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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:

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4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: May 18 at 9:00 am

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

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BOSTON, MA

WHEN: June 20 at 9:00 am

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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, **Federal Register** finding aids, and a list of documents on public inspection 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.

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Presidential Documents

Title 3—

The President

Proclamation 6800 of May 15, 1995

Peace Officers Memorial Day and Police Week, 1995

By the President of the United States of America

A Proclamation

Each year, we pause to remember and to honor the brave men and women whose heartfelt commitment to the law and to their fellow citizens cost them their lives. During 1994, we lost 56 law enforcement officers to on-duty accidents. Seventy-six officers—72 State and local police and four Federal agents—were murdered. Thirty-three of these officers were wearing body armor when they were killed. All but one were killed with a firearm. Three were gunned down inside police headquarters in our Nation's capital.

America's law enforcement officers face extraordinary risks—breaking up a drug ring, apprehending a fugitive, responding to an incident of domestic violence, even making a traffic stop. Since the first recorded police death in this country in 1794, more than 13,500 law enforcement officers have been killed in the line of duty. On average, more than 62,000 officers are assaulted and some 20,000 are injured each year.

Tragically, the dangers of law enforcement service are increasing. From 1960 to 1993, the number of violent crimes in America increased 567 percent. In the past 10 years, it increased 51 percent. During 1993, more than 1.9 million violent crimes—murders, rapes, robberies, and assaults—were reported to police. And our police responded.

Despite the rising tide of crime, good and brave men and women continue to join the ranks of law enforcement. Today, more than 600,000 sworn officers work every day to preserve the peace and improve the safety of cities and towns across America. These heroic individuals and their fallen colleagues come from many different backgrounds. But they are linked by a common faith—that freedom is worth defending and that justice shall prevail. For those who died to uphold these ideals and for those who still stand to protect them, we salute America's law enforcement officials.

The Congress, by a joint resolution approved October 1, 1962 (76 Stat. 676), has authorized and requested the President to designate May 15 of each year as "Peace Officers Memorial Day," and the week in which it falls as "Police Week," and by Public Law 103–322 (36 U.S.C. 175) has requested that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 15, 1995, as Peace Officers Memorial Day, and May 14–20, 1995, as Police Week. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities. I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I invite the people of the United States to display the flag at half-staff from their homes on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–12290
Filed 5-15-95; 2:38 pm]
Billing code 3195–01–P

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG76

Prevailing Rate Systems; Abolishment of Atlanta, Georgia, Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Federal Wage System special wage schedule for printing positions in the Atlanta, Georgia, wage area. Printing and lithographic employees in Atlanta will now be paid rates from the regular Atlanta, Georgia, wage schedule.

DATES: This interim rule becomes effective on May 17, 1995. Comments must be received by June 16, 1995. Employees paid rates from the Atlanta, Georgia, special wage schedule for printing positions will continue to be paid rates from that schedule until their conversion to the regular Atlanta, Georgia, wage schedule on July 9, 1995, the effective date of the new Atlanta, Georgia, regular wage schedule.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Human Resources Systems Service, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Atlanta, Georgia, Printing and Lithographic wage schedule be abolished and that the regular Atlanta, Georgia, wage schedule apply to printing employees in the Atlanta, Georgia, wage area. This recommendation was based on the fact that the number of employees paid from this special schedule has declined in recent years from a total of 38 employees in 1993 to a current total of 25 employees, only 6 of whom are in grade levels benefiting from the special survey. The Atlanta, Georgia, special printing wage survey would produce special schedule rates lower than the regular area wage schedule rates for all but 6 of the 25 employees covered by the special printing schedule. Because regulations provide that the special printing schedule rates may not be lower than the regular schedule rates for an area, Atlanta, Georgia, special printing schedule rates for the first eight grades are currently based on the Atlanta, Georgia, regular wage schedule rates.

In addition with the reduced number of employees, it has been difficult to comply with the requirement that workers paid from the special printing schedule participate in the special wage survey process. The last full-scale survey involved the substantial work effort of contacting 65 printing establishments spread over 15 counties in the Atlanta metropolitan area.

Upon abolishment of the Atlanta special printing schedule, the printing and lithographic employees will be converted to the regular schedule on a grade-for-grade basis. Their new rate of pay will be set at the rate for the step of the applicable grade of the regular schedule that equals the employees' existing scheduled rate of pay. When the existing rate falls between two steps, the employees's new rate will be set at the rate for the higher of those two steps. This conversion does not constitute an equivalent increase for within-grade increase purposes. In accordance with the OPM Operating Manual, *The Guide to Processing Personnel Actions*, this pay plan change will be processed as a "Pay Adjustment," Nature of Action Code 894, authority code ZLM, citing this **Federal Register** notice as authority. Pay retention provisions will apply for the few employees not receiving increases upon conversion.

The Federal Prevailing Rate Advisory Committee has reviewed this recommendation and by consensus has recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the May 1995 Atlanta, Georgia, survey must begin immediately.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. In § 532.279, paragraph (j)(5) is removed, and paragraphs (j)(6) through (j)(9) are redesignated as paragraphs (j)(5) through (j)(8), respectively.

[FR Doc. 95–12033 Filed 5–16–95; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV94–981–4 FR]

Almonds Grown in California; Reduction of Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the expenses and assessment rate previously established under Marketing Order No. 981 for the 1994–95 crop year. This rule reduces the budget of expenses and rate which almond handlers may be assessed for funding expenses by the Almond Board of California (Board) that are reasonable and necessary to administer the program.

EFFECTIVE DATE: Effective July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone 202–720–1509, or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-In-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone 209–487–5901, or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981, both as amended (7 CFR part 981), regulating the handling of almonds 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 of Agriculture (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 almonds are subject to assessments. It is intended that the assessment rate issued herein will be applicable to all assessable almonds handled during the 1994–95 crop year, which began July 1, 1994, and ends June 30, 1995. 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), 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 7,000 producers of California almonds under this marketing order, and approximately 115 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 $5,000,000. The majority of California almond producers and handlers may be classified as small entities.

A budget of expenses and rate of assessment for the 1994–95 crop year was recommended on May 18, 1994, by the Board, the agency responsible for local administration of the program. An interim final rule was issued in the **Federal Register** on July 14, 1994, (59 FR 35847) and a final rule was issued in the September 8, 1994 **Federal Register** (59 FR 46321). Approved expenditures totalled $9,435,262 with an approved assessment rate of 2.25 cents per pound. Of the 2.25 cents per pound, handlers could receive credit-back against their assessment obligation up to one cent per pound for their own promotional expenditures. Specific explanations of various expenditure categories and comparisons with a prior period are contained in the aforementioned final rule.

The Board met on September 14, 1994, and recommended, by a seven to two vote, postponing its paid advertising campaign and directly related activities until further notice. It also voted to postpone assessment billings pending evaluation of legal issues and future program activities. Generic public relations activities and other promotion-related activities to which the Board was contractually committed at that time are to be continued. This action was taken as a result of uncertainty created by legal decisions regarding the Board's former advertising and promotion program.

Specifically, the Ninth Circuit Court of Appeals ruled in December 1993, that aspects of the Board's former advertising and promotion program in the 1980's were unconstitutional. On remand, the district court subsequently awarded plaintiff handlers refunds of assessments and other money spent under the program. This decision was issued on September 6, 1994, which led to the Board's actions to postpone advertising activities at its September 14, 1994, meeting. The district court's remand decision is currently being appealed. In addition, several handlers filed legal challenges to the Board's current credit-back advertising and promotion program, pursuant to section 608(c)(15)(A) of the Act.

The Board again met on November 30, 1994, and recommended, by a seven to three vote, reducing the assessment rate by eliminating the portion applicable to credit-back to handlers for their own promotional activities (one cent), and by eliminating the portion of the remaining assessment applicable to generic promotion activities. The resulting assessment rate the Board recommended handlers pay was .47 cents per pound. Concurrently, the Board again postponed assessment billings pending further evaluation of the Board's financial status. These actions were taken because of the apparent lack of support by some handlers at the time for generic promotion and credit-back programs, demonstrated by legal challenges filed by such handlers representing a significant portion of the industry volume. One Board member commented that since the handlers who have filed legal challenges are not likely to pay the advertising assessment, it is not equitable for the remainder of the

industry to shoulder the expense of an advertising program.

The Board met again on February 1, 1995, and recommended, by a six to four vote, to further reduce the assessment rate. The Board recommended an assessment rate of .25 cents per pound. This action was taken after the Board further evaluated its financial position and current and future program activities.

An assessment rate of .25 cents per pound will generate income of $1,675,000 based on an estimated assessable crop of 670 million pounds. When combined with cash and cash equivalents held by the Board, this will provide the Board with sufficient income to meet its administrative expenses and those promotional expenses to which it is contractually obligated for the remainder of the current fiscal year.

To reduce the budget of expenses previously approved ($9,435,262), the Board deleted the funds budgeted for reserve replenishment ($300,000) and at its November 30, 1994, meeting, postponed a major portion ($3.9 million) of the $4.7 million funds budgeted for promotional activities. These revisions will reduce the budget to $5,235,262. The reduced budget will provide the Board with sufficient capital to carry into the next fiscal year to finance operations prior to collection of future assessments.

Concerns were raised that the reduction of the assessment rate mid-way through the crop year may generate complaints from those handlers who relied on the final rule of September 8, 1994, which established an assessment rate of 2.25 cents per pound, of which handlers could receive credit-back up to one cent per pound for their own promotional expenditures. Some handlers have incurred expenses that would be eligible for credit-back under the provisions of that rule.

Under this assessment rate reduction, there is no assessment for these handlers to claim credit-back against. However, an assessment rate of .25 cents per pound is significantly lower than the previously established rate of 2.25 cents. Under the previous assessment of 2.25 cents, if handlers claimed credit-back for the entire one cent, they would still be required to pay 1.25 cents per pound to the Board. Handlers will pay significantly less even if they conducted advertising for which they believed credit-back would be obtained. In addition, benefits are derived from advertising undertaken by these handlers.

A proposed rule concerning this rule was published in the March 24, 1995, **Federal Register** (60FR 15523), with a 30-day comment period. Two comments were received.

The first comment received was from an independent handler who was concerned that some handlers will make their final accountings to growers prior to the finalization of the proposed rule. If handlers make final payment to their growers based on the proposed assessment and USDA modifies the proposal, the commenter states that some of these handlers will file petitions against USDA for modifying the proposal under section 608c(15)(A) of the Act. However, this final rule does not modify the proposed rule and both handlers and growers had adequate notice of this change. In addition, the marketing order does not regulate contractual relationships between handlers and growers.

The second comment was received from the Office of Chief Counsel for Advocacy of the United States Small Business Administration (SBA). The SBA contended that although it concurs with the cancellation of the advertising component of the order until legal disputes are resolved, USDA's assertion that this cancellation of the advertising program would not have a significant economic impact on a substantial number of small entities was illogical. SBA contends that rational businesses are not going to subject themselves to the increased paperwork generated by the advertising program for insignificant economic gain and USDA appears to be avoiding its responsibilities under the RFA.

Although SBA's comment seems to relate to the implementation of the almond promotional program, rather than the elimination of that program, consideration was given to the impact of this rule on large and small handlers. As stated previously in this final rule and in the proposed rule, concerns were raised about the handlers who have incurred expenses that would be eligible for credit-back. It was determined that handlers will pay significantly less even if they conducted advertising for which they believed they would be entitled to credit-back as well as derive benefits from the advertising they conducted.

Another determination made in this rule and in the proposed rule was that the action taken by the Board to minimize financial liability in the event the pending litigation is decided unfavorably to the Board, is sensible and reduces economic risk to handlers.

For the above reasons, USDA disagrees with the SBA's assertion that this action fails to meet the requirements of the RFA. The program's impact on small businesses has been properly addressed in this document and in the proposed rule.

This rule reduces the assessment obligation imposed on handlers. The assessments are uniform for all handlers. The assessment cost 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 the Board's recommendations and other relevant information presented, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule reduces the assessment rate currently in effect; (2) this rule should be in effect as soon as possible because the 1994 crop year began on July 1, 1994; and (3) the proposed rule provided a 30-day comment period and the only comments received did not oppose the reduction.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: The following section will not appear in the Code of Federal Regulations.

2. Section 981.341 is revised to read as follows:

§ 981.341 Expenses and assessment rate.

Expenses of $5,235,262 by the Almond Board of California are authorized for the crop year ending June 30, 1995. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at .25 cents per kernel pound of almonds. Of the .25 cents assessment rate, none is available for handler credit-back pursuant to § 981.441.

Dated: May 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12145 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[FV95–989–2IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1994–95 Crop Year for Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of final free and reserve percentages for 1994–95 crop Natural (sun-dried) Seedless raisins. The percentages are 77 percent free and 23 percent reserve. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This rule was recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

DATES: This interim final rule becomes effective May 17, 1995, and applies to all Natural (sun-dried) Seedless raisins acquired from the beginning of the 1994–95 crop year. Comments which are received by June 16, 1995, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456, or faxed to 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: 209–487–5901 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, PO Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The 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 of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Natural (sun-dried) Seedless raisins for the 1994–95 crop year, beginning August 1, 1994, through July 31, 1995. This interim final 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 exempt 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/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 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 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule may restrict the amount of Natural (sun-dried) Seedless raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the computed trade demand

and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to § 989.54(a) of the order, the Committee, which is responsible for local administration of the order, met on August 15, 1994, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in § 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one half of October. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced a 1994–95 trade demand of 294,422 tons for Natural (sun-dried) Seedless raisins.

As required under § 989.54(b) of the order, the Committee met on October 5, 1994, and computed and announced a preliminary crop estimate and preliminary free and reserve percentages for Natural (sun-dried) Seedless raisins which released 65 percent of the trade demand since the field price had not been established. The preliminary crop estimate and preliminary free and reserve percentages were as follows: 404,677 tons, and 47 percent free and 53 percent reserve. The Committee authorized the Committee staff to modify the preliminary percentages to release 85 percent of the trade demand when the field price was established. The preliminary percentages for Natural (sun-dried) Seedless raisins were adjusted soon thereafter to 62 percent free and 38 percent reserve.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Zante Currant, Sultana, Muscat, Monukka, and Other Seedless raisins. On January 12, 1995, the Committee determined that volume control percentages only were warranted for Zante Currant, Other Seedless, and Natural (sun-dried) Seedless raisins, and it recommended final percentages of 40 percent free and 60 percent reserve for both Zante Currant and Other Seedless raisins. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietals. In view of these factors, volume control percentages would not be necessary to maintain market stability for the other varietal types.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for Natural (sun-dried) Seedless raisins of 75 percent free and 25 percent reserve were computed and announced on January 15, 1995. That action released most, but not all, of the computed trade demand for Natural (sun-dried) Seedless raisins.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's final estimate of 1994–95 production of Natural (sun-dried) Seedless raisins is 379,972 tons. Dividing the computed trade demand of 294,422 tons by the final estimate of production results in a final free percentage of 77 percent and a final reserve percentage of 23 percent.

The free and reserve percentages established by this interim final rule will apply uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. Although raisin markets are limited, they are available to all handlers, regardless of size. The stabilizing effects of the percentages impact both small and large handlers positively by helping them maintain and expand markets.

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

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1994–95 crop year apply to all Natural (sun-dried) Seedless raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1994–95 crop raisins of the Natural (sun-dried) Seedless varietal type and this action should be taken promptly to achieve the intended purpose of making the full trade demand quantity computed by the Committee available to handlers; (3) handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 30-day period for written comments and all comments received will be considered prior to finalization of this 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 to read 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.

2. Section 989.248 is added to Subpart—Supplementary Regulations to read as follows:

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

§ 989.248 Final free and reserve percentages for the 1994–95 crop year.

The final percentages for standard Natural (sun-dried) Seedless raisins acquired by handlers during the crop year beginning on August 1, 1994, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	77	23

Dated: May 11, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12148 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[FV95–989–1FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1994–95 Crop Year for Zante Currant and Other Seedless Raisins

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 which established final free and reserve percentages for 1994 crop Zante Currant and Other Seedless raisins. The percentages are 40 percent free and 60 percent reserve for each of these varietal types. These percentages are intended to help stabilize supplies and prices and counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This rule was recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the marketing order.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901; or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The 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 of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This action finalizes final free and reserve percentages for Zante Currant and Other Seedless raisins for the 1994–95 crop year, beginning August 1, 1994, through July 31, 1995. This final 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 exempt 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/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 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 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers of California raisins, may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

An interim final rule was published in the **Federal Register** on March 7, 1995 (60 FR 12403), with an effective date of March 7, 1995. That rule established final free and reserve percentages for Zante Currant and Other Seedless raisins for the 1994–95 crop year. The percentages were established in a new § 989.247 of the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended April 6, 1995. No comments were received.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule continues in effect restrictions limiting the amount of Zante Currant and Other Seedless raisins entering domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free

tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the trade demand and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to § 989.54 of the order, the Committee met on August 15, 1994, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in § 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one half of October. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced a 1994–95 trade demand of 787 tons for Other Seedless raisins.

Section 989.54 of the order also authorizes the Committee to consider factors which pertain to the marketing of raisins, including an estimated trade demand which differs from the computed trade demand. At its August 15, 1994, meeting, the Committee computed a trade demand of 500 tons for Zante Currants. The Committee, however, determined that anticipated changes in the market conditions for Zante Currants warranted an estimated trade demand substantially higher than this.

Entering this season, the California raisin industry was carrying a very large supply of 1992–93 and 1993–94 crop Zante Currants and projected a record production in 1994–95. The Committee recommended actions to help handlers sell their tonnage at prices competitive with other currant prices in domestic and export markets. Because of these actions, the Committee believed that the computed trade demand was insufficient and decided to calculate its percentages based on an estimated trade demand of 2,200 tons.

When the Committee met on October 5, 1994, the field price for Zante Currants had been established, but the field price for Other Seedless raisins had not. Section 989.54(b) of the order requires the Committee to compute percentages which release 85 percent of the trade demand for varieties for which field prices have been established and 65 percent for varieties which have not. Thus, when the Committee met on that date, it computed and announced preliminary crop estimates and preliminary free and reserve percentages for Zante Currant and Other Seedless raisins which released 85 percent and 65 percent of the trade demands, respectively. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 6,074 tons, 31 percent free and 69 percent reserve for Zante Currants; and 4,073 tons, 13 percent free and 87 percent reserve for Other Seedless Raisins. The Committee also authorized the Committee staff to increase the preliminary percentages to release 85 percent of the trade demands for varietal types without established field prices when the field prices were established. For Other Seedless raisins, the preliminary percentages were adjusted soon thereafter to 16 percent free and 84 percent reserve.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Sultana, Muscat, Monukka, and Golden Seedless raisins. On January 12, 1995, the Committee decided that volume control percentages only were warranted for Zante Currant, Other Seedless, and Natural (sun-dried) Seedless raisins. The Committee delayed announcing final percentages for Natural (sun-dried) Seedless raisins until more shipment and production information was available. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietals. Thus, volume control percentages would not be necessary to maintain market stability.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for both Zante Currant and Other Seedless raisins of 39.75 percent free and 60.25 percent reserve were computed and announced on January 12, 1995. That action released most, but not all, of the computed trade demand for Zante Currant and Other Seedless raisins.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's estimates, as of January 12, 1995, of 1994–95 production of Zante Currant and Other Seedless raisins were 5,507 and 1,973 tons, respectively. For Zante Currants, dividing the estimated trade demand of 2,200 tons by the final estimate of production results in a final free percentage of 40 percent and a final reserve percentage of 60 percent. For Other Seedless raisins, dividing the computed trade demand of 787 tons by the final estimate of production results in a final free percentage of 40 percent and a final reserve percentage of 60 percent.

The free and reserve percentages established by the interim final rule, and continued in effect, without changes, by this rule, apply uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. Although raisin markets are limited, they are available to all handlers, regardless of size. The stabilizing effects of the percentages impact both small and large handlers positively by helping them maintain and expand markets.

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 all relevant information presented, including the Committee's recommendations and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** on March 7, 1995 (60 FR 12403), will tend to effectuate the declared policy of the Act.

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.

2. Accordingly, the interim final rule adding § 989.247, which was published at 60 FR 12403 on March 7, 1995, is adopted as a final rule without change.

Dated: May 11, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12147 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 998

[Docket No. FV95–998–1IFR]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures for administration and indemnification, establishes an assessment rate, and authorizes continuation of an indemnification reserve under Marketing Agreement 146 (agreement) for the 1995–96 crop year. This rule also increases the administrative assessment rate for the 1994–95 crop year. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay those expenses, and settle indemnification claims during the 1995–96 crop year. Authorization of the increase in the administrative assessment rate for the 1994–95 crop year enables the Committee to collect sufficient funds to pay expenses projected for the remainder of that year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

DATES: Effective July 1, 1995, through June 30, 1996 (§ 998.408) and July 1, 1994, through June 30, 1995 (§ 998.407). Comments received by June 16, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

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 William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement 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 U.S. Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12887, Civil Justice Reform. Under the agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments. This rule authorizes expenditures and establishes an assessment rate for the Committee for the crop year beginning July 1, 1995, and increases the administrative assessment rate for the crop year which began July 1, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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 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.

There are approximately 47,000 producers of peanuts in the 16 States covered under the agreement, and approximately 76 handlers regulated under the agreement. 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 $5,000,000. A majority of the producers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

Under the agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee for the 1995–96 crop year was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received or acquired by handlers from July 1, 1995. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expenses.

The Committee met on March 23, 1995, and unanimously recommended 1995–96 crop year administrative expenses of $1,067,500 and an administrative assessment rate of $0.70 per net ton of assessable farmers' stock peanuts received or acquired by handlers. In comparison, 1994–95 crop

year budgeted administrative expenditures were $1,056,000, and the administrative assessment rate was initially recommended and fixed at $0.60 per ton.

Administrative budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Executive salaries, $145,051 ($140,146), clerical salaries, $138,856 ($132,500), field representatives salaries, $304,344 ($290,420), payroll taxes, $44,000 ($43,000), employee benefits, $148,000 ($145,000), insurance and bonds, $9,500 ($8,500), postage and mailing, $13,200 ($12,000), and audit fees, $10,400 ($9,200). Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Office rent and parking, $44,360 ($50,000), furniture and equipment, $4,000 ($9,500), and lab data processing, $1,000 ($1,500). All other items are budgeted at last year's amounts. The administrative budget includes $4,789 for contingencies ($14,234 last year).

The Committee also unanimously recommended 1995 crop indemnification claims payments of up to $7,000,000 and an indemnification assessment of $1.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. For the 1994 crop, indemnification claim payments of up to $9,000,000 and an assessment rate of $2.00 per net ton were established. The decreases for 1995 reflect the Committee's desire to lower indemnification costs.

The costs to carry out indemnification procedures (sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, of indemnified peanuts, pursuant to § 998.200(c)), are paid from available indemnification funds. Such costs are not expected to exceed $500,000.

The total assessment rate is $1.70 per ton of assessable peanuts ($0.70 for administrative and $1.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,525,000 will yield $1,067,500 for program administration and $1,525,000 for indemnification. The indemnification amount, when added to expected cash carryover from 1994–95 indemnification operations of $8,700,000, will provide $10,225,000 which should be adequate for the 1995 fund, and to maintain an adequate reserve.

The 1994–95 budget was published in the **Federal Register** as an interim final rule on May 12, 1994 (59 FR 24633), and finalized on August 3, 1994 (59 FR 39421). The administrative expenses and assessment rate for the 1994–95 crop year were based on an estimated assessable tonnage of 1,760,000. Due to handlers purchasing fewer peanuts than originally projected, the assessable tonnage is expected to be only 1,676,000. In order to have sufficient revenue to cover budgeted expenses of $1,056,000, the Committee unanimously recommended that the 1994–95 crop year administrative assessment be increased from $0.60 to $0.63 per net ton of assessable farmers' stock peanuts.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1994–95 crop year began on July 1, 1994, and the 1995–96 crop year begins on July 1, 1995, and the marketing agreement requires that the rate of assessment for the fiscal period apply to all assessable peanuts handled during the fiscal period; (3) handlers are aware of these actions which were unanimously recommended by the Committee at a public meeting and are similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the Code of Federal Regulations.

2. New § 998.408 is added to read as follows:

§ 998.408 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1995, shall be in the amount of $1,067,500, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee not to exceed $7,000,000 for indemnification claims payments and claims expenses, pursuant to the terms and conditions of indemnification applicable to the 1995 crop effective July 1, 1995, are authorized. In addition, indemnification expenses, in an undetermined amount estimated not to exceed $500,000, which are incurred by the Committee for sampling and testing fees for 2–AB and 3–AB Subsamples, and fees for the supervision of the crushing of indemnified peanuts are also authorized.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of $1.70 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31(c) and (d). A total of $0.70 shall be for administrative expenses and a total of $1.00 shall be for indemnification. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop

year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $1.00 rate not expended on indemnification claims payments on 1995 crop peanuts and related expenses shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

§ 998.407 [Amended]

3. On § 998.407, paragraph (c) is amended by removing "$2.60" and adding in its place "$2.63" and by removing "$0.60" and adding in its place "$0.63."

Dated: May 11, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12146 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Housing and Community Development Service; Rural Business and Cooperative Development Service; Rural Utilities Service; Consolidated Farm Service Agency

7 CFR Part 1980

RIN 0575–AB84

Business and Industrial Loan Program

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business and Cooperative Development Service (RBCDS), (pursuant to section 234 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, October 13, 1994) and the Secretary's decision to implement such Authority) is the successor to the Rural Development Administration (RDA), which is the successor to the Farmers Home Administration (FmHA). RBCDS amends the Business and Industry Loan Servicing regulations to clarify the procedure for categorizing and classifying loans according to payment frequency criteria. The intended effect is to clarify procedures for classifying and categorizing loan payment history.

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Hennings, Senior Loan Specialist, Business and Industry Division, RBCDS (formerly RDA), U.S. Department of Agriculture, Room 6337, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC, 20250–0700, Telephone: (202) 690–3809.

SUPPLEMENTARY INFORMATION:

Classification

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

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

Intergovernmental Review

The Business and Industrial Loan programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. RBCDS has conducted intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Civil Justice Reform

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. (In accordance with this rule:) (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 C.F.R. 1900–B or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0029 in accordance with the Paperwork Reduction Act of 1980. This rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, subpart G, "Environmental Program." RBCDS 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.

Background

The regulations for Business and Industrial guaranteed loans require the lender to classify each loan in accordance with specific criteria set out in the regulations. It has been discovered that loans that are in compliance with requirements and have been current for more than 23 months but still have an outstanding balance of more than two-thirds of the original loan amount do not fit the criteria provided for in any classification. This action is to revise the criteria so that those loans will be included in the current non-problem classification.

Comments

On June 24, 1994, FmHA published a proposed rule with a comment period ending on August 23, 1994 in the **Federal Register** (59 FR 32660) to revise the loan classification criteria so that those loans that have been current for more than 23 months but still have an outstanding balance of more than two-thirds of the original loan amount will be included in the current non-problem classification. There were no comments on the proposed rule.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and industry, Rural development assistance, Rural areas.

Accordingly, part 1980 of chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 7 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.469 is amended by revising paragraph (c)(3) to read as follows:

§ 1980.469 Loan servicing.

* * * * *

(c) * * *

(3) *Current Non-problem Classification*—Those loans that are current and are in compliance with all loan conditions and B&I regulations but do not meet all the criteria for a Seasoned Loan classification. All loans not classified as Seasoned or Current Non-problem will be reported on the quarterly status report with documentation of the details of the reason(s) for the assigned classification.

* * * * *

Dated: March 28, 1995.

Michael V. Dunn,

Acting Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–12154 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–32–U

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 103F; AG Order No. 1966–95]

RIN 1125–AA03

Executive Office for Immigration Review; Stipulated Requests for Deportation or Exclusion Orders, Telephonic, Video Electronic Media Hearings

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 8 CFR 3.25 by codifying an Immigration Judge's discretion to enter an order of deportation or exclusion without a hearing if satisfied that the alien voluntarily entered into a plea-negotiated or otherwise stipulated request for an order of deportation or exclusion. It further codifies the practice of Immigration Judges conducting telephonic hearings in deportation, exclusion, or recission cases, and codifies the authority of the Immigration Judge to hold video electronic media hearings.

The proposed rule also clarifies the language in § 3.25(a) to conform with *in absentia* hearing provisions under the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1252, 1252b.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041 (703) 305–0470.

SUPPLEMENTARY INFORMATION: The Department of Justice published a proposed rule on May 13, 1994 (59 FR 24976). The proposed rule sought to amend § 3.25 of title 8, CFR, to require an Immigration Judge to enter an order of deportation or exclusion on the written record, without an in-person hearing, based upon the stipulated written request of the respondent/applicant and the government under certain specified circumstances. The requirement to enter orders of deportation or exclusion based on the written record would arise only in instances where the Immigration Judge determined that the charging document set forth a valid basis for deportability or excludability; the stipulated request for an order of deportation or exclusion was voluntarily entered into by the respondent/applicant; and the respondent/applicant specifically waived relief from deportation or exclusion as well as the described hearing rights.

The rule also proposed to establish the authority of the Immigration Judge to hold telephonic hearings and video electronic media hearings. Additionally, the proposed rule made minor technical changes in paragraph (a) to conform with the *in absentia* provisions of 8 U.S.C. 1252.

The Executive Office for Immigration Review ("EOIR" or "the Agency") received eighteen comments concerning the proposed rule. The comments addressed the waiver of presence of the parties, the requirement that an Immigration Judge enter stipulated orders of deportation and exclusion under certain circumstances, and an Immigration Judge's discretion to conduct telephonic and video electronic media hearings.

1. Section 3.25(a) Waiver of Presence of the Parties

The Agency received one comment objecting to the proposed rule's provision allowing the Immigration Judge to waive the presence of an alien who is a child where a parent or legal guardian is present. The commenter argued that the rule would provide children with less due process protection than it provides adults.

This rule is for the convenience of the parties. For example, if parents and their infant child are in deportation proceedings, this rule allows the Immigration Judge to waive the presence of the infant. Such a waiver allows parents to place the child in childcare during the hearing. The waiver allows the parents and the Immigration Judge to concentrate on the substantive issues. For pragmatic reasons, the Agency has decided to retain this rule.

2. Section 3.25(b) Stipulated Request for Deportation or Exclusion Orders

Numerous commenters expressed due process concerns with the proposed rule's provision requiring an Immigration Judge to enter an order of deportation or exclusion if, based on the written record, the Judge determines that a represented respondent/applicant voluntarily entered into a stipulated request for an order of deportation or exclusion. Conversely, other commenters expressed approval of the requirement and suggested that the Agency expand the requirement to include motions for changes of venue and some forms of relief. Commenters also expressed concern that the rule requiring that a respondent/applicant make no application for relief unjustly limits the options of the respondent/applicant.

The rule has been modified to respond to the commenters' due process concerns. The final rule does not require an Immigration Judge to enter an order of deportation or exclusion based on the parties' written stipulation. stead, the rule explicitly recognizes a Judge's discretion to enter an order of deportation or exclusion based on the parties' written stipulation. The Immigration Judge's discretion to enter an order by written stipulation in the absence of the parties is limited to cases in which the applicant or respondent is represented at the time of the stipulation and where the stipulation is signed on behalf of the government and by both the applicant or respondent and his or her attorney or other representative qualified under part 292 of this chapter. At this juncture, the Agency declines to modify the scope of the stipulation procedure, and so the final rule does not address venue and has not changed with respect to application for relief.

Commenters stated that the proposed rule did not give sufficient emphasis to the requirement that only represented respondents/applicants may enter into stipulation requests. In response, the word "represented" has been inserted before each reference to respondent/applicant in the final version of § 3.25(b).

Commenters stated that the proposed rule did not give sufficient emphasis to the requirement that the respondent/applicant fully understand the ramifications of a stipulation. In ascertaining the extent of understanding, one commenter suggested that the Immigration Judge should focus specifically on the respondent/applicant's English language skills. The words "voluntarily,

knowingly and intelligently" have been added to ensure maximum protection for aliens entering into stipulations. Because language skills are subsumed in the voluntarily, knowingly and intelligently formula, the Agency considers it unnecessary for the rule to specifically address language skills.

One commenter, although supporting the rule's concept, expressed a technical concern with the elimination of "hearings" when the requirements for a stipulated deportation or exclusion are met. According to the comment, there is a statutory mandate that Immigration Judge conduct "hearings". In response to this comment, the final rule now states that the Immigration Judge may "conduct hearings in the absence of the parties."

A few commenters stated, in essence, that the requirement that the respondent/applicant introduce written statements as an exhibit to the record of proceedings was superfluous. The commenters suggested deletion of this requirement. Because of the potential value of a complete record, the Agency rejects this suggestion.

One commenter suggested that the rule should explicitly permit revocation of stipulated deportations and exclusions. Because the Code of Federal Regulations already provides mechanisms for motions to reopen, motions to reconsider, and notices of appeal, e.g., 8 CFR 103.5, 208.19, 242.21, 242.22, and 3.3, a revocation provision would be redundant and potentially confusing.

The rule implements the statutory requirement of expeditious deportation of criminal aliens under 8 U.S.C. 1252(i), 1252a(d), while protecting the rights of the parties. The rule contemplates employing stipulated deportations to expedite departures of aliens convicted of offenses rendering them immediately deportable or excludable. Stipulated deportations also allow the prompt departure of imprisoned criminal aliens who have no apparent avenue of relief from deportation or exclusion and who wish to avoid immigration-related detention after having completed their criminal sentences. If used more widely by litigants and criminal prosecutors, the procedure could alleviate overcrowded federal, state, and local detention facilities and eliminate the need to calendar such uncontested cases on crowded Immigration Court dockets.

The procedure is not limited to cases arising in the criminal context and can be used in other appropriate settings. The practice codified by the final rule already exists in some jurisdictions. The final rule promotes judicial efficiency in uncontested cases and resolves the commenters' due process concerns.

3. Section 3.25(c) Telephonic or Video Electronic Media Hearing

Commenters raised both statutory and practical concerns with this section of the proposed rule. The statutory concerns revolved around the proper construction of the phrase "before a special inquiry officer" as used in 8 U.S.C. 1252(b). According to some comments, the word "before" must be construed to mean that an alien is entitled to appear physically before an Immigration Judge. Commenters made no distinction between telephonic and video electronic media hearings. These comments relied on *Purba* v. *INS*, 884 F.2d 516, 517–18 (9th Cir. 1989) (holding that "section 242a(b) [of the Act] requires that the hearing be conducted with the hearing participants in the physical presence of the IJ [Immigration Judge]" and that "telephonic hearings by an IJ, absent consent of the parties, simply are not authorized by the statute"). The Ninth Circuit decision in *Purba* informs the issue of whether telephonic hearings are appropriate. However, *Purba* disposes of the issue in the Ninth Circuit only. Notably, the Eleventh Circuit also has addressed the issue of whether the statutory language of the Act allows for telephonic hearings at the Immigration Judge's discretion or whether the statutory language requires parties' consent. *Bigby* v. *INS*, 21 F.3d 1059 (11th Cir. 1994).

The Eleventh Circuit expressly cited to and disagreed with the holding in *Purba*, finding instead that an Immigration Judge has the discretion to hold a hearing by telephonic means and that party consent is unnecessary, at least where credibility determinations are not at issue. *Bigby*, 21 F.3d at 1062–64. *See also U.S.* v. *McCalla*, 821 F. Supp. 363, 369 n. 11 (E.D.Pa. 1993) ("Assuming that the defendant in this case did not consent to holding the hearing by telephone, this is of no moment * * * [the defendant] has demonstrated no prejudice resulting from the use of the telephone such that he would have been entitled to relief from deportation on appeal.")

Commenters relied exclusively on the Ninth Circuit decision and, as of the date of their comments, apparently were unaware of the Eleventh Circuit's recent decision. Numerous commenters conceded that the telephonic hearings currently conducted are procedurally effective and convenient, citing as examples, detained aliens and attorneys who practice some distance from the Immigration Court. However, commenters asserted that telephonic and video electronic media hearings, as contemplated by the proposed rule, would result in deprivations of respondents' due process rights. The commenters argued that, in some instances, this rule would deprive respondents of the opportunity to present and inspect evidence and the right to cross-examine adverse witnesses. They also stated that telephonic and video electronic media hearings would impair the Immigration Judge's ability to assess credibility. furthermore, commenters maintained that telephonic and video electronic media hearings would handicap the communication between non-English speaking respondents and their interpreters and would handicap respondents' representation by counsel. In addition, commenters noted that this rule would lead to disparate treatment in the various circuits. Given these perceived harms, the commenters suggested that the Agency either withdraw the telephonic/video electronic media hearing provision or modify it to be consistent with *Purba* by requiring party consent.

In response to the commenters' due process concerns, the Agency has modified the rule's telephonic hearing provision. The final rule requires that parties consent to telephonic procedures which are full evidentiary hearings on the merits. Consequently, the parties will have an opportunity to elect an in-person hearing at a critical juncture.

The final rule, however, distinguishes between telephonic and video electronic media hearings. The final rule does not require that parties consent to video electronic media hearings of any kind. Video electronic media hearings are completely within the discretion of the Immigration Judge. The sophistication of modern video electronic media coupled with the prudent use of Immigration Judge discretion should be sufficient to preserve the integrity of the procedure and the due process rights of the parties.

The final rule, furthermore, retains the proposed rule's provision recognizing the Immigration judge's discretion to conduct hearings telephonically and by video electionic media when such proceedings are not contested, full evidentiary merit hearings. Judicial discretion will ensure that telephonic and video electronic media hearings will be conducted only as appropriate.

Althought his rule probably will result in disparate treatment among the circuits, this situation is neither unusual nor prohibited in our federal system. The Immigration Judges in the

geographical confines of the Ninth Circuit currently follow *Purba* and will continue to follow the law of that circuit.

Commenters also raised practical concerns with telephonic and video electronic media hearings. Given the nature of immigration proceedings, they correctly note that parties are often unable to communicate proficiently in the English language. These comments posit that telephonic and video electronic media hearings would further impair communication. The caliber of today's technology, the requirement for party consent in critical telephonic merit hearings, the prudent use of Immigration Judge discretion, and the availability of procedural vehicles for review of Immigration Judge decisions sufficiently safeguard non-English speakers from potential prejudice.

The final rule codifies some of the current practices of Immigration Judges holding telephonic hearings at their discretion and extends these practices to video electronic media hearings. The final rule also codifies a limitation on Immigration Judge discretion to conduct certain telephonic hearings. The final rule allows implementation of modern technology in order to increase procedural efficiency while protecting parties' due process rights. The rule assists the Agency in carrying out the country's immigration policy in an equitable and productive manner.

The final rule also makes minor technical changes in paragraph 9a) to conform with the *in absentia* provisions of 8 U.S.C. 1252.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, § 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration and Naturalization Service, Organization and functions (government agencies).

Accordingly, 8 CFR part 3 is amended as set forth below:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Section 2, Reorganization Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.25 is revised to read as follows:

§ 3.25 Waiver of presence of the parties.

(a) *Good cause shown.* The Immigration Judge may, for good cause, waive the presence of a respondent/applicant at the hearing when the alien is represented or when the alien is a minor child at least one of whose parents or whose legal guardian is present. In addition, *in absentia* hearings may be held pursuant to sections 1252(b) and 1252b(c) of title 8, United States Code with or without representation.

(b) *Stipulated request for order; waiver of hearing.* Notwithstanding any other provision of this chapter, upon the written request of the respondent/applicant and upon concurrence of the government, the Immigration Judge may conduct hearings in the absence of the parties and enter an order of deportation or exclusion on the written record if the Immigration Judge determines, upon a review of the charging document, stipulation document, and supporting documents, if any, that a represented respondent/applicant voluntarily, knowingly, and intelligently entered into a stipulated request for an order of deportation or exclusion. The stipulation document shall include:

(1) An admission that all factual allegations contained in the charging document are true and correct as written;

(2) A concession of deportability or excludability as charged;

(3) A statement that the respondent/applicant makes no application for relief from deportation or exclusion, including, but not limited to, voluntary departure, asylum, adjustment of status, registry, de novo review of a termination of conditional resident status, de novo review of a denial or revocation of temporary protected status, relief under 8 U.S.C. 1182(c), suspension of deportation, or any other possible relief under the Act;

(4) A designation of a country for deportation under 8 U.S.C. 1253(a);

(5) A concession to the introduction of the written statements of the respondent/applicant as an exhibit to the record or proceedings;

(6) A statement that the attorney/representative has explained the consequences of the stipulated request to the respondent/applicant and that the respondent/applicant enters the request voluntarily, knowingly and intelligently;

(7) A statement that the respondent/applicant will accept a written order for his or her deportation or exclusion as a final disposition of the proceedings; and

(8) A waiver of appeal of the written order of deportation or exclusion.

The stipulated request and required waivers shall be signed on behalf of the government and by both the respondent/applicant and his or her attorney or other representative qualified under part 292 of this chapter. The attorney or other representative shall file a Notice of Appearance in accordance with § 3.16(b) of this part.

(c) *Telephonic or video electronic media hearing.* An Immigration Judge may conduct hearings via video electronic media or by telephonic media in any proceeding under 8 U.S.C. 1226, 1252, or 1256, except that contested full evidentiary hearings on the merits may be conducted by telephonic media only with the consent of the alien.

Dated: May 8, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–12080 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 94–064–2]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the pseudorabies regulations by adding the glycoprotein I enzyme-linked immunosorbent assay approved differential test to the list of official pseudorabies tests. This rule will allow, under certain conditions, the glycoprotein I enzyme-linked immunosorbent assay approved differential test to be used as an official pseudorabies test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations other than slaughter or a quarantined herd or quarantined feedlot. Adding the glycoprotein I enzyme-linked immunosorbent assay approved differential test to the list of official

pseudorabies tests will also allow its use for the testing of nonvaccinated swine.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold C. Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3A01, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7767.

SUPPLEMENTARY INFORMATION:

Background

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus. The Animal and Plant Health Inspection Service's regulations in 9 CFR part 85 (referred to below as the regulations) govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

For the purposes of interstate movement, the regulations separate swine into four basic categories: (1) Swine infected with or exposed to pseudorabies; (2) pseudorabies vaccinated swine (except swine from qualified negative gene-altered vaccinated herds) not known to be infected with or exposed to pseudorabies; (3) swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies; and (4) swine from qualified negative gene-altered vaccinated herds. Provisions governing the interstate movement of swine from each category are found in §§ 85.5, 85.6, 85.7, and 85.8, respectively.

On January 31, 1995, we published in the **Federal Register** (60 FR 5876–5880, Docket No. 94–064–1) a proposal to amend the regulations governing the interstate movement of certain pseudorabies vaccinated swine by adding the glycoprotein I (gpI) enzyme-linked immunosorbent assay (ELISA) approved differential test to the list of official pseudorabies tests. We also proposed to amend the definition of *certificate* and add provisions to allow, under certain conditions, the gpI ELISA approved differential test to be used as an official test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations other than slaughter, quarantined herds, or quarantined feedlots.

We solicited comments concerning our proposal for 60 days ending April 3, 1995. We received three comments by that date. They were from a State agriculture agency, a national veterinary association, and a pharmaceutical company. Two of the commenters supported the proposed rule without reservation. The third commenter, however, expressed concern regarding the use of a term in the proposed regulations. Specifically, the commenter noted that the proposed rule referred to gpI-deleted pseudorabies vaccines as "gene-altered" pseudorabies vaccines, which he felt inferred that only genetically engineered gpI deletions would be acceptable, to the exclusion of natural gpI gene-deleted pseudorabies vaccines.

We believe that our use of the term "gene-altered" does not exclude natural gpI gene-deleted pseudorabies vaccines. The gpI-deleted pseudorabies vaccine is an official gene-altered pseudorabies vaccine. The regulations in § 85.1 define *official gene-altered pseudorabies vaccine* as "[a]ny official pseudorabies vaccine for which there is an approved differential pseudorabies test," and *official pseudorabies vaccine* is defined as "[a]ny pseudorabies virus vaccine produced under license from the Secretary of Agriculture under the Virus, Serum and Toxin Act of March 4, 1913, and any legislation amendatory thereof (21 U.S.C. 151 *et seq.*)." Neither definition contains a requirement that an official gene-altered pseudorabies vaccine be the product of genetic engineering, so we have made no changes in this final rule based on that comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

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

This final rule amends the pseudorabies regulations to allow, under certain conditions, swine vaccinated with a gpI-deleted gene-altered pseudorabies vaccine, but that are not from a qualified negative gene-altered vaccinated herd, to be moved interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot. This final rule also allows the use of the gpI ELISA test to determine the pseudorabies status of nonvaccinated swine.

In December 1993, there were 235,840 swine operations in the United States, with a total inventory of about 56.8 million head. The value of the total swine inventory was estimated to be about $4.3 billion (Agricultural Statistics Board, National Agricultural Statistics Service, U.S. Department of Agriculture, "Hogs and Pigs," December 29, 1993). We believe that about 99 percent of all domestic swine operations would be considered small entities.

We estimate that there are approximately 25,000 domestic swine herds that contain vaccinated animals. Of those herds, there are only about 250 qualified negative gene-altered vaccinated herds. The provisions of this rule pertaining to individual swine vaccinated with the gpI-deleted pseudorabies vaccine (referred to below as gpI vaccinates) will have an economic impact only on the owners of gpI vaccinates that are not part of a qualified negative gene-altered herd. Because there have been no provisions for the interstate movement of gpI vaccinates that are not part of a qualified negative gene-altered herd to destinations other than slaughter, quarantined herds, or quarantined feedlots, this rule will have the effect of opening up new markets for the owners of such swine. Testing costs will be incurred only when an owner chooses to move gpI vaccinates interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot, since pseudorabies vaccinated swine do not require a test prior to interstate movement for slaughter or to a quarantined herd or quarantined feedlot. We expect that swine owners will accept the costs of testing with the gpI ELISA test if they feel the economic opportunities afforded by the new markets balance or outweigh the costs associated with the interstate movement.

The provisions of this rule that allow the use of the gpI ELISA test to determine the pseudorabies status of nonvaccinated swine will not have a significant economic impact on the owners of nonvaccinated swine. Although the gpI ELISA test costs from $0.50 to $1.00 more per test than other official serologic tests used to determine the pseudorabies status of nonvaccinated swine, its use to test nonvaccinated swine will be optional. It is likely, therefore, that most owners of nonvaccinated swine will continue using less expensive official pseudorabies tests until the cost of the gpI ELISA test becomes comparable to that of other official tests.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0070.

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 85 is amended to read as follows:

PART 85—PSEUDORABIES

1. The authority citation for part 85 continues to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, in the definition of *certificate*, the first sentence is amended by adding the words "vaccinated with a glycoprotein I (gpI) deleted gene-altered pseudorabies vaccine or" immediately after the words "gene-altered pseudorabies vaccinates".

3. In § 85.1, in the definition of *official pseudorabies test*, in the second sentence, item 4 is amended by adding the words "other than the glycoprotein I (gpI) ELISA test" immediately after the word "tests".

4. In § 85.6, a new paragraph (c) is added to read as follows:

§ 85.6 Interstate movement of pseudorabies vaccinate swine, except swine from qualified negative gene-altered herds, not known to be infected with or exposed to pseudorabies.

* * * * *

(c) *General movements.* Swine vaccinated for pseudorabies with a glycoprotein I (gpI) deleted gene-altered pseudorabies vaccine and not known to be infected with or exposed to pseudorabies, but that are not from a qualified negative gene-altered vaccinated herd, may be moved interstate to destinations other than those set forth in paragraphs (a) and (b) of this section only if:

(1) The swine are accompanied by a certificate and such certificate is delivered to the consignee; and

(2) The certificate, in addition to the information described in § 85.1, states:

(i) The identification required by § 71.19 of this chapter;

(ii) That each animal to be moved was vaccinated for pseudorabies with a gpI-deleted gene-altered pseudorabies vaccine;

(iii) That each animal to be moved was subjected to a gpI enzyme-linked immunosorbent assay (ELISA) approved differential pseudorabies test no more than 30 days prior to the interstate movement and was found negative;

(iv) The date of the gpI ELISA approved differential pseudorabies test; and

(v) The name of the laboratory that conducted the gpI ELISA approved differential pseudorabies test.

Done in Washington, DC, this 11th day of May 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12149 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–34–P

Animal and Plant Health Inspection Service, USDA

9 CFR Parts 92 and 98

[Docket No. 94–087–2]

Canadian Border Ports; Baudette, MN

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On March 29, 1995, the Animal and Plant Health Inspection Service published a direct final rule. (See 60 FR 16043–16045). The direct final rule notified the public of our intention to amend the animal importation regulations by adding Baudette, MN, as a Canadian border port for pet birds, poultry, horses, ruminants, swine, and germ plasm. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8172.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 11th day of May 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12153 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150–AF21

NRC Licensee Renewal/ Reinvestigation Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to eliminate the five-year expiration date for licensee "U" and "R" special nuclear material access authorizations and "Q" and "L" access authorizations and to require the licensee to submit NRC renewal application paperwork only for an individual who has not been reinvestigated by the Department of Energy (DOE) or another Federal agency within the five-seven year span permitted in the regulations. This final rule is necessary to achieve administrative efficiencies that reduce paperwork and cut red tape in a manner that is consistent with National Performance Review initiatives.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: James J. Dunleavy, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 telephone (301) 415–7404.

SUPPLEMENTARY INFORMATION: The NRC currently requires "U" and "R" special nuclear material access authorizations and "Q" and "L" access authorizations

to expire five years from the issuance date unless a timely application is made for renewal. An application for renewal must include a personnel security forms packet, including a Questionnaire for Sensitive Positions (SF–86, Parts 1 and 2), two completed standard fingerprint cards (FD–258), other related forms, and a statement of continuing need by the licensee.

For those individuals who also have an active DOE or other comparable access authorization and are subject to DOE's or another Federal agency's reinvestigation program, the application that must be filed with the NRC consists of an NRC Form 237, "Request for Access Authorization," or comparable list containing the individual's full name, social security number, date of birth, type of request (renewal), the agency conducting the reinvestigation and the date of reinvestigation submittal, and a statement of continuing need by the licensee.

The final rule eliminates the five-year expiration date for "U", "R", "Q" and "L" access authorizations and requires renewal application paperwork to be submitted to NRC only for an individual who has not been reinvestigated by DOE or another Federal agency for any reason within the five-seven year span permitted in the regulations.

This final rule reduces paperwork for the licensee and NRC, cuts red tape, and achieves the timely reinvestigation of licensee personnel on a more cost effective basis.

The comment period on the proposed rule (December 28, 1994; 59 FR 66812) closed on January 27, 1995. No comments were received from the public. This final rule becomes effective 30 days after publication in the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0050, –0062 and –0046. Because the rule relaxes existing information collection requirements, the public burden for this collection of information is expected to be reduced by three hours per licensee. This reduction includes the time required 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 the burden, to the Information and Records Management Branch (T6–F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0050, –0062, and –0046), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Room LL6, Washington, DC. Single copies of the analysis may be obtained from James J. Dunleavy, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7404.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C.605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule only applies to those licensees and others who need to use, process, store, transport, or deliver to a carrier for transport, formula quantities of special nuclear material (as defined in 10 CFR Part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR Part 95). Approximately 20 NRC licensees and other license-related interests are affected under the provisions of 10 CFR Parts 11 and 25. Because these licensees are not classified as small entities as defined by the NRC's size standards (April 11, 1995; 60 FR 18344), the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subject

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15, paragraph (c) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(c)(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, NRC-U and NRC-R special nuclear material access authorizations must be renewed every five years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five year period and must include:

(i) A statement by the licensee that at the time of application for renewal the individual's assigned or assumed job requires an NRC-U special nuclear material access authorization, justified by appropriate reference to the licensee's security plan;

(ii) The questionnaire for Sensitive Positions (SF–86, Parts 1 and 2);

(iii) Two completed standard fingerprint cards (FD–258); and

(iv) Other related forms specified in accompanying NRC instructions (NRC Form 254).

(2) An exception to the time for submission of NRC-U special nuclear material access authorization renewal applications and the paperwork required is provided for those individuals who have a current and active DOE-Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements (generally every five years) will satisfy the NRC renewal submission and paperwork requirements even if less than five years has passed since the date of issuance or renewal of the NRC-U access authorization. Any NRC-U special nuclear material access authorization renewed in response to provisions of this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(3) An exception to the time for submission of NRC-R special nuclear material access authorization renewal applications and the paperwork required is provided for those individuals who have a current and active DOE-L or DOE-Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements (generally every five years) will satisfy the NRC renewal submission and paperwork requirements even if less than five years has passed since the date of issuance or renewal of the NRC-R access authorization. Any NRC-R special nuclear material access authorization renewed pursuant to this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(4) Notwithstanding the provisions of paragraph (c)(2) or (c)(3) of this section, the period of time for the initial and each subsequent NRC-U or NRC-R renewal application to NRC may not exceed seven years. Any individual who is subject to the DOE Reinvestigation Program requirements but, for administrative or other reasons, does not submit reinvestigation forms to DOE within seven years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) of this section before the expiration of the seven year period.

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701.)

4. In § 25.21, paragraph (c) is revised to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

* * * * *

(c) (1) Except as provided in paragraph (c)(2) of this section, NRC "Q" and "L" access authorizations must be renewed every five years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five year period, and must include:

(i) A statement by the licensee or other person that the individual continues to require access to classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(c).

(2) Renewal applications and the paperwork required for renewal applications are not required for individuals who have a current and active access authorization from another Federal agency and who are subject to a reinvestigation program by that agency that is determined by NRC to meet NRC's requirements (the DOE Reinvestigation Program has been determined to meet NRC's requirements). For such individuals, the submission of the SF–86 by the licensee or other person to the other government agency pursuant to their reinvestigation requirements will satisfy the NRC renewal submission and paperwork requirements, even if less than five years has passed since the date of issuance or renewal of the NRC "Q" or "L" access authorization. Any NRC access authorization continued in response to the provisions of this paragraph will, thereafter, not be due for renewal until the date set by the other government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program. However, the period of time for the initial and each subsequent NRC "Q" or NRC "L" renewal application to NRC may not exceed seven years. Any individual who is subject to the reinvestigation program requirements of another Federal agency but, for administrative or other reasons, does not submit reinvestigation forms to that agency within seven years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in § 25.17(c) before the expiration of the seven year period.

Dated at Rockville, MD, this 8th day of May 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–12104 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. ANM–106; Special Conditions No. 25–ANM–98]

Special Conditions; Raytheon Corporate Jets, Inc., Model Hawker 800 Airplanes, High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Raytheon Corporate Jets, Inc., Model Hawker 800 airplanes equipped with modifications that install Garrett TFE731–5BR–1H engines and a mach trim system. The configuration of these airplanes will utilize new and revised electronic systems that perform functions critical to the safety of the airplane. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 1994, Raytheon Corporate Jets, Inc., 3 Bishop Square, St. Albans Road West, Hatfield, Hertfordshire AL 10 9NE, England, applied for a revision to type certificate

number A3EU to add new engines and a mach system to the Model Hawker 800 series airplanes currently included on that TC. This revised Model Hawker 800 is a cruciform tail, low wing, 15 passenger business jet powered by two Garrett TFE 731–5BR–1H turbofan engines mounted on pylons extending from the aft fuselage. The engines will be capable of delivering 4,634 lbs. of mzx continous thrust each and 4750 pounds of thrust on the operating engine for up to 5 minutes at automatic power reserve (APR) power.

Type Certification Basis

Under the provisions of § 21.29 of the FAR, Raytheon must show, except as provided in § 25.2, that the revised Model Hawker 800 complies with the certification basis of record shown on TC Data Sheet A3EU for Model Hawker 800 airplanes plus, for the engine and mach trim system installations, § 25.1316 as amended by Amendment 25–80, § 25.933 as amended by Amendment 25–40, § 25.934 as amended through Amendment 25–23, § 25.1309 as amended through Amendment 25–23, parts 34 and 36 of the FAR as amended through the latest amendment in effect at the time of certification of this revision to the TC and any additional equivalent safety findings made for this revision of the TC. These special conditions form an additional part of the type of certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model Hawker 800 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.29(a)(1)(ii) and § 21.17(a)(2).

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

Novel or Unusual Design Features

The Model Hawker 800 airplanes with TFE731–5BR–1H engines incorporate a revised engine electronic control system and an electronic controlled mach trim system. These systems perform critical to safety of flight functions and may be vulnerable to high-intensity radiated fields external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Model Hawker 800 with TFE731–5BR–1H engines and a mach trim system. These special conditions require that electrical and electronic components that perform critical functions and are embodied in the mach trim system or TFE731–5BR–1H engine electronic control system be designed and installed to ensure that operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital electronic systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strength for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable initially to certain components on Model Hawker 800 airplane with TFE731–5BR engines and a mach trim system. Should Raytheon Corporate Jets, Inc. apply at a later date for a change to the type certificate to add or revise electrical or electronic equipment that performs critical functions or to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of Proposed Special Conditions No. SC–95–2–NM for the Raytheon Corporate Jets, Inc., Model Hawker 800 Airplanes, was published in the **Federal Register** on February 8, 1995 (60 FR 7479). No comments were received.

Conclusion

This action affects only certain design features on the Model Hawker 800 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

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

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c). 1352, 1354(a), 1355, 1421 through 1431,

1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Raytheon Corporate Jets, Inc., Model Hawker 800 series airplanes equipped with Garrett TFE731–5BR–1H turbo fan engines and electronically controlled mach trim system. These special conditions would apply only to electrical and electronic components that perform critical functions and are embodied in the mach trim system or TFE731–5BR–1H engine electronic control system.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 9, 1995.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–101.

[FR Doc. 95–12155 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Penicillin G Potassium in Turkey Drinking Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Wade Jones Co., Inc. The ANADA provides for use of penicillin G potassium powder to make a medicated turkey drinking water for the treatment of erysipelas caused by *Erysipelothrix rhusiopathiae.*

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Wade Jones Co., Inc., Highway 71 North, 409 North Bloomington, Lowell, AR 72745, has filed ANADA 200–122, which provides for use of penicillin G potassium powder to make a medicated turkey drinking water used for the treatment of erysipelas in turkeys caused by *E. rhusiopathiae.*

Wade Jones' ANADA 200–122 for penicillin G potassium powder is approved as a generic copy of Solvay's NADA 55–060 for the same product. The ANADA is approved as of April 17, 1995, and the regulations are amended in 21 CFR 520.1696b(b) to reflect the approval. The basis for this approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1696b is amended by revising paragraph (b) to read as follows:

§ 520.1696b Penicillin G potassium in drinking water.

* * * * *

(b) *Sponsors.* See Nos. 017144, 047864, 050604, and 053501 in § 510.600(c) of this chapter.

* * * * *

Dated: May 5, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–12095 Filed 5–16–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation and Injectable Dosage Form New Animal Drugs; Zeranol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Mallinckrodt Veterinary, Inc. The supplemental NADA provides for use of a 72-milligram (mg) zeranol implant in steers being fed in confinement for slaughter for increased rate of weight gain.

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Mallinckrodt Veterinary, Inc., 421 East Hawley St., Mundelein, IL 60060, filed supplemental NADA 38–233 to provide for the use of Ralgro Magnum (a 72-mg zeranol implant) in steers being fed in confinement for slaughter for increased rate of weight gain (i.e., use of six 12-mg zeranol pellets). The supplemental NADA is approved as of April 6, 1995, and the regulations are amended in 21 CFR 522.2680(d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch

(HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning April 6, 1995, because the supplemental NADA contains reports of new clinical investigations (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant. Three years of marketing exclusivity applies only to the use for which the supplemental NADA is approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.2680 is amended by adding new paragraph (d)(3) to read as follows:

§ 522.2680 Zeranol.

* * * * *

(d) * * *

(3) *Steers*—(i) *Amount.* 72 milligrams (six 12-milligram pellets) per animal.

(ii) *Indications for use.* For increased rate of weight gain in steers fed in confinement for slaughter.

(iii) *Limitations.* Implant subcutaneously in ear only.

Dated: May 5, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–12094 Filed 5–16–95; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–30072L; FRL–4950–7]

Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 3.22 percent increase in locality pay for civilian Federal General Schedule (GS) employees working in the Washington, DC/Baltimore, MD metropolitan area in 1995.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Concerning this rule contact: By mail: Delores A. Furman, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 700–G, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7016), furman.delores. Concerning tolerance petitions and individual fees contact: Jim Tompkins (703–305–5697)

SUPPLEMENTARY INFORMATION: The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover, among other things, the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible. The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the **Federal Register** on June 2, 1994 (59 FR 28482) and became effective on July 5, 1994. At that time the fees were increased 4.23 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads in part as follows:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale.... When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective thirty days or more after publication, as specified in the rule.

The Federal Employees Pay Comparability Act of 1990 (FEPCA) initiated locality-based comparability pay, known as "locality pay." The intent of the legislation is to make Federal pay more responsive to local labor market conditions by adjusting General Schedule salaries on the basis of a comparison with non-Federal rates on a geographic, locality basis.

The processing and review of tolerance petitions is conducted by EPA employees working in the Washington, DC/ Baltimore, MD pay area. The pay raise in 1995 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 3.22 percent; therefore, the tolerance petition fees are being increased 3.22 percent. All fees have been rounded to the nearest $25.00.

List of subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 5, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is amended by revising paragraphs (a), (b), (c), (d), (e), (f), (g), (i), (j)(3), and (m) to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $60,425, plus $1,500 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the

same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $13,825 plus $925 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $11,150.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $24,150 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $3,425.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $12,050 plus $925 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $7,550. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,500 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,500 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

* * * * *

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $3,025.

(j) * * *

(3) An advance deposit shall be made in the amount of $30,175 to cover the costs of the advisory committee. Further advance deposits of $30,175 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

* * * * *

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), Washington, DC 20460. A fee of $1,500 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

* * * * *

[FR Doc. 95–12143 Filed 5–16–95; 8:45 am]
BILLING CODE 6550–50–F

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40 CFR Parts 180, 185, and 186

[FAP 4H5683/R2131; FRL–4952–5]

RIN 2070–AB78

Hexazinone; Pesticide Tolerances and Food/Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the current tolerance for residues of the herbicide hexazinone (3-(cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on sugarcane at 0.2 part per million (ppm) by revoking the current tolerance and reestablishing the same tolerance with regional registration and tolerance as described in 40 CFR 180.1(n). EPA also establishes food and feed additive regulations for residues of hexazinone and its metabolites in sugarcane molasses at 0.5 ppm. E.I. du Pont de Nemours & Co., Inc., requested these regulations pursuant to the Federal Food, Drug and Cosmetic Act.

EFFECTIVE DATE: These regulations become effective May 17, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 4H5683/R2131], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [FAP 4H5683/R2131]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1995 (60 FR 15113), EPA issued a proposed rule that gave notice that E.I. du Pont de Nemours & Co., Inc., had petitioned EPA under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to amend 40 CFR parts 180, 185, and 186 to establish tolerances with regional registration for combined residues of the herbicde hexazinone (3-

cyclohexyl)-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the raw agricultural commodity sugarcane at 0.2 part per million (ppm), the food additive commodity sugarcane, molasses at 0.5 ppm, and the feed additive commodity sugarcane, molasses at 0.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [FAP 4H5683/R2131] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [FAP 4H5683/R2131], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 1, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR parts 180, 185, and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.396, the existing text is designated as paragraph (a), and the table therein is amended by removing the entry for sugarcane, and new paragraph (b) is added, to read as follows:

§ 180.396 Hexazinone; tolerances for residues.

* * * * *

(b) A tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethyamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following raw agricultural commodity:

Commodity	Parts per million
Sugarcane	0.2

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By adding new § 185.3575, to read as follows:

§ 185.3575 Hexazinone; tolerances for residues.

A food additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethyamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following food commodity:

Commodity	Parts per million
Sugarcane, molasses	0.5

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.3575, to read as follows:

§ 186.3575 Hexazinone; tolerances for residues.

A feed additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethyamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following feed commodity:

Commodity	Parts per million
Sugarcane, molasses	0.5

[FR Doc. 95–11812 Filed 5–16–95; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) 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 modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (1% annual chance) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

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

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

The modified base (1% annual chance) 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.

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. 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.
Florida: Citrus County (FEMA Docket No. 7111).	City of Inverness	July 25, 1994, Aug. 1, 1994, *Citrus County Chronicle.*	The Honorable O.J. Humphries, Mayor of the City of Inverness, 212 West Main Street, Inverness, Florida 34450.	July 18, 1994	120348 B
Illinois:					
Will County (FEMA Docket No. 7115).	Village of Crete	Aug. 18, 1994, Aug. 25, 1994, *Crete Record.*	Mr. David L. Wallace, Crete Village Administrator, 524 Exchange Street, Crete, Illinois 60417.	Aug. 11, 1994 ...	170700 B
Will County (FEMA Docket No. 7104).	City of Lockport	June 22, 1994, June 29, 1994, *Herald News.*	The Honorable Richard G. Dystrup, Mayor of the City of Lockport, 222 East Ninth Street, Suite 4, Lockport, Illinois 60441–3497.	June 14, 1994 ...	170703 B
Cook County (FEMA Docket No. 7104).	Village of Orland Hills ..	June 30, 1994, July 7, 1994, *The Star.*	Mr. Kyle R. Hastings, President of the Village of Orland Hills, 16795 South 94th Avenue, Orland Hills, Illinois 60477.	June 24, 1994 ...	170172 B
Minnesota: Hennepin County (FEMA Docket No. 7123).	City of St. Louis Park ..	Oct. 5, 1994, Oct. 12, 1994, *Sun Sailor.*	The Honorable Lyle Hanks, Mayor of the City of St. Louis Park, 505 Minnetonka Boulevard, St. Louis Park, Minnesota 55416–2290.	Sept. 28, 1994 ..	270184 B
Mississippi Panola County (FEMA Docket No. 7123).	City of Batesville	Oct. 26, 1994, Nov. 2, 1994, *The Panolian.*	The Honorable Bobby Baker, Mayor of the Town of Batesville, P.O. Box 689, Batesville, Mississippi 38606.	Sept. 19, 1994 ..	280126 C
North Carolina: Granville County (FEMA Docket No. 7123).	Unincorporated areas ..	Sept. 29, 1994, Oct. 6, 1994, *Oxford Public Ledger* and *Butner Creedmoor News.*	Mr. John W. Lewis, Jr., Granville County Manager, P.O. Box 906, Oxford, North Carolina 27565.	Sept. 23, 1994 ..	370325 C
Pennsylvania: Dauphin County (FEMA Docket No. 7123).	Township of Middle Paxton.	Oct. 7, 1994, Oct. 14, 1994, *The Patriot* and *The Evening News.*	Mr. Richard Peffer, Chairman, Middle Paxton Township Board of Supervisors, P.O. Box 277, Dauphin, Pennsylvania 17018.	Jan. 11, 1995	420387 B
New Jersey: Sussex County (FEMA Docket No. 7123).	Township of Byram	Mar. 23, 1994, Mar. 30, 1994, *The New Jersey Herald.*	The Honorable Richard A. Bowe, Mayor of the Township of Byram, 10 Mansfield Drive, Stanhope, New Jersey 07874.	Sept. 15, 1994 ..	340557
New York: Monroe County (FEMA Docket No. 7123).	Town of Gates	Oct. 5, 1994, Oct. 12, 1994, *Gates Chili News.*	Mr. Ralph J. Esposito, Supervisor for the Town of Gates, 1605 Buffalo Road, Rochester, New York 14624.	Sept. 28, 1994 ..	360416 B
West Virginia: Putnam County (FEMA Docket No. 7123).	Unicorporated areas	May 12, 1994, May 19, 1994, *Putnam Democrat.*	Mr. Dave Alford, President of the Putnam County Commission, P.O. Box 149, Winfield, West Virginia 25213.	May 6, 1994	540164

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

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12124 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

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 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 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.
Texas: Tarrant (FEMA Docket No. 7121).	City of Bedford	November 22, 1994, November 29, 1994, Fort Worth Star Telegram.	The Honorable Rick Hurt, Mayor, City of Bedford, P.O. Box 157, Bedford, Texas 76095.	October 31, 1994	480585

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

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12125 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7135]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (1% annual chance) 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) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any

person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: 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 (1% annual chance) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

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

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

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

The modified base (1% annual chance) 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.

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. 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.
Illinois: DuPage County.	Unincorporated areas.	February 17, 1995, February 24, 1995, *The Chicago Tribune.*	Mr. Gayle Franzen, DuPage County Board Chairman, 421 North County Farm Road, Wheaton, Illinois 60187.	February 10, 1995	170197 B
Michigan: Macomb County.	City of Sterling Heights.	February 12, 1995, February 19, 1995, *The Source.*	The Honorable Richard J. Notte, Mayor of the City of Sterling Heights, 40555 Utica Road, P.O. Box 8009, Sterling Heights, Michigan 48311–8009.	February 2, 1995 ..	260128 E
Mississippi: Oktibbeha County.	Unincorporated areas.	February 15, 1995, February 22, 1995, *Starkville Daily News.*	Mr. David Oswalt, President of the Oktibbeha County Board of Supervisors, 101 East Main Street, Starkville, Mississippi 39759.	February 8, 1995 ..	280277 B
New Hampshire: Belknap County.	Town of Tilton	February 15, 1995, February 22, 1995, *Laconia Citizen.*	Mr. Kenneth Money, Senior Selectman for the Town of Tilton, 145 East Main Street, Tilton, New Hampshire 03276.	February 8, 1995 ..	330009 B
Rhode Island: Bristol County.	Town of Barrington	February 22, 1995, March 1, 1995, *Barrington Times.*	Dennis M. Phelan, Barrington Town Manager, 283 County Road, Barrington, Rhode Island 02806.	February 14, 1995	445392 E
South Carolina: Richland County.	Unincorporated areas.	February 10, 1995, February 17, 1995, *The State.*	Mr. W. Anthony McDonald, Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.	May 18, 1995	450170 G

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

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12127 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7139]

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 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 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.
California: Solano ..	City of Vacaville	Mar. 23, 1995, Mar. 30, 1995, *The Reporter.*	The Honorable David A. Fleming, Mayor, City of Vacaville, 650 Merchant Street, Vacaville, California 95688.	Mar. 7, 1995	060373
Colorado: Douglas	Town of Parker	Mar. 15, 1995, Mar. 22, 1995, *Douglas County, News-Press.*	The Honorable Greg Lopez, Mayor, Town of Parker, 20120 East Main Street, Parker, Colorado 80134.	Feb. 21, 1995	080310

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montana: Flathead areas.	Unincorporated areas.	Mar. 16, 1995, Mar.23, 1995, *Daily Inter Lake.*	The Honorable Sharon L. Stratton Chairman, Flathead County, Board of Commissioners, 800 South Main Street, Kalispell, Montana 59901,.	Mar. 3, 1995	300023
Nevada: Independence.	City of Carson City	Mar. 23, 1995, Mar. 30, 1995, *Nevada Appeal.*	The Honorable Marv Teixeira, Mayor, City of Carson City, 2621 Northgate Lane, Carson City, Nevada 89706.	Feb. 27, 1995	320001
Texas: Dallas, Denton, City of Dallas Collin, Rockwall, and Kaufman.	City of Dallas	Mar. 15, 1995, Mar. 22, 1995, *Daily Commercial Record.*	The Honorable Steve Bartlett, Mayor, at Large, City of Dallas, 1500 Marilla, Office of the Mayor and City Council, 5E North, Dallas, Texas 75201.	Mar. 1, 1995	480171

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

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12126 Filed 5–16–95; 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 (1% annual chance) flood elevations and modified base (1% annual chance) flood elevations are made final for the communities listed below. The base (1% annual chance) 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 maps are 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 (FEMA or 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.

The Agency 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 Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, 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 National Flood Insurance Program. 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 as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Taylor County, (unincorporated areas) (FEMA Docket No. 7112)	
Woods Creek:	
Approximately 350 feet upstream of confluence with Spring Creek	*31
Approximately 100 feet upstream of U.S. Route 221 and State Route 55	*50
Maps available for inspection at the Courthouse Basement, 108 North Jefferson Street, Perry, Florida.	
ILLINOIS	
Bolingbrook (village), Will County (FEMA Docket No. 7093)	
Lily Cache Creek:	
Approximately 2,200 feet downstream of 224th Avenue	*620
Approximately 1,600 feet upstream of Naperville Road	*658
Lily Cache Lane Tributary:	
Approximately 920 feet upstream of confluence with Lily Cache Creek	*674
Approximately 650 feet downstream of State Route 53	*698
Maps available for inspection at the Village Hall/Zoning Department, 375 West Briarcliff Road, Bolingbrook, Illinois.	
Channahon (village), Will County (FEMA Docket No. 7093)	
Du Page River:	
At confluence with Des Plaines River	*512
Approximately 0.54 mile downstream	*512
Maps available for inspection at the Village Hall, 24441 West Eames Street, Channahon, Illinois.	
Crete (village), Will County (FEMA Docket No. 7093)	
Deer Creek:	
Upstream face of Columbia Street Bridge	*693
Approximately 1,950 feet upstream of Columbia Street Bridge	*696
Maps available for inspection at the Village Hall, 524 West Exchange Street, Crete, Illinois.	
Elmhurst (city), DuPage County (FEMA Docket No. 7124)	
Salt Creek:	
Approximately 0.4 mile downstream of State Route 56 (Butterfield Road)	*662
Approximately 0.54 mile upstream of State Route 64 (North Avenue)	*673
Sugar Creek:	
At the confluence with Salt Creek	*663
At State Route 83 (Robert Kingery Expressway)	*664
Maps available for inspection at the Public Works Department, Elmhurst City Hall, 209 North York Street, Elmhurst, Illinois.	
Frankfort (village), Will County (FEMA Docket No. 7093)	
Hickory Creek Tributary A:	
Approximately 75 feet downstream of Saulic Trail Road	*710
Approximately 75 feet upstream of Saulic Trail Road	*710
Hickory Creek:	
Approximately 750 feet downstream of U.S. Route 45	*676
Approximately 0.4 mile upstream of U.S. Route 45	*678
Maps available for inspection at the Village Administration Building, 432 West Nebraska Street, Frankfort, Illinois.	
Joliet (city), Will County (FEMA Docket No. 7093)	
Rock Run North:	
Downstream face of Mound Road (at corporate limit)	*547
Approximately 1,200 feet upstream of Theodore Street	*583
Sunnyland Drain:	
Approximately 1,025 feet downstream of Caton Farm Road	*592
At Plainfield Road (U.S. Route 30)	*604
Sunnyland Drain Tributary:	
At Hennepin Road	*602
Approximately 700 feet downstream of Stateville Road	*605
Rock Run South:	
At confluence with Des Plaines River	514
Approximately 1,500 feet downstream of U.S. Route 6	*514
Rock Run Tributary No. 1:	
At confluence with Rock Run North	*578
Approximately 1,500 feet upstream of Barber Lane	*623
Rock Run Tributary No. 2:	
Approximately 160 feet upstream of confluence with Rock Run North	*577
Approximately 800 feet upstream of Barber Lane	*622
Rock Run Tributary No. 3:	
Approximately 50 feet downstream of Jefferson Street	*580
Approximately 520 feet upstream of Barney Road	*632
Hickory Creek:	
Approximately 1,150 feet downstream of McKinley Avenue	*518
Approximately 850 feet upstream of Gougar Road	*605
Sugar Run:	
At Chicago Street (State Route 55)	*565
Approximately 200 feet downstream of Wildwood Lane	*588
Maps available for inspection at the City Hall, 150 West Jefferson Street, Joliet, Illinois.	
Lockport (city), Will County (FEMA Docket No. 7093)	
Des Plaines River:	
Approximately 150 feet upstream of W. 9th Street	*565
Approximately 250 feet upstream of W. 9th Street	*565
Maps available for inspection at the City Hall, 222 East 9th Street, Lockport, Illinois.	
Plainfield (village), Will County (FEMA Docket No. 7093)	
Lily Cache Creek:	
Approximately 3,350 feet downstream of U.S. Route 30	*593
Approximately 1,600 feet upstream of Lockport Street	*601
West Norman Drain:	
Downstream side of State Route 59	*608
Approximately 1,250 feet upstream of U.S. Route 30	*628
Maps available for inspection at the Village Hall, 1400 North Division Street, Plainfield, Illinois.	
Romeoville (village), Will County (FEMA Docket No. 7093)	
Des Plaines River:	
Approximately 600 feet downstream of 135th Street (Romeo Road)	*586
Approximately 2,600 feet upstream of 135th Street (Romeo Road)	*588

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Village Hall Annex Building, 17 Montrose Drive, Romeoville, Illinois.	
Will County (unincorporated areas) (FEMA Docket No. 7093)	
Jackson Branch Creek:	
Approximately 300 feet downstream of Cherry Hill Road Bridge	*651
Upstream face of Spencer Road Bridge	*703
Hickory Creek Tributary A:	
Approximately 75 feet upstream of Saulic Trail Road	*710
Approximately 150 feet upstream of Saulic Trail Road	*710
Lily Cache Creek:	
Approximately 3,750 feet downstream of U.S. Route 30	*593
At Rockhurst Road	*696
Marley Creek:	
At confluence with Hickory Creek	*635
Approximately 450 feet downstream of Norfolk Southern Railway Bridge	*641
Naperville Road Tributary:	
At confluence with Lily Cache Creek	*655
Approximately 850 feet downstream of Naperville Road	*655
Sunnyland Drain:	
Approximately 1,025 feet downstream of Caton Farm Road	*592
Approximately 100 feet upstream of Elgin, Joliet, and Eastern Railway	*621
Sunnyland Drain Tributary:	
At Plainfield Road	*604
Approximately 100 feet upstream of Elgin, Joliet, and Eastern Railway	*615
West Norman Drain:	
Approximately 200 feet downstream of 143rd Street	*610
Approximately 0.6 mile upstream of Ferguson Road (119th Street)	*695
Wolf Creek:	
Upstream side of Book Road	*620
Approximately 0.7 mile upstream of 111th Street	*681
Deer Creek:	
Approximately 1.2 miles upstream of Blackhawk Drive	*744
Approximately 1.3 miles upstream of Blackhawk Drive	*744
Hickory Creek Tributary 1:	
Approximately 1,250 feet downstream of Indiana Court	*690
Approximately 650 feet downstream of U.S. Route 45	*714
Thorn Creek:	
Approximately 0.27 mile upstream of Thorn Creek Drive	*700
Approximately 0.39 mile upstream of Thorn Creek Drive	*701
Des Plaines River:	
Approximately 600 feet downstream of 135th Street (Romeo Road)	*586
Approximately 1.78 miles upstream of 135th Street (Romeo Road)	*589
Springhole Creek:	
Approximately 75 feet upstream of Old Indian Boundary Line Road	*608
Approximately 1,375 feet upstream of Old Indian Boundary Line Road	*611
Spring Creek Tributary:	
Approximately 1,300 feet downstream of Lioletta Avenue	*601
Approximately 900 feet downstream of Lioletta Avenue	*607
Jackson Creek:	
Approximately 1.26 miles upstream of Illinois Central Gulf Railroad	*599
Approximately 1.29 miles upstream of Illinois Central Gulf Railroad	*599
Kankakee River:	
Approximately 1,500 feet east along South River Road from its intersection with Jewel Lane	*535
Plum Creek:	
Approximately 1,550 feet upstream of the county boundary	*646
Approximately 400 feet upstream of Richton Road	*660
Lily Cache Lane Tributary:	
Approximately 920 feet upstream of confluence with Lily Cache Creek	*674
Approximately 1,180 feet downstream of Lily Cache Lane	*691
Maps available for inspection at the Health Department, Land Use Building, 501 Ella Avenue, Joliet, Illinois.	
KENTUCKY	
Taylor Mill (city), Kenton County (FEMA Docket No. 7110)	
Banklick Creek:	
Approximately 0.5 mile downstream of State Highway 16	*499
Approximately 1,300 feet upstream of State Highway 16	*499
Map available for inspection at the City Hall, 5225 Taylor Mill Road, Taylor Mill, Kentucky.	
MINNESOTA	
Olmsted County (unincorporated areas) (FEMA Docket No. 7120)	
South Fork Zumbro River:	
Approximately 1.1 miles downstream of 37th Street NW	*969
At Mayowood Road SW	*1036
Cascade Creek:	
Approximately 0.6 mile upstream of U.S. Highway 52	*1007
At County Road 34	*1019
Middle Fork Zumbro River:	
Approximately 0.7 mile upstream of southbound lane U.S. Highway 52	*964
Approximately 0.8 mile upstream of southbound lane U.S. Highway 52	*964
North Branch Root River:	
Approximately 700 feet downstream of abandoned Chicago and North Western Railway	*1185
At County Road 6 (6th Street SW) At Lake Florence	*1202
South Fork Whitewater River:	
Approximately 0.5 mile downstream of Chicago and North Western Railway	*1136
At confluence of Tributary B	*1145
West Tributary to Willow Creek:	
Approximately 630 feet downstream of Chicago and North Western Railway	*1023
Approximately 950 feet upstream of Chicago and North Western Railway	*1031
West Fork of Willow Creek:	
Approximately 400 feet upstream of the confluence with Willow Creek	*1066
Approximately 470 feet upstream of the confluence with Willow Creek	*1066
South Run of the North Fork of Cascade Creek:	
Approximately 0.9 mile upstream of Chicago and North Western Railway	*1035
Approximately 1.3 miles upstream of Chicago and North Western Railway	*1041
East Fork of Willow Creek:	
At confluence with Willow Creek	*1022
At County Road #101	*1075
South Fork of Willow Creek:	
At confluence with Willow Creek	*1040
Approximately 1,075 feet upstream of confluence with Willow Creek	*1043
South Branch Middle Fork Zumbro River:	
Approximately 0.6 mile upstream of southbound lane U.S. Highway 52	*964

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1.1 miles upstream of southbound lane U.S. Highway 52	*965
Willow Creek:	
Approximately 250 feet downstream of the confluence of East Fork Willow Creek	*1022
At 48th Street SW	*1075
Maps available for inspection at the County Auditor's Office Government Center, 151 4th Street, SE., Rochester, Minnesota.	
Rochester (city), Olmsted County (FEMA Docket No. 7120 and 7124)	
Bear Creek:	
At confluence with South Fork Zumbro River	*986
Approximately 400 feet downstream of 6th Street, SE.	*993
Approximately 0.8 mile upstream of confluence with South Fork Zumbro River	*1004
Approximately 200 feet upstream of the confluence of Willow Creek	*1012
Cascade Creek:	
At confluence with South Fork Zumbro River	*979
Approximately 50 feet downstream of County Road 34	*1017
Silver Creek:	
At confluence with South Fork Zumbro River	*981
At Silver Creek Road	*1015
South Fork of Willow Creek:	
Approximately 1,650 feet upstream of confluence with Willow Creek	*1045
Approximately 500 feet downstream of St. Bridget Road	*1047
South Fork of Zumbro River:	
Approximately 1.1 miles downstream of 37th Street, NW	*969
At confluence of Bear Creek	*986
Approximately 750 feet upstream of 16th Street, SW	*1005
Approximately 0.6 mile downstream of Mayowood Road	*1027
West Tributary to Willow Creek:	
Approximately 630 feet downstream of Chicago and North Western Railway	*1023
Approximately 400 feet downstream of Chicago and North Western Railway	*1025
Willow Creek:	
At confluence with Bear Creek	*1012
Approximately 0.7 mile upstream of County Road 147	*1094
West Fork of Willow Creek:	
At confluence with Willow Creek	*1066
Approximately 400 feet upstream of confluence with Willow Creek	*1066
Cascade Creek Split Flow:	
Approximately 300 feet upstream of 16th Avenue	*1001
Approximately 0.5 mile downstream of U.S. Highway 52	*1004
Maps available for inspection at the City Clerk's Office, Government Center, 224 1st Avenue, S.W., Rochester, Minnesota.	
MISSISSIPPI	
Lauderdale County, (unincorporated areas) (FEMA Docket No. 7120)	
Sowashee Creek:	
Approximately 4.3 miles downstream of 49th Avenue (Valley Road)	*286
Approximately 2.4 miles upstream of U.S. Highway 45 By-pass	*383
Okatibbee Creek:	
Approximately 1.16 miles downstream of the confluence of Burwell Creek	*289
Approximately 1.03 miles downstream of the confluence of Burwell Creek	*289
Maps available for inspection at the Lauderdale County Courthouse, Tax Assessor's Office, 500 Constitution Avenue, Meridian, Mississippi.	
Marion (town), Lauderdale County (FEMA Docket No. 7116)	
Sowashee Creek:	
Approximately 0.8 mile upstream of confluence of Nanabe Creek	*344
Approximately 1.3 miles upstream of U.S. Highway 45 By-pass	*372
Maps available for inspection at the Marion Town Hall, 6021 Dale Drive, Marion, Mississippi.	
Meridian (city), Lauderdale County (FEMA Docket No. 7120)	
Sowashee Creek:	
Approximately 3 miles downstream of 49th Avenue (Valley Road)	*289
Approximately 0.9 mile downstream of confluence of Nanabe Creek	*340
Gallagher Creek:	
At confluence with Sowashee Creek	*307
Approximately 0.2 mile upstream of the confluence with Sowashee Creek	*308
Robbins Branch:	
At confluence with Sowashee Creek	*330
At U.S. Highway 45 bridge	*330
Magnolia Branch:	
At confluence with Sowashee Creek	*321
Approximately 400 feet on the downstream side of the Illinois Central Railroad bridge	*329
Okatibbee Creek:	
Approximately 1.16 miles downstream of the confluence of Burwell Creek	*289
Approximately 1.03 miles downstream of the confluence of Burwell Creek	*289
Maps available for inspection at the Meridian City Hall, 601 24th Avenue, Meridian, Mississippi.	
NEW YORK	
Ballston (town), Saratoga County (FEMA Docket No. 7120)	
Larue Creek:	
Approximately 1.39 miles downstream of Jenkins Road	*352
Approximately 1.02 miles downstream of Jenkins Road	*362
Maps available for inspection at the Ballston Town Office, 323 Charlton Road, Ballston Spa, New York 12020.	
Ballston Spa (village), Saratoga County (FEMA Docket No. 7120)	
Kayaderosseras Creek (Lower Reach):	
Approximately 1,700 feet downstream of Ralph Road	*232
At the upstream side of Ralph Road	*237
Maps available for inspection at the Ballston Spa Village Office, 66 Front Street, Ballston Spa, New York.	
Ellicottville (town), Cattaraugus County (FEMA Docket No. 7064 and 7116)	
Elk Creek:	
Approximately 650 feet downstream of Maples Ellicottville Road	*1,548
Approximately 1.5 miles upstream of Maples Ellicottville Road	*1,598

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Plum Creek:	
Approximately 620 feet upstream of confluence with Great Valley Creek	*1,534
Approximately 0.3 mile upstream of State Route 242	*1,740
South Branch Plum Creek:	
At confluence with Plum Creek	*1,665
Approximately 260 feet upstream of Woods Road	*1,742
Great Valley Creek:	
Approximately 900 feet upstream of downstream corporate limits	*1,514
At Chessie System	*1,552
Holiday Valley Creek:	
Approximately 1,025 feet downstream of Chessie System	*1,521
At the upstream crossing of Holiday Valley Road	*1,649
Shallow Flooding Area:	
Between Chessie System and U.S. Route 219	#2
South of intersection of U.S. Route 219 and Holiday Valley Road	#2
Maps available for inspection at the Ellicottville Town Hall, 1 West Washington, Ellicottville, New York.	
Greenfield (Town), Saratoga County (FEMA Docket No. 7120)	
Kayaderosseras Creek (Upper Reach):	
Approximately 100 feet downstream of downstream corporate limits	*523
Approximately 150 feet upstream of the downstream corporate limits	*523
Maps available for inspection at the Greenfield Town Hall, Corner of 9N and Walton Road, Greenfield Center, New York.	
Malta (town), Saratoga County (FEMA Docket No. 7120)	
Kayaderosseras Creek:	
Approximately 1,000 feet downstream of the upstream corporate limits	*228
At upstream corporate limits	*229
Maps available for inspection at the Malta Town Hall, 2840 Route 9, Malta, New York.	
Northumberland (town), Saratoga County (FEMA Docket No. 7120)	
Snook Kill:	
Approximately 50 feet downstream of Mott Road	*132
At Strong Road	*244
Maps available for inspection at the Northumberland Town Office, Cathrine Street, Northumberland, New York.	
Waterford (town), Saratoga County (FEMA Docket No. 7120)	
Hudson River:	
At downstream corporate limits	*36
Approximately 300 feet upstream of the downstream corporate limits	*36
Fourth Branch Mohawk River (Left Channel):	
Approximately 1,140 feet upstream of confluence with Fourth Branch Mohawk River	*44
Approximately 1,400 feet upstream of confluence with Fourth Branch Mohawk River	*48
Maps available for inspection at the Waterford Town Clerk's Office, 65 Broad Street, Waterford, New York.	
PENNSYLVANIA	
California (borough), Washington County (FEMA Docket No. 7110)	
Monongahela River:	
Approximately 1.3 miles downstream of confluence of Pike Run	*769
Approximately 2.9 miles upstream of the confluence of Pike Run	*773
Maps are available for inspection at the Municipal Building, 114 5th Street, California, Pennsylvania.	
Coal Center (borough), Washington County (FEMA Docket No. 7110)	
Monongahela River:	
Approximately 1,650 feet downstream of confluence of Pike Run	*770
Approximately 200 feet upstream of confluence of Pike Run	*770
Maps available for inspection at the Coal Center Borough Building, 132 Water Street, Coal Center, Pennsylvania.	
West Brownsville (borough), Washington County (FEMA Docket No. 7110)	
Monongahela River:	
Approximately 100 feet downstream of confluence of Lily Run	*773
Approximately 1,350 feet upstream of Bridge Street	*775
Maps available for inspection at the West Brownsville Borough Building, 235 Main Street, West Brownsville, Pennsylvania, or at the home of Mr. Jack J. Sabo, West Brownsville Secretary, 615 Woodlawn Avenue, West Brownsville, Pennsylvania.	
TENNESSEE	
Hendersonville (city), Sumner County (FEMA Docket No. 7116)	
Drakes Creek:	
Approximately 1.31 miles upstream of Gallatin Pike	*460
At the downstream side of Long Hollow Pike	*515
Drakes Creek Right Bank Tributary No. 2:	
Approximately 50 feet upstream of Louisville and Nashville Railroad	*455
Approximately 0.18 mile upstream of Forest Retreat Road	*522
Drakes Creek Right Bank Tributary No. 3:	
At confluence with Drakes Creek	*467
Approximately 0.15 mile upstream of Goshen Town Road	*527
Drakes Creek Left Bank Tributary No. 1:	
At confluence with Drakes Creek	*466
At upstream side of Stop Thirty Road	533
Drakes Creek Unnamed Tributary No. 1:	
At confluence with Drakes Creek Right Bank Tributary	*452
Approximately 0.29 mile upstream of Wessington Place	*522
Maps available for inspection at the Hendersonville City Hall, One Executive Park Drive, Hendersonville, Tennessee.	

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

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12121 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 205, 224, 233, 238, 239, 240, and 282

Public Assistance Programs; etc.; Removal of Obsolete Work Program Regulations

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule; removal.

SUMMARY: This notice removes several obsolete provisions from the Code of Federal Regulations. Most involve work program activities which were superseded when State welfare agencies began their JOBS programs in 1989 or 1990.

DATES: Effective date is May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Ann Burek (202) 401–4528.

SUPPLEMENTARY INFORMATION: In September of 1993 President Clinton issued Executive Order 12866 which called for Federal regulations which were less burdensome, more effective and more consistent with Administration priorities. In response, in January of 1994, ACF published a notice in the **Federal Register** providing a plan for periodic review of existing rules and soliciting ideas.

In early March of 1995, the President issued a new directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. (This initiative is part of the National Performance Review and calls for more immediate, comprehensive regulatory reform.) He directed all agencies to undertake an exhaustive review of all their regulations—with an eye towards eliminating or modifying those that are obsolete or which are otherwise in need of reform. This notice represents one of the first steps in ACF's response to this new directive.

We are issuing a final rule rather than a notice of proposed rulemaking because we have determined, for good cause, that publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful. This final rule affects only obsolete provisions and programs. Furthermore, this final rule will be effective immediately upon publication. It is unnecessary to postpone the effective date since none of the provisions being removed are in effect, and no time for implementation is required.

Statutory Authority

We are publishing these rules under the general authority provided under section 1102 of the Social Security Act, 42 U.S.C. § 1302. This section requires publication of regulations that may be necessary for the efficient administration of the functions under the Social Security Act.

Work Programs

Under the Family Support Act of 1988, Pub. L. 100–485, Congress created the Job Opportunities and Basic Skills Training (JOBS) program to improve the job prospects of welfare recipients and help them become self-sufficient. It required States to begin operating their JOBS programs by October 1, 1990. If a State began operating its JOBS programs sooner, the regulations governing the separate work programs authorized under parts A and C of title IV of the Social Security Act—i.e., the Work Incentive (or WIN) program; the Work Incentive Demonstration (or WIN Demo) program; the Community Work Experience Program (or CWEP); the Work Supplementation Program; and the Employment Search Program—became inapplicable with the start of the JOBS program. Nationwide, these programs were repealed as of October 1, 1990. Thus, the regulations which governed these programs are obsolete. (In fact, the regulations at 45 CFR 224.0(c), 238.01(b), 239.01(b), and 240.01(b) explicitly provided for the repeal of the provisions of parts 224, 238, 239 and 240, respectively, effective October 1, 1990.)

Accordingly, this notice removes parts 224 (covering WIN), 238 (covering CWEP), 239 (covering Work Supplementation), and 240 (covering Employment Search) from Title 45. It also removes regulations at: 1) 45 CFR 233.20(a)(11)(iv), which provided for the disregard of certain payments made under the WIN program; and 2) 45 CFR 205.146(a), which provided for penalties on States which did not meet WIN certification requirements.

The only regulations issued for the WIN Demo program were regulations governing WIN Demo evaluations. These regulations, at 45 CFR 205.80, are also obsolete and being removed.

Demonstration Projects

Section 1115(b) of the Social Security Act authorizes work-related demonstration projects for welfare recipients. Under paragraph (6) of that subsection, such demonstrations could not extend beyond September 30, 1980. Thus, we have no further need of rules for these demonstrations, and we are deleting 45 CFR part 282.

Income, Eligibility and Verification Systems

Finally, 45 CFR 205.62 includes provisions covering the initial implementation of State Income, Eligibility and Verification Systems (or IEVS) in 1986. Since the provisions are no longer relevant, we are deleting them.

Regulatory Procedures—Executive Order 12866

This final rule has been reviewed pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed for consistency with the priorities and principles set forth in the Executive Order. ACF has determined that this rule is consistent with these priorities and principles. Most specifically, it responds directly to the President's new Regulatory Reinvention Initiative by cutting obsolete regulations and getting rid of yesterday's government. It entails no increase in cost or burden on State and local governments or other entities.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354), which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Department certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. § 3500 *et. seq.*).

List of Subjects

45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public Assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 224

Administrative practice and procedure, Grant programs—social programs, Reporting and recordkeeping requirements, Work Incentive (WIN) Programs.

45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs, Reporting and recordkeeping requirements.

25 CFR Part 238

Aid to Families with Dependent Children, Grant programs—social programs.

45 CFR Part 239

Aid to Families with Dependent Children, Employment, Grant programs—social programs.

45 CFR Part 240

Aid to Families with Dependent Children, Employment, Grant programs—social programs.

45 CFR Part 282

Aid to Families with Dependent Children, Employment, Family Assistance Office, Grant programs—social programs, Manpower training programs.

(Catalog of Federal Assistance Programs No. 93.560 Family Support Payments to States—Assistance Payments (AFDC Maintenance Assistance—State Aid); and No. 93.562, Assistance Payments—Research.)

Dated: April 25, 1995.

May Jo Bane,

Assistant Secretary for Children and Families.

Accordingly, we are amending Chapter II of Title 45 of the Code of Federal Regulations as set forth below:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 205 continues to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 608, 1302, and 1306(a).

§§ 205.62 and 205.80 [Removed]

2. Sections 205.62 and 205.80 are removed.

§ 205.146 [Removed and Reserved]

3. Section 205.146(a) is removed and reserved.

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

1. Under the authority of section 1102 of the Social Security Act, Part 224 is removed.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for Part 233 continues to read as follows:

Authority: 42 U.S.C. 301, 602, 602 (note), 606, 607, 1202, 1302, 1352, and 1382 (note).

§ 233.20 [Amended]

2. Section 233.20 is amended by removing and reserving paragraph (a)(11)(iv).

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

1. Under the authority of section 1102 of the Social Security Act, Part 238 is removed.

PART 239—WORK SUPPLEMENTATION PROGRAM

1. Under the authority of section 1102 of the Social Security Act, Part 239 is removed.

PART 240—EMPLOYMENT SEARCH PROGRAM

1. Under the authority of section 1102 of the Social Security Act, Part 240 is removed.

PART 282—DEMONSTRATION PROJECTS

1. Under the authority of section 1102 of the Social Security Act, Part 282 is removed.

[FR Doc. 95–11911 Filed 5–16–95; 8:45 am]
BILLING CODE 4184–01–M

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45 CFR Parts 1010, 1050, 1060, 1061, 1064, 1067, 1068, 1069, 1070, and 1076

Removal of Obsolete Provisions Related to the Former Community Services Administration

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This final rule removes a number of obsolete provisions from the Code of Federal Regulations. These provisions concern program activities under the former Community Services Administration (CSA) which were superseded by Community Services Block Grant Act, enacted as part of the Omnibus Budget Reconciliation Act of 1981.

DATES: Effective date is May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mae Brooks, (202) 401–9344.

SUPPLEMENTARY INFORMATION: In September of 1993, President Clinton issued Executive Order 12866 which called for Federal regulations which were less burdensome, more effective and more consistent with Administration priorities. In response, in January of 1994, ACF published a notice in the **Federal Register** providing a plan for periodic review of existing rules and soliciting ideas.

In early March of 1995, the President issued a new directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. He directed all agencies to undertake an exhaustive review of all their regulations—with an eye towards eliminating or modifying those that are obsolete or which are otherwise in need of reform. This final rule represents one of the first steps in ACF's response to this new directive.

We are issuing a final rule rather than a notice of proposed rulemaking because we have determined, for good cause, that publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful. This final rule affects only obsolete provisions and programs. Furthermore, this final rule will be effective immediately upon publication because none of the provisions being removed is in effect and no time for implementation is required.

Background

On August 13, 1981, the Community Services Block Grant (CSBG) Act was enacted as part of the Omnibus budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35, 42 U.S.C. 9901 *et seq.*). OBRA of 1981 created seven block grants in the Department of Health and Human Services, one of which was the Community Services Block Grant (CSBG) established through the CSBG Act. The CSBG Act also established a new Office of Community Services to administer the CSBG program. This new office replaced the former Community Services Administration (CSA), and the new CSBG program replaced the programs administered through the former CSA.

Soon after passage of OBRA of 1981, the Department developed and published final rules at 45 CFR Part 96 to govern the seven new block grant programs created by OBRA of 1981, including CSBG (See 47 FR 29486, July 6, 1982). Therefore, the regulations which governed the former Community Services Administration and its grantees are being removed because they are absolete.

Accordingly, this regulation removes 45 CFR Parts 1010 (civil rights program requirements of CSA grantees; civil rights regulations), 1050 (uniform federal standards), 1060 (general characteristics of CSA-funded programs), 1061 (character and scope of specific programs), 1064 (limited purpose agencies; eligibility, organization and functions) 1067

(funding of CSA grantees), 1068 (grantee financial management), 1069 (grantee personnel management), 1070 (grantee public affairs), 1076 (economic development programs).

Regulatory Procedures

Executive Order 12866

This final rule has been reviewed pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed for consistency with the priorities and principles set forth in the Executive Order. ACF has determined that this rule is consistent with these priorities and principles. Most specifically, it responds directly to the President's new Regulatory Reinventor Initiative by cutting obsolete regulations. It entails no increase in cost or burden on State and local governments or other entities.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354), which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Department certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. section 3500 *et seq.*).

List of Subjects

45 CFR Part 1010

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs.

45 CFR Part 1050

Administration practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, Government procedures, Report and recordkeeping, Charity bonds.

45 CFR Part 1060

Administrative practice and procedures, Civil rights, Community activities programs, Community Services offices, Grant programs—social programs.

45 CFR Part 1061

Aged, Community Services Offices, Energy, Family planning, Nutrition, Recreation and recreation activities, Reporting and recordkeeping.

45 CFR Part 1064

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs.

45 CFR Part 1067

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, Accounting.

45 CFR Part 1068

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, Accounting, Income taxes, Social security.

45 CFR Part 1069

Civil disorders, Community Services Offices, Lobbying, Political activities (government employees), Social security, Travel.

45 CFR Part 1070

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, News media.

45 CFR Part 1076

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, Credit unions, Loan programs—social programs, Rural areas and small businesses.

(Catalog of Federal Domestic Assistance Program Number 93.569, Community Services Block Grant)

(42 U.S.C. 9912)

Dated: April 25, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble and under the authority of 42 U.S.C. 9912, Chapter X of title 45 is amended by removing parts 1010, 1050, 1060, 1061, 1064, 1067, 1068, 1069 1070, and 1076.

[FR Doc. 95–11912 Filed 5–16–95; 8:45 am]

BILLING CODE 4184–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90–314, ET Docket No. 92–100, FCC 95–92]

Personal Communications Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Correction to final rules.

SUMMARY: This document contains corrections to the final rules which were published Wednesday, March 15, 1995, (60 FR 13915). The rules related to the ownership attribution of licenses in view of the Commission's decisions to use a multiplier when assessing indirect ownership interests.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Wack, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION: On March 3, 1995, the Commission released the full text of a Memorandum Opinion and Order (Order) in the captioned matter (FCC 95–92). However, there are several errors in the appendix to the Order, "Appendix A: Final Rules," as released and as subsequently published in the **Federal Register**, on March 15, 1995, at 60 FR 13915. There is a need for correction because these rules contain errors which may prove misleading and are in need of clarification. The final rules that are the subject of these corrections supersede §§ 24.101(b) and 24.229(c) on the effective date of publication in the **Federal Register** and affect nationwide narrowband PCS licenses and certain other PCS licensees that are institutional investors.

Accordingly, the publication on March 15, 1995 of the final regulations, which were the subject of FR Doc. 95–6488, is corrected as follows:

§ 24.101 [Corrected]

1. On page 13917, first column, in § 24.101, in paragraph (b), line one, the word "had" is removed and the words "applies for a license after August 16, 1994 or has a license transferred to it after that date, and the party has" are added in its place.

§ 24.229 [Corrected]

2. On page 13917, third column, in § 24.229, paragraph (c) is corrected to read as follows:

§ 24.229 Frequencies.

* * * * *

(c) PCS licensees shall not have an ownership interest in frequency blocks

that total more than 40 MHz and serve the same geographic area. For purposes of this section, PCS licensees are:

(1) Any institutional investor, as defined in § 24.720(h), with an ownership interest of 10 or more percent in a broadband PCS license; and

(2) Any other entities having an ownership interest of 5 or more percent or other attributable ownership interest, as defined in § 24.204(d), in a PCS license.

Example 1: Company A, which is a rural telephone company with no cellular interests, buys a 7 percent stake in a 30 MHz BTA that constitutes 8 percent of the population in MTA 1, which encompasses BTA 1. It is then offered an opportunity to buy 8 percent of the equity in a 30 MHz license in MTA 1. It cannot accept this offer because it would be over the 5 percent threshold on two overlapping PCS licenses. Its status as a rural telephone company has no impact on the 5 percent threshold for PCS licensees.

Example 2: (1) Company A has two investors, Company B and Company C. Company B owns 15 percent of Company A. Company C, a rural telephone company, owns 25 percent of Company A. Company B and Company C do not have any interests in each other.

(2) Company B has 100 percent ownership of cellular license 1 that covers 20 percent of the pops in BTA 1 and 6 percent of the pops in MTA 1. Company C owns 25 percent of cellular license 2 that covers 20 percent of the pops in BTA 2 and 6 percent of the pops in MTA 1. Company A has no separate cellular interests. MTA 1 encompasses both BTA 1 and BTA 2.

(3) Company A cannot purchase 30 MHz of spectrum in BTA 1. Such a purchase would put Company B over the aggregation limit of 40 MHz in BTA 1 because it would have over 5 percent ownership of the PCS license in addition to its cellular license.

(4) Company A can, however, purchase 30 MHz in BTA 2 or MTA 1 because Company C is a rural telephone company, and thus Company C's interest in cellular license 2 falls below the 40 percent threshold and is not counted against the spectrum cap. If Company C were not a rural telephone company, then Company A could not acquire 30 MHz in BTA 2 or MTA 1 because its partners in those licenses would be over the spectrum cap.

(5) Company B can also buy 30 MHz in BTA 2 or MTZ 1 as long as Company A does not also buy 30 MHz in BTA 2 or MTA 1 because Company B and Company C have no joint ownership.

(6) Company C can also buy 30 MHz in BTA 1 or 2 or MTA 1 as long as Company A does not also buy in the region where Company C buys. If Company A were to buy a 30 MHz MTA 1 license, then Company B and Company C would be prohibited from acquiring either of the BTAs because they would be over the 5 percent threshold for PCS spectrum in the same region.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–11931 Filed 5–16–95; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 60, No. 95
Wednesday, May 17, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 77 and 78

[Docket No. 95-006-1]

Tuberculosis and Bruceliosis in Cattle and Bison; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the tuberculosis and brucellosis regulations by requiring brands for certain cattle and bison to be placed on the hip rather than the jaw. This action would reduce distress to cattle and bison that need to be identified with a brand by moving the brand to a less sensitive location, but would allow them to continue to be clearly identified. We are also proposing to allow certain cattle and bison to be moved interstate to slaughter without branding if they are accompanied directly to slaughter by an Animal and Plant Health Inspection Service or State representative or are moved in vehicles closed with official seals. This proposed rule responds to increasing public concern that branding on the jaw causes unnecessary distress to cattle and bison.

DATES: Consideration will be given only to comments received on or before June 16, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–006–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. J.D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–6188.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis causes weight loss, general debilitation, and sometimes death.

Brucellosis, also called Bang's disease or undulant fever, is a serious infectious disease of cattle, bison, and other species, including humans, caused by bacteria of the genus *Brucella*. Brucellosis in cattle and bison is characterized by the birth of weak or stillborn calves, slow breeding, abortion, and loss of milk production.

In accordance with the regulations in 9 CFR parts 50, 51, 77, and 78 (referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) administers programs designed to control and eradicate tuberculosis and brucellosis in cattle and bison. As part of these programs, hot-iron branding on the jaw and on the tailhead is used to identify certain cattle and bison. Specifically, hot-iron branding on the jaw is required or allowed in the following cases: (1) To identify cattle or bison that have contracted or been exposed to tuberculosis or brucellosis; (2) to identify certain cattle or bison to be moved interstate to slaughter because of tuberculosis or brucellosis; and (3) to identify adult cattle or bison that have been immunized against brucellosis.

There has been increasing public concern that hot-iron branding on the jaw may cause undue distress to cattle and bison. A number of animal rights groups and other members of the public have requested that APHIS remove hot-iron branding on the jaw from our regulatory programs. In response to their concerns, we are in this document proposing to remove hot-iron branding on the jaw from the regulations in 9 CFR parts 50, 51, 77, and 78. In places where branding is required to be on the jaw, we would move the required location of the brand to high on the hip near the tailhead. In places where the regulations offer an owner the option of branding either on the jaw or on the hip, we would remove the option of branding on the jaw, but would retain the brand on the hip.

We also considered proposing identification options such as freeze branding, by requiring that the cattle and bison be identified by a brand or by another distinct, permanent, and legible mark. We chose not to propose these options. A limitation of freeze branding is that the brand takes a minimum of 18 to 21 days to become visible. In order that we may continue to prevent the spread of tuberculosis and brucellosis, it is imperative that exposed and affected animals be instantly recognizable from the time of their identification until they are slaughtered, so that they are not commingled with healthy animals. In most cases, exposed or affected cattle or bison would be identified, shipped, and slaughtered before the freeze brand becomes visible. To date, an acceptable alternative to hot-iron branding has not been found for marking exposed or affected cattle or bison that satisfies the criteria of being instantly visible upon application, as well as distinct, permanent, and legible. Until an acceptable alternative is developed, we have chosen to continue to require that branding of cattle and bison under the brucellosis and tuberculosis regulations be with a hot iron. We believe that moving the location of the brand from the jaw to the hip would reduce distress to cattle and bison, but would allow them to continue to be identified distinctly, permanently, legibly, and instantly.

We are, however, proposing several alternatives to branding certain cattle and bison that are to be moved interstate for slaughter. We would allow brucellosis reactor and exposed cattle or bison moving directly to slaughter to be moved without branding if they are accompanied directly to slaughter by an APHIS or State representative. We would also allow brucellosis reactor and exposed cattle or bison moving interstate in slaughter channels (e.g, to a quarantined feedlot, a specifically approved stockyard, or an approved intermediate handling facility, and then to slaughter) to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited

veterinarian, or an individual authorized for this purpose by an APHIS representative. For movement in sealed vehicles, cattle and bison moving interstate to slaughter because of brucellosis would have to be accompanied by a permit or "S" brand permit, and the official seal numbers would have to be recorded on the accompanying permit or "S" brand permit. (*Permit* and *"S" brand permit* are defined in the regulations, and, in accordance with the definitions, must list: The points of origin and destination, the number of animals covered, the purpose of movement, and one of several possible identification numbers.)

We would allow tuberculosis exposed cattle and bison moving directly to slaughter to be moved without branding if they are accompanied directly to slaughter by an APHIS or State representative. We would allow tuberculosis exposed cattle or bison moving interstate in slaughter channels to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. For tuberculosis reactor cattle and bison, we would allow the same movement without branding as for tuberculosis exposed cattle and bison, but we would require that the reactors be identified by a permanent and legible "TB" tattooed on the left ear, and by spraying the left ear with yellow paint. Unlike brucellosis reactor cattle and bison, tuberculosis reactor cattle and bison can only be sold for consumption if the meat is cooked. Presently, there are only four slaughtering facilities in the United States that have the capacity to cook the meat, so this option is not available to the majority of cattle and bison owners. Consequently, most tuberculosis reactor cattle and bison sent to slaughter constitute a monetary loss of $500 or more to the owner. Such monetary loss could provide an incentive to substitute less valuable tuberculosis-free animals for more valuable infected animals, or to otherwise divert valuable tuberculosis infected animals from slaughter channels, impeding tuberculosis eradication efforts in the United States. We believe that requiring tuberculosis reactors to have their left ear tattooed with a "TB" and spray painted yellow would make it difficult for these reactors to be diverted.

These options would provide owners of cattle and bison with an alternative to branding, while helping to ensure that brucellosis- and tuberculosis-affected cattle and bison are handled and moved to slaughter in a manner that prevents dissemination of these diseases.

Miscellaneous

The branding requirements in the regulations are currently inconsistent, providing different size specifications and different descriptions for the location of the brand. This proposed rule would revise the branding requirements not only to remove the option for branding on the jaw, but to make the descriptions consistent. All brands would be required to be positioned high on the left hip near the tailhead and to be at least 5 by 5 centimeters (2 by 2 inches) in size.

Executive Order 12866 and Regulatory Flexibility Act

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

We do not anticipate that this proposed rule would have an economic impact on any entities, large or small. Cattle and bison that have contracted or been exposed to tuberculosis or brucellosis, or that have been immunized against brucellosis, are already required to be identified by a brand; this rule would simply change the location of the brand. Under the tuberculosis and brucellosis eradication programs, the Animal and Plant Health Inspection Service (APHIS) and cooperating States bear the costs of branding cattle and bison, and changing the location of the brand would not result in any change in costs to APHIS or the States. Further, although branding is generally done on the ranch or farm where the cattle or bison are located, no new equipment would be necessary for branding the cattle or bison on the hip, so there would be no new costs to the owner of the animals.

This rule would also allow certain cattle and bison to be moved interstate to slaughter without branding if they are accompanied directly to slaughter by an APHIS or State representative, or if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. Such movement would be a voluntary alternative to branding, and would not impose any additional costs to owners of cattle or bison that are to be moved interstate.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

9 CFR Part 77

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

9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 50, 51, 77, and 78 would be amended as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 50.6, paragraphs (a) and (b) would be revised to read as follows:

§ 50.6 Identification of animals to be destroyed because of tuberculosis.

* * * * *

(a) *Reactor cattle and bison.* Reactor cattle and bison shall be identified by

branding the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag. Reactor cattle and bison may be moved interstate to slaughter without branding if they are permanently identified by the letters "TB" tattooed legibly on the left ear, they are sprayed on the left ear with yellow paint, and they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(b) *Exposed cattle and bison.* Exposed cattle and bison shall be identified by branding the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number. Exposed cattle and bison may be moved interstate to slaughter without branding if they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

3. The authority citation for part 51 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.17, 2.51, and 371.2(d).

4. In § 51.5, paragraph (b) would be revised to read as follows:

§ 51.5 Identification of animals to be destroyed because of brucellosis.

* * * * *

(b) Except as in paragraph (b)(4), cattle and bison to be destroyed because of brucellosis shall be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor," or a similar State reactor tag, and must be:

(1) "B" branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

(4) Reactor and exposed cattle and bison in herds scheduled for herd depopulation may be moved interstate without eartagging or branding if they are identified by USDA approved backtags and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 77—TUBERCULOSIS

5. The authority citation for part 77 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

6. In § 77.5, the heading would be amended by removing the word "comtaining" and adding the word "containing" in its place, and paragraphs (a)(1) and (b)(1) would be revised to read as follows:

§ 77.5 Interstate movement of cattle and bison that are exposed, reactors, or suspects, or from herds containing suspects.

(a) Reactor cattle and bison. * * *

(1) Reactor cattle and bison must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag, and must be:

(i) Branded with the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Permanently identified with the letters "TB" tattooed legibly on the left ear and sprayed on the left ear with yellow paint, and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

(b) *Exposed cattle and bison.* * * *

(1) Exposed cattle and bison must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number, and must be:

(i) Branded with the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Accompanied directly to slaughter by an APHIS or State representative; or

(iii) Moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 78—BRUCELLOSIS

7. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—General Provisions

§ 78.1 [Amended]

8. Section 78.1 would be amended as follows:

a. In the definition for "*B*" *branded*, the phrase "at least 5 sq. cm. (2 × 2 inches) in size on the left jaw" would be removed and "high on left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size" would be added in its place.

b. In the definition for *Official adult vaccinate*, paragraph (b)(1) would be amended by removing "on the right jaw or" and by adding "at least 5 by 5 centimeters (2 by 2 inches) in size" immediately after "tailhead".

c. In the definition for "*S*" *branded*, the phrase "at least 5 sq. cm. (2 ×2 inches) in size on the left jaw or high on the tailhead (over the fourth to the seventh coccygeal vertebrae)" would be removed and "high on left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size" would be added in its place.

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

9. In § 78.7, paragraph (b) would be revised to read as follows:

§ 78.7 Brucellosis reactor cattle.

* * * * *

(b) *Identification.* Brucellosis reactor cattle must be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S.

Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors, and must be:

(1) "B" branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

* * * * *

10. Section 78.8 would be amended by removing the period at the end of paragraphs (a)(3)(iii)(C), (a)(5)(iii)(C), and (b)(3)(ii) and adding "; or" in its place; and by adding new paragraphs (a)(3)(iii)(D), (a)(5)(iii)(D), and (b)(3)(iii) to read as follows:

§ 78.8 Brucellosis exposed cattle.

* * * * *

(a) * * *

(3) * * *

(iii) * * *

(D) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

* * * * *

(5) * * *

(iii) * * *

(D) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

* * * * *

(b) * * *

(3) * * *

(iii) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

* * * * *

11. Section 78.9 would be amended by removing the period at the end of paragraphs (c)(1)(v)(C), (c)(1)(vii)(C), (c)(2)(i)(C), (c)(2)(ii)(B), (d)(1)(v)(C), (d)(1)(vii)(C), (d)(2)(i)(C), and (d)(2)(ii)(B) and adding "; or" in its place; and by adding new paragraphs (c)(1)(v)(D), (c)(1)(vii)(D), (c)(2)(i)(D), (c)(2)(ii)(C), (d)(1)(v)(D), (d)(1)(vii)(D), (d)(2)(i)(D), and (d)(2)(ii)(C) to read as follows:

§ 78.9 Cattle from herds not known to be affected.

* * * * *

(c) * * *

(1) * * *

(v) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(vii) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(2) * * *

(i) * * *

(D) A quarantined feedlot, a specifically approved stockyard and then directly to a quarantined feedlot, or an approved intermediate handling facility and then directly to a quarantined feedlot if the cattle are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(ii) * * *

(C) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(d) * * *

(1) * * *

(v) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(vii) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(2) * * *

(i) * * *

(D) A quarantined feedlot, a specifically approved stockyard and then directly to a quarantined feedlot, or an approved intermediate handling facility and then directly to a quarantined feedlot if the cattle are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(ii) * * *

(C) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis

12. In § 78.22, paragraph (b) would be revised to read as follows:

§ 78.22 Brucellosis reactor bison.

* * * * *

(b) *Identification.* Brucellosis reactor bison must be individually identified

prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors, and must be:

(1) "B" branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

* * * * *

Done in Washington, DC, this 11th day of May 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-12150 Filed 5-16-95; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Parts 101 and 113

[Docket No. 94-051-1]

RIN 0579-AA66

Viruses, Serums, Toxins, and Analogous Products; In Vitro Tests for Serial Release

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the use of in vitro potency tests in place of animal tests for immunogenicity to: change the title of the section; prescribe requirements for in vitro immunoassays used to determine the relative antigen content of inactivated biological products; require that such immunoassays be parallel line assays based upon unexpired reference preparations; require that in vitro tests for relative antigen content be converted to parallel line assays within 2 years; specify procedures and requirements for qualifying or requalifying reference preparations for inactivated products; and add certain definitions to the regulations.

The effect of the amendment would be to standardize the methods used to determine the relative potency of inactivated biological products.

DATES: Consideration will be given only to comments received on or before August 15, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94-051-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 94-051-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737-1237, (301) 734-8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations pertaining to the testing of biologics provide that no biological product shall be released (for sale) prior to the completion of tests prescribed to establish the product to be pure, safe, potent, and efficacious (9 CFR 113.5). Efficacy refers to the specific ability of the product to effect the result for which it is offered when used as recommended by the manufacturer. Studies conducted to establish efficacy include immunogenicity tests in host animals using product manufactured according to specific requirements which include specifications for antigen content and/or animal potency. These requirements apply to every serial of product which is produced. Therefore, if a product has been tested for immunogenicity in animals and shown to have the desired effect, it follows that subsequent serials (batches) of the product manufactured to the same specifications should also have the same effect.

Once immunogenicity is established in relation to a specific minimum antigen content in a product, it should no longer be necessary to test every subsequent serial for potency in animals if an evaluation can be made with reasonable certainty of the relative antigen content by testing the serial or subserial in an acceptable in vitro test system. Therefore, when properly qualified and validated, in vitro immunoassays that determine relative antigen content of the product can serve as acceptable substitutes for potency tests that otherwise would need to be performed in animals.

The regulations in 9 CFR 113.8 pertain to the use of in vitro tests in place of animal tests for determining the potency of veterinary biological products. Currently, the in vitro tests prescribed in § 113.8 which include determining the $\log_{10}$ virus titer and performing live bacterial counts are only applicable to veterinary biologicals which contain live microorganisms. The changes and test procedures prescribed in this proposal would make § 113.8 applicable to both live and inactivated products by prescribing validity requirements for in vitro test systems used, in place of animal tests, to test for the potency of inactivated products.

We are proposing to amend the title of § 113.8 to read: "In vitro potency tests for serial release." This change is intended to clarify the fact that the in vitro procedures described in § 113.8 are applicable to in vitro tests used to release serials or subserials of veterinary biological products after the prescribed animal protection studies required for licensing have been completed. In the case of inactivated products, the proposal specifies that in vitro immunoassays (test systems) which compare the relative antigen content (relative potency) of a test serial to a reference preparation must be parallel line assays using an unexpired reference preparation whose potency has been correlated directly or indirectly to immunogenicity in host animals.

In addition, the proposal would require: confirming the accuracy of the protective dose established for live products 3 years after the initiation of the host animal immunogenicity study; and confirming the immunogenicity of reference preparations used in immunoassays for inactivated biological products prior to their expiration. The expiration date for a reference would be equal to the dating of the product or as supported by data acceptable to APHIS.

APHIS is proposing these amendments because current requirements for many of the immunoassays being used to release serials or subserials of product do not have uniform validity criteria and do not include a provision to confirm periodically the immunogenicity of the reference used in such immunoassays. The proposed amendment would standardize the requirements for in vitro potency tests for relative antigen content and update and improve the reliability of such tests that are currently included in filed outlines of production. The proposed amendment does not specify a particular immunoassay provided that it is a parallel line assay using an unexpired reference preparation. While there is not a generally accepted "best" immunoassay, there is general agreement that an acceptable

immunoassay must demonstrate linearity, specificity, and reproducibility; and that the reference must be capable of eliciting a protective immune response in animals for as long as it serves as the reference.

APHIS has selected the parallel line assay because it demonstrates linearity, specificity, and reproducibility, and also compares the "similarity" of the responses elicited by the test and reference preparations in the immunoassay. APHIS feels that the "similarity" feature is critical to the acceptance of any in vitro immunoassay purporting to measure relative antigenic content. We realize that the proposed amendment would necessitate the revalidation of immunoassays currently contained in some filed outlines of production and propose to implement the requirements as set out below.

Firms with filed outlines of production for licensed products with in vitro potency tests that are immunoassays that are not parallel line assays would be allowed 2 years after the effective date of the final rule to come into compliance with the proposed amendments. In the interim, immunoassays, utilizing unexpired references, contained in previously approved outlines of production would continue to be allowed for serial release of previously licensed fractions but would not be acceptable for fractions not previously licensed to the firm. Firms with filed outlines of production for licensed product with in vitro potency tests for relative antigen content would be required to use unexpired references. References that have expired or that are about to expire would need to be requalified or have the dating period extended in accordance with protocols and time schedules acceptable to APHIS.

APHIS has determined that immunoassays that are not based on a parallel line assay using an unexpired reference may not provide reliable relative potency data in all instances. Such instances include the determination of relative potency based on a reference preparation that may have expired or the extrapolation of data based upon standard curves that may not be proportional between serial and reference. These amendments are being proposed in order to provide greater assurance that a serial of product provides adequate potency in all instances.

We are also adding to the regulations in § 101.5 definitions of the term "immunogenicity", and the terms "master reference", "working reference", and "qualifying serial" as they apply to reference preparations used in in vitro immunoassays.

Licensees, researchers, and scientists at the National Veterinary Services Laboratories, U.S. Department of Agriculture, have cooperated in the development of this proposed rule. We are therefore proposing to amend §§ 101.5 and 113.8 as set forth below.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be no significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This proposed amendment, if adopted, would allow any valid in vitro immunoassay to be used in determining the relative antigen content of an inactivated veterinary biological product, provided that it satisfies the parallel line criteria and that it is conducted using an unexpired reference preparation that has been tested, directly or indirectly, for immunogenicity in a manner acceptable to APHIS. This amendment would affect all licensed manufacturers of veterinary biologicals utilizing in vitro relative potency immunoassays for determining the potency of inactivated products. This proposal, however, does not impose any additional economic burden since the testing of product for potency is already required under § 113.5 of the regulations and outlines of production are routinely amended and updated. Section 113.5 specifies that no biological product shall be released prior to the completion of tests prescribed in a filed outline of production or standard requirement to establish that the product is pure, safe, potent, and efficacious. In the absence of a standard requirement prescribing a specific potency test for inactivated products, the firms develop a potency test suitable for their product, and designate such tests in the outline of production that is filed with APHIS. Currently, firms are using host animal tests, laboratory animal tests, and a variety of in vitro immunoassays as potency tests for inactivated products. This proposed rule does not restrict the firm's discretion to choose the most appropriate test for its product. The proposed rule would only prescribe validity requirements for in vitro immunoassays for relative potency. The overall effect of this proposed amendment would be to standardize in vitro immunoassays that are used to determine the potency of inactivated veterinary biological products.

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

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0013.

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 101 and 113 would be amended as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.5 would be amended by adding new paragraphs (o), (p), (q), and (r) to read as follows:

§ 101.5 Testing terminology.

* * * * *

(o) *Master Reference.* A Master Reference is a reference whose potency is correlated, directly or indirectly, to host animal immunogenicity. The Master Reference may be used as the working reference in in vitro tests for relative potency. The Master Reference

may also be used to establish the relative potency of a serial of product used in requalification studies and to establish the relative potency of working references. A Master Reference may be:

(1) A completed serial of vaccine or bacterin prepared in accordance with a field Outline of Production;

(2) A purified preparation of the protective immunogen or antigen; or

(3) A nonadjuvanted harvested culture of microorganisms.

(p) *Working Reference.* A Working Reference is the reference preparation that is used in the in vitro test for the release of serials of product. Working References may be:

(1) Master References; or

(2) Serials of product that have been prepared and qualified, in a manner acceptable to APHIS, for use as reference preparations.

(q) *Qualifying Serial.* (1) A serial of biological product used to test for immunogenicity when the Master or Working Reference is a purified antigen or nonadjuvanted harvest material. Qualifying serials shall be produced in accordance with the filed Outline of Production, tested for immunogenicity in host animals in accordance with protocols acceptable to Animal and Plant Health Inspection Service, and have a geometric mean relative potency, when compared to the Master Reference, of not greater than 1.0 as established by independent parallel line assays with 5 or more replicates.

(2) Qualifying serials used to requalify or extend the dating period of a Master Reference in a repeat immunogenicity test shall satisfy all criteria prescribed above and, it addition, shall have been prepared within 6 months of requalifying testing, i.e., the initiation of the repeat immunogenicity test.

(r) *Immunogenicity.* The ability of a biological product to elicit an immune response in animals as determined by test methods or procedures acceptable to the Animal and Plant Health Inspection Service.

PART 113—STANDARD REQUIREMENTS

3. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 113.8 would be amended as follows:

a. The section heading would be revised to read as set forth below.

b. Paragraph (a) would be revised to read as set forth below.

c. Paragraph (b) the introductory text would be revised to read as set forth below.

d. Paragraph (b)(5) would be revised to read as set forth below.

e. Paragraph (c) would be redesignated as paragraph (e) and new paragraphs (c) and (d) would be added to read as set forth below.

f. In redesignated paragraph (e), in the introductory text, the reference to "paragraph (b)" would be removed and "Paragraphs (b) and (c)" would be added in its place. In paragraph (e)(4), the reference to "paragraphs (c)(1)," would be removed and "paragraphs (e)(1)," would be added in its place.

§ 113.8 In vitro potency tests for serial release.

(a) Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seed for production as specified in the Standard Requirements or in the filed Outline of Production. The Administrator may exempt a product from a required animal potency test for release when an evaluation can, with reasonable certainty, be made by:

(1) Subjecting the master seed to the applicable requirements prescribed in §§ 113.64, 113.100, 113.200, and 113.300;

(2) Testing the Master Seed for immunogenicity in a manner acceptable to the Animal and Plant Health Inspection Service (APHIS);

(3) Establishing a satisfactory potency for live products based on the protective dose used in the Master Seed immunogenicity test plus an adequate overage allowance for adverse conditions and test error; and

(4) For inactivated products, determining the potency of each serial or subserial, or both, using an accepted test system. Acceptable potency tests shall include:

(i) Determining the $\log_{10}$ live virus titer;

(ii) Determining the live bacterial count; or

(iii) For inactivated products, determining the relative antigen content, as compared with a reference, using a parallel line immunoassay.

(b) In the case of live products, each serial and subserial of desiccated product derived from an approved Master Seed and bulk or final container samples of each serial of completed liquid product derived from an approved Master Seed shall be evaluated by a test procedure acceptable to APHIS. On the basis of the results of the test, as compared with the required minimum potency, each serial and subserial shall either be released to the firm for marketing or withheld from the market. The evaluation of such products shall be made in accordance with the following criteria:

(1) * * *

* * * * *

(5) *Exceptions.* When a product is evaluated in terms other than $\log_{10}$ virus titer or organism count, an appropriate difference between the average potency value obtained in the retests and the potency value obtained in the initial test shall be established for use in paragraphs (b)(3) or (b)(4) of this section to evaluate such products and shall be specified in the Product Standard Requirement or filed Outline of Production.

(c) In the case of inactivated products, bulk or final container samples of completed product from each serial derived from an approved Master Seed, shall be evaluated for relative antigen content (potency), as compared with a reference, by a parallel line immunoassay procedure acceptable to APHIS. Firms currently using immunoassays which do not meet the requirements of a parallel line assay shall have 2 years from the effective date of the final rule to update their filed Outlines of Production to be in compliance with this requirement. On the basis of the results of such test procedures, each serial that meets the required minimum potency shall be released to the firm for marketing; each serial not meeting the required minimum potency shall be withheld from the market. The evaluation of such products shall be made in accordance with the following criteria:

(1) A test that results in no valid lines is considered a no test and may be repeated.

(2) An initial test that results in valid lines that are not parallel is considered a valid equivocal test. Release of the serial may not be based on such test since the result cannot be termed "satisfactory" or "unsatisfactory".

(3) If the initial test shows that potency equals or exceeds the required minimum potency, the serial is satisfactory without additional testing.

(4) If the initial test is an equivocal test due to lack of parallelism, the serial may be retested up to three times: *Provided*, That, if the test is not repeated, the serial shall be deemed unsatisfactory.

(i) If more than 50% of all valid repeat tests show that potency equals or exceeds the required minimum potency, the serial is satisfactory.

(ii) If greater than 50% of all valid repeat tests show either lack of parallelism or that potency is less than the required minimum potency, the serial is unsatisfactory.

(5) If the initial test shows that potency is less than the required minimum potency, the serial may be retested. If retested, two additional tests, must be conducted: *Provided,* That, if the serial is not retested, the serial shall be deemed unsatisfactory.

(i) If more than 50% of all valid tests show that potency equals or exceeds the required minimum potency, the serial is satisfactory.

(ii) If more than 50% of all valid tests show either lack of parallelism or that potency is less than the required minimum potency, the serial is unsatisfactory.

(d) *Repeat immunogenicity tests.*

(1) The accuracy of the protective dose established for live products in the Master Seed immunogenicty test and defined as live virus titer or live bacterial count shall be confirmed in 3 years in a manner acceptable to APHIS, unless use of the lot of Master Seed previously tested is discontinued.

(2) All determinations of relative antigen content using parallel line immunoassays shall be conducted with an unexpired reference. The lot of reference used to determine antigenic content shall have an initial dating period equal to the dating of the product or as supported by data acceptable to APHIS. Prior to the expiration date, such reference may be granted an extension of dating by confirming its immunogenicity using a Qualifying Serial of product. Tests to establish or confirm immunogenicity of references shall be conducted in a manner acceptable to APHIS. The dating period of the Master Reference and Working Reference may be extended as supported by data acceptable to APHIS if the minimum potency of the Master Reference is determined to be adequately above the minimum level needed to provide protection in the host animal. If a new Master Reference is established, it shall be allowed an initial dating period equal to the dating of the product or as supported by data acceptable to APHIS.

* * * * *

Done in Washington, DC, this 11th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Services.

[FR Doc. 95–12152 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 113

[Docket No. 93–039–2]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirement or Escherichia Coli Bacterin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for the proposed Standard Requirement for *Escherichia coli* bacterin. This extension will provide interested persons with additional time in which to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments on Docket No. 93–039–1 that are received on or before August 15, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–039–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–039–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION: On October 11, 1994, we published in the **Federal Register** (59 FR 51390–51392, Docket No. 93–039–1) a proposed rule to amend the regulations in 9 CFR 113.124 to include a Standard Requirement for *Escherichia coli* bacterins. Comments on the proposed rule were required to be received on or before December 12, 1994.

So that we may consider comments submitted after that date, we are reopening and extending the public comment period on Docket No. 93–039–1 until 90 days after the date of publication of this notice in the **Federal Register**. During this period, interested persons may submit their comments for our consideration.

Authority: 21 U.S.C. 151–159, 7 CFR 2.17, 2.51, and 371.2(d). Done in Washington, DC, this 11th day of May 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12151 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ANE–23]

Proposed Establishment of Class E Airspace; Portland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Portland International Jetport, Portland, Maine, that coincides with the hours that the associated radar approach control facility is not in operation. Since the Portland Class C airspace is predicated on an operational air traffic control tower (ATCT) serviced by a radar control approach facility (TRACON), Class E airspace must be defined for the hours when that facility is not in operation. This proposal would not change the designated boundaries or altitudes of the Portland Class C airspace, but only establish the necessary Class E airspace to provide sufficient controlled airspace for those aircraft operating under instrument flight rules during the hours when the Portland ATCT and TRACON are not in operation.

DATES: Comments must be received on or before June 16, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7049; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

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.

Commentators 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: "Comment to Airspace Docket No. 95–ANE–23." The postcard will be date/time stamped and returned to the commeter. 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 System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, 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, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. 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 establish Class E airspace at Portland International Jetport, Portland, Maine. The current Portland, ME Class C airspace area is predicated on continuous operation and availability of the Portland air traffic control tower (ATCT) and the associated radar control approach facility (TRACON). Since this facility does not operate continuously, Class E airspace is needed to provide sufficient controlled airspace for those aircraft operating under instrument flight rules (IFR) during the hours when the Portland ATCT and TRACON are not in operation. This proposal would not change the designated boundaries or altitudes of the Portland Class C airspace. Class E surface airspace areas are published in Paragraph 6002 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Calss E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations 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 economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies 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).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ANE ME E2 Portland International Jetport, ME [New]

Portland International Jetport, ME
(Lat. 43°38'46" N, long. 70°18'31" W)

Within a 5-mile radius of the Portland International Jetport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, Massachusetts, On May 8, 1995

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–12157 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANE–24]

Proposed Revocation of Class D and Class E Airspace; Limestone, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke the Class D and Class E airspace areas established at the former Loring Air Force Base (AFB), Limestone, Maine, and amend the Class E airspace at the Northern Maine Regional Airport at Presque Isle, Maine, to delete that portion of that airspace in the vicinity of Loring AFB. This action is necessary since Loring Air Force Base is no longer in operation, all standard instrument approach procedures to Loring AFB have been cancelled, and the air traffic control tower at Loring AFB is closed.

DATES: Comments must be received on or before June 16, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park,

Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket may be examined in the Office of the Assistant Chief Counsel for New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT:

Karl D. Anderson, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

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. Commentators 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: "Comment to Airspace Docket No. 95–ANE–24." 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 System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, 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, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. 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 revoke the Class D and Class E airspace areas established at the former Loring Air Force Base (AFB), Limestone, Maine, and to amend the Class E airspace at the Northern Maine Regional Airport at Presque, Isle, Maine, to delete the portion of that airspace in the vicinity of Loring AFB. As of October 1, 1994, Loring AFB ceased operations, and since that time all standard instrument approach procedures to Loring AFB have been cancelled. The air traffic control tower at Loring is closed, and weather observation reports are no longer available from that facility. Therefore, this action is necessary to revoke the Limestone Class D and Class E airspace areas, and to amend the Presque Isle Class E airspace area to delete the controlled airspace in the vicinity of the former Loring AFB. Class D and Class E airspace areas are published in FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. Class D airspace areas appear in paragraph 5000 of FAA Order 7400.9B, Class E areas designated as extensions to a Class D areas appear in paragraph 6004, and Class E areas extending upward from 700 feet or more about the surface of the earth appear in paragraph 6005. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations 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 economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies 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).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ANE ME D Limestone, ME [Removed]

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area

* * * * *

ANE ME E4 Limestone, ME [Removed]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE ME E5 Presque Isle, ME [Amended]

Northern Maine Regional Airport at Presque Isle, ME
(Lat. 46°41'20" N, long. 68°02'41" W)
Presque Isle VORTAC
(Lat. 46°46'27" N, long. 68°05'40" W)
EXCAL LOM
(Lat. 46°36'37" N, long. 68°01'08" W)
Caribou Municipal Airport, ME
(Lat. 46°52'17" N, long. 68°01'04" W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Northern Maine Regional Airport at Presque Isle, and within 3 miles each side of the EXCAL LOM 165° bearing extending from the 11-mile radius to 9.2 miles south of the

EXCAL-LOM, and within 4 miles east and 8 miles west of the Presque Isle 340° radial extending from the 11-mile radius to 16 miles northwest of the VORTAC, and within an 8.5-mile radius of Caribou Municipal Airport; excluding that airspace outside of the United States.

* * * * *

Issued in Burlington, Massachusetts, on May 8, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–12156 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD87

Supplemental Security Income for the Aged, Blind, and Disabled; Extension of Time Period for Not Counting as Resources, Funds Received for Repair or Replacement of Damaged or Destroyed Excluded Resources in the Supplemental Security Income Program

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: In the past several years, portions of the United States have experienced natural disasters that have had unprecedented effects on supplemental security income (SSI) recipients. To provide us with the flexibility to deal with these and future occurrences, we propose to modify our current regulations regarding the period of time that cash and in-kind items received for the repair or replacement of certain destroyed or damaged excluded resources would not count toward the resource limit.

DATES: To be sure that your comments are considered, we must receive them no later than July 17, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov" or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: The regulations at § 416.1205(c) provide that SSI recipients can have no more than $2,000 in countable resources and SSI couples can have no more than $3,000. The regulations at § 416.1237 provide that assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a Federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States or comparable assistance received from a State or local government, or from a disaster assistance organization, is excluded permanently under the SSI program in determining countable resources.

The regulations at § 416.1232 complement the disaster assistance exclusion by providing that cash or in-kind items for the repair or replacement of lost, stolen, or damaged excluded resources are not treated as resources for 9 months. The regulations also provide for one extension for a reasonable period up to an additional 9 months for good cause if circumstances do not permit repair or replacement within the initial 9-month period and the individual intends to use the funds for repair or replacement.

Excluded resources generally include the individual's home, household goods and personal effects, and the automobile, as are described in §§ 416.1212, 416.1216 and 416.1218 respectively.

Private insurance payments do not qualify as disaster assistance and, therefore, cannot be permanently excluded from resources. For some SSI recipients affected by natural disasters, the maximum period of 18 months during which monies received to repair or replace excluded resources are not treated as resources will not be sufficient and some of these individuals will consequently lose SSI and Medicaid eligibility.

In the past several years, portions of the United States have experienced natural disasters that have had unprecedented effects on SSI recipients. In August 1992, Hurricane Andrew devastated south Florida causing damage estimated in excess of $18 billion. Because of the extent of the devastation, SSI recipients in the area were unable to use insurance payments to repair or replace their damaged property within the maximum 18-month period provided by regulations during which those payments would not be treated as resources. With the expiration of this period, the payments would have counted as resources for SSI purposes. On March 17, 1994 (59 FR 12544), we published interim final regulations with a request for comments which provided victims of Hurricane Andrew with an additional 12-month time period in which to repair or replace their property.

History has shown that current regulations generally provide a sufficient time period for individuals to repair or replace their excluded resources destroyed or damaged by natural disasters. However, in the event disasters of the magnitude of Hurricane Andrew occur, we wish to have the flexibility in regulations to extend the period that payments or in-kind assistance for the repair or replacement of affected excluded resources will not count as resources.

We are proposing regulations which provide us with the flexibility to provide individuals with additional time to repair or replace destroyed or damaged excluded resources when such disasters occur and certain other criteria are met. These proposed regulations will extend the maximum 18-month period during which cash or in-kind replacement received from any source for purposes of repairing or replacing an excluded resource is not counted as a resource for up to an additional 12 months. This additional time period only applies in the case of presidentially declared major disasters as long as the individual intends to repair or replace the property and good cause still exists.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they

affect eligibility for or the amount of SSI payments of individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416:

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: May 3, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart L of part 416 continues to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1232 is amended by revising paragraph (b), by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c), to read as follows:

§ 416.1232 Replacement of lost, damaged, or stolen excluded resources.

* * * * *

(b) The initial 9-month time period will be extended for a reasonable period up to an additional 9 months where we find the individual had good cause for not replacing or repairing the resource. An individual will be found to have good cause when circumstances beyond his or her control prevented the repair or replacement or the contracting for the repair or replacement of the resource. The 9-month extension can only be granted if the individual intends to use the cash or in-kind replacement items to repair or replace the lost, stolen, or damaged excluded resource in addition to having good cause for not having done so. If good cause is found for an individual, any unused cash (and interest) is counted as a resource beginning with the month after the good cause extension period expires. *Exception: For victims of Hurricane Andrew only,* the extension period for good cause may be extended for up to an additional 12 months beyond the 9-month extension when we find that the individual had good cause for not replacing or repairing an excluded resource within the 9-month extension.

(c) The time period described in paragraph (b) of this section (except the time period for individuals granted an additional extension under the Hurricane Andrew provision) may be extended for a reasonable period up to an additional 12 months in the case of a catastrophe which is declared to be a major disaster by the President of the United States if the excluded resource is geographically located within the disaster area as defined by the presidential order; the individual intends to repair or replace the excluded resource; and, the individual demonstrates good cause why he or she has not been able to repair or replace the excluded resource within the 18-month period.

* * * * *

[FR Doc. 95–12099 Filed 5–16–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 452

RIN 1294–AA09

Eligibility Requirements for Candidacy for Union Office

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Proposed rule.

SUMMARY: The Office of Labor-Management Standards proposes to amend its interpretative regulations on labor organization officer elections. The proposed amendment will add a reference to a ruling by the Court of Appeals for the District of Columbia Circuit regarding the reasonableness of meeting attendance requirements set by labor organizations for eligibility for union office. This amendment will inform the public of a court decision that guides the Office in its enforcement actions.

DATES: Interested parties may submitted comments on or before July 17, 1995.

ADDRESSES: Written comments should be submitted to Edmundo A. Gonzales, Deputy Assistant Secretary for Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, (202) 219–7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) sets forth standards and requirements for the election of labor organization officers. Section 401(e) of title IV, 29 U.S.C. § 481(e), provides in part that every member in good standing has the right to be a candidate subject "to reasonable qualifications uniformly imposed."

In connection with the Department's enforcement responsibilities under LMRDA title IV, interpretative regulations have been promulgated, 29 CFR part 452, in order to provide the public with information as to the Secretary's "construction of the law which will guide him in performing his [enforcement] duties." 29 CFR 452.1. Several provisions in the interpretative regulations discuss union-imposed qualifications on candidacy eligibility. One of these provisions, 29 CFR 452.38, deals specifically with meeting attendance requirements and lists several factors to consider in determining whether, under "all the circumstances," a particular meeting attendance requirement is reasonable.

On June 15, 1994, OLMS published an advance notice of proposed rulemaking (ANPRM) requesting comments from the public on the possible need to modify the interpretative regulations on meeting attendance requirements in order to incorporate a ruling of the United States Court of Appeals for the District of Columbia Circuit in *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Cir. 1987). In *Doyle*, the Secretary's decision not to bring enforcement action under LMRDA title IV was reviewed by the courts pursuant to *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975). (In *Bachowski*, the Supreme Court held that judicial review of the Secretary's decision not to bring litigation in LMRDA title IV cases is available under the Administrative Procedure Act.) The Secretary had decided not to bring civil action on a member's complaint about his union's meeting attendance requirement, even though the requirement disqualified 97% of the members. The Secretary's position, after reviewing the factors set forth in 29 CFR 452.38, was that since

the requirement was not on its face unreasonable (i.e., it did not require a member to decide to become a candidate an excessively long period before the election) and it was not difficult to meet (i.e., the meetings were held at convenient times and locations and the union provided liberal excuse provisions), the large impact of the requirement was not by itself sufficient to render it unreasonable.

The district court held that the Secretary's decision not to bring litigation against the union was arbitrary and capricious, *Doyle* v. *Brock*, 641 F. Supp. 223 and 632 F. Supp. 256 (D.D.C. 1986). The court of appeals affirmed, rejecting the Secretary's position summarized above. The court emphasized the importance of the impact of the meeting attendance requirement in disqualifying 97% of the membership as a sufficient factor in determining the requirement to be unreasonable:

> There is *no* basis, in [the Supreme Court's decision in *Steelworkers, Local 3489* v. *Usery*, 429 U.S. 305 (1977)] or in any other case, for the notion that an attendance requirement that has a large antidemocratic effect can be reasonable on its face, and that some additional factor is necessary to find the requirement violative of the LMRDA.

821 F.2d 778, 785.

The ANPRM suggested three options for modifying the interpretative regulations. The first suggested option was to delete the current language in 29 CFR 452.38(a) and replace it with the statement that all meeting attendance requirements are per se unreasonable. The second suggested option was to retain the current language in 29 CFR 452.38(a) stating that the reasonableness of a meeting attendance requirement is determined by reviewing a number of factors on a case-by-case basis, but add language to the effect that there is an inverse relationship between the impact of the requirement and the probability that it will be considered reasonable. The third suggested option, a combination of the first two, was to retain the current case-by-case language of 29 CFR 452.38, but add a statement that once the impact reaches a certain point (such as 50%, 75% or 90%) the meeting attendance requirement will be considered to be unreasonable per se.

II. Comments on the ANPRM

OLMS received sixteen (16) comments pursuant to the ANPRM on the meeting attendance regulation. Fourteen (14) comments were received from the following labor organizations, which generally opposed restrictions on meeting attendance requirements:

—International Organization of Masters, Mates & Pilots
—Association of Western Pulp and Paperworkers
—United Cereal, Bakery and Food Workers, No. 374
—International Association of Fire Fighters
—Glass, Molders, Pottery, Plastics & Allied Workers International Union
—American Federation of Grain Millers
—International Guards Union of America
—Graphic Communications International Union
—Amalgamated Transit Union
—Oil, Chemical & Atomic Workers International Union
—Amalgamated Clothing and Textile Workers Union
—International Brotherhood of Painters & Allied Trades
—The American Federation of Labor and Congress of Industrial Organization (joined by the United Steelworkers of America and the International Association of Machinists and Aerospace Workers)
—International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers

The other two comments, which opposed meeting attendance requirements and supported the option of holding that they are *per se* unreasonable, were received from the following:

—The Association for Union Democracy
—Acuna, Casas & Araiza (a law firm)

The points that were most frequently made in the comments submitted by labor organizations are as follows.

—A substantial number of union constitutions continue to have meeting attendance requirements, either because the parent national or international union requires one or the parent allows subordinate locals to choose to impose one.
—Although a large majority of union members do not attend meetings, it is not possible to make generalizations on the portion of membership disqualified by meeting attendance requirements. One comment stated that determining who is ineligible because of a meeting attendance requirement in a particular case is difficult because of the availability of excuse provisions and the need to review meeting sign-in sheets and records of excuse requests.
—The primary purpose of meeting attendance requirements is to ensure that candidates are knowledgeable about the duties of the positions they seek and that they are committed to the union and serving its members; the labor organizations stated that they and their members feel very strongly that this is a valid purpose. Meeting attendance requirements have served this purpose well (but the labor organizations presented no facts to support this belief).
—It is not appropriate to judge the reasonableness of a candidacy qualification by the number of member who choose not to attempt to meet it. The reasonableness of a rule should be determined primarily by how difficult the qualification is to meet.
—*Doyle* is not persuasive and should not be followed in the other circuits.
—No court has held meeting attendance requirements to be per se unreasonable, and there is no legal basis for the Department to make them per se unreasonable.
—If any change is made to the regulations, that change should state that a meeting attendance requirement is presumptively reasonable as long as the requirement is flexible (e.g., liberal excuse provisions are available) and/or the union takes other action to encourage attendance (e.g., meetings held at different times, extensive notice of meetings, etc.).

In addition, one of the labor organization comments cited several Supreme Court and lower court decisions to support the proposition that although "Congress' model of democratic elections was public elections in this country," *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492 (1968), the *Doyle* court's standard for judging union candidacy qualifications was far more demanding than the standards which courts have used for judging state election rules (and therefore, presumably, the *Doyle* standard would not survive a challenge to the Supreme Court). The most recent of the Supreme Court cases, *Munro v. Socialist Workers Party*, 479 U.S. 189, 107 S. Ct. 533 (1986), involved a challenge to a Washington state law which required a minority party candidate to run in the state's open primary and receive at least 1% of all votes cast for that office in order to be a candidate in the general election. The Court upheld this candidacy restriction, even though such restrictions "impinge" upon the First and Fourteenth Amendment rights of candidates and voters, because those rights "are not absolute and are necessarily subject to qualification if elections are to be run fairly and effectively." *Id.*, at 193.

The state interests generally cited to justify the impingement on

constitutional rights are ensuring that candidates have a "modicum of support," *Id.*, at 193, avoiding voter confusion, and eliminating frivolous candidates. The Court has held that states are not required to show that the restriction is actually needed to serve valid state interests. In *Munro*, the Court accepted the determination of the Court of Appeals (which has found the restriction unconstitutional) that, as a "historical fact," there was no evidence of voter confusion from ballot overcrowding, but went on to state that

> [W]e have never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidates prior to the imposition of reasonable restrictions on ballot access * * *. *Id.*, at 194–5.
>
> Legislatures, we think, should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively * * * *Id.*, at 195.

For the Court, it was sufficient that the restriction on candidacy in the general election was based on the state's "perception" of harmful developments requiring that restriction. *Id.*, at 196.

The two commenters who opposed meeting attendance requirements stated generally that

—they disqualify too many members, discriminate in favor of incumbents, are difficult to administer, and serve no useful purpose,
—their alleged purpose, of ensuring knowledgeable and committed candidates, is undermined rather than supported by the availability of liberal excuse provisions,
—only a minority of unions have them, and
—members should make the decision in the election as to whether a person is qualified.

One of the comments which supported a per se ruling against meeting attendance requirements made a number of additional points. First, in support of the position that most meeting attendance requirements have been held to violate the LMRDA, this commenter stated that its review of court and administrative decisions on title IV cases disclosed only one court decision and a handful of administrative decisions which upheld the application of a meeting attendance requirement after *Steelworkers Local 3489*.

Second, this commenter argued that the Supreme Court's approval of the Department's case-by-case approach under 29 CFR 452.38 in *Steelworkers Local 3489* does not prohibit the Department "from adopting a less flexible ban on all meeting attendance requirements." It stated that in other areas of law the courts "have not hesitated to make the transition from a test based on all the circumstances to the adoption of per se rules." In particular, the commenter cited a Supreme Court decision involving anti-trust laws, *Northwest Stationers* v. *Pacific Stationery*, 472 U.S. 284 (1985), which rejected the "rule of reason" approach and held that certain business arrangements were per se illegal because experience has shown that they "always or almost always" tend to restrict competition. This commenter also cited a handbook of tort law to support its position that courts have held that certain actions in violation of statutes or ordinances are per se unreasonable.

Third, this commenter stated that several of the Department's regulations already contain per se rulings on eligibility requirements. It cited the following regulations which set forth per se prohibitions: prior office holding (29 CFR 458.40), membership in a particular branch (29 CFR 458.42), discrimination on the basis of personal characteristics such as race, religion, sex, and national origin which violates Federal law (29 CFR 458.46), and declaration of candidacy months prior to the election (29 CFR 458.51). It also cited several regulations which hold that certain candidacy qualifications are per se reasonable: ineligibility of full-time non-elective employees (29 CFR 458.48), term limits (29 CFR 458.49), and two years prior membership (29 CFR 458.37).

Finally, an article cited in these comments, that was written by the author of these comments, refers to several sources which support the proposition that attendance at union meetings is and always has been low. One of these is a statement by Senator Hubert Humphrey in discussions on bills which lead to the LMRDA. Senator Humphrey's exact statement, made in the context of emphasizing the importance of members' attending union meetings, was that "[i]f only 10 percent of union members attend meetings—and that is a good average—we can expect abuse of power." 105 Cong. Rec. 17,918.

This commenter concluded by arguing that it is important to completely prohibit meeting attendance requirements because any action short of this will encourage unions to retain those requirements and discourage members who have not met the requirements from running for office, even though most such requirements would not survive challenge. This commenter also noted that some judges have upheld an eligibility requirement because it disqualified only 10% or 25% of members, even though its justification was otherwise questionable; continuing the current case-by-case approach might encourage the case law to develop in this direction, a tendency which should be "resisted."

III. Discussion

After reviewing the comments on the ANPRM and the pertinent court decisions in view of these comments, the Department has decided to propose a modification of the interpretative regulations at 29 CFR 452.38 in order to cite *Doyle* and refer to its essential ruling. The Department has concluded the *Doyle* is an important decision "which will guide [the Secretary] in performing his duties," 29 CFR 452.1, and it is therefore appropriate to include it in the interpretative regulations, but that there is an insufficient basis at this time to take further action such as holding that meeting attendance requirements are per se unreasonable.

The proposal to cite *Doyle* and refer to its essential ruling is contrary to the recommendations of both the labor organization commenters and those commenters who supported a per se ruling against meeting attendance requirements. Several labor organizations stated in their comments that they disagreed with *Doyle* and recommended that *Doyle* not be followed in other circuits. However, this recommendation is not feasible. Since *Doyle* was decided in the District of Columbia Circuit, where the Secretary is located, and since the Supreme Court's decision in *Dunlop* v. *Bachowski* held that any member may bring litigation against the Secretary for judicial review of his decision not to take enforcement action, a decision by the Secretary not to follow *Doyle* in another circuit would be susceptible to successful legal challenge in the D.C. Circuit.

In addition, several labor organizations recommended that the Department create a "safe harbor" whereby a meeting attendance requirement would be presumed to be reasonable if, for example, meetings are not difficult to attend, the union makes significant efforts to encourage attendance, and there are liberal excuse provisions. However, many of these factors were considered and rejected in *Doyle* as well as in *Steelworkers Local 3489*, and the establishment of a presumptively "safe harbor" is therefore not possible.

The proposal to cite *Doyle* is also contrary to the recommendations made in the other two comments to prohibit meeting attendance requirements per se. The Department has concluded that such recommended action, at a

minimum, raises serious legal questions. As the labor organizations comments noted, the LMRDA expressly allows unions to impose "reasonable qualifications uniformly imposed" on candidacy eligibility, Congress did not discuss any abuses stemming from meeting attendance requirements even though many unions had such requirements at the time the LMRDA was enacted and attendance was undoubtedly very low at that time as well, and no court has actually held meeting attendance requirements to be per se unreasonable, not even the *Doyle* court.

The arguments presented in the comments in support of the legal validity of adopting a per se rule do not overcome these difficulties. In particular, the Department does not feel that the Supreme Court decision involving anti-trust laws, which reflected the "rule of reason" approach and held that certain business arrangements were per se illegal because the experience shows that they "always or almost always" tend to restrict competition, is persuasive here. Unlike the statutes discussed in that Court decision (§ 1 of the Sherman Act, 15 U.S.C. § 1, and section 4 of the Robinson-Patman Act, 15 U.S.C. § 13(b)), LMRDA section 401(e) expressly allows unions to adopt reasonable rules limiting candidacy. Moreover, as stated above, the fact that attendance at union meetings is low was acknowledged during Congressional deliberations, so that the Department's "experience" in implementing the LMRDA is not different from the facts known by Congress when it enacted the LMRDA.

In addition, the four kinds of eligibility requirements referred to one of the commenters which are prohibited per se in the Department's regulations can be readily distinguished from meeting attendance requirements. "Prior office holding" by its very terms makes it impossible for every member to be a candidate *and* was expressly found to be unreasonable by the Supreme Court in *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492 (1968). "Discrimination on the basis of certain personal characteristics" also by its very terms makes it impossible for every member to be a candidate *and* is illegal under other Federal law. "Membership in a particular union branch" also by its very terms makes it impossible for every member to be a candidate. "Declaration of candidacy" restricts the right of members to nominate candidates and has been held by the courts to serve no arguable purpose.

The Department recognizes that many of the statements made by the commenters who supported a per se prohibition on meeting attendance requirements may well be valid. For those cases of which the Department has knowledge through its investigation of a complaint, meeting attendance requirements have most often disqualified the overwhelming majority of members and the requirements have most often been found to be unreasonable. The justifications for meeting attendance requirements have most often been seriously questioned by the courts. Meeting attendance requirements are difficult and burdensome to administer equitably and uniformly, especially with regard to excuse provisions, and they lead to uncertainty and costly litigation for all concerned. These are all considerations which labor organizations should be aware of if they choose to have meeting attendance requirements, in addition to the fact that the Department under *Doyle* will take enforcement action whenever a meeting attendance requirement disqualifies a large portion of a union's membership from candidacy.

Nevertheless, the LMRDA recognizes that labor organizations have the right to establish reasonable candidacy qualifications, and the Department has concluded that there is not a sufficient basis at this time for holding this one type of candidacy qualification to be per se unreasonable. It is therefore not appropriate or necessary under the present case law to replace the case-by-case approach, set forth in 29 CFR 452.38 and cited approvingly by the Supreme Court in *Steelworkers Local 3489*, for determining whether a meeting attendance requirement is reasonable.

IV. The Proposed Revision

As stated above, the Department proposes to revise the interpretive regulations to cite *Doyle* and refer to its essential ruling. Under this proposal, the text of § 452.38 would remain, but the text of footnote 25 would be replaced with the following:

[25] If a meeting attendance requirement disqualifies a large portion of members from candidacy, that large antidemocratic effect alone may be sufficient to render the requirement unreasonable. In *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Circuit 1987), the court held that the impact of a meeting attendance requirement which disqualified 97% of the union's membership from candidacy was by itself sufficient to make the requirement unreasonable notwithstanding any of the other factors set forth in 29 CFR 452.38(a).

The current text of footnote 25, which would be eliminated under this proposal, refers to the holding of the Supreme Court in *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, at 502, as support for the importance of impact in determining whether a meeting attendance requirement is reasonable. However, the *Doyle* decision is a more appropriate citation for this point because in this case, unlike *Local 6*, the meeting attendance requirement was found unreasonable solely on the basis of its impact; in contrast, *Local 6* involved the issue for prior office holding, which is covered in 29 CFR 452.40 and footnote 26, which summarizes *Local 6*. In addition, even if the current text of footnote 25 is replaced, there will continue to be references to *Local 6* in footnote 26 and the text of 452.36(a).

V. Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this proposed rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (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.

B. Regulatory Flexibility Act

The Agency Head has certified that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. Any regulatory revision will only apply to labor organizations, and the Department has determined that labor organizations regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This proposed rule contains no information collection requirements for

purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects Affected in 29 CFR Part 452

Labor unions.

Text of Proposed Rule

In consideration of the foregoing, the Department of Labor proposes that part 452 of title 29, Code of Federal Regulations, be amended as follows:

PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

The authority citation for Part 452 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 2–93 (58 FR 42578).

2. Footnote 25 cited at the end of section 452.38(a) is revised to read as follows:

§ 452.38 Meeting attendance requirements.

* * * * *

[25] If a meeting attendance requirement disqualifies a large portion of members from candidacy, that large antidemocratic effect alone may be sufficient to render the requirement unreasonable. In *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Circuit 1987), the court held that the impact of a meeting attendance requirement which disqualified 97% of the union's membership from candidacy was by itself sufficient to make the requirement unreasonable notwithstanding any of the other factors set forth in 29 CFR 452.38(a).

Signed in Washington, DC this 11th day of May 1995.

Charles L. Smith,

Special Assistant to the Deputy Secretary.

[FR Doc. 95–12137 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–86–M

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 95–1]

Reading Rooms and Service to the Collections

AGENCY: Library of Congress.

ACTION: Proposed rules.

SUMMARY: The Library of Congress is proposing to amend its regulations on access to the Library's collections by members of the public and policies and procedures for service to the collections. This amendment reflects the new capabilities of the Library's reader registration system, specifically requiring all members of the public wishing to use the Library's collections to obtain a Library-issued User Card. The User card will contain the name, current address, and a digitized photograph of the user. This amendment also describes new policies and procedures for providing and maintaining security for Library materials from accidental or deliberate damage or loss caused by users of these collections and the penalties for misuse. These measures include establishing conditions and procedures for the use of material that requires special handling, instructing and monitoring readers, assuring that the conditions and housing of all materials are adequate to minimize risk, and establishing control points at entrances to reading rooms. These new procedures will enhance the security of the Library's collections.

DATES: Comments should be received on or before June 16, 1995.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Mail Code 1050, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–601, First and Independence Avenue, SE., Washington, DC 20540–1050, (202) 707–6316.

FOR FURTHER INFORMATION CONTACT: Johnnie M. Barksdale, Regulations Officer, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–1593.

SUPPLEMENTARY INFORMATION: Under the authority of 2 U.S.C. 136, the Librarian of Congress is authorized to make rules and regulations for the government of the Library and for the protection of its property. In March of 1992, James H. Billington, the Librarian of Congress, announced that new security measures had to be taken to protect the Library's collections due to an increase in thefts and mutilation of materials. "The Library of Congress has long prided itself on being open to all readers," Dr. Billington said. "However, as the nation's Library and the world's largest repository of mankind's intellectual accomplishments, we have an obligation to protect our collections for future generations of Americans. Many of our books, maps, prints, and manuscripts are irreplaceable. We cannot risk their loss or desecration. We are responsible for the nation's patrimony." Dr. Billington's announcement followed lengthy planning by the Library to tighten security. It also followed the third arrest for theft from the Library since April 1991. 36 CFR 701.5 is amended to announce the Library's new capability to capture and store the name, address, and a digitized photograph of registered users of its collections in an automated file for collections security purposes. The existing text in 36 CFR 701.5 will become paragraph (b) and a new paragraph (a) is added. 36 CFR 701.6 is amended to set forth the general policy of the Library on the use of materials in its custody. 18 U.S.C. 641, 1361, and 2071; and 22 D.C. Code 3106 set forth criminal provisions for mutilation or theft of Government property. The existing text in 36 CFR 701.6, Chapter VII will become paragraph (a) and new paragraphs (b), (c), and (d) are added. The last sentence in paragraph (a) should be removed.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Proposed Regulations.

In consideration of the foregoing the Library of Congress proposes to amend 36 CFR part 701 as follows:

PART 701—PROCEDURES AND SERVICES

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

Authority: 2 U.S.C. 136.

2. Section 701.5 is amended by redesignating the existing text as paragraph (b) and adding a new paragraph (a) to read as follows:

§ 701.5 The Library's reading rooms and public use thereof.

(a) All members of the public wishing to use materials from the Library's collections first must obtain a User Card. The Library will issue User Cards, in accordance with established access regulations, to those persons who present a valid photo identification card containing their name and current address. The Library-issued User Card will include the name, digitized photograph, and signature of the user. It must be presented when requesting materials housed in the book stacks or other non-public areas or upon request of a Library staff member. In accordance with Library regulations which prescribe the conditions of reader registration and use of Library materials, presentation of a User Card may be required for entry into certain reading rooms. The Library will maintain the information found on the User Cards, including the digitized photograph and other pertinent information, in an automated file for collections security purposes. Access to the automated file shall be limited to only those Library

staff whose official duties require access. The automated file shall be physically separated and accessible only from inside the Library.

* * * * *

3. Section 701.6 is amended by redesignating the existing text as paragraph (a), except for the last sentence which should be removed, and adding new paragraphs (b), (c), and (d) to read as follows:

§ 701.6 Service to the collections

* * * * *

(b) Definitions.

(1) *Security* means administration of continuing, effective controls in areas where materials are housed for the purpose of preprocessing or processing, storage, access, or use. These controls are designed to safeguard against theft, loss, misplacement, or damage from improper use or vandalism and may vary as appropriate to the quality, monetary value, replaceability, fragility, or other special or unusual conditions relating to the materials concerned.

(2) *Library material* means:

(i) Items in all formats (including, but not limited to, books and pamphlets; documents; manuscripts; maps; microfiche, microfilms, and other microforms; motion pictures, photographs, posters, prints, drawings, videotapes, and other visual materials; newspapers and periodicals; recorded discs, tapes, or audio/video/digital materials in other formats) either in the collections of the Library of Congress or acquired for and in process for the Library's collections;

(ii) Objects such as musical instruments, printing blocks, copper engraving plates, paintings, and scrolls, and

(iii) *Control files,* which are manual or automated files essential to the physical or intellectual access to Library materials, such as catalogs, computer tapes, finding aids, and shelflists. These include items that are acquired as an integral part of Library materials and are accessioned into the collections with them permanent inventory records, public catalogs, and other finding aids.

(3) *Security-controlled environment* means, but is not limited to: general and special reading rooms and research facilities where materials are issued under controlled circumstances for use of readers; the bookstacks and other storage facilities where materials are housed when not in use; and work areas where materials are held temporarily for processing.

(c) *General policy for use of Library materials.* Materials retrieved for readers' use shall be used only in assigned reading rooms or research facilities. Use elsewhere in Library buildings requires specific authorization from designated staff members of the custodial unit. Use of materials assigned to reference collections shall be in accordance with established regulations. To minimize the risk of theft, loss, or damage when the materials are removed from designated storage areas, the conditions of availability and use will vary as appropriate to the quality of materials, their monetary value, replaceability, format, physical condition, and the purpose for which they are to be circulated—reader use within the Library, exhibits, preservation, photoduplication, or loan outside the Library. Unless otherwise specified by Library regulations, and/or legal or contractual obligations, the conditions and procedures for use of materials, including duplication, either inside or outside of the Library buildings, shall be determined by or in consultation with the unit head responsible for the custody of the material used.

(1) Any material removed from the security-controlled environment of a reading room or storage area, and meeting the established criteria must be charged as an internal or external loan through the Loan Division, in accordance with established loan regulations. The security of in-process material, and special collections material not meeting the criteria of these regulations, is the responsibility of the division chief or equivalent Library officer with physical control of the material. That division shall determine whether or not a Loan Division internal charge must be created when an item is removed for use. If a Loan Division record is not created, the division shall create and maintain a local record until the item is returned.

(2) When the period of use is completed, all materials shall be returned immediately to the custodial unit to be placed in designated shelf or other locations in assigned storage areas. Charge records for the returned materials shall be removed from the charge files.

(d) *Penalties.* Readers who violate established conditions and/or procedures for using material are subject to penalties to be determined by or in consultation with the unit head responsible for the custody of the material used.

(1) When a reader violates a condition and/or procedure for using material, the division chief or head of the unit where the infraction occurred may, upon written notification, deny further access to the material, or to the unit in which it is housed, to be determined by the nature of the infraction and the material involved.

(2) Within five workdays of receipt of such notification, the reader may make a written request, including the reasons for such request to the Associate Librarian for that service unit, or his/her designee, for a reconsideration of said notification.

(3) The Associate Librarian for that service unit, or his/her designee, shall respond within five workdays of receipt of such request for reconsideration and may rescind, modify, or reaffirm said notification, as appropriate.

(4) Repeated violations of established conditions and/or procedures for using material may result in denial of further access to the premises and further use of the Library's facilities or revocation of the reader's User Card, in accordance with established access regulations.

(5) Mutilation or theft of Library property also may result in criminal prosecution, as set forth in 18 U.S.C. 641, 1361, and 2071; and 22 D.C. Code 3106.

(6) In certain emergency situations requiring prompt action, the division chief or head of the unit where the infraction occurred immediately may deny further access to the material or unit prior to making written notification action. In such cases, the reader shall be notified, in writing, within three days of the action taken and the reasons therefor. The reader then may request reconsideration.

(7) A copy of any written notification delivered pursuant to this part shall be forwarded to the Captain, Library Police, the service unit, and the Director, Integrated Support Services, for retention.

Dated: May 11, 1995.

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–12129 Filed 5–16–95; 8:45 am]

BILLING CODE 1410–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7136]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood

elevation modifications for the communities listed below. The base (1% annual chance) 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 (FEMA or Agency) proposes to make determinations of base (1% annual chance) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, 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 National Flood Insurance Program. As a result, a regulatory flexibility analysis has not 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
Florida	Pinellas County Unincorporated Areas.	Alligator Creek Channel A	Approximately 800 feet downstream of McMullen Booth Road.	*11	*10
			Approximately 625 feet downstream of Sunset Point Road.	None	*54
		Alligator Creek Channel B	Approximately 1,250 feet upstream of CSX Transportation.	None	*24
			At 4th Avenue South	None	*89
		Alligator Creek Channel C	At confluence with Channel A	*37	*38
			Approximately 1,400 feet upstream of Sunset Point Road.	None	*66
		Alligator Creek Channel E	Approximately 250 feet downstream of CSX Transportation.	*10	*12
			At downstream side of McMullen Booth Road.	None	*22
		Alligator Creek Channel H	At confluence with Channel A	*25	*26
			Approximately 600 feet upstream of Sharkey Road.	None	*35
Maps available for inspection at the County Technical Services Building, First Floor, 440 Court Street, Clearwater, Florida. Send comments to Mr. Fred E. Marquis, Pinellas County Administrator, 315 Court Street, Clearwater, Florida 34616.					
Indiana	Tipton (City)	Cicero Creek	At the confluence of Tobin Ditch	None	*859
	Tipton County		Approximately 0.95 mile upstream of State Route 19 (Main Street).	None	*866

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Buck Creek	Approximately 0.5 mile downstream of State Route 28 (Jefferson Street).	None	*866
			At Norfolk & Western Railroad	None	*870

Maps available for inspection at the City of Tipton Planning Commission, 113 Court Street, Tipton, Indiana.
Send comments to The Honorable David Berkemeier, Mayor of the City of Tipton, 113 Court Street, Tipton, Indiana 46072.

Maine	Anson (Town) Somerset County.	Kennebec River	Approximately 5,580 feet downstream of U.S. Route 201A, and U.S. Route 8, 43, and 148.	*196	*201
			Approximately 3 miles upstream of the confluence of Carrabassett River.	*272	*275
		Carrabassett River	At the confluence with Kennebec River	*267	*270
			Approximately 0.56 mile upstream of the confluence with Big Brook.	*344	*345
		Getchell Brook	Approximately 180 feet downstream of State Route 43 and 148 (Main Street).	*255	*258
			Approximately 545 feet upstream of State Routes 43 and 148 (Main Street).	*257	*258

Maps available for inspection at the Anson Town Hall, Main Street, Anson, Maine.
Send comments to Mr. Ralph Withee, Chairman of the Town of Anson Board of Selectmen, Anson Town Hall, P.O. Box 297, Anson, Maine 04911.

Maine	Holden (Town) Penobscot County.	Brewer Lake	Entire shoreline within community	None	*112
		David Pond	Entire shoreline within community	None	*199
		Holbrook Pond	Entire shoreline within community	None	*199

Maps available for inspection at the Holden Town Office, 1460 Main Road, East Holden, Maine.
Send comments to Mr. Joel Dearborn, Chairman of the Town of Holden Board of Selectmen, P.O. Box 490, East Holden, Maine 04429.

Massachusetts	Monson (Town) Hampden County.	Twelvemile Brook	At the upstream side of Pulpit Rock Pond dam.	Done	*367
			Approximately 1,000 feet upstream of Reimers Street	None	*426
		Thayer Brook	Approximately 210 feet downstream of Lakeshore Drive.	None	*367
			Approximately 40 feet upstream of Lakeshore Drive	None	*385

Maps available for inspection at the Building Inspector's Office, 110 Main Street, Monson, Massachusetts.
Send comments to Mr. Peter A. Rouette, Chairman of the Board of Selectmen for the Town of Monson, 110 Main Street, Monson, Massachusetts 01057.

Michigan	Bangor (Township)	Saginaw Bay	Shoreline from approximately 4,500 feet south of Parrish Road along Detroit and Mackinac Rail to a point approximately 1,500 feet south of intersection of Tobico Road and Ploof Road.	*585	*589

Maps available for inspection at the Bangor Township Hall, 180 State Park Drive, Bay City, Michigan.
Send comments to Mr. Joseph Rivet, Supervisor of the Bangor Charter Township, Bay County, 180 State Park Drive, Bay City, Michigan 48706.

Michigan	Cadillac (City) Wexford County.	Clam River	Approximately 50 feet upstream of Chestnut Street 1.	None	*1291
			At Thirteenth Street and No. 6 Road	None	*1288
		Lake Cadillac	Entire shoreline within community	None	*1291
		Lake Mitchell	Entire shoreline within community	None	*1291

Maps available for inspection at the Cadillac City Hall, 200 Lake Street, Cadillac, Michigan.
Send comments to The Honorable Ronald Blanchard, Mayor of the City of Cadillac, Cadillac City Hall, 200 Lake Street, Cadillac, Michigan 49601.

Michigan	Fraser (Township) Bay County.	Saginaw Bay	Shoreline along Saginaw Bay (approximately 925 feet east of the intersection of Elevator Road and Anderson Road, to Gregory Drain.	*589	*586

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 Fraser Township Hall, 1474 North Mackinaw Road, Linwood, Michigan. Send comments to Mr. Richard Gromaski, Supervisor of the Township of Fraser, Bay County, Fraser Township Hall, 1474 North Mackinaw Road, Linwood, Michigan 48634.					
Michigan	Monitor (Township) Bay County.	Kawkawlin River	At downstream corporate limits Approximately 500 feet upstream of confluence with North Branch Kawkawlin River.	None	*591
		North Branch	At confluence with Kawkawlin River	None	*592
		Kawkawlin River	At upstream corporate limits	None	*593
Maps available for inspection at the Monitor Township Hall, 2483 Midland Road, Bay City, Michigan. Send comments to Mr. Warren J. Sinke, Supervisor for the Township of Monitor, Bay County, 2483 Midland Road, Bay City, Michigan 48706.					
Michigan	Selma (Township) Wexford County.	Lake Mitchell	Entire shoreline within community	None	*1291
		Gyttja Lake	Entire shoreline within community	None	*1291
		Pleasant Lake	Entire shoreline within community	None	*1330
Maps available for inspection at the Selma Township Hall, 3730 South 37th Road, Cadillac, Michigan. Send coments to Mr. David DeForest, Supervisor of the Township of Selma, 3730 South 37th Road, Cadillac, Michigan 49601.					
Mississippi	Pearl River Valley Water Supply District Hinds, Madison, Leake, Scott, and Rankin Counties.	Brashear Creek	Approximately 1,250 feet downstream of Charity Church Road.	*286	*287
			Approximately 850 feet upstream of Rice Road (upstream corporate limits).	*296	*297
		Hearn Creek	Approximately 1,500 feet downstream of North Bay Drive.	*304	*303
			Approximately 1,480 feet upstream of North Bay Place.	*310	*308
		Ross Barnett Reservoir	At the north side of North Shore Parkway	None	*300
			At corporate limits approximately 150 feet north of North Shore Parkway.	None	*300
Maps available for inspection at the Water Supply District General Office, 115 Madison Landing Circle, Madison, Mississippi. Send comments to Mr. Kenneth Griffin, General Manager of the Pearl River Valley Water Supply District, P.O. Box 12750, Jackson, Mississippi 39236.					
New Jersey	Moorestown (Township) Burlington County.	Swede Run	Approximately 0.54 mile downstream of Garwood Road.	*31	*34
			Approximately 150 feet upstream of Stanwick Avenue.	*56	*57
		Swede Run Tributary	At the confluence with Swede Run	*47	*48
			Approximately 600 feet upstream of the confluence with Swede Run.	*47	*48
Maps available for inspection at the Building Inspector's Office, 111 West Second Street, Moorestown, New Jersey. Send comments to The Honorable Walter Maahs, Mayor of the Township of Moorestown, 111 West Second Street, Moorestown, New Jersey 08057.					
New York	Bolivar (Village) Allegany County.	Root Creek	Approximately 0.27 mile downstream of Main Street.	*1582	*1583
			Approximately 0.4 mile upstream of David Street.	*1637	*1638
Maps available for inspection at the Village Clerk's Office, 252 North Main Street, Bolivar, New York. Send comments to The Honorable David Evans, Mayor of the Village of Bolivar, 252 North Main Street, Bolivar, New York 14715.					
New York	Huron (Town) Wayne County.	Lake Ontario	Within Sodus, East, and Port Bays	*249	*250
			Entire Lake Ontario shoreline within the Town of Huron corporate limits.	*249	*251
Maps available for inspection at the Town Clerk's Office, 10880 Lummisville Road, Wolcott, New York. Send comments to Mr. Carl Prober, Huron Town Supervisor, 10880 Lummisville Road, Wolcott, New York 14590.					
New York	Potsdam (Village) St. Lawrence County.	Raquette River	Approximately 240 feet upstream of downstream corporate limits.	*400	*399

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 200 feet downstream of upstream corporate limits.	*412	*411

Maps available for inspection at the Code Enforcement Office, Park and Elm Streets, Potsdam, New York.
Send comments to Mr. Marvin E. Rust, Flood Control Officer for the Village of Potsdam, P.O. Box 5168, Potsdam, New York 13676.

North Carolina	Durham County (Unincorporated Areas).	Little Lick Creek	Approximately 200 feet downstream of State Route 1814 (Fletcher Chapel Road).	None	*278
			Approximately 200 feet downstream of State Route 1815 (North Mineral Springs Road).	None	*290
		Little Lick Creek Tributary 1B.	At confluence with Little Lick Creek	*275	*279
			Approximately 50 feet upstream of Delmar Road.	None	*345
		Northeast Creek	Approximately 1,800 feet downstream of State Route 1100 (Grandale Drive).	None	*245
			Approximately 100 feet downstream of State Route 1951 (Sohi Road).	*295	*301
		Northeast Creek Tributary	Approximately 150 feet upstream of confluence with Northeast Creek.	None	*245
			Just upstream of State route 1100 (Old Alex Drive).	None	*286
		Northeast Creek Tributary C.	At confluence with Northeast Creek	*243	*248
			Approximately 100 feet upstream of State Route 1201 (McCormack Road).	None	*297
		Stirrup Iron Creek	Approximately 0.4 mile downstream of Southern Railway Spur.	*327	*330
			Approximately 0.7 mile upstream of Cart Path Dam.	None	*399
		Stirrup Iron Creek Tributary A.	At confluence with Stirrup Iron Creek	None	*344
			Just upstream of State Route 1966 (Lumley Road).	None	*383
		Stirrup Iron Creek Tributary B.	At downstream side of Soil Access Road	*325	*327
			Approximately 600 feet upstream of Soil Access Road.	None	*331
		Stirrup Iron Creek Tributary C.	Approximately 600 feet downstream of State Route 1969 (Chin Page Road).	None	*317
			Just upstream of State Route 1967 (Evans Road).	None	*349
		Cabin Branch	Approximately 850 feet downstream of State Route 1631 (Snowhill Road).	None	*268
			Approximately 1.29 miles upstream of Glen Oaks Drive.	None	*385
		Crooked Creek	At the City of Durham Extraterritorial Jurisdiction Boundary.	*375	*376
			Approximately 50 feet upstream of Terry Road.	None	*455
		Crooked Creek Tributary 1	At confluence with Crooked Creek	*443	*444
			Approximately 35 feet upstream from confluence with Crooked Creek.	*444	*443
		Eno River	Approximately 0.8 mile downstream of confluence of Eno River Tributary 3.	*327	*328
			Approximately 0.7 mile upstream of State Route 1401 (Cole Mill Road).	None	*369
		Eno River Tributary 3	At confluence with Eno River	*336	*337
			Approximately 600 feet upstream of Brook Lane.	None	*438
		Ellerbe Creek	Approximately 3,700 feet (0.7 mile) upstream from Glenn Road.	*273	*274
			Approximately 1.8 miles upstream from Glenn Road.	*278	*286
		Chunky Pipe Creek	Approximately 0.19 mile downstream of State Route 1815 (North Mineral Springs Road).	*264	*267
			Approximately 1.2 miles upstream of	*294	*297

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			State Route 1815 (North Mineral Springs Road).		
		Burdens Creek	At confluence with Northeast Creek	*250	*252
			At upstream face of State Route 54	None	*283
		Burdens Creek Tributary	At confluence with Burdens Creek	*261	*267
			Approximately 100 feet upstream of State Route 54 (Nelson-Chapel Hill Highway).	None	*283
		Sevenmile Creek	At confluence with Eno River	*338	*339
			Approximately 50 feet upstream of State Route 2359 (Quincemore Road).	None	*495
		Panther Creek	Approximately 7,700 feet (1.4 miles) downstream of State Route 1818.	None	*269
			Approximately 75 feet upstream of State Route 1822 (Carpenter Road).	None	*314
		Falls Lake (Neuse River)	Entire shoreline within community	None	*263
		Knap of Reeds Creek	Approximately 1 mile upstream of confluence with Neuse River.	None	*263
			Approximately 4.9 miles upstream of the confluence with Neuse River.	None	*266

Maps available for inspection at the Durham City Engineer's Office, 101 City Hall Plaza, Durham, North Carolina.
Send comments to Mr. George H. Williams, Durham County Manager, 200 East Main Street, Durham, North Carolina 27701.

North Carolina	Durham (City) Durham County.	Chunky Pipe Creek	Approximately 1.2 miles upstream of State Route 1815 (North Mineral Springs Road).	*294	*297
			Approximately 1.64 miles upstream of State Route 1815 (North Mineral Springs Road).	*320	*319
		Goose Creek	At confluence with Ellerbe Creek	*288	*293
			Upstream face of Holloway Street	*338	*339
		Goose Creek Tributary A	At confluence with Goose Creek	*308	*317
			Approximately 2,050 feet downstream of South Miami Boulevard.	*323	*324
		Little Lick CreekApproximately 0.8 mile upstream of State Route 1814 (Fletcher Chapel Road).	*281	*284	
		Approximately 200 feet downstream of State Route 1815 (North Mineral Spring Road)	None	*289	
		Little Lick Creek	At confluence with Little Lick Creek	*289	*293
		Tributary 1A	Approximately 60 feet upstream of Chandler Road.	None	*317
		Little Lick Creek Tributary 1B.	Approximately 1,700 feet upstream of confluence with Little Lick Creek.	None	*281
			Approximately 100 feet upstream of State Route 1911 (Holder Road).	None	*314
		Little Lick Creek Tributary 1D.	At confluence with Little Lick Creek Tributary 1A.	*306	*303
			Approximately 50 feet upstream of State Route 1844 (Chandler Road).	*318	*317
	Mud Creek	At confluence with New Hope Creek.	*254	*256	
			Approximately 50 feet upstream of American Drive.	None	*360
		New Hope Creek	Approximately 400 feet downstream of State Route 2220 (Chapel Hill Road).	*249	*250
			Approximately 2.3 miles upstream of confluence of New Hope Creek Tributary.	None	*263
		New Hope Creek Tributary	Approximately 500 feet upstream of confluence with New Hope Creek.	*259	*260
			Approximately 1,750 feet upstream of State Route 1113 (New Mt. Moriah Road).	None	*265
		Northeast Creek	Approximately 0.6 mile downstream of State Route NC54 (Nelson-Chapel Hill Way).	*254	*258

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 50 feet upstream of Sohi Road.	None	*305
	Stirrup Iron Creek	Approximately 120 feet downstream of State Route 1969 (Chin Page Road).	None	*317	
			Approximately 750 feet upstream of confluence of Stirrup Iron Creek Tributary A.	None	*344
	Stirrup Iron Creek Tributary A	Approximately 200 feet upstream of confluence with Stirrup Iron Creek.	None	*344	
		Approximately 400 feet upstream of confluence with Stirrup Iron Creek	None	*344	
		Stirrup Iron Creek Tributary B.	At confluence with Stirrup Iron Creek	*323	*326
			Approximately 1,440 feet upstream of Soil Access Road.	None	*339
	Third Fork Creek	Approximately 1,000 feet downstream of South Roxboro Road.	*253	*254	
		Approximately 50 feet upstream of Forest Hills Boulevard (East)	None	*310	
		Third Fork Creek	At Abandoned Road	*251	*249
		Tributary A	Approximately 800 feet upstream of Rollingwood Drive.	None	*286
		Third Fork Creek Tributary C.	Approximately 400 feet downstream of South Roxboro Road.	*254	*255
			Upstream side of Princeton Avenue	None	*317
		Third Fork Creek Tributary D.	At confluence with Third Fork Creek	*253	*255
			Approximately 60 feet upstream of Morningside Drive.	None	*289
		Third Fork Creek	At confluence with Third Fork Creek	*287	*291
		Tributary E	Approximately 50 feet upstream of Ward Street.	None	*331
		Third Fork Creek Tributary	At confluence with Third Fork Creek Tributary C.	*274	*277
			Approximately 50 feet upstream of Sherbon Drive.	None	*329
		Warren Creek	At confluence with Eno River	*293	*297
			Approximately 40 feet upstream of State Route 1407 (Carver Road).	None	*388
		Warren Creek	At confluence with Warren Creek	*313	*316
		Tributary A	Approximately 50 feet upstream of State Route 1321 (Hillandale Road).	*381	*383
		Warren Creek	At confluence with Warren Creek	*306	*311
		Tributary B	Approximately 225 feet upstream of State Route 1321 (Hillandale Road).	None	*340
		Crooked Creek	At confluence with Eno River	*291	*296
			At the City of Durham Extraterritorial Jurisdiction Boundary.	*375	*376
		Ellerbe Creek	Approximately 1.5 miles downstream of State Route 1669 (East Club Boulevard) (At Extraterritorial Jurisdiction Boundary).	*278	*286
			At State Route 1477 (Shocoree Drive)	*404	*417
		Ellerbe Creek	At confluence with Ellerbe Creek	*299	*302
		Tributary A	At downstream side of Bluefield Street	*301	*302
		Ellerbe Creek	At confluence with Ellerbe Creek	*285	*291
		Tributary B	Approximately 1,660 feet upstream of confluence with Ellerbe Creek.	*290	*291
		Eno River	Approximately 2 miles downstream of U.S. Route 15/501.	None	*284
			Approximately 0.73 mile upstream of State Route 1401 (Cole Mill Road).	None	*369

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Eno River Tributary 1	Approximately 350 feet upstream of State Route 1648 (Danube Lane).	*315	*316
			Approximately 0.3 mile upstream of State Route 1648 (Danube Lane).	*318	*329
		Eno River	Downstream of Rivermont Drive	*360	*361
		Tributary 2	Approximately 50 feet upstream of Interstate 85.	None	*498
		Eno River	At confluence with Eno River	*286	*289
		Tributary A	At downstream side of Fox Hunt Road	*288	*290
		Burdens Creek	At upstream side of Southern Railway	*254	*262
			Approximately 250 feet downstream of South Alston Avenue.	*256	*263
		Northeast Creek	At confluence with Northeast Creek	*264	*271
		North Prong	Approximately 1,100 feet upstream of State Route 55 (Apex Highway).	*324	*330
		Northeast Creek North Prong Tributary A.	Approximately 80 feet upstream of confluence of Northeast Creek North Prong.	*283	*282
			Approximately 100 feet upstream of Akron Avenue.	*349	*348
		Northeast Creek North Prong.	At confluence with Northeast Creek North Prong.	*265	*271
		Tributary	Approximately 110 feet upstream of State Route 1,182 (Carpenter Fletcher Road).	None	*280
		Rocky Creek	At confluence with Third Fork Creek	*283	*289
			Approximately 150 feet upstream of Briggs Avenue.	None	*336
		◆South Ellerbe Creek	At confluence of South Ellerbe Creek Tributary.	*307	*311
			Approximately 150 feet upstream of West Club Boulevard.		
		◆◆South Ellerbe Creek Tributary.	At confluence with South Ellerbe Creek ...	*305	*311
			Approximately 865 feet upstream of Dacian Street (Upstream Limit).	*324	*329
		Sandy Creek	At confluence with New Hope Creek	*253	*256
			Approximately 50 feet upstream of State Route 1317 (Moreene Road).	*314	*317
		Sandy Creek	At confluence with New Hope Creek	*253	*255
		Tributary A	Approximately 0.4 mile upstream of University Drive.	*271	*274
		Sandy Creek Tributary D ..	At confluence with Sandy Creek	*285	*292
			Approximately 50 feet upstream of Anderson Street.	None	*321

Maps available for inspection at Durham City Engineer's Office, 101 City Hall Plaza, Durham, North Carolina.
Send comments to The Honorable Harry E. Rodenheizer, Jr., Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.
◆ Shown as South Ellerbe Creek Tributary in the effective Flood Insurance Rate Map.
◆◆ Shown as South Ellerbe Creek in the effective Flood Insurance Rate Map.

Pennsylvania	Charleroi (Borough) Washington County.	Monongahelia River	Approximately 700 feet downstream of Lock and Dam #4 at downstream corporate limits.	*760	*762
			Approximately 1.07 miles upstream of Lock and Dam #4 at upstream corporate limits.	*762	*764

Maps available for inspection at the Municipal Building, 4th and Fallowfield Avenue, Charleroi, Pennsylvania.
Send comments to The Honorable Edward M. Paluso, Mayor of the Borough of Charleroi, Washington County, Municipal Building, 4th and Fallowfield Avenue, Charleroi, Pennsylvania 15022.

Pennsylvania	Roulette (Township) Potter County.	Allegheny River	Approximately 160 feet upstream of the confluence of Trout Brook.	None	*1549
			Approximately 750 feet upstream of the Township of Roulette's upstream corporate limits.	None	*1581

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 Roulette Township Building, 253 Railroad Avenue, Roulette, Pennsylvania. Send comments to Mr. William Grandin, Chairman of the Township of Roulette, P.O. Box 253, Roulette, Pennsylvania 16746.					
Rhode Island	Barrington (Town) Bristol County.	Providence River	Approximately 600 feet west of the intersection of Allen Avenue and Narragansett Avenue.	*20	*19
			At intersection of Washington Road and Annawamscutt Road.	*16	*15
		Narragansett Bay	Approximately 500 feet south of the intersection of Middle Highway and Nayatt Road.	*20	*19
			Approximately 400 feet west of the intersection of Vans Lane with Rumstick Road.	*20	*19
		Barrington River	At the intersection of Kyle Street and Peck Lane.	*11	*10
			At the intersection of Jennys Lane and Mathewson Road.	*18	*13
		Palmer River	Approximately 1,000 feet east along Sowams Road from its intersection with Barneyville Road.	*11	*10
			At the intersection of Sowams Road and Jessie Davis Lane.	*18	*10
		Warren River	At the confluence of Barrington and Palmer Rivers.	*18	*13
			At Adams Point	*20	*13
Maps available for inspection at the Building Inspector's Office, Barrington Town Hall, 283 County Road, Barrington, Rhode Island. Send comments to Mr. Dennis Phelan, Barrington Town Manager, 283 County Road, Barrington, Rhode Island 02806.					
Rhode Island	Bristol (Town) Bristol County.	Kickamuit River	Approximately 1,000 feet east northeast from the intersection of Butterworth Avenue and Hawthorne Avenue.	*16	*17
			Approximately 500 feet east of Harrison Avenue extended.	*15	*18
Maps available for inspection at the Office of Community Development Planning, Bristol Town Hall, 10 Court Street, Bristol, Rhode Island. Send comments to Mr. Joseph Parella, Bristol Town Administrator, 10 Court Street, Bristol, Rhode Island 02809.					
Vermont	Weston (Town) Windsor County.	Greendale Brook	At the confluence with West River	None	*1363
			Approximately 1.7 miles upstream of Greendale Road.	None	*1595
		Ludlow Mountain Brook	At the confluence with West River	None	*1466
			Approximately 110 feet upstream of State Route 100 (Ludlow Road).	None	1769
		Trout Club Brook	At the confluence with West River	None	*1294
			Approximately 1,100 feet upstream of Trout Club Road.	None	*1762
		Trout Club Brook Backside	At the confluence with West River	None	*1300
			Approximately 650 feet upstream of Parker Lane.	None	*1627
		West River	Approximately 0.9 mile downstream of most downstream crossing of State Route 100 (Wantastiquet Road).	None	*1171
			Approximately 0.8 mile upstream of State Route 155 (Wantastiquet Road).	None	*1748
Maps available for inspection at the Weston Town Office, Lawrence Hill, Weston, Vermont. Send comments to Mr. Donald Hart, Chairman of the Town of Weston Board of Selectmen, P.O. Box 98, Weston, Vermont 05161.					

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

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12128 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[DA 95–1027]

Proposed Elimination of Detailed Continuing Property Records ("CPRs") for Certain Support Assets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; rulemaking notice.

SUMMARY: The Accounting and Audits Division has released a Public Notice seeking comments on a Petition for Rulemaking filed by the United States Telephone Association ("USTA") to eliminate CPRs for certain support assets in Part 32 accounts. USTA proposes an alternative property record system for these support assets. This will enable the Commission to determine whether it should initiate a rulemaking proceeding.

DATES: Comments due by July 5, 1995; Replies due by August 1, 1995.

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

FOR FURTHER INFORMATION CONTACT: Debra Weber, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0810.

SUPPLEMENTARY INFORMATION: Released: May 10, 1995.

United States Telephone Association Files a Petition for Rulemaking to Amend Part 32 of the Commission's Rules to Eliminate Detailed Property Records for Certain Support Assets

Public Comment Invited

The United States Telephone Association ("USTA") filed a Petition for Rulemaking ("petition"), proposing that the Commission amend Part 32 of its rules to eliminate detailed continuing property records ("CPRs") for certain support asset accounts. These support assets include the items in Accounts 2115, Garage work equipment; 2116, Other work equipment; 2122, Furniture; 2123, Office equipment; and the personal computers and peripheral equipment in Account 2124, General purpose computers. In place of CPRs for those accounts, USTA proposes that carriers be permitted to use a vintage amortization level ("VAL") property record system. Under this system, the net book value of existing assets in each account would be placed in a VAL group and amortized on a straight-line basis over the remaining life that results from the asset life chosen from the Commission approved range of lives. All new purchases would also be placed in a VAL group for each vintage for each account, and amortized in the same manner. When the assets in a VAL group are fully amortized, the assets and their associated reserves would be removed from the carriers' books. Salvage proceeds would be reflected as a decrease in amortization expense, and the cost of removal would be reflected as an increase in amortization expense.

We seek comment on the USTA petition, and we invite parties to propose alternatives for simplifying the CPR requirements for these support assets. We encourage parties to focus on how USTA's proposal or any alternative proposal provides for adequate internal controls to safeguard these support assets. We seek comment on what records are necessary to ascertain the location, existence, and cost of these assets. We also seek comment on how carriers should account for retirement of these support assets, and whether these assets should be removed from the carrier's books when fully amortized, as USTA proposes. Finally, we seek comment from any parties believing that our CPR requirements should not be modified for support assets. These parties should explain why, and should emphasize what aspects of our current CPR requirements are the most useful.

Parties may file comments on USTA's petition, or propose alternatives no later than July 5, 1995. Replies should be filed by August 1, 1995. Comments should refer to RM–8640. A copy of each pleading should be sent to Debbie Weber, FCC, Common Carrier Bureau, 2000 L St., N.W., Room 812, Washington, D.C. 20554 and the International Transcription Service (ITS), 2100 M St., N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. Copies of USTA's petition and any comments will be available for public inspection and copying in the Office of Public Affairs Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. Copies are also available from ITS.

For further information contact Debbie Weber at (202) 418–0812.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–12109 Filed 5–16–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–65, RM–8595]

Radio Broadcasting Services; Billings, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Conway Broadcasting requesting the allotment of Channel 242C1 to Billings, Montana. Channel 242C1 can be allotted to Billings without a site restriction at coordinates 45–46–58 and 108–30–13.

DATES: Comments must be filed on or before July 3, 1995, and reply comments on or before July 18, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lars Conway, Conway Broadcasting, 4415 Freemont Ave., South, Minneapolis, Minnesota 55409.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–65, adopted May 4, 1995, and released May 12, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–12108 Filed 5–16–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 659

[I.D. 050595A]

Shrimp and Calico Scallop Fisheries Off the Southern Atlantic States; Public Hearings and Scoping Meetings

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

ACTION: Notice of public hearings and scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) is holding public hearings to solicit comments on management options for Amendment 1 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the South Atlantic Region (Shrimp FMP) that would add rock shrimp to the management unit. Immediately after the hearings, the Council will hold public scoping meetings to solicit comments on the development of an FMP for the calico scallop fishery and on Amendment 2 to the Shrimp FMP dealing with fishery bycatch issues. See the **SUPPLEMENTARY INFORMATION** section for additional information on the hearings and scoping meetings.

DATES: The hearings are scheduled as followed:

1. Monday, May 22, 1995, 7 p.m., Wilmington, NC

2. Tuesday, May 23, 1995, 7 p.m., Charleston, SC

3. Wednesday, May 24, 1995, 7 p.m., Cocoa Beach, FL

4. Thursday, May 25, 1995, 7 p.m., Mobile, AL

The public scoping meetings on an FMP for calico scallops and on Amendment 2 to the Shrimp FMP will be held immediately after the public hearings on May 22 and 23. Also, a public scoping meeting on calico scallops will be held immediately after the public hearing on May 24.

ADDRESSES: The hearings will be held at the following locations:

1. Wilmington—Ramada Conference Center, 5001 Market Street, Wilmington, NC 28405; public hearing and scoping meeting.

2. Charleston—Department of Natural Resources, Fort Johnson Auditorium, 217 Fort Johnson Road, Charleston, SC 29412; public hearing and scoping meeting.

3. Cocoa Beach-Holiday Inn, 300 N. Atlantic Avenue, Cocoa Beach, FL 32931; public hearing and scoping meeting.

4. Mobile—Holiday Inn Downtown, 301 Government Street, Mobile, AL 36602; public hearing.

Written comments regarding the issues being discussed at the hearings and scoping meetings must be received on or before June 2, 1995. Requests for copies of the public hearing documents should be sent to the Council at the following address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Sharon Coste (Council staff); telephone: 803–571–4366; fax: 803–769–4520.

SUPPLEMENTARY INFORMATION: Public hearings will be held to solicit comments on management options for Amendment 1 to the Shrimp FMP that proposes to add rock shrimp to the management unit, prohibit trawling for rock shrimp in designated areas, and implement mandatory permitting and reporting requirements for vessels fishing for and dealers handling rock shrimp in the South Atlantic region. In addition, a mandatory vessel operator license and other management measures to enhance law enforcement are under consideration.

Public scoping meetings will be held to solicit comments on the development of an FMP for the calico scallop fishery. The Council may consider the following measures as possible management options for this fishery: (1) No action; (2) prohibit calico scallop trawling (trawling) south of 28°30′ N. lat.; (3) prohibit trawling south of 28° N. lat.; (4) allow trawling south of Cape Canaveral only with transponders; (5) prohibit trawling west of Oculina Bank; (6) prohibit trawling south of Bethal Shoals; (7) prohibit trawling in depths less than 120 ft. (8) allow trawling with transponders only from Duval through St. Lucie Counties; (9) limit trawling to Duval through St. Lucie Counties; and (10) prohibit trawling south of Cape Canaveral, Florida (i.e., south of 28°35.1′ N. lat).

The Council will also hold public scoping meetings to solicit comments on Amendment 2 to the Shrimp FMP to address the issue of finfish bycatch in the shrimp trawl fishery. The Shrimp FMP was prepared by the Council in 1992 and approved and implemented by NMFS in 1993. At the time of FMP implementation, the Council was concerned about finfish bycatch in the shrimp trawl fishery and intended, at that time, to begin developing management measures through an FMP amendment that would reduce bycatch. The Council's goal for bycatch reduction was affected by the 1990 Amendments to the Magnuson Fishery Conservation and Management Act that mandated a 3-year research program to assess the impacts of shrimp trawl bycatch on fishery resources under management of the Council before management action is taken. The results of this research program have been recently summarized in a NMFS report to Congress titled "A Report to Congress—Cooperative Research Program Addressing Finfish Bycatch in the Gulf of Mexico and South Atlantic Shrimp Fisheries—April 1995."

These research results will be considered by the Council as an important basis for any specific management actions. Recent advances in gear development through cooperative efforts of Federal and state governments and the shrimp industry have produced Bycatch Reduction Devices (BRDs) that successfully exclude juvenile fish from shrimp trawls with a minimum of shrimp loss. At its October 1994 meeting in Wrightsville Beach, North Carolina, the Council recommended that NMFS emphasize the development of efficient and effective BRDs in its bycatch reduction research efforts in the South Atlantic; this would provide the Council and the South Atlantic states with expanded options to reduce finfish bycatch in the shrimp trawl fishery. Both the Council and the South Atlantic states have requested that NMFS proceed as rapidly as possible to obtain the research information needed to identify and assess options for requiring the use of BRDs under the Shrimp FMP and under coastal fishery management plans (CFMPs) developed by the Atlantic States Marine Fisheries Commission (Commission) under provisions of the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Atlantic Coastal Act).

The Council has asked NMFS to conduct a bycatch characterization of the rock shrimp fishery off Cape

Canaveral, Florida. Concerns still exist relative to the impacts of shrimp bycatch on the Spanish and king mackerel resources. In addition, under the current Amendment 2 to the CFMP for Weakfish, prepared by the Commission under the Atlantic Coastal Act, all South Atlantic states must implement management measures to reduce the bycatch of weakfish by 50 percent in the shrimp trawl fisheries for the 1996 fishing season. Bycatch reduction plans must be submitted to the Commission's Weakfish Technical Committee by October 1, 1995.

The Council is closely coordinating their efforts with the marine resource agencies of the South Atlantic states and has also initiated action on the shrimp trawl bycatch issue by beginning the scoping process on the development of Amendment 2 to the Shrimp FMP. Among several management alternatives under consideration by the Council are the use of BRDs by season and/or area as well as areal or seasonal closures.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by May 19, 1995. For special accommodations regarding the hearings and meetings, contact the Council (see **ADDRESSES**).

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

Dated: May 11, 1995.

Richard W. Surdi,

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

[FR Doc. 95–12027 Filed 5–16–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 95
Wednesday, May 17, 1995

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

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Opta Food Ingredients, Inc. of Bedford, Massachusetts, an exclusive license for all uses in the field of food ingredients to U.S. Patent Application Serial No. 08/233,173 filed April 26, 1995, "Non-Separable Starch-Oil Compositions." Notice of Availability was published in the **Federal Register** on October 24, 1994.

DATES: Comments must be received on or before July 16, 1995.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Opta Food Ingredients, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 95–12047 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–03–M

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
AL–122 Fayette Stock Yard, Inc., Fayette, Alabama	May 19, 1959.
AZ-109 Rawhide Stockyards, Inc., Chandler, Arizona	May 11, 1977.
AR–106 Bentonville Livestock Auction, Inc., Bentonville, Arkansas	December 11, 1958.
AR–125 Richardson Livestock Commission Company, Inc., Little Rock, Arkansas	December 17, 1959.
AR–130 Drew County Auction Sale, Monticello, Arkansas	February 24, 1959.
AR–133 Montgomery County Livestock Auction, Mt. Ida, Arkansas	June 13, 1957.
AR–139 White Auction Company, Russellville, Arkansas	December 15, 1958.
AR–142 Siloam Springs Sale Barn, Siloam Springs, Arkansas	December 11, 1958.
AR–149 Boone County Livestock Auction, Harrison, Arkansas	November 27, 1973.
AR–150 Farmers and Ranchers Livestock Auction, Mt. View, Arkansas	November 27, 1973.
AR–154 Rector Auction Sale Barn, Rector, Arkansas	February 23, 1976.
AR–163 Ward Livestock Auction, Inc., Ward, Arkansas	July 28, 1987.
AR–155 Lafayette County Livestock Auction, Lewisville, Arkansas	November 13, 1976.
AR–157 Hot Springs County Livestock Auction, Inc., Malvern, Arkansas	July 11, 1977.
CA–118 Mike's Livestock Auction, El Monte, California	October 24, 1969.
CA–158 Tulare Sales Yard, Inc., Tulare, California	October 7, 1959.
FL–125 Madison Stockyard, Inc., Madison, Florida	February 21, 1978.
GA–156 Soperton Stockyard, Soperton, Georgia	May 19, 1959.
GA–205 Crystal Farms Livestock Auction, Ranger, Georgia	March 10, 1990.
GA–207 K&K Hair and Feather Auction Swainsboro, Georgia	August 8, 1990.
ID–101 Bonners Ferry Livestock, Bonners Ferry, Idaho	October 13, 1959.
IA–102 Albia Sales Company, Inc., Albia, Iowa	April 28, 1941.
IA–113 Baxter Sale Company, Baxter, Iowa	June 8, 1959.
IA–124 Chariton Livestock Exchange, Chariton, Iowa	May 22, 1959.
IA–136 Winneshiek Cooperative Association, Decorah, Iowa	May 29, 1959.
IA–148 Hawkeye Livestock Auction, Fairfax, Iowa	March 1, 1960.

Facility No., name, and location of stockyard	Date of posting
IA–204 Postville Sale Barn, Postville, Iowa	May 19, 1959.
IA–218 Stanton Livestock Auction, Market Stanton, Iowa	May 25, 1959.
IA–255 Mahaska Sale Barn Oskaloosa, Iowa	September 17, 1979.
LA–104 Bastrop Livestock Auction, Bastrop, Louisiana	April 9, 1957.
LA–115 Eunice Stockyards, Inc., Eunice, Louisiana	June 13, 1957.
LA–116 W.H. Hodges & Company, Inc., Franklinton, Louisiana	May 21, 1957.
LA–125 Mansfield Livestock Commission Company, Mansfield, Louisiana	April 10, 1957.
LA–128 W.H. Hodges & Company, Inc., New Roads, Louisiana	June 20, 1957.
LA–134 Lum Livestock Auction, Inc., Vidalia, Louisiana	August 22, 1958.
LA–137 Franklin Livestock Auction, Winnsboro, Louisiana	May 23, 1957.
LA–142 Mouiller Livestock Auction, Mamou, Louisiana	November 28, 1989.
MD–117 Woodsboro Livestock Sales, Inc., Woodsboro, Maryland	November 10, 1959.
NB–110 Beatrice Sales Pavilion, Beatrice, Nebraska	August 15, 1955.
NB–166 Pawnee Livestock, Pawnee City, Nebraska	April 6, 1959.
NC–162 Walking Acres Auction Plymouth, North Carolina	October 23, 1991.
SC–144 Interstate Stock Barn, Inc., Pelzer, South Carolina	October 31, 1989.
WA–107 Deer Park Livestock Auction, Deer Park, Washington	October 1, 1959.

This notice is in the nature of a change relieving a restriction and, thus, May be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C. this 10th day of May 1995.

Daniel L. Van Ackeren,

Acting Director, Livestock Marketing Division.

[FR Doc. 95–12048 Filed 5–16–95; 8:45 am]

BILLING CODE 3210–KD–P

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

FL–136 Florida Classic Horse Sales, Inc., Ocala, Florida
GA–214 Lee's Auction, Sylvania, Georgia
IN–165 Reel Livestock Center, Inc., Congerville, Indiana
MI–149 Rosebush Sale Barn, Rosebush, Michigan
NC–168 Lyman Livestock, Chinquapin, North Carolina
MS–167 Sebastopol Livestock Association, Inc., Sebastopol, Mississippi
OK–211 Prague Livestock Auction LLC, Prague, Oklahoma
PA–158 John Whiting Auction, New Wilmington, Pennsylvania

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Acting Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408–South Building, U.S. Department of Agriculture, Washington, D.C. 20250 by *May 25, 1995*. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, D.C. this 10th day of May 1995.

Daniel L. Van Ackeren,

Acting Director, Livestock Marketing Division.

[FR Doc. 95–12049 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050895D]

Marine Mammals and Endangered Species

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

ACTION: Receipt of application for a scientific research permit (P557D).

SUMMARY: Notice is hereby given that Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093–0225, has applied in due form for a permit to take several species of marine mammals and sea turtles for purposes of scientific research. The subject application supersedes a previous application published at 59 FR 5177 and a subsequent revision to that application which was never published, both of which have been withdrawn.

DATES: Written comments must be received on or before June 16, 1995.

ADDRESSES: The application 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, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (301/980–4016).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, Permits Division, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested 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.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

The permit application requests authorization to harass marine mammals and sea turtles by a low frequency sound source (peak frequency 75 Hz, 35 Hz bandwidth; 195 dB level (re 1 μPa at 1 m)) which would be located approximately 88 km offshore central California on Pioneer Seamount, at a depth of 980 m. The proposed research would be conducted over a 2-year period.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 11, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12026 Filed 5–16–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

May 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased by recrediting unused carryforward and special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 5371, published on January 27, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 11, 1995

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on May 15, 1995, you are directed to amend the January 24, 1995 directive to increase the limits for the following categories, as provided under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	376,930 dozen.
331	906,360 dozen pairs.
334	109,143 dozen.
335	195,967 dozen.
336/636	350,689 dozen.
342/642	329,155 dozen.
369–S [2]	1,376,141 kilograms.
638/639	1,184,778 dozen.
641	839,306 dozen.
645/646	302,555 dozen.
647/648	942,193 dozen.
847	500,270 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–12106 Filed 5–16–95; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations on Spun Yarn

May 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On April 27, 1995, under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations with the Government of Thailand with respect to spun yarn containing 85 percent or more by weight artificial staple fiber in Category 603, produced or manufactured in Thailand.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Thailand, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile

products in Category 603, produced or manufactured in Thailand and exported during the twelve-month period April 27, 1995 through April 26, 1996, at a level of not less than 1,249,659 kilograms. On April 27, 1995, CITA dropped its request for consultations with Thailand on Category 603 that was made on November 28, 1994 (see 60 FR 2081, published on January 6, 1995) and resubmitted the request under Article 6 of the ATC.

A summary statement of serious damage concerning Category 603 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 603, or to comment on domestic production or availability of products included in Category 603, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Thailand.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 603. Should such a solution be reached in consultations with the Government Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Summary Statement of Serious Damage

Spun Yarn Containing 85 Percent or More By Weight Artificial Staple Fiber—Category 603

April 1995

The sharp and substantial increase in imports of spun yarn containing 85 percent or more by weight artificial staple fiber, Category 603, is causing serious damage to the U.S. industry producing spun yarn containing 85 percent or more by weight artificial staple fiber.

Category 603 imports surged from 5,259,000 kilograms in 1992 to 9,886,000 kilograms in 1993, a 88 percent increase. Imports of spun yarns containing 85 percent or more by weight artificial staple fiber, Category 603, continued to increase in 1994 and 1995, reaching 12,966,000 kilograms during year ending January 1995, 27 percent above the year ending January 1994 level and two and a half times the 1992 level.

Serious damage to the domestic industry resulting from the sharp and substantial increase in imports of spun yarn containing 85 percent or more by weight artificial staple fiber is attributed to imports from Thailand. Surging imports and low priced yarns from Thailand have resulted in loss of domestic output, market share, investment, employment, and man-hours worked.

U.S. imports of spun yarn containing 85 percent or more by weight artificial staple fiber, Category 603, from Thailand reached 1,249,659 kilograms during the year ending January 1995, three times the 408,257 kilograms imported during the year ending January 1994 and two times Thailand's calendar year 1992 import level.

[FR Doc. 95–12107 Filed 5–16–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission Investigative Hearings

AGENCY: Defense Base Closure and Realignment Commission (a Presidentially appointed commission *separate from and independent of DoD.*

ACTION: Notice of additional bases for closure/realignment consideration.

SUMMARY: Pursuant to Pub. L. 101–510, as amended, the Defense Base Closure and Realignment Commission announces 36 domestic U.S. defense activities that require further analysis as potential candidates for closure or realignment.

The Commission added Minot Air Force Base ND on March 7, 1995, as a potential candidate for realignment. Included on the following list are 31 activities in addition to those recommended for closure or realignment by the Secretary of Defense on February 28, 1995. Also included on the list are 4 installations recommended for realignment on the February 28, 1995, list that the Commission will consider for increasing the extent of the Secretary's recommended realignment or for closure.

On May 10, 1995, the Commission approved the following 35 activities for further analysis and consideration and as proposed changes to the Secretary's February 28, 1995, list:

Alabama
- Space and Strategic Defense Command (Huntsville leased space)

California
- Oakland Army Base
- Engineering Field Activity West, Naval Facilities Engineering Command
- Fleet and Industrial Supply Center Oakland
- Naval Air Station Point Mugu
- Naval Warfare Assessment Division Corona
- Supervisor of Shipbuilding, Conversion, and Repair San Francisco
- McClellan Air Force Base
- Defense Distribution Depot McClellan

Florida
- Homestead Air Reserve Station

Georgia
- Naval Air Station Atlanta
- Robins Air Force Base
- Defense Distribution Depot Warner-Robins

Guam
- Public Works Center

Illinois
- Chicago O'Hare International Airport Air Reserve Station

Maine
- Portsmouth Naval Shipyard

Maryland
- Fort Holabird

Minnesota
- Minneapolis-Saint Paul International Airport Air Reserve Station

Mississippi
- Columbus Air Force Base

New York
- Niagra Falls International Airport Air Reserve Station

North Dakota
Grand Forks Air Force Base
Ohio
Youngstown-Warren Municipal Airport Air Reserve Station
Oklahoma
Tinker Air Force Base
Defense Distribution Depot Oklahoma City
Vance Air Force Base
Pennsylvania
Letterkenny Army Depot
Tobyhanna Army Depot
Defense Distribution Depot Tobyhanna
Texas
Kelly Air Force Base
Defense Distribution Depot San Antonio
Carswell Air Reserve Station, Naval Air Station Fort Worth Joint Reserve Base Laughlin Air Force Base
Utah
Hill Air Force Base
Defense Distribution Depot Hill
Wisconsin
General Mitchell International Airport Air Reserve Station

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Director of Communications, at (703) 696–0504.

Dated: May 11, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12030 Filed 5–16–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Advanced Weapons will meet on 5–9 June 1995 at Kirtland AFB, NM from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to fulfill the yearly SAB Science and Technology Review in the area of Advanced Weapons.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–12130 Filed 5–16–95; 8:45 am]

BILLING CODE 3910–01–P

Corps of Engineers

Intent To Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting

AGENCY: Corps of Engineers, Omaha District.

ACTION: Notice of intent.

SUMMARY: The Metropolitan Utilities District (District), Omaha Nebraska, proposes to construct a 104 million gallon per day (MGD) well field near the Platte River in western Douglas and eastern Saunders Counties, Nebraska. The proposed project also includes a water treatment plant and transmission pipelines. The purpose of the proposed project is to provide additional public water supply to meet customer requirements through the year 2030 and to improve water source reliability for the District's growing service area.

The proposed action will require a Corps of Engineers' permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), which authorizes the Corps of Engineers to issue permits for the discharge of dredged or fill material into the waters of the United States. In accordance with the National Environmental Policy Act of 1969 and implementing regulations, an environmental impact statement will be prepared to analyze the environmental impacts of the proposed action and alternatives. A public scoping meeting has been scheduled to solicit comments regarding the scope of the environmental studies.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Environmental Impact Statement should be directed to: Mr. Richard D. Gorton, Chief, Environmental Analysis Branch, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978; phone (402) 221–4598; fax (402) 221–4886.

SUPPLEMENTARY INFORMATION: The Metropolitan Utilities District (District) is the potable water supplier of Omaha, Nebraska, and the surrounding area. The District is experiencing a steady growth within its existing and expanding service area boundaries. It has determined that an additional 100 MGD supply would be required by the year 2030. It has also concluded that if peak day design conditions were to occur any year after 1995, the District would not be able to meet those demands. The District does not currently have any excess production capacity to provide reliability during peak water demand periods.

The proposed project would include a total of 42 wells in the Platte River alluvial aquifer and associated pumping equipment, water transmission pipelines, a water treatment facility, and a 25-million-gallon storage reservoir. These facilities would deliver water to the western portion of the District's distribution system.

Alternatives to the proposed action identified to date include:

- Construction of well facilities in the Platte River alluvial aquifer in alternative locations;
- Construction of additional facilities to supply water from the Missouri River;
- No Federal action.

A public scoping meeting has been scheduled for June 1, 1995 at 7:00 p.m. at the Russell Middle School Cafeteria, 5304 South 172 Street, Omaha, Nebraska.

The purpose of the scoping meetings is to solicit public input on issues, studies needed, alternatives to be evaluated, and potential environmental effects. Written comments will also be requested.

Potential significant environmental issues include effects on threatened and endangered species and the indirect effects of drawdown on wetlands and recreational lakes.

Other applicable and pertinent environmental review and consultation requirements will be undertaken simultaneously with the NEPA process, including requirements of the Endangered Species Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, Clean Water Act, Clean Air Act, and others.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–12072 Filed 5–16–95; 8:45 am]

BILLING CODE 3710–62–M

Department of the Army

International Personal Property Program—Synopsis of Comments Received

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice (Provide industry a synopsis of comments received from the carrier industry regarding the increase in carrier liability for international shipments and the elimination of the valuation charges for domestic shipments).

SUMMARY: The following synopsis includes the comments received from a total of six carriers/associations/bureaus and MTMC's response to each of these comments:

1. *Comment:* MTMC's proposal states that it is based upon the results of a

General Accounting Office (GAO) study. This study has not yet been released by GAO in final form. Thus any attempt to implement the so-called findings of this study is premature.

MTMC Response: MTMC recognizes the proposal to increase liability to $1.25 times the net shipment weight is based on a draft GAO report. MTMC anticipates the final study will recommend the increase in carrier liability. However, MTMC will review its proposal should GAO decide to change the final study recommendations.

2. *Comment:* Concerned that GAO has misinterpreted the data collected and thus drawn some erroneous conclusions. Believe that GAO has used an inflation index that has overstated the actual level of inflation between 1986 and 1993.

MTMC Response: MTMC changes to the domestic and international solicitations will be based on a GAO's recommendations.

3. *Comment:* Change to the $1.25 carrier liability will expose the Government to significant additional risk of stranding shipments by increasing the possibility of carriers going bankrupt and out of the program. Any increase in carrier liability beyond the base liability of $.60 per pound per article must be accompanied by an appropriate compensatory valuation charge, as in commercial practice. Failure to pay this charge will inappropriately transfer costs onto the shoulders of private industry. Nothing is accomplished in carrier liability in the international program except to transfer liability from the military to the mover.

MTMC Response: MTMC believes international carriers will be able to adapt to the increase in carrier liability to $1.25 times the net shipment weight just as carriers have adapted to a similar increase in the domestic program and the increase in carrier liability to $1.80 per pound per article in the international program. MTMC feels confident that carriers will be able to adjust their rates appropriately, to include costs for the increase in carrier liability. In addition, as recommended by GAO, MTMC will compensate carriers with an appropriate valuation charge.

4. *Comment:* By making household goods carriers liable for much more of the claims costs, the Government simply transferred responsibility for paying these costs to the carriers. This shifting of claims costs can be characterized as more of a tax than a savings.

MTMC Response: MTMC's desire is to transfer responsibility for loss and damage to carriers and to improve carrier quality control and assurance programs. Limited or undervalued liability provisions do not incentivize carriers to provide quality service. In addition, after MTMC raised the domestic carrier liability in May 1987, carrier rated did not significantly increase. A study of selected personal property shipping offices (PPSOs) did not show significant increases. Some decrease in rates occurred. Carriers with successful programs to reduce loss and damage will be subjected to a reduced frequency of claims and reduction in overall claims cost, to include personnel costs associated with claims processing.

5. *Comments:* If increase in carrier liability to $1.25 did not have the desired effect in the domestic market, there is no reason to expect that it would work in the international market.

MTMC Response: Changes to the domestic and international solicitations will be based on GAP's recommendations. GAO concluded the $1.25 minimum released valuation for domestic shipments and resulted in reducing shipment loss and damage and overall program cost.

6. *Comment:* Nothing is accomplished by the increase in carrier liability in the program except to transfer liability from the military to the mover. The liability level should either be returned to the $.60 per pound per article, or carriers should be adequately compensated for the additional liability.

MTMC Response: MTMC's desire is to transfer responsibility for less and damage to carriers and to improve carrier quality control and assurance programs. Limited or undervalued liability provisions do not incentive carriers to provide quality service. In addition, after MTMC raised the domestic carrier liability in May 1987, carrier rates did not significantly increase. A study of selected PPSOs did not show significant increase. Some decrease in rates occurred. Carriers with successful programs to reduce loss and damage will be subjected to reduced frequency of claims and reduction in overall claims cost, to include personnel costs associated with claims processing.

7.*Comment:* MTMC proposes to set the valuation charge for international shipments at $1.28 for $100 declared value. The GAO report shows that this level with be inadequate. It must be increased to a reasonable level.

MTMC Response: MTMC is revising the compensation charge originally proposed in the **Federal Register** for international shipments. The following are the valuation charges in effect for 3 years: $2.04 for the first year (1 Oct 95–30 Sep 96); $1.36 for the second year (1 Oct 96–30 Sep 97); and $.68 for the third year (1 Oct 97–30 Sep 98). Effective 1 Oct 98, the valuation charge will be eliminated.

8. *Comment:* Table 3.2 of the GAO draft report shows an average cost to carriers of $6.2 million over FY 89 to FY 91, with liability at 60 cents per pound per article. When the liability is increased to $1.25, GAO projects a recovery from carriers of $22.5 million. To compensate carriers for the $16.3 million difference, a valuation charge of $2.31 would be required. If MTMC is not willing to pay this compensation, it should return carrier liability to the 60 cents per pound per article level.

MTMC Response: MTMC does not agree with the recommendation to compensate carriers with a valuation charge of $2.31 for each $100 declared value. However, MTMC is implementing the following valuation charge, which will be in effect for 3 years: $2.04 for the first year (1 Oct 95–30 Sept 96); $1.36 for the second year (1 Oct 96–30 Sep 97); $.68 for the third year (1 Oct 97–30 Sep 98). The valuation charge will be eliminated effective 1 Oct 98.

9. *Comment:* Strongly agree with GAO's recommendation to shorten the time that a DOD member is given to file his/her claim for damages to one year from the current 2 years.

MTMC Response: Claims matters are under the purview of the U.S. Army Claims Service. Comments regarding claims will be forwarded to them for review.

10. *Comment:* The two most important cost components which affect increase or decrease in the transportation rate level, in addition to carrier liability, are steamship costs and fluctuation in foreign currency. These factors do not exist in connection with the domestic program and their very absence underscores the unreliability and illogic of using domestic experience as a predictor of the impact of the $1.25 liability on the international program.

MTMC Response: MTMC has established a separate compensation factor for international shipments. See MTMC response to comment number 8.

11. *Comment:* Suggest MTMC let carriers settle claims directly with the member, both for the International and Domestic programs. This is what is really going to save the Government money, not the proposal in the **Federal Register**.

MTMC Response: At this time, MTMC proposes no changes to the claims settlement process. However, MTMC is considering direct claims settlement as part of the reengineering initiative.

12. *Comment:* In the Domestic program, the current valuation charge of

$.64 per $100 of declared value should not only be retained, but increased to $1.35 per $100 of declared value. Removing the $.64 valuation charge will simply serve to take even more money away from carriers, with no valid reason. Unless liability level is returned to $.60 per pound per article, the valuation charge is needed in return.

MTMC Response: MTMC agrees with GAO's recommendation that the valuation charge is unnecessary. Carriers should include appropriate claims costs in their rates. MTMC is examining alternatives to phase out/eliminate the valuation charge.

13. *Comment:* The Total Quality Assurance Program and the High Risk Item Protection Program and the present carrier liability should be used for evaluation and utilized to reach a supportable decision.

MTMC Response: The commenter has mixed evaluation of carrier services with liability for loss and damage. Each of these areas is separate and distinct. Also, the industry's HRIP is an excellent initiative to reduce loss and damage; however, this also is a quality control/assurance tool and should not be confused with carrier liability when loss/damage does occur.

14. *Comment:* It is unfair and not justified to hold international carriers responsible for the full value of damages incurred on an international move. The movement in international trade is many times outside the carrier's direct control, such as movement by vessel, aircraft, or the movement of goods in foreign lands. It is just and right that the Government should take part in a portion of that risk.

MTMC Response: MTMC recognizes international personal property shipments require additional handling and over-ocean movement. Accordingly, MTMC expects carriers to subcontract with ocean and linehaul carriers and other parties that provide quality service and damage-free movement. MTMC also expects carriers to have appropriate provisions in their contracts with underlying service providers, which include adequate reimbursement options for loss and damage.

FOR FURTHER INFORMATION CONTACT: Questions should be referred to Mr. Alex Moreno, MTOP–T–NP, (703) 756–2383.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–12071 Filed 5–16–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations Executive Panel will meet May 24-25, 1995, from 9:00 a.m. to 4:00 p.m. on each day. The meeting will be held at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to conduct discussions on strategies for an uncertain future to include information warfare, reserve structure and mobilization, and the changing strategic environment. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302-0268, Phone: (703) 756-1205.

Dated: May 2, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 95-12073 Filed 5-16-95; 8:45 am]

BILLING CODE 3810-FF-F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 16, 1995, from 3:00 p.m. to 4:00 p.m., at the Pentagon, room 4E630. This session will be closed to the public.

The purpose of this meeting is to brief the Chief of Naval Operations on naval warfare innovations in the areas of joint operations, information warfare, naval doctrine, and research and development. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 4, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95-12088 Filed 5-16-95; 8:45 am]

BILLING CODE 3810-FF-F

Intent to Grant Exclusive Patent License; Biocompatibles Limited

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Biocompatibles Limited, a revocable, nonassignable, exclusive license in the United States to practice the Government owned inventions described in U.S. Patents Nos. 4,867,917, "Method for Synthesis of Diacetylenic Compounds," patented 19 September 1989; 4,877,501, "Process for Fabrication of Lipid Microstructures," patented 31 October 1989; 4,911,981, "Metal Clad Lipid Microstructures," patented 27 March 1990; 5,049,382, "Coating and Composition Containing Lipid Microstructure Toxin Dispenses," patented 17 September 1991; and Patent Application Serial No. 08/077,503, "Method of Controlled Release and Controlled Release Microstructures," filed 17 June 1993 in the field of lipid derived controlled release systems for non-medical biofouling applications.

Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR, 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: May 1, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–12131 Filed 5–16–95; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 20-21, 1995, from 9:00 a.m. to 4:00 p.m., on each day. The meeting will be held at the Applied Physics Laboratory, JHU, Johns Hopkins Road, Laurel MD. This session will be closed to the public.

The purpose of this meeting is to conduct discussions on strategies for an uncertain future to include information warfare, reserve structure and mobilization, and the changing strategic environment. Additionally, the panel members will discuss and synthesize recommendations and conclusions which will appear in the Task Force final report. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 4, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95-12089 Filed 5-16-95; 8:45 am]

BILLING CODE 3810-FF-F

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, May 24, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 11:00 a.m. in Conference Room Two, 30th Floor, 290 Broadway, New York, New York.

An informal conference among the Commissioners and staff will be open for public observation at 10:00 a.m. at the same location and will include reports on the Upper Delaware ice diversion project; New York State's FY 1996 budgetary contribution to the Commission; review policy for depletive water uses exceeding 100,000 gpd and possible local sponsorship of a Lehigh River Basin automated flood warning system.

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. West Deptford Township D–79–82 CP RENEWAL–2

An application for the renewal of a ground water withdrawal project to supply up to 108.5 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 3 through 8. Commission approval on December 23, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 105 mg/30 days to 108.5 mg/30 days. The project is located in West Deptford Township, Gloucester County, New Jersey.

2. Rollins Environmental Services Inc. D–93–63

An application for approval of an industrial wastewater treatment plant (IWTP) modification project. The applicant proposes to replace its existing outfall flume with a submerged outfall diffuser for its current discharge to Raccoon Creek in Water Quality Zone 4. The project IWTP will continue to serve the applicant's commercial hazardous waste treatment facility situated just south of U.S. Route 322 and north of Raccoon Creek in Logan Township, Gloucester County, New Jersey.

3. Seabrook Water Corporation D–94–48 CP

An application for approval of an existing ground water withdrawal project to supply up to 20 mg/30 days of water to the applicant's distribution system from existing Well Nos. 12 and 13, and to limit the withdrawal from all wells to 20 mg/30 days. The project is located in Upper Deerfield Township, Cumberland County, New Jersey.

4. Pocono Farms Water Company D–94–65 CP

An application for approval of a ground water withdrawal project to supply up to 15.75 mg/30 days of water to the applicant's distribution system from Well Nos. 4, 5 and 7, and to increase the existing withdrawal limit of 4.84 mg/30 days from all wells to 15.75 mg/30 days. The project is located in Coolbaugh Township, Monroe County, Pennsylvania.

5. Thornbury Township, Delaware County D–94–76 CP

A project to expand an existing 0.06 million gallons per day (mgd) sewage treatment plant (STP) to 0.12 mgd to serve growth in the planned residential development of Thornbury Hunt in Thorny Township, Delaware County, Pennsylvania. The STP will continue to provide secondary biological treatment and discharge to Chester Creek near the Penn Central Railroad in Thornbury Township.

6. Jericho National Golf Club, Inc. D–95–2

An application for approval of a ground water withdrawal project to supply up to 9 mg/30 days of water to the applicant's golf course irrigation system from existing Well Nos. B–100 and B-C, and to limit the withdrawal from all wells to 9 mg/30 days. The project is located in Upper Makefield Township, Bucks County, Pennsylvania.

7. Town of Thompson, Emerald Green STP D–95–16 CP

A STP upgrade project that will replace a 0.41 mgd capacity secondary level plant with a 0.41 mgd capacity tertiary plant. The upgraded STP will continue to serve development in the Emerald Green/Lake Louise Marie Sewer District in the Town of Thompson, Sullivan County, New York. The STP will be situated on the site of the existing STP located just south of Route 17 and north of Lake Louise Marie in the Town of Thompson, and will continue to discharge to McKee Brook, a tributary of the Neversink River, via the existing outfall.

8. Outletter Associates D–95–17

A project to expand the existing 0.017 mgd tertiary STP to 0.024 mgd by replacing the existing extended aeration biological treatment process with a sequencing batch reactor process, along with other modifications. The STP will continue to serve the Crossings Outlet Square shopping center located in Pocono Township, Monroe County, Pennsylvania. Treated effluent, after ultraviolet disinfection, will continue to discharge to Pocono Creek in Pocono Township.

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: May 9, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–12070 Filed 5–16–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Office of Administrative Law Judges; Intent To Compromise Claims, South Carolina Commission for the Blind

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claims.

SUMMARY: The Department intends to compromise claims against the South Carolina Commission for the Blind (Commission) now pending before the Office of Administrative Law Judges (OALJ), Docket Nos. 93–131–R and 93–141–R (20 U.S.C. 1234a(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before July 3, 1995.

ADDRESSES: All comments concerning this notice should be addressed to Jeffrey B. Rosen, Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue SW., Room 5411, FB–10B, Washington, D.C. 20202–2242.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Rosen. Telephone: (202) 401–6009. 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: Pursuant to the Single Audit Act of 1984 (P.L. 98–502) and the provisions of Office of Management and Budget (OMB) Circular A–128, the Office of the State Auditor, State of South Carolina, conducted an audit of the Commission for the period July 1, 1987 through June 30, 1989. A final audit report was issued on February 11, 1993 (ACN: 04–23147 SC) (hereinafter "SC I").

Based upon this audit report, the Regional Commissioner, Region IV, Rehabilitation Services Commission, U.S. Department of Education (ED), issued a Preliminary Department Decision (PDD) on September 28, 1993 in which he requested that the Commission repay $294,232 of funds misspent under Title I of the Rehabilitation Act of 1973, as amended (the Act), 29 U.S.C. 701 et seq. There were seven different monetary findings as follows:

a. Finding 1(b)—$8,528.23—Unallowable vehicle purchase.
b. Finding 2—$1,217.00—Purchases not properly allocated to particular cost objectives.
c. Finding 4—$51,294.74—Time distribution records not maintained for employees.
d. Finding 6(a)—$205,640.00—Documentation not maintained for Federal activities.
e. Finding 8—$8,109.41—Computer lease payments not properly allocated.
f. Finding 9—$17,614.62—Expenditures obligated after project end.
g. Finding 12—$1,828.00—Unallowable interest charges.

On October 27, 1993 the Commission filed an application for review of the PDD with the Office of Administrative Law Judges (OALJ). On September 26, 1994, the Regional Commissioner filed a Notice of Reduction of Claim notifying the OALJ that, based upon new information submitted by the Commission, Finding 6(a) was reduced by $139,353.37. Thus, the total amount outstanding in the appeal was reduced to $154,878.63.

The Office of the State Auditor conducted another audit covering the period July 1, 1990 through June 30, 1991. A final audit report was issued on February 23, 1993 (ACN: 04–23165G SC) (hereinafter "SC II"). In SC II, the Regional Commissioner issued a PDD on September 29, 1993 in which he requested that the Commission repay $129,369.26 of funds under the Act. There were three different monetary findings as follows:

a. Finding 1—$88,805.26—Time distribution records not maintained for employees.
b. Finding 2—$18,156.80—Using funds under the Act for unallowable expenditures.
c. Finding 3—$22,407.20—Purchases not properly allocated to particular cost objectives.

The Commission filed an appeal of the PDD with the OALJ on November 3, 1993.

The Commission and ED have agreed to settle all of the issues in these cases. The outstanding amounts in the two cases are covered by the Settlement Agreements.

Under the terms of the proposed agreement in SC I, the Commission owes ED a total of $68,955. This repayment amount, including four percent interest accruing from July 15, 1995, is to be paid in three equal annual payments of $23,904 beginning July 15, 1995 and continuing through July 15, 1997. The Commission would be assessed interest at a rate of four percent per year if any of the foregoing payments are not made in a timely fashion. Failure to make timely payment within 20 days would result in a late payment fee of 10 percent of the payment due. Finally, under the agreement, the parties would jointly move for dismissal of the appeal.

For the following reasons, ED recommends approval of the proposed Settlement Agreement in SC I. The Commission has agreed to repay in full the cost disallowances in Findings 1, 2, 8, and 12. In Finding 9, ED determined that there was insufficient evidence of harm to the Federal interest and, as a result, agreed not to seek any recovery on this issue in the agreement.

With respect to Finding 4, which pertains to a time distribution issue for employees, the parties agreed that the Commission should repay $15,826, which represents a repayment of greater than 30 percent of the original disallowed amount of $51,294.74. The evidence presented by the Commission demonstrated that the employees in question worked a substantial portion of time on grant activities. Although the Commission clearly had an obligation to keep time distribution records, it presented other less reliable and circumstantial evidence that could persuade an administrative law judge or a Federal court to rule in substantial part or in full for its position.

With respect to the final issue, Finding 6(a), ED originally recommended a cost disallowance of $205,640 for the failure of the Commission to maintain proper documentation for Federal activities. Following an on-site review of the documentation in question in this issue, ED agreed to reduce the cost disallowance to $66,286.63, which consisted of obligations the liquidation of which the Commission had been unable to verify. Notwithstanding the Commission's failure to satisfy its burden of providing this information, ED did not have evidence demonstrating that all of these outstanding obligations were, in fact, unliquidated or detailing the extent to which the Federal interest was harmed. In order to reach a settlement of all the issues in this case, ED agreed to a 50 percent payback of $33,143 on this issue.

Based upon the foregoing, ED believes that it is prudent to accept the settlement offer in SC I, which represents almost 45 percent of the disallowed costs outstanding in this case.

Under the terms of the proposed agreement in SC II, the Commission owes ED a total of $71,044. This repayment amount, including four percent interest accruing from July 15, 1995, is to be paid in three equal annual payments of $24,628 beginning July 15, 1995 and continuing through July 15, 1997. The Commission would be assessed interest at a rate of four percent per year if any of the foregoing payments are not made in a timely fashion. Failure to make timely payment within 20 days would result in a late payment fee of 10 percent of the payment due. Finally, under the agreement, the parties would jointly move for dismissal of the appeal.

For the following reasons, ED recommends approval of the proposed Settlement Agreement in SC II. The Commission has agreed to repay in full the cost disallowances in Findings 2 and 3. With respect to Finding 1, which pertains to a time distribution issue for employees, the parties agreed that the Commission should repay $30,480, which represents a repayment of over 30 percent of the original disallowed amount of $88,805.26. The evidence presented by the Commission demonstrated that the employees in question worked a substantial portion of time on grant activities. Although the Commission clearly had an obligation to keep time distribution records, it presented other less reliable and circumstantial evidence that could persuade an administrative law judge or a Federal court to rule in substantial part or in full for its position.

Based upon the foregoing, ED believes that it is prudent to accept the settlement offer in SC II, which represents almost 55 percent of the original costs disallowed in the PDD for this finding.

If these issues are not settled, ED will incur further litigation costs. Additional discovery efforts would be necessary before these cases can be litigated. Furthermore, it is unlikely that ED would be able to recover 100 percent of the cost disallowance for the time distribution issues in SC I and SC II and the failure to maintain documentation issue in SC I. The recovery amounts for these issues not only reflect the demonstrated harm to the Federal interest, but were essential to the overall settlements that were agreed to by the parties.

There are even litigation risks with respect to the issues the Commission has conceded in the Settlement Agreements. If these issues are litigated, ED would run the risk of not recovering 100 percent. Moreover, the Commission would have the right to appeal any decision to the U.S. Court of Appeals. *See* 20 U.S.C. 1234g. There is no certainty that ED would recover 100 percent on these issues as is contemplated in the Settlement Agreements.

After weighing the risks in litigating the issues that are the subject of the settlements, it is ED's assessment that the proposed Settlement Agreements are the most advantageous resolution of the outstanding issues in these cases.

The public is invited to comment on the Department's intent to compromise these claims. Additional information may be obtained by writing to Jeffrey B. Rosen at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j) (1990)

Dated: May 11, 1995.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 95–12068 Filed 5–16–95; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 17, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 11, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Management

Type of Review: Expedited
Title: Epidemiological Study of Office of Educational Research and Improvement (OERI) Employees
Frequency: One time
Affected Public: Individual and households
Reporting Burden:
Responses: 600
Burden Hours: 200
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Federal employees in OERI are concerned about a continuing increase in the number of diagnosed cancer cases and adverse reproductive outcomes in their workplace since 1988. This study will determine the variation from comparable prevalence and mortality profiles.
Additional Information: Clearance for this information collection is requested for May 17, 1995. An expedited review is requested in order to implement the survey as soon as possible.

[FR Doc. 95–12064 Filed 5–16–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 19, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 11, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Bilingual and Minority Languages Affairs

Type of Review: Expedited
Title: Application for Cooperative Agreement Under the Bilingual Education Program: Benchmark Evaluation Study
Frequency: One Time
Affected Public: Not-for-profit institutions; State, Local or Tribal Governments
Reporting Burden:
Responses: 15
Burden Hours: 1,800
Recordkeeping Burden:
Recordkeeprs: 0
Burden Hours: 0
Abstract: The Department needs and uses this information to make cooperative agreements. The respondents are institutions of higher education (IHEs), nonprofit organizations (NPOs), and State and local educational agencies (SEAs and LEAs). The respondents are required to provide this information in applying for this cooperative agreement award.
Additional Information: Clearance for this information collection is requested for May 19, 1995. An expedited review is requested in order to make grant awards before the end of the fiscal year.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: LEAs' and SEAs' Collection, Review, and Reporting on Title I Assessments and School Improvement Under Title I, Part A, Section 1116 of the Improving America's Schools Act of 1994 (IASA)
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 14,111
Burden Hours: 564,440
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Under IASA, Title I, Part A, Section 1116(a) LEAs are required, and under Section 1116(a)(1) (A) and (B) SEAs are required, to collect, disaggregate and report specific data on the performance of schools and individual students and on the formal process of school improvement.
Additional Information: Clearance for this information collection is requested for May 19, 1995. An expedited review is requested in order for the SEAs to implement the requirement before the start of the new year.

Office of Elementary and Second Education

Type of Review: Expedited
Title: Information Collection and Reporting Required for Local School District Plans and Applications to State Education Agencies for Subgrants Under Title I, Part A of the Improving America's Schools Act of 1994 (IASA)
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 14,199
Burden Hours: 289,816
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: LEAs, as a condition for receiving funds under IASA, Title I, Part A, must prepare and submit to their SEA, for approval, the plan required by Section 1112 describing their student assessments, plans for staff development, their poverty criteria for selecting school attendance areas, identification of participating children, school programs and other information needed to determine their adherence to the statute.
Additional Information: Clearance for this information collection is requested for May 19, 1995. An expedited review is requested in order for the SEAs to implement the requirement before the start of the new year.

[FR Doc. 95–12065 Filed 5–16–95; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No.: 84.246J]

Rehabilitation Short-Term Training—Training Impartial Hearing Officers on Provisions of the Rehabilitation Act; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: The purpose of the Rehabilitation Short-Term Training program is to provide Federal support for developing and conducting special seminars, institutes, workshops, and technical instruction in areas of special significance to the delivery of vocational, medical, social, and psychological rehabilitation services.

Eligible Applicants: Public and private nonprofit agencies and

organizations, including institutions of higher education, are eligible for assistance under this program.

Supplementary Information: On December 5, 1994, the Secretary published in the **Federal Register** a notice inviting applications for Training Impartial Hearing Officers on Provisions of the Rehabilitation Act (59 FR 62510). Two applications were submitted, and neither application was found acceptable. The Secretary believes that, by increasing the estimated award from $145,000 to $200,000 per year for each of three years in the project period, improved applications will be submitted. Also, unsuccessful applicants from the December competition have been provided with peer review comments so that they may strengthen their proposals.

Deadline for Transmittal of Applications: June 30, 1995.

Deadline for Intergovernmental Review: August 30, 1995.

Applications Available: May 19, 1995.

Available Funds: $200,000.

Estimated Range of Awards: $190,000–$210,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 390.

Priority: The priority in the notice of final priorities for this program, as published December 5, 1994, in the **Federal Register** (59 FR 62508), applies to this competition. For the purpose of this notice, the Secretary designates the priority as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)). A copy of the applicable priority will be included in the application package.

For Applications or Information Contact: Beverly Steburg, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3329, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9817. Individuals who use a telecommunications device for the deaf 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: May 11, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–12067 Filed 5–16–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Federal Assistance Award to Utility Photovoltaic Group

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application; Initiating PV Commercialization Through TEAM–UP, DE–FC36–93CH10560.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to grant funding to the Utility PhotoVoltaic Group, which represents interested members of the power production industry, to continue a multi-year program entitled "Technology Experience to Accelerated Markets in Utility Photovoltaics (TEAM–UP)". The objective of this joint effort between DOE and the Utility PhotoVoltaic Group (UPVG), as identified by Congress, is the establishment of an accelerated market for suppliers of photovoltaic systems that encourages investments in larger manufacturing facilities, thus reducing photovoltaic unit costs through economies of scale and creating even broader market potential. The UPVG organization will develop credible PV technical and educational information for utilities, assist utility purchases through market buyer teams, encourage a greater array of potential system applications, and provide the foundation and implementation of the TEAM–UP program. The prime objective of TEAM–UP is achieving a sustainable, domestic PV market and increased manufacturing capability through this joint commercialization effort by the year 2000.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John K. Lewis, Contract Specialist. The telephone number is 303–275–4739. The Contracting Officer for this action is John W. Meeker.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with the DOE Federal Assistance Regulations, 10 CFR section 600.14, the unsolicited proposal entitled "Initiating PV Commercialization Through TEAM–UP" and recommends that the unsolicited proposal be accepted for support without further competition in accordance with section 600.7 of the Federal Assistance Regulations.

The program involves cost sharing with industry, through the Utility PhotoVoltaic Group (UPVG), for the implementation of the multi-year, 50 MW hardware initiative known as TEAM–UP. The proposed agreement implements TEAM–UP, serving as the mechanism for implementing small-scale industry funded PV applications and grid-connected cost-shared programs, as well as continuing technology transfer and market conditioning activities.

DOE, as directed by Congress, is actively pursuing a program of solar energy technology commercialization in conjunction with an industrial partner acting as the "funding entity". The major program objective being the cost-effective use of photovoltaics (PV) in large-scale, grid-connected applications. The UPVG, consisting of almost one hundred utility members, directly supports the DOE objectives by continuing this multi-year program intended to result in the achievement of PV acceptance and use by electric utilities, power producers, and their customers. The proposed agreement represents an ideal and totally unique mechanism to encourage the use of PV and maintain an industry driven initiative for the implementation of photovoltaics within the utility and power production industry.

The multi-year program involves: Outreach and technology transfer activities to educate the utility industry; market conditioning activities aimed at building a foundation for PV purchase commitments; implementation of grid-connected cost-shared projects through competitive solicitation; and development of the market infrastructure to facilitate utility purchases of small-scale photovoltaic applications.

The six year program plan is presently anticipated to cost approximately

$140,000,000 with industry providing 70% funding and DOE contributing 30%. DOE Phase 3 funding is anticipated as $7,021,000 or 48% of the total $14,488,727 cost of implementing up to 10 MW of grid-connected photovoltaic applications and 2 MW of small-scale photovoltaic applications. This notice is published for public comment at least fourteen calendar days prior to making an award.

Issued in Golden, Colorado, on May 4, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95–12036 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–P

Draft Environmental Impact Statement for Waste Management at the Savannah River Site, Aiken, South Carolina

AGENCY: Department of Energy (DOE).

ACTION: Revision to one alternative in the Savannah River Site Waste Management Draft Environmental Impact Statement (DOE/EIS–0217D).

SUMMARY: DOE issued the Savannah River Site Waste Management Draft Environmental Impact Statement (EIS) on January 20, 1995. The EIS evaluates alternative approaches to and environmental impacts of managing wastes at the Savannah River Site (SRS). The EIS examines alternatives for managing five types of waste (liquid high-level radioactive, low-level radioactive, hazardous, mixed (radioactive and hazardous combined), and transuranic) during the next decade and establishes a baseline for assessing options for waste management beyond that time. DOE extended the initial 45-day public comment period to March 31, 1995, in response to a request from the SRC's Citizens Advisory Board.

Throughout the comment period, DOE continued to consider many of the issues addressed in the draft EIS. As a result of these considerations, DOE has decided to change the treatment of low-level waste proposed in the "moderate treatment" alternative. The change concerns the location of, but not the technology used in, the treatment of about 40% of the expected volume of low-level waste at the SRS. This change would reduce disposal vault capacity requirements by providing: (1) Immediate utilization of commercial volume reduction capacity in lieu of construction of an onsite compactor, (2) more detailed and effective sorting, and (3) offsite waste treatment during maintenance periods of onsite treatment facilities.

In the draft EIS, the "moderate treatment" alternative included onsite incineration, supercompaction, or direct disposal of low-level waste. In the final EIS, this alternative would include: (1) Onsite incineration or direct disposal of low-level waste, and (2) supercompaction, size reduction (e.g., sorting, shredding, and melting), and incineration at an offsite commercial treatment facility. In the event of offsite treatment, all residues would be returned to the SRS for further treatment or disposal.

DOE is modifying this alternative in the final EIS because at present the Department does not consider construction of an onsite supercompactor to be a reasonable component of the "moderate treatment" alternative. As licensed offsite supercompaction services are currently available, it would not be cost effective for DOE to build a supercompactor at the SRS. The modified alternative allows DOE to conserve space in its existing disposal vaults and to defer the costs of building additional vaults.

DOE intends to continue with the present schedule for issuing the final EIS because the impacts of the treatment technologies that would be used were already evaluated as onsite options in the draft EIS. The impacts of transportation to commercial treatment facilities and these facilities' capacity will be evaluated in the final EIS. DOE does not consider this change in the "moderate treatment" alternative to be sufficiently significant to reissue the draft EIS. Minor modifications will also be made to each alternative to account for updates to the waste volume forecasts.

DOE would solicit proposals from commercial facilities for reducing the volume of low-level radioactive waste in the future, and would require the facilities to supply information that DOE would use to prepare an additional environmental review as required by Title 10 Code of Federal Regulation (CFR) § 1021.216.

ADDRESSES: DOE will accept comments on the above modifications through June 12, 1995. Any comments on the revision or requests for further information should be directed to: A.B. Gould, Jr., NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, South Carolina 29804–5031, Attention "WMEIS", e-mail: nepa@barms036.b-r.com, or by telephone or facsimile through the Information Line (800) 242–8269.

FOR FURTHER INFORMATION CONTACT: For general information on DOE's National Environmental Policy Act (NEPA) process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–4600 or leave a message at (800) 472–2756.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 95–12044 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–M

Draft Programmatic Environmental Impact Statement for the Uranium Mill Tailings Remedial Action Ground Water Project

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy announces the availability of the draft Programmatic Environmental Impact Statement for the Uranium Mill Tailings Remedial Action Ground Water Project. The proposed action is to conduct the Uranium Mill Tailings Remedial Action Ground Water Project using appropriate ground water compliance strategies at the 24 uranium processing sites based on a health and environmental risk-based framework that provides a consistent and flexible approach. The three other alternatives analyzed in the programmatic environmental impact statement are: No action, active remediation to background levels at all processing sites, and passive remediation at all processing sites. Separate site-specific National Environmental Policy Act documentation will be prepared to address site-specific ground water compliance activities.

DATES: The public comment period extends through July 17, 1995. Written comments should be postmarked by that date to ensure consideration in preparation of the final document. Comments postmarked after that date will be considered to the extent practicable. Comments may also be submitted orally or in writing at public hearings to be held at the times, places, and dates listed below.

ADDRESSES: Written comments on the draft programmatic environmental impact statement should be directed to Mr. Rich Sena, Acting Director, Environmental Restoration Division, Department of Energy, Suite 4000, 2155 Louisiana N.E., Albuquerque, New Mexico 87110. Addresses of Department of Energy Public Reading Rooms and public libraries where the draft

document will be available for review are listed below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Requests for copies of the draft programmatic environmental impact statement and requests for further information concerning this draft document may be directed to Mr. Rich Sena at the address above. Requests for copies of the draft programmatic environmental impact statement or requests for more information may also be made by leaving a message at 1–800–523–6495 (outside New Mexico) and 1–800–423–2539 (within New Mexico). For general information on the procedures followed by the Department of Energy in complying with the requirements of the National Environmental Policy Act, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, Telephone 1–202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Public concern regarding the potential human health and environmental effects from uranium mill tailings led to passage of the Uranium Mill Tailings Radiation Control Act (Public Law 95–604, 42 USC § 7901 et seq.) in 1978, wherein Congress acknowledged the potentially harmful health effects associated with uranium mill tailings at 24 abandoned uranium mill processing sites. Pursuant to the Act, the U.S. Environmental Protection Agency developed standards (40 CFR Part 192) which include exposure limits for surface contamination and concentration limits for ground water, to protect the public and the environment from potential radiological and nonradiological hazards from the abandoned mill processing sites. Final ground water protection standards were published in the **Federal Register** [60 FR 2854 (Jan. 11, 1995)]. The Department of Energy is responsible for performing remedial action to bring the surface and ground water contaminant levels at the abandoned mill processing sites into compliance with these standards. The Department of Energy is accomplishing this function through the Uranium Mill Tailings Remedial Action Project. Remedial action will be conducted with the concurrence of the U.S. Nuclear Regulatory Commission and the full participation of affected States and Indian tribes.

Uranium processing activities at most of the 24 mill processing sites resulted in the formation of contaminated ground water beneath and, in some cases, downgradient of the sites. The purpose of the Uranium Mill Tailings Remedial Action Ground Water Project is to protect human health and the environment by meeting the Environmental Protection Agency standards in areas where ground water has been contaminated with hazardous constituents, such as uranium and nitrate, as a result of former uranium processing activities.

A major first step in the Uranium Mill Tailings Remedial Action Ground Water Project is the preparation of the Ground Water Project programmatic environmental impact statement which assesses the potential programmatic impacts of conducting the Ground Water Project, provides a method for determining the site-specific ground water compliance strategies, and supplies data and information that can be used to tier off site-specific environmental impact analysis documents to eliminate repetition. The proposed action and the alternatives in the document are considered programmatic in that they broadly address the overall plans for conducting the Ground Water Project.

Programmatic Environmental Impact Statement Preparation

The Department of Energy published a Notice of Intent [57 FR 54374, Nov. 18, 1992)] to prepare a programmatic environmental impact statement and commence the scoping process. The public scoping process was completed on April 15, 1993. Public scoping meetings were held in Falls City, Texas; Durango, Colorado; Moenkopi Village, Arizona; Shiprock, Arizona; Tuba City, Arizona; Window Rock, Arizona; Grand Junction, Colorado; Gunnison, Colorado; Rifle, Colorado; Bowman, North Dakota; Lakeview, Oregon; Canonsburg, Pennsylvania; Halchita, Utah; Salt Lake City, Utah; St. Stephen, Wyoming; and Riverton, Wyoming. The Department of Energy received over 500 comments on the proposed scope of the programmatic environmental impact statement which were considered in preparation of the draft programmatic environmental impact statement.

Availability of Copies of the Draft Programmatic Environmental Impact Statement

Copies of the draft programmatic environmental impact statement have been distributed to Federal, State, and local agencies, and to organizations, environmental groups, and individuals known to be interested in or affected by the Ground Water Project. Additional copies of the document may be obtained by contacting the Uranium Mill Tailings Project Office at the address or telephone numbers listed above. Copies of the draft programmatic environmental impact statement and applicable documents referenced in the document are available for inspection at the Department of Energy's reading rooms and at the public libraries in the vicinity of the 24 former uranium processing sites listed below.

Department of Energy Reading Rooms

Freedom of Information Reading Room, Room 1E–190, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585

National Atomic Museum Library, Public Document Room, Department of Energy, Albuquerque Operations, Albuquerque, NM 87115

Grand Junction Project Office, Department of Energy, 2597 B 3/4 Road, Grand Junction, CO 81302

Public Libraries

Arizona

Tuba City Public Library, Tuba City, AZ 86045

Navajo Nation Library System, Window Rock, AZ 86515

Kykotsmovi Public Library, Community Development Director, Kykotsmovi, AZ 86039

Colorado

Cortez Public Library, 802 E. Montezuma, Cortez, CO 81321

Denver Public Library, 1357 Broadway, Denver, CO 80203

Rifle Branch Library, Second Street, Rifle, CO 81650

Mesa State College Library, Grand Junction, CO 81502

Dove Creek School Library, Dove Creek, CO 81324

Durango Public Library, Reference Department, Durango, CO 81301

Glenwood Springs Library, 413 9th Street, Glenwood Springs, CO 81601

Gunnison Public Library, 307 N. Wisconsin, Gunnison, CO 81230

Naturita Public Library, 312 W. Second Street, Naturita, CO 81422

Montrose Public Library, 4349 First Street, Montrose, CO 81424

Idaho

Boise Public Library, 715 S. Capitol Bldg., Boise, ID 83805

New Mexico

Navajo Community College Library, Shiprock Branch, Shiprock, NM 87420
Mother Whiteside Memorial Library, 525 W. High Street, Grants, NM 87020
New Mexico State University Library, 1500 3rd St., Grants, NM 87020
University New Mexico Gallup Library, 200 College Road, Gallup, NM 87301
University New Mexico Zimmerman Library, Albuquerque, NM 87131–1466
New Mexico Environmental Department Library, 1190 St. Francis Drive, Santa Fe, NM 87502

North Dakota

Bowman Public Library, 104 Main Street, Bowman, ND 58623
Dickinson Public Library, 139 West 3rd Street, Dickinson, ND 58601

Oregon

Lake County Library, 513 Center Street, Lakeview, OR 97630

Pennsylvania

Canonsburg Public Library, East Pike Street, Canonsburg, PA 15317
People's Library, 2889 Leechburg Road, Lower Burrell, PA 15068

Texas

Falls City Public Library, P.O. Box 325, Falls City, TX 78113

Utah

Bluff Public Library, Bluff, UT 84512
Marriott Library, University of Utah, Salt Lake City, UT 84112
San Juan County Library, 25 West 300 St., Blanding, UT 84511
Grand County Library, 25 S. 1st East, Moab, UT 84532
Green River Library, 85 South Lang St., Green River, UT 84525

Wyoming

Riverton Branch Library, 1330 West Park, Riverton, WY 82501
Wyoming St. Library, Supreme Court Building, 24th & Capitol Street Cheyenne, WY 82002
University of Wyoming Library, University Station, Laramie, WY 82071

Opportunity to Comment

Interested parties are invited to comment on the draft programmatic environmental impact statement. The Department of Energy will consider written and oral comments equally when preparing the final programmatic environmental impact statement. Written comments should be sent to Mr. Rich Sena, UMTRA Team, at the address given above. To be considered in the document, written comments should be postmarked by July 17, 1995; comments postmarked after that date will be considered to the extent practicable.

Public Hearings and Information Meetings

The public is invited to comment on the draft programmatic environmental impact statement to the Department of Energy in person at the scheduled public hearings. The purposes of the hearings are to receive comments on the subjects analyzed in the draft document; to provide information to the public concerning the content and adequacy of the programmatic environmental impact statement; and to respond to public questions on the analyses or the programmatic environmental impact statement process. Hearings will be set up to address these areas. Persons presenting oral comments at the hearings are encouraged to provide the Department of Energy with written copies of their comments.

Conduct of Hearings

Format for the conduct of the hearings will be announced by the presiding officer at the start of the hearings. The Department of Energy personnel conducting the hearings may ask clarifying questions regarding statements made at the hearings. Transcripts of the comments made at the hearings will be made available at Department of Energy reading rooms and public libraries listed above.

Hearing Schedules and Locations

Shiprock, New Mexico, June 7, 1995, Shiprock Chapter House, 7:00–10:00 p.m.
Durango, Colorado, June 8, 1995, Durango City Hall, 7:00–10:00 p.m.
Halchita, Utah, June 13, 1995, Mexican Hat Elementary School, 7:00–10:00 p.m.
Moenkopi, Arizona, June 14, 1995, Moenkopi Community Center, 7:00–10:00 p.m.
Tuba City, Arizona, June 14, 1995, Tuba City Chapter House, 2:00–5:00 p.m.
Grand Junction, Colorado, June 22, 1995, Grand Junction City Hall, 7:00–10:00 p.m.
Gunnison, Colorado, June 21, 1995, Gunnison County Court House, 7:00–10:00 p.m.
Falls City, Texas, June 27, 1995, Falls City Community Center, 7:00–10:00 p.m.
Riverton, Wyoming, June 28, 1995, St. Stephens School, 7:30–10:30 p.m.

Issued in Washington, D.C., on May 10, 1995.

James M. Ownedoff,

Acting Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 95–12041 Filed 5–16–95; 8:45 am]
BILLING CODE 6450–01–P

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Department of Energy (DOE).

ACTION: Proposed establishment of a new Privacy Act system of records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) to publish a notice in the **Federal Register** of a proposed system of records. The Department of Energy (DOE) proposes to establish a new system of records entitled, "DOE–87 Human Radiation Experiments Helpline Records".

DATES: The proposed new system of records will become effective without further notice June 26, 1995, unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue, SW, Washington, DC 20585. Written comments will be available for inspection at the above address between the hours of 9 a.m and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Ellyn R. Weiss, Director, U.S. Department of Energy, Office of Human Radiation Experiments, 1726 M Street, NW, Washington DC 20036, or (2) GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, HR–78, 1000 Independence Avenue SW, Washington, DC 20585 (202) 586–5955 or (3) Harold Halpern, Office of General Counsel, GC–80, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 586–7406.

SUPPLEMENTARY INFORMATION: The DOE proposes to establish a new system of records entitled "DOE–87, Human Radiation Experiments Helpline Records". This system will contain records of telephone calls to the DOE or the Interagency Helpline (operated by DOE) and correspondence with or involving the callers. The calls and correspondence were in response to DOE's December, 1993, announcement that it would declassify and publicize information pertaining to Human

Radiation Experiments. That term, which includes certain experiments and environmental releases of radiation, is defined in Executive Order 12891, 59 FR 2935, (January 20, 1994); *see* Appendix A to the accompanying Notice of a Proposed New System of Records. The proposed new system will pertain to members of the public who contacted the DOE or the Interagency Helpline under the belief that they, or their deceased relatives, may have participated as subjects in the experiments or may have been affected by environmental or other releases of radiation resulting from Government activities. These records will be used as a source of information to assist the Advisory Committee on Human Radiation Experiments evaluation of the scientific and ethical aspects of the experiments and releases. These records will also be used to enable information to be gathered from other sources concerning inquirers or their relatives' participation in experiments and releases, in order to provide such information to the inquirers. Records in this system may be referred to agencies other than DOE if it appears that such other agencies may have conducted pertinent experiments or environmental releases or may administer remedial programs.

The text of the system notice is set forth below.

Issued in Washington, DC, this 28 day of April, 1995.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–87

SYSTEM NAME:

Human Radiation Experiments Helpline Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U. S. Department of Energy, Office of Human Radiation Experiments, Washington, DC 20585

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains records pertaining to persons in the following categories who contacted the DOE or the Interagency Helpline (operated by the DOE), after December 1, 1993, to determine or report their, or their relatives', possible exposure to radiation as a result of Human Radiation Experiments or environmental releases conducted or sponsored by the Government or to report possible exposure to radiation as a result of other Government or non-government activities:

(1) Members of the public;

(2) Former members of the armed forces;

(3) Employees of the DOE, its predecessor agencies, and their contractors and subcontractors;

(4) Persons exposed to radiation as a result of proximity to nuclear facilities or the intentional or accidental release of radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data provided by persons contacting the DOE or the Interagency Helpline after December 1, 1993, to report or inquire about exposure to radiation consists of records of telephone conversations and correspondence. Records in this system also include correspondence between the callers, Members of Congress, attorneys who represent them, and with Federal agencies that conducted pertinent Human Radiation Experiments or environmental releases or administer remedial programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; authority incorporated by reference in Title III of the Department of Energy Organization Act at 42 U.S.C. 7151; including 42 U.S.C. 2201(c) and 42 U.S.C. 5813 and 5817.

PURPOSE:

The records will be used by DOE as a source of information to assist the Advisory Committee on Human Radiation Experiments in the evaluation of the Human Radiation Experiments and environmental releases. *See* Executive Order 12891, 59 FR 2935, (January 20, 1994). Additionally, based upon the information reported by the persons that contacted DOE or the Interagency Helpline after December 1, 1993, to inquire about or report participation in the experiments or the effects of the environmental releases, DOE intends to gather pertinent information about the experiments and releases from other sources, in order to provide that information to the inquirers. The DOE will also refer particular cases to other Federal agencies which may have conducted pertinent experiments or releases or may administer remedial programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To assist the Advisory Committee on Human Radiation Experiments perform its assigned task of evaluating the scientific and ethical aspects of the Human Radiation Experiments and environmental releases, a record from this system of records may be disclosed to that Committee to provide it with information concerning experiments or releases of radiation that were sponsored, financed or conducted by DOE, its predecessors, or other Federal agencies, and their contractors and subcontractors. *See* Executive Order 12891, 59 FR 2935, (January 20, 1994); Appendix A.

2. A record in this system of records may be disclosed as a routine use to a Member of Congress submitting a written request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

3. A record from this system may be disclosed to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties, subject to the same limitations applicable to DOE's officers and employees under the Privacy Act, as amended, 5 U.S.C. 552a.

4. A record from this system of records pertaining to a particular Human Radiation Experiment or environmental release may be disclosed to another Federal agency if it appears from the record, or other available information, that the other Federal agency conducted the Human Radiation Experiment or environmental release or that referral to the other Federal agency is appropriate for remedial purposes.

5. A record from this system of records may be disclosed to the Department of Justice when: (a) DOE, any predecessor agency, or any component thereof; (b) any DOE or predecessor agency employee, in an official capacity; (c) the United States Government; (d) any current or former DOE, or predecessor agency, contractor, or any of their employees, is a party to, or has an interest in, litigation and DOE determines that the records are both relevant to and necessary for the litigation, and the use of such records by the Department of Justice is deemed by DOE to be compatible with the purpose for which DOE collected the records.

6. A record from this system of records may be disclosed to a court or adjudicative body in a proceeding when: (a) DOE, any predecessor agency, or any component thereof; (b) any current or former DOE, or predecessor agency, employee in an official capacity, or in an individual capacity where DOE has agreed to represent the employee; (c) the United States Government; or (d) any current or former DOE contractor, or employee of such contractor is a party to, or has an interest in, the proceeding

and DOE determines that the records are both relevant to and necessary for the proceeding and that such use is deemed by DOE to be compatible with the purpose for which DOE collected the records.

7. When a record on its face or in conjunction with other records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general program statute or particular program pursuant thereto, the relevant records may be referred as a routine use to the appropriate agency, whether Federal, foreign, state, local or tribal, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto, if DOE determines that the records are both relevant to and necessary for such investigation or prosecution and the use of such records by the appropriate agency is deemed by DOE to be compatible with the purpose for which DOE collected the records.

8. A record from this system of records may be disclosed to the Archivist of the United States, the National Archives and Records Administration or to the General Services Administration for records management conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electromagnetic or optical storage media, and paper records.

RETRIEVABILITY:

Telephone calls have been placed in a database from which information is retrieved by the caller's name. Correspondence is retrieved by name of the person to whom the correspondence pertains or of the person submitting the correspondence.

SAFEGUARDS:

Data is kept in secured areas that are locked when not in regular use and buildings with controlled access. Hard copy data are stored in locked files. Appropriate safeguards for electronic information are built into program software as warranted by sensitivity of the data.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with authorities contained in the DOE Order 1324.2 "Records Disposition."

SYSTEM MANAGER(S) AND ADDRESSES:

U.S. Department of Energy Director, Office of Human Radiation Experiments, Washington, DC 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if this system of records contains information about him or her should be directed to the Privacy Act Officer, U.S. Department of Energy, HR–78, Washington, DC 20585, in accordance with the DOE's Privacy Act regulation (10 CFR part 1008, September 16, 1980, 45 FR 61576). Requests should include the individual's current full name and address, the individual's name and address at the time of any possible participation in the Human Radiation Experiments or environmental release as defined in Appendix A, and, if the requester is a current or former employee of a Department contractor, the contractor's name, the individual's employment dates, and the individual's social security number.

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Same as notification procedures.

RECORD SOURCE CATEGORIES:

Subject individuals, family members, their attorneys, Senators and Representatives.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

As defined in Executive Order 12891, Human Radiation Experiments include:

(1) Experiments on individuals involving intentional exposure to ionizing radiation. This category does not include common and routine clinical practices, such as established diagnosis and treatment methods, involving incidental exposures to ionizing radiation;

(2) Experiments involving intentional environmental releases of radiation that (A) were designed to test human health effects of ionizing radiation; or (B) were designed to test the extent of human exposure to ionizing radiation;

(3) The experiment into the atmospheric diffusion of radioactive gases and test of detectability, commonly referred to as the "Green Run test," conducted by the former Atomic Energy Commission and the Air Force in December 1949 in Hanford, Washington;

(4) Two radiation warfare field experiments conducted at the Atomic Energy Commission's Oak Ridge office in 1948 involving gamma radiation released from non-bomb point sources at or near ground level;

(5) Six tests conducted during 1949–1952 of radiation warfare ballistic dispersal devices containing radioactive agents at the U.S. Army's Dugway, Utah, site;

(6) Four atmospheric radiation-tracking tests in 1950 at Los Alamos, New Mexico; and

(7) Other similar human experiments that may later be identified by the Human Radiation Interagency Working Group.

[FR Doc. 95–12042 Filed 5–12–95; 8:45 am]
BILLING CODE 6450–01–P

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Department of Energy.

ACTION: Proposed establishment of a New Privacy Act system of records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) to publish a notice in the **Federal Register** of a proposed system of records. The Department of Energy (DOE) proposes to establish a new system of records entitled, "DOE–86 Human Radiation Experiments Records."

DATES: The proposed new system of records will become effective June 26, 1995 unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue SW., Washington, DC 20585. Written comments will be available for inspection at the above address between the hours of 9 a.m and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Ellyn R. Weiss, Director, U. S. Department of Energy, Office of Human Radiation Experiments, 1726 M Street NW., Washington DC 20036, or (2) GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–5955 or (3) Harold Halpern, Office of General Counsel, GC–80, 1000 Independence Avenue SW, Washington, DC 20585 (202) 586–7406.

SUPPLEMENTARY INFORMATION: The DOE proposes to establish a new system of records entitled "DOE–86 Human Radiation Experiments Records". The records are being compiled by the DOE as part of its effort to gather and publicize information concerning Human Radiation Experiments and certain environmental releases of radiation, as defined in Executive Order 12891, 59 FR 2935 (January 20, 1994).

See Appendix A to the accompanying Notice of a Proposed New System of Records. The records will be used to provide information concerning the experiments and environmental releases to the general public and to individuals who contacted the DOE or the Interagency Helpline (operated by the DOE) that were, or believed that they or their relatives were, subjects of the experiments or affected by the environmental releases. The information will also be used to assist the Advisory Committee on Human Radiation Experiments in its assigned task of evaluating the scientific and ethical aspects of the experiments and proposing remedial measures to the Human Radiation Interagency Working Group. *See* Executive Order 12891.

Information in the system will include records pertaining to the organizing, conducting, financing, results and effects of experiments and environmental radiation releases sponsored or conducted by DOE, its predecessors and their current and former contractors and subcontractors.

The text of the system notice is set forth below.

Issued in Washington, DC, this 28 day of April 1995.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–86

SYSTEM NAME:

Human Radiation Experiments Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U. S. Department of Energy, Office of Human Radiation Experiments, Washington, DC 20585

Coordination and Information Center, 3084 S. Highland St., Las Vegas, Nevada 89109

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records pertain to persons who participated in the organizing, conducting, and financing of the Human Radiation Experiments and environmental releases of radiation described in Executive Order 12891, 59 FR 2935 (January 20, 1994). *See* Appendix A. The records also pertain to persons who were subjects of the experiments or were affected by the releases. Generally, the records pertain to persons in the following categories:

(1) Former and current employees of the DOE, its predecessor agencies and their contractors and subcontractors;

(2) Members of the public;

(3) Persons exposed to radiation as a result of proximity to nuclear facilities or the intentional or accidental release of radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data consists of records pertaining to the planning, organizing, financing, conducting, effects and results of experiments and environmental releases, gathered from DOE, its predecessor agencies and their contractors and subcontractors. Such records include correspondence, memoranda, published and unpublished reports, notes, logs, proposals, contracts, minutes of meetings of the Atomic Energy Commission and its advisory committees and subcommittees dealing with radiation, correspondence with members of the public, transcripts of interviews of persons associated with the organizing, financing and conducting of the experiments, reports of Congressional hearings, personal notes, diaries and papers, archival collections, interagency memoranda and agreements, consent forms, medical and laboratory reports, transcripts of medical conferences, and newspaper and magazine articles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; authority incorporated by reference in Title III of the Department of Energy Organization Act at 42 U.S.C. 7151; including 42 U.S.C. 2201(c) and 42 U.S.C. 5813 and 5817.

PURPOSE:

The records will enable DOE to create a central source of data concerning the experiments and releases, and to provide information to the public and to individuals that were subjects of the experiments or affected by the environmental releases. The records will also be used to assist the Advisory Committee on Human Radiation Experiments evaluate the scientific, medical and ethical aspects of the experiments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To assist the Advisory Committee on Human Radiation Experiments perform its assigned task of evaluating the scientific and ethical aspects of the Human Radiation Experiments and environmental releases, a record from this system of records may be disclosed to that Committee to provide it with information concerning experiments or releases of radiation that were sponsored, financed or conducted by DOE, its predecessors, or other Federal agencies, and their contractors and subcontractors. *See* Executive Order 12891, 59 FR 2935, (January 20, 1994); Appendix A.

2. A record from this system of records pertaining to a particular Human Radiation Experiment or environmental release may be disclosed to another Federal agency if it appears from the record, or other available information, that the other Federal agency conducted the Human Radiation Experiment or environmental release or that referral to the other Federal agency is appropriate for remedial purposes.

3. A record from this system of records may be disclosed for epidemiological, industrial safety or hygiene studies conducted by DOE's contractors and subcontractors to ascertain or determine: (1) How radiation exposure effects the health and well being of individuals or groups of individuals; and (2) the risks of working with, or being in proximity to, nuclear equipment, devices and facilities and how such risks may be ameliorated.

4. A record from this system of records may be disclosed to the Centers for Disease Control and Prevention, other Federal and state health agencies, and Federal and state agencies involved with industrial or employee safety to be used for epidemiological or industrial safety or hygiene studies to ascertain or determine: (1) How radiation exposure effects the health and well being of individuals or groups of individuals; and (2) the risks of working with, or being in proximity to, nuclear equipment, devices and facilities, and how such risks may be ameliorated.

5. A record from this system of records may be disclosed to the Department of Justice when: (a) The DOE or any component thereof; (b) any DOE employee, or employee of a DOE predecessor agency, in an official capacity; (c) the United States Government; (d) any current or former DOE contractor, or employee of such contractor, is a party to or has an interest in litigation and DOE determines that the records are both relevant and necessary and the use of such records by the Department of Justice is deemed by DOE to be compatible with the purpose for which DOE collected the records.

6. A record from this system of records may be disclosed to a court or adjudicative body in a proceeding when: (a) DOE, any predecessor agency, or any component thereof; (b) any current or former DOE, or predecessor agency, employee in an official capacity, or in an individual capacity where DOE has agreed to represent the employee;

(c) the United States Government; or, (d) any current or former DOE contractor, or employee of such contractor is a party to, or has an interest in, the proceeding and the DOE determines that the records are both relevant to and necessary for the proceeding and that such use is deemed by DOE to be compatible with the purpose for which DOE collected the records.

7. When a record on its face or in conjunction with other records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general program statute or particular program pursuant thereto, the relevant records may be referred as a routine use to the appropriate agency, whether Federal, foreign, state, local or tribal, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

8. A record in this system of records may be disclosed as a routine use to a Member of Congress submitting a written request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

9. A record from this system of records may be disclosed to the Archivist of the United States, the National Archives and Records Administration or to the General Services Administration for records management conducted under 44 U.S.C. 2904 and 2906.

10. A record from this system may be disclosed to DOE's contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties, subject to the same limitations applicable to DOE's officers and employees under the Privacy Act.

11. A record from this system of records may be disclosed to officials and contractor personnel of the Agency for Toxic Substances and Disease Registry in carrying out that agency's authorized activities at DOE's facilities pursuant to setion 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electromagnetic or optical storage media, and paper records.

RETRIEVABILITY:

These records are entered into a database. Accordingly, retrievability may be by name, or other personal identifier, as dictated by the needs of the particular researcher.

SAFEGUARDS:

Data is kept in secured areas that are locked when not in regular use and buildings with controlled access. Hard copy data are stored in locked files. Appropriate safeguards for electronic information are built into program software as warranted by sensitivity of the data.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with authorities contained in DOE Order 1324.2 "Records Disposition."

SYSTEM MANAGER(S) AND ADDRESSES:

U.S. Department of Energy, Director, Office of Human Radiation Experiments, Washington, DC 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if this system of records contains information about him or her should be directed to the Privacy Act Officer, U.S. Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulation (10 CFR part 1008, September 16, 1980, 45 FR 61576). Requests should include the individual's current full name and address, the individual's name and address at the time of any specific events of interest to the requester, and, if the requester is a current or former employee of a DOE contractor, the contractor's name, the individual's employment dates, and the individual's social security number.

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Same as notification procedures.

RECORD SOURCE CATEGORIES:

Persons conducting or otherwise having a role in the organization and financing of experiments or releases, present and former DOE and predecessor agency contractors and subcontractors, physicians, medical records, dosimetry records, subject individuals, DOE and its predecessor agency officials and operating offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

As defined in Executive Order 12891, 59 FR 2935 (January 20, 1994) Human Radiation Experiments include:

(1) Experiments on individuals involving intentional exposure to ionizing radiation. This category does not include common and routine clinical practices, such as established diagnosis and treatment methods, involving incidental exposures to ionizing radiation;

(2) Experiments involving intentional environmental releases of radiation that (A) were designed to test human health effects of ionizing radiation; or (B) were designed to test the extent of human exposure to ionizing radiation;

(3) The experiment into the atmospheric diffusion of radioactive gases and test of detectability, commonly referred to as the "Green Run test," conducted by the former Atomic Energy Commission and the Air Force in December 1949 in Hanford, Washington;

(4) Two radiation warfare field experiments conducted at the Atomic Energy Commission's Oak Ridge office in 1948 involving gamma radiation released from non-bomb point sources at or near ground level;

(5) Six tests conducted during 1949–1952 of radiation warfare ballistic dispersal devices containing radioactive agents at the U.S. Army's Dugway, Utah, site;

(6) Four atmospheric radiation-tracking tests in 1950 at Los Alamos, New Mexico; and

(7) Other similar human experiments that may later be identified by the Human Radiation Interagency Working Group.

[FR Doc. 95–12043 Filed 5–16–95; 8:45 am]
BILLING CODE 6450–01–P

Energy Information Administration

Notice of Proposed One Year Extension of Forms

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed extension to the Forms EIA–800–804, 807, 810–814, 816, 817, 819M, 819A, 820 and 825, "Petroleum Supply Reporting System."

DATES: Written comments must be submitted on or before June 16, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Stacey Ungerleider, Energy Information Administration, EI–421, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (202) 586–5130.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Stacey Ungerleider at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs. The Paperwork Reduction Act of 1980, 511, 44 U.S.C. 3501 *et seq.* requires the EIA to conduct these presurvey consultation programs.

The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude oil, petroleum products and natural gas liquids. These data are published by the Energy Information Administration in the *Weekly Petroleum Status Report, Winter Fuels Report, Petroleum Supply Monthly* and the *Petroleum Supply Annual.* Respondents to the surveys are producers of oxygenates, operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tanker and barge operators and oil importers.

II. Current Actions

EIA will request a one year extension to the existing collections to collect data in 1996.

In anticipation of the 1997 OMB clearance package, the Petroleum Supply Division is conducting a Business Process Re-engineering effort to review the collection, validation and dissemination of petroleum supply data. Changes to these processes will focus on reducing respondent burden and making data more accessible and timely. The changes will begin with the collection of the petroleum supply data in 1997. Requests for comments on these changes will be made in 1996.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average per submission: EIA–800—1 hour 10 minutes; EIA–801—40 minutes; EIA–802—40 minutes; EIA–803—25 minutes; EIA–804—1 hour 10 minutes; EIA–807—50 minutes; EIA–810—3 hours 10 minutes; EIA–811—1 hour 40 minutes; EIA–812—2 hours; EIA–813—1 hour 30 minutes; EIA–814—1 hour 5 minutes; EIA–816—40 minutes; EIA–817—1 hour 30 minutes; EIA–818—2 hours; EIA–819M—30 minutes; EIA–819A—1 hour 15 minutes; EIA–820—2 hours; EIA–825—30 minutes. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Petroleum Supply Reporting System.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 of the United States Code [See 44 U.S.C. 3506(a) and (c)(1)].

Issued in Washington, D.C. May 10, 1995.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–12040 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP92–237–016]

Alabama-Tennessee Natural Gas Company; Notice of Filing of a Corrected Refund Report

May 11, 1995.

Take notice that on April 4, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing a corrected refund report in compliance with ordering paragraph (F) of the Commission's March 20, 1995 order in Docket No. RP92–237–013, *et al.*

Consistent with ordering paragraph (E) of the March 20 order Alabama-Tennessee states that it sent letters on March 27, 1995, offering each of its customers that had an effective Operational Balancing Agreement (OBA) the option of receiving refunds for fuel retainage either in-kind, or as a credit to the customer's OBA account. Alabama-Tennessee further states that it has calculated interest at the rates

mandated by Commisison regulations, and has applied the resulting percentage figures to the retained gas volumes for each customer, thereby paying the interesting as volumes.

All parties that have already filed comments or protests regarding the subject corrected refund report need not file in response to this notice.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 18, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12056 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. GT95–34–000]

Columbia Gas Transmission Corporation; Notice of Refund Report

May 11, 1995.

Take notice that on April 26, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Capacity Access Program Refund Report. The report indicates that Columbia flowed through to customers that had utilized Columbia's Firm Transportation Capacity on Texas Eastern Transmission Corporation (Docket Nos. RP90–119 and RP88–67) and Texas Gas Transmission Corporation (Docket No. RP90–104) via Columbia's Capacity Access Program, the portion of Texas Eastern and Texas Gas's refund, which was applicable to the quantities transported on Texas Gas and Texas Eastern by each customer under Columbia's Capacity Access Program.

Columbia states that it flowed through these refunds in the form of credits to invoices issued on or around April 10, 1995, which were payable to Columbia on or before April 20, 1995. Interest was included in the amount refunded to each customer, calculated through April 19, 1995, in accordance with Section 154.67(c)(2) of the Commission's Regulations. The total amount credited was $160,179.26.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12059 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–5–34–001]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take notice that on May 10, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revision Volume No. 1, the following tariff sheets:

Substitute 4th Revised Eighth Revised Sheet No. 8A

Substitute 3rd Revised Original Sheet No. 8A.02

On May 1, 1995, FGT filed tariff sheets in Docket No. TM95–5–34–000 to make out-of-cycle adjustments to both the Current Fuel Reimbursement Charge and the Annual Fuel Surcharge (Fuel Filing) proposed to become effective June 1, 1995. Contained in this filing were tariff sheets including 4th Revised Eighth Revised Sheet No. 8A and 3rd Revised Original Sheet No. 8A.02. The revisions to these tariff sheets were redlined from 3rd Revised Eighth Revised Sheet No. 8A and 2nd Revised Original Sheet No. 8A.02, which were also filed on May 1, 1995 in Docket Nos. TM94–4–34–006 and RP95–259–000 and also proposed to become effective on June 1, 1995. Subsequently, FGT has become aware that it inadvertently failed to revise 3rd Revised Eighth Revised Sheet No. 8A and 2nd Revised Original Sheet No. 8A.02 to reflect the elimination of the Annual Unit Take-Or-Pay Surcharge from the maximum usage charges and associated footnotes.

Therefore, concurrent with the instant filing, FGT is filing Substitute 3rd Revised Eighth Revised Sheet No. 8A and Substitute 2nd Revised Original Sheet No. 8A.02 in Docket Nos. TM94–4–34–007 and RP95–259–001 to correct this oversight. In the instant filing, FGT is making conforming changes to the referenced tariff sheets filed herewith.

Any person desiring to protest said filing should file a motion protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 18, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12051 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM94–4–34–007 and RP95–259–001]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take notice that on May 10, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revision Volume No. 1, the following tariff sheets:

Substitute 3rd Revised Eighth Revised Sheet No. 8A

Substitute 2nd Revised Original Sheet No. 8A.02

On May 1, 1995, FGT filed in Docket Nos. TM94–4–34–006 and RP95–259–000 to replace the Annual Unit Take-Or-Pay Surcharge (TOP Surcharge) mechanism by modifying Section 25 of the General Terms and Conditions of FGT's Tariff to reflect that recovery of remaining Southern Fixed Charge balances will be pursuant to arrangements which have been mutually agreed to between FGT and the customers with remaining balances. In the May 1 filing, FGT inadvertently failed to reduce the maximum usage charges to reflect the elimination of the volumetric TOP Surcharge.

FGT states that in the instant filing, FGT is correcting this oversight by

reducing the maximum usage charges and eliminating the associated footnotes from the referenced tariff sheets.

Any person desiring to protest said filing should file a motion protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with § 385.214 of the Commission's Rules and Regulations. All such protests should be filed on or before May 18, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12052 Filed 5–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–226–005]

Kern River Gas Transmission; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take notice that on May 5, 1995, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on May 1, 1995:

Third Revised Sheet No. 5
Third Revised Sheet No. 6
First Revised Sheet No. 125
Original Sheet No. 126
Original Sheet No. 127 through 199

Kern River states that the revised tariff sheets implement the October 19, 1994 Stipulation and Agreement in this proceeding, approved by Commission orders dated January 25, 1995 and April 4, 1995, to reflect the Post-Restructuring Settlement Rates and the changes to Kern River's interruptible transportation revenue crediting provision, as provided for in the Settlement. Kern River requests that the Commission grant any and all waivers necessary to make the revised tariff sheets effective on May 1, 1995.

Kern River states that copies of the filing were served upon Kern River's jurisdictional customers, all affected state commissions, and the parties to this proceeding.

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 May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12057 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–287–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Tariff

May 11, 1995.

Take notice that on May 8, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 163
First Revised Sheet No. 164
First Revised Sheet No. 167
First Revised Sheet No. 168
First Revised Sheet No. 169
First Revised Sheet No. 170

MRT states that the tariff sheets submitted reflect revisions to MRT's capacity release provisions consistent with the Commission's Final Rule in Order No. 577, and that they also reflect other minor revisions to MRT's capacity release tariff provisions, including changing all times for posting and bidding for releases to Central Time.

MRT requests waiver of the notice requirement of Section 154.22 of the Commission's Regulations to permit Sheet Nos. 169 and 170 reflecting Order No. 577 changes to become effective on May 4, 1995, which is the date Order No. 577 became effective. MRT requests an effective date of June 8, 1995 for all other tariff sheets submitted.

MRT states that copies of its tariff filing were mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12053 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–286–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take Notice that on May 8, 1995, National Fuel Gas Supply Corporation (National), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective June 1, 1995:

First Revised Sheet No. 147
First Revised Sheet No. 154
Second Revised Sheet No. 255
First Revised Sheet No. 256

National states that First Revised Sheet No. 154 is being filed to reflect the Commission's modifications to § 284.243(h) of its capacity release regulations in Order No. 577.

National states that Second Revised Sheet No. 255 and First Revised Sheet No. 256 are being filed to eliminate affiliate transaction data from National's request for service form in accordance with Order No. 566. National further states that First Revised Sheet No. 147 is being filed because the Order No. 566 series of orders made certain sections incorrect.

National states that it is serving copies of the filing to its firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12054 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–824–000]

Puget Sound Power & Light Company; Notice of Filing

May 11, 1995.

Take notice that on April 4, 1995, Puget Sound Power & Light Company tendered for filing an Agreement Providing for Termination of Agreement for Assignment and for Exchange of Power between Puget and Public Utility District No. 1 of Grays Harbor County, Washington (the "District") executed as of March 2, 1995 (the "Exchange Agreement"). A copy of the filing was served upon the District.

Puget states that the Exchange Agreement relates to the exchange and scheduling by Puget and the District of the District's Centralia Project output share, the sale by Puget to the District of reserve capacity, and the provision by Puget of certain associated services, all pursuant to the terms of the Exchange Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 23, 1995. 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 the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12060 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–654–001]

Texas Eastern Transmission Corporation; Notice of Amended Application

May 11, 1995.

Take notice that on May 9, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP94–654–001, an amended application, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Section 157.7 of the Commission's Regulations, for a certificate of public convenience and necessary to construct, own, and operate certain incremental pipeline facilities necessary to render firm transportation service to PECO Energy Company (PECO) and UGI Utilities, Inc. (UGI). Firm transportation service will be provided under Texas Eastern's Part 284, open-access blanket transportation certificate, and the terms and conditions of Texas Eastern's Rate Schedule FT–1. Texas Eastern also requests authorization to charge a NGA Section 7 initial rate that is a separately-stated incremental rate.

Texas Eastern filed its original application on July 12, 1994, and proposed to construct facilities in two phases to provide firm transportation for: Eastern Shore Gas Company (Eastern Shore), PECO, and UGI (Phase I); and South Jersey Natural Gas Company (South Jersey) (Phase II). Eastern Shore, PECO, and South Jersey intended to utilize their capacity to transport volumes of gas from the Riverside Gas Storage Company (Riverside) storage facility, pending in Docket No. CP94–292–000. South Jersey declined to execute a precedent agreement, and Texas Eastern filed its "Notice of Withdrawal" of the Phase II facilities on August 31, 1994. Since that time, Texas Eastern has been notified that Riverside's storage project will not be in service in the 1995–96 winter heating season, as originally contemplated,

As a result, Eastern Shore has withdrawn from the project, and PECO has agreed to a corresponding increase of 2,000 dekatherms per day (Dth/d) in its contract quantity for a total of 29,210 Dth/d to be transported on the incremental facilities proposed to be constructed by Texas Eastern between Uniontown, Pennsylvania and Doylestown, Pennsylvania. PECO has made alternate permanent upstream arrangements for storage service and for the transportation of the gas to Uniontown, Pennsylvania.

There is no change in UGI's proposed firm transportation service, or in the proposed total incremental capacity. The proposed facilities are also unchanged from the original application; except that the 4.05 miles of 36-inch pipeline loop in Greene County, Pennsylvania has been eliminated, and the capacity at the meter and regulating station in Bucks County, Pennsylvania has been increased to 50,000 Dth/d (without physical modification of the original design).

Pursuant to the Amended Application, Texas Eastern proposes to construct: 7.22 miles of 36-inch pipeline replacement in Fayette, Bedford, and Bucks Counties, Pennsylvania; and a new meter and regulating station in Bucks County, Pennsylvania. The estimated total cost of the proposed facilities is $22,019,000. Based upon the proposed cost of the facilities, Texas Eastern proposes an initial incremental monthly reservation charge of $10.896 per Dth/d beginning November 1, 1995.

Any person desiring to be heard or to make any protest with reference to said amended application should on or before May 25, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12062 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–753–001]

United Cities Gas Company; Notice of Application To Amend

May 11, 1995.

Take notice that on May 9, 1995, United Cities Gas Company (United Cities), 5300 Maryland Way, Brentwood, Tennessee 37027, filed in Docket No. CP94–753–001 an application to amend the existing authorization issued in Docket No. CP94–753–000 to substitute Woodward Marketing, L.L.C. (Woodward) for Sonat Marketing Company (Sonat) as the potential lessee of certain storage capacity in the Barnsley Storage Field in Kentucky, as provided by Section 7(c) of the Natural Gas Act, all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection.

United Cities, as owner of the Barnsley Storage Field in Kentucky, indicates that it was issued a limited jurisdiction certificate by order issued September 20, 1994, in Docket No. CP94–753–000 to lease capacity in the storage field to Sonat. United Cities indicates that, by letter dated October 20, 1994, it had accepted the authorization but also notified the Commission that the operations authorized in the order had not yet commenced and may not commence in the future, and that Sonat may choose not to pursue the transaction authorized in the certificate. United Cities states that by letter dated February 1, 1995, Sonat advised that it was not interested in pursuing further the lease arrangement. United Cities also states that by letter dated April 13, 1995, Woodward indicated that it would like to lease the storage capacity under the same conditions previously approved for Sonat. United Cities requests that its authorization be amended to substitute Woodward for Sonat as the potential lessee of the storage capacity. United Cities proposes no other modifications to the authorization.

Any person desiring to be heard or to make any protest with reference to said application to amend should on or before May 26, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, If the Commission on its own review of the matter finds that a grant of the amended application is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for United Cities to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12061 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–190–002]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take notice that on May 1, 1995, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of March 31, 1995:

Substitute Fourth Revised Sheet No. 9
Substitute Third Revised Sheet No. 10

WNG states that this filing is being made in compliance with Commission order issued March 31, 1995 in docket No. RP95–190. Ordering Paragraph (B) of the order directed WNG to file revised tariff sheets within 30 days of the order to reflect revised billings using the applicable jurisdictional percentages to calculate the various *ad valorem* costs represented in this proceeding. WNG is filing Revised Schedule D1, Code 1 and Revised Schedule D1, Code 8, Workpapers 001 and 002 to reflect the change in methodology for computing the jurisdictional percentages in compliance with the order.

WNG states that Attachment 1 shows the calculation of the revised amounts using jurisdictional percentages applicable to the ad valorem tax year. The ad valorem payments were evenly spread over the twelve months to which they apply, since the payments are applicable to the annual period and not to particular months. This change results in a reduction of approximately $97,000 in the direct bill amount.

WNG states that a copy of the filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 18, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12055 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EF95–1021–000, et al.]

Alaska Power Administration, et al., Electric Rate and Corporate Regulation Filings

May 10, 1995.

Take notice that the following filings have been made with the Commission:

1. Alaska Power Administration

[Docket No. EF95–1021–000]

Take notice that on May 3, 1995, the Deputy Secretary of the Department of Energy, by Rate Order No. APA–13, confirmed and approved on an interim basis effective May 1, 1995, Rate Schedules SN-F–5, SN-NF–8, SN-NF–9, and SN-NF–10 applicable to power from Alaska Power Administration's (APA) Snettisham Project. The rate schedules which are being adjusted were previously confirmed and approved by FERC on December 23, 1991, for a period of five years, Docket No. EF92–1021–000.

Current rates in effect are 32.1 mills per kilowatt-hour for firm energy, a variable rate for non-firm energy based on the cost of heating oil, currently 12.1 mills per kilowatthour, and a rate of 27.1 mills per kilowatt-hour for energy used in place of wood burning. APA proposes to increase the rate for firm energy to 34.7 mills per kilowatthour, an increase of 6.1 percent. Rates for non-firm energy would remain the same.

The Department requests the approval of the Commission of the adjusted rates for a period not to exceed five years with the understanding that the rates can be adjusted at an earlier date if needed to comply with the cost recovery criteria. The rate schedules are submitted for confirmation and approval of a final basis pursuant to authority vested in the Commission by Amendment No. 3 to Delegation Order No. 0204–108.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Western Systems Power Pool

[Docket No. ER91–195–020]

Take notice that on May 1, 1995, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order on Rehearing Denying Request Not to Submit Information, and Granting In Part and Denying in Part Privileged Treatment. WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

3. Direct Electric Inc.

[Docket No. ER94–1161–004]

Take notice that on April 21, 1995, Direct Electric Inc. tendered for filing its quarterly report pursuant to the Commission's order issued on July 18, 1994 in the above-referenced docket, reporting no activity for the quarter ending March 31, 1995.

4. Electrade Corp.

[Docket No. ER94–1478–003]

Take notice that Electrade Corporation (Electrade) on April 27, 1995, tendered for filing its quarterly report in the above-referenced docket. Electrade reports no transactions for the period ending March 31, 1995.

5. Aquila Power Corp.

[Docket No. ER95–216–002]

Take notice that Aquila Power Corporation (Aquila), on April 27, 1995, tendered for filing its quarterly report in the above-referenced docket. Aquila reports no transactions for the period ending March 31, 1995.

6. Wickland Power Services

[Docket No. ER95–300–001]

Take notice that on April 24, 1995, Wickland Power Services tendered for filing a supplement to its initial quarterly report filed on April 10, 1995 in the above-referenced docket.

7. Delmarva Power & Light Co.

[Docket No. ER95–683–000]

Take notice that on May 1, 1995, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, filed an amendment to its filing of a twelve-year power supply contract (the Service Agreement) under which Delmarva will provide all requirements service to the Town of Middletown, Delaware (Middletown). Delmarva states that the Service Agreement supersedes Delmarva's Rate Schedule No. 65 under which Middletown currently receives service.

Delmarva originally filed the Service Agreement on a confidential basis. Pursuant to Commission order, Delmarva in its amended filing has refiled the Service Agreement on a nonconfidential basis.

Delmarva, with Middletown's concurrence, requests an effective date of March 1, 1995 for the new Service Agreement. This effective date is specified by terms of the Service Agreement.

The Service Agreement provides for the continuation of the requirements service previously furnished Middletown under Rate Schedule No. 65, but changes certain terms and conditions. The chief differences between the Service Agreement and Rate Schedule No. 65 are that the Service Agreement provides for all requirement service as a change from the partial requirements service Middletown was receiving, establishes a new rate for Middletown which is below the level of the rate currently charged Middletown and provides for future adjustments to the Middletown rate based on changes in the level of Delmarva's retail rates. The Service Agreement has a twelve year term.

Delmarva states that the filing has been posted and has been served upon the affected customer and the Delaware Public Service Commission.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. K Power Company, Inc.

[Docket No. ER95–792–000]

Take notice that on April 26, 1995, K Power Company, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER95–795–000]

Take notice that on April 21, 1995, The Washington Water Power Company (WWP) and Sierra Pacific Power Company (Sierra), on behalf of Resources West Energy (RWE), tendered for filing with the Federal Energy Regulatory Commission, a Certificate of Concurrence in the Interim Agreement (Interim Agreement) among Sierra, WWP, and Idaho Power Company as filed by Idaho Power Company in the above referenced docket.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER95–842–000]

Take notice that on April 28, 1995, Northern Indiana Public Service Company (Northern) tendered for filing a Revised Exhibit A to the Interchange Agreement Between Northern Indiana Public Service Company and Rainbow Energy Marketing Company.

The Revised Exhibit A to the Interchange Agreement clarifies certain provisions for General Purpose transactions or Negotiated Capacity transactions. Revised Exhibit A clarifies that the rates for energy shall not be less than Northern's out-of-pocket costs, provides a cap on seven consecutive daily purchases of capacity at the weekly capacity purchase rate, provides that the rate for energy associated with purchased power, if any, shall be the cost of such energy to Northern plus one mill and states that third party purchase-resale transactions are not anticipated.

Copies of this filing have been sent to Rainbow Energy Marketing Company and the Indiana Utility Regulatory Commission.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Co.

[Docket No. ER95–911–000]

Take notice on April 21, 1995, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Co.

[Docket No. ER95–934–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with the Kissimmee Utility Authority for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on May 1, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Co.

[Docket No. ER95–935–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL)

tendered for filing proposed Service Agreements with the City of Key West for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on May 1, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Co.

[Docket No. ER95–936–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with Florida Power Corporation for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on April 3, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power & Light Co.

[Docket No. ER95–937–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with the City of Gainesville for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on April 2, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Co.

[Docket No. ER95–939–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with the City of Homestead for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on May 1, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Delhi Energy Services, Inc.

[Docket No. ER95–940–000]

Take notice that on April 21, 1995, Delhi Energy Services, Inc. (DESI) tendered for filing pursuant to Rule 205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

DESI intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where DESI sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. DESI is not in the business of generating, transmitting, or distributing electric power.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Company Services, Inc.

[Docket No. ER95–961–000]

Take notice that on April 27, 1994, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a Service Agreement dated as of April 10, 1995 between Alabama Municipal Electric Authority and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Tampa Electric Co.

[Docket No. ER95–962–000]

Take notice that on April 27, 1995, Tampa Electric Company (Tampa Electric), tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled short-term firm interchange service provided under interchange contracts with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority. Oglethorpe Power Corporation, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Homestead, Lake Worth, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric also tendered for filing revised caps on the charges for emergency and scheduled short-term firm interchange transactions under the same contracts.

Tampa Electric requests that the revised daily capacity charge and revised caps on charges be made effective as of May 1, 1995, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange contracts with Tampa Electric, as well as the Florida and Georgia Public Service Commission.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Co.

[Docket No. ER95–963–000]

Take notice that on April 27, 1995, Tampa Electric Company (Tampa Electric), tendered for filing cost support schedules showing recalculation, based on 1994 data, of the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the recalculated transmission service rates be made effective as of May 1, 1995, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. CNB/Olympic Gas Services

[Docket No. ER95–964–000]

Take notice that on April 27, 1995, CNB/Olympic Gas Services (CNB/Olympic) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective June 26, 1995.

CNB/Olympic intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where CNB/Olympic sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither CNB/Olympic nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. The Washington Water Power Co.

[Docket No. ER95–966–000]

Take notice that on April 27, 1995, The Washington Water Power Company (WWP), tendered for filing an unsigned offer setting forth principles for the purchase of scheduling and dispatch services from WWP in instances where WWP does not provide any associated transmission or wholesale power service.

WWP requests that the services described be ruled non-jurisdictional when the service is offered to a power marketer who is not purchasing, selling, or transmitting power associated with the scheduling services from or to WWP. WWP states that they are exploring the possibility of providing these services to power marketers, but only if the service is non-jurisdictional such that WWP may limit the service to use of its existing personnel to the extent that they have the time available for that purpose.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. UNITIL Power Corp.

[Docket No. ER95–967–000]

Take notice that on April 28, 1995, UNITIL Power Corp. tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 1994 through December 31, 1994 along with the actual costs incurred by UNITIL Power Corp. by FERC account.

2. UNITIL Power Corp. rates billed from January 1, 1994 to December 31, 1994 and supporting rate development.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Progas Power, Inc.

[Docket No. ER95–968–000]

Take notice that on April 28, 1995, Progas Power, Inc. (PPI), tendered for filing pursuant to 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Southern Company Services, Inc.

[Docket No. ER95–969–000]

Take notice that on April 28, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a package of Transmission Service Tariffs, including Network Integration Service Tariffs and Point to Point Transmission Service Tariffs.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Co.

[Docket No. ER95–979–000]

Take notice that on April 28, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of the Northeast Utilities Service Companies, a change in rate schedule for sales of system power to Westfield Gas and Light Department. NUSCO requests that the charges in rate schedules become effective on May 1, 1995 and that such rate schedule changes supersede the Agreement with respect to firm service dated May 1, 1990 between Holyoke Power and Electric Company and City of Westfield, Gas and Electric Light Department at that time.

NUSCO states that copies of its submission have been mailed or delivered to City of Westfield, Gas and Electric Light Department.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Southwestern Public Service Co.

[Docket No. ER95–996–000]

Take notice that Southwestern Public Service Company (Southwestern) on May 1, 1995, tendered for filing a proposed amendment to the Interconnection Agreement with El Paso Electric Company (EPE).

The proposed amendment adds a new service schedule for Firm Unit Replacement Power Service to the Interconnection Agreement. The initial service under this new schedule is for four months beginning May 1, 1995.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Wesley W. von Schack

[Docket No. ID–2877–000]

Take notice that on April 21, 1995, Wesley W. von Schack (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board and Chief Executive Officer—Duquesne Light Company

Director—Mellon Bank Corporation

Director—Mellon Bank, N.A.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Tex-La Electric Cooperative of Texas, Inc.

[Docket No. TX94–4–002]

Take notice that on May 1, 1995, Tex-La Electric Cooperative of Texas, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12122 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–486–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

May 10, 1995.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP95–486–000]

Take notice that on May 5, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket

No. CP95–486–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for permission to abandon an offshore lateral by sale to Stingray Pipeline Company (Stingray), an affiliate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural indicates that in 1975, it constructed 9.57 miles of sixteen-inch pipeline, one dual eight-inch meter, a sixteen-inch platform riser and appurtenant platform facilities that extend from a production platform owned by Kerr-McGee Corporation (Kerr McGee) in West Cameron Block 543, offshore Louisiana, (WC 543), to a subsea interconnection with Stingray in West Cameron Block 565, offshore Louisiana (WC 543 Lateral). Natural states that it constructed these facilities to provide for the receipt of gas that Natural purchased from Kerr McGee in WC 543. It is indicated that Natural also transported and exchanged gas through these facilities for Columbia Gas Transmission Corporation (Columbia), Northern Natural Gas Company (Northern), and Texas Eastern Transmission Corporation (Texas Eastern).

Natural states that in 1991, Kerr McGee informed it that production from WC 543 had ceased and that Kerr McGee was going to abandon its platform. Natural indicates that at Kerr McGee's request Natural then disconnected and abandoned, pursuant to its blanket authority received in Docket No. CP82–402, 2.27 miles of its 9.57 miles of sixteen-inch lateral from Kerr McGee's platform, leaving 7.3 miles of lateral in service which allowed Natural to continue to provide 1) for the transportation and exchange of Texas Eastern's gas produced in West Cameron Block 522, and 2) for the interruptible transportation service, under Part 284 of the Commission's Regulations, for various shippers of gas produced in West Cameron Blocks 518 and 522. Natural avers that it no longer has any gas purchase obligations on the WC 543 Lateral. It is indicated that on April 28, 1995 Natural and Texas Eastern filed a joint application in Docket No. CP95–373–000 to abandon the remaining exchange obligation on the WC 543 Lateral. It is further indicated that the last gas flow activity under interruptible gas transportation agreements occurred in January, 1994.

Natural states that its system will benefit from the sale of the lateral by the elimination of the responsibility and costs of operation, maintenance, and ownership of a facility that Natural no longer needs. Natural indicates that Stingray has offered to pay $250,000 for the WC 543 Lateral and that Stingray will acquire the lateral under its blanket certificate authorization in Docket No. CP91–1505 and pursuant to Section 157.208(a) of the Commission's Regulations.

Natural further indicates that PETSEC Energy, Inc. (PETSEC), an offshore producer, has purchased from Natural the 2.27 miles of sixteen-inch lateral located in WC 543 that Natural previously retired in 1991. Natural avers that PETSEC intends to construct a lateral that will extend from its production platform in West Cameron Block 544 (WC 544) to the existing 2.27 miles of sixteen-inch pipeline in WC 543. Natural states that PETSEC and Stingray have entered into an agreement whereby the gas produced by PETSEC in WC 544 will be delivered to Stingray in WC 543 and transported through the sixteen-inch lateral proposed herein to be abandoned and sold to Stingray, and the transported onshore.

Comment date: May 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corp.

[Docket No. CP95–487–000]

Take notice that on May 8, 1995, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP95–487–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to replace regulating facilities at its Pinehurst Meter Station in Shoshone County, Idaho used to provide firm transportation service for The Washington Water Power Company (Water Power), under the blanket certificate issued in Docket No. CP82–433–000, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to replace two obsolete 1-inch regulators and appurtenances at the Pinehurst Meter Station with two new 1-inch regulators with 35 percent trim, with appurtenances. Northwest states that the existing regulators will be scrapped. Northwest indicates that the facility replacement will better accommodate existing firm maximum daily delivery obligations at this delivery point to Water Power. Northwest estimates a construction cost of $28,000 and a removal cost of $1,000.

Northwest advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Also, Northwest indicates that the proposed facility modification is not prohibited by its existing tariff.

Comment date: June 26, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Mississippi River Transmission Corp.

[Docket No. CP95–489–000]

Take notice that on May 8, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP95–489–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a measuring and regulating station and related facilities under MRT's blanket certificate issued in Docket No. CP82–489–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to abandon approximately 519 feet of 4-inch pipeline and remove its measuring and regulating station and related facilities which have been used to serve Brouk Company in St. Louis, Missouri.

Comment date: June 26, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the

Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12123 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11417–001 Alaska]

David Ausman and Associates; Notice of Surrender of Preliminary Permit

May 11, 1995.

Take notice that David Ausman and Associates, Permittee for the Snyder Falls Creek Project No. 11417, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11417 was issued December 28, 1993, and would have expired November 30, 1996. The project would have been located on Snyder Falls Creek, near Cordova, Alaska.

The Permittee filed the request on May 3, 1995, and the preliminary permit for Project No. 11417 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12058 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Notice of Order Confirming and Approving an Extension of the Existing Step One Firm and Nonfirm Transmission Service Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice is given of Rate Order No. WAPA–69 extending until October 1, 1996, Rate Schedules INT–FT1 and INT–NFT1 for firm and nonfirm transmission service over the Western Area Power Administration (Western) Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) transmission system.

FOR FURTHER INFORMATION CONTACT: Mr. J. Tyler Carlson, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2521.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing Department Of Energy (DOE) procedures for public participation in rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37837). Pursuant to Delegation Order No. 0204–108, FERC, in the order issued March 24, 1994, in Docket No. EF93–5191–000, confirmed and approved Rate Schedules INT–FT1 and INT–NFT1 for firm and nonfirm transmission service by the AC Intertie administered by Western's Phoenix Area Office (66 FERC ¶62,180). The existing step one rate was approved for the period August 1, 1993, through September 30, 1995. The existing step two rate was approved for the period October 1, 1995, through July 31, 1998.

The existing step two rates were to be automatically implemented on October 1, 1995. However, Western will not implement the existing step two rates at this time. A Stipulation Agreement was executed by Western and the customers and filed with FERC on December 28, 1993, agreeing to re-examine the issues from the last rate adjustment. In addition to re-examining these issues, Western is also investigating different rate design alternatives since two new transmission line segments will be energized on January 1, 1996. Western needs additional time for resolution of these issues along with current customer issues. Therefore, Western proposes to extend the existing step one AC Intertie transmission service rates until October 1, 1996. During this time, Western will be holding a series of public meetings with the AC Intertie customers.

The purpose of Rate Order No. WAPA–69 is to extend Rate Schedules INT–FT1 and INT–NFT1 until October 1, 1996, to allow time for the coordination and resolution of these issues and other rate adjustment processes.

Issued in Washington, DC, April 28, 1995.

Bill White,

Deputy Secretary.

Rate Order No. WAPA–69

In the matter of: Western Area Power Administration, Rate Adjustment for Phoenix Area Office AC Intertie Project

Order Confirming and Approving an Extension of the AC Intertie Project Firm and Nonfirm Transmission Service Rate

April 28, 1995.

Transmission rates for the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); and the Reclamation Act of 1902 (32 Stat. 388 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and section 8 of the Act of August 31, 1964 (16 U.S.C. 837g), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary; and (3) the authority to

confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing the Department of Energy (DOE) procedures for public participation in rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37837). This rate extension is issued pursuant to the Delegation Order and the rate extension procedures in 10 CFR Part 903. FERC is not required to confirm and approve this rate extension by reason of 10 CFR Part 903.23(b), which states that existing rates may be extended on a temporary basis by the Deputy Secretary.

Background

Pursuant to Delegation Order No. 0204–108, FERC, in the order issued July 14, 1993, in Docket No. EF93–4151–000, confirmed and approved Rate Schedule INT–FT1 for firm transmission service and INT–NFT1 for nonfirm transmission service in the AC Intertie administered by Western's Phoenix Area Office (PAO). The step one and step two rates were approved for the period from August 1, 1993, through July 31, 1998.

Discussion

On July 14, 1993, the Acting Assistant Secretary of Energy for Energy Efficiency and Renewable Energy of DOE, approved the existing rates on an interim basis for firm and nonfirm transmission service. The existing step one and step two rates for firm and nonfirm transmission service were placed in effect on August 1, 1993. Step one of the firm transmission service rate was approved to be in effect through September 30, 1995, and step two of the existing rates was to become effective on October 1, 1995, and continue through July 31, 1998. The FERC confirmed and approved the rates on a final basis for both firm and nonfirm transmission service on March 24, 1994.

During the last AC Intertie rate adjustment process (WAPA–56), the Colorado River Commission of Nevada, the Arizona Power Authority, the Arizona Subcontractor Group, the Arizona Power Pooling Association, Inc., and Salt River Project Agricultural Improvement and Power District filed Motions to Intervene and Protest FERC's confirmation and approval of the AC Intertie rates described in Rate Order No. WAPA–56, in Docket No. EF93–4191–000. On December 28, 1993, Western filed a Stipulation Agreement signed by Western and these customers in which the intervenors withdrew their protests and Western agreed to re-examine the issues raised as well as commence a new rate adjustment process during fiscal year 1995.

Western proposes to extend the existing step one AC Intertie transmission service rates until October 1, 1996. Western is investigating different rate design alternatives since two new transmission line segments will be energized on January 1, 1996. Western needs additional time for resolution of these issues along with current customer issues. Even though it is anticipated that the firm transmission service rate adjustment will be placed in effect by December 31, 1995, the extension of the existing step one AC Intertie firm and nonfirm transmission service rates is through March 1, 1996, to allow for flexibility in the upcoming rate adjustment process. During this time, Western will be holding a series of public meetings with AC Intertie customers.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby confirm and approve for a period effective October 1, 1995, until October 1, 1996, the existing step one Rate Schedules INT–FT1 and INT–NFT1 for firm and nonfirm transmission service over the AC Intertie transmission system.

Issued in Washington, DC, April 28, 1995.

Bill White,

Deputy Secretary.

[FR Doc. 95–12037 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[PP 3G4263/T672; FRL 4948–7]

Fipronil; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the insecticide fipronil and its metabolites in or on the raw agricultural commodity field corn grain at 0.02 part per million (ppm).

DATES: This temporary tolerance expires March 28, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Keigwin, Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7618; e-mail: keigwin.rick@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc AG Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, N.C. 27709, has requested in pesticide petition (PP) 3G4263, the establishment of a temporary tolerance for the combined residues of the insecticide fipronil (5-amino-3-cyano-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-trifluoromethylsulphinyl pyrazole or its metabolites MB 46136 5-amino-3-cyano-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-trifluoromethylsulphonyl pyrazole or MB 45950 5-amino-3-cyano-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-trifluoromethylthiopyrazole in or on the raw agricultural commodity field corn grain at 0.02 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 264–EUP–95, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone-Poulenc AG Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 28, 1996. Residues not in excess of this amounts remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 1, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–11813 Filed 5–16–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1049–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1049–DR), dated May 10, 1995, and related determinations.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster has been changed. The incident period for this disaster is May 8, 1995, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12119 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1049–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana, FEMA–1049–DR), dated May 10, 1995, and related determinations.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana dated May 10, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1995:

Ascension, Assumption, Jefferson, LaFourche, Orleans, St. Bernard, St. James, St. John, St. Tammany, Tangipahoa, and Terrebonne Parishes for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12120 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200934.

Title: Port of Houston Authority/ Lykes Bros. Steamship Co:, Inc. Marine Terminal Agreement

Parties:

Port of Houston Authority ("Port")
Lykes Bros. Steamship Co., Inc. ("Lykes")

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement authorizes the Port to provide marine terminal services to Lykes at the Port's Barbours Cut Terminal Facility. The term of the Agreement expires September 30, 1996.

Agreement No.: 224–200935.

Title: Port of Houston Authority/ Ryan-Walsh Facility Use Agreement.

Parties:

Port of Houston Authority ("Port")
Ryan-Walsh, Inc. ("Ryan-Walsh")

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement authorizes Ryan-Walsh to perform freight handling services at the Port's Transit Sheds 21–A and 25–A. The term of the Agreement expires April 30, 1996.

By Order of the Federal Maritime Commission.

Dated: May 11, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12034 Filed 5–16–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011474–001.

Title: CSAV/CCNI Car Carrier Agreement.

Parties:

Compania Sud Americana de Vapores S.A.
Compania Chilena De Navegacion Interoceanica S.A.

Synopsis: The proposed amendment modifies the Agreement to permit the parties to jointly operate a second pure car carrier. It also extends the term of the Agreement indefinitely.

By Order of the Federal Maritime Commission.

Dated: May 11, 1995.

Joseph C. Polking,

Secretary.

[FR. Doc. 95–12035 Filed 5–16–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

UB&T Financial Corporation, 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 June 9, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201 2272:

1. UB&T Financial Corporation, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of UB&T Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire United Bank & Trust, N.A., Dallas, Texas.

In connection with this application UB&T Delaware Financial Corporation, Dover, Delaware; has applied to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, N.A., Dallas, Texas.

Board of Governors of the Federal Reserve System, May 11, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12097 Filed 5–16–95; 8:45 am]

BILLING CODE 6210–01–F

Wachovia Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Wachovia Corporation, Winston-Salem, North Carolina; to engage *de novo* through its subsidiary, Wachovia Capital Markets, Inc., Winston-Salem, North Carolina, in leasing real and personal property or acting as agent, broker, or adviser in leasing such property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. C.S.B., Co., Cozad, Nebraska; to acquire Cozad Interim Savings Bank, Lexington, Nebraska, a *de novo* savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 11, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12098 Filed 5–16–95; 8:45 am]

BILLING CODE 6210–01–F

[Docket No. R–0880]

Privacy Act of 1974; Technical Amendment to Existing Systems of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of technical amendment to existing systems of records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the Board of Governors of the Federal Reserve System (Board) is publishing technical amendments to two existing systems of records. The two systems are called OIG Investigative Records (BGFRS/OIG–1) and OIG Personnel Records (BGFRS/OIG–2). The amendment is necessary to reflect the change in location of the systems.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2418.

SUPPLEMENTARY INFORMATION: The Board's Office of Inspector General (OIG) recently moved its offices as well as its systems of records. Accordingly, it is necessary to amend the existing systems of records maintained by the OIG to reflect this change in location. No other changes are needed at this time.

This is not a "significant change" in the existing system of records, which was published in the **Federal Register** on February 7, 1994 (59 FR 5602); accordingly no report to the Senate, House of Representatives or Office of Management and Budget is necessary under 5 U.S.C. 552a(r). Furthermore, because no change is made to the exemptions claimed for these systems,

the technical change is not subject to the informal rulemaking procedures of the Administrative Procedure Act. Accordingly, these changes will become effective on June 16, 1995.

The Board is revising the following data elements in these two systems of records.

BGFRS/OIG–1

SYSTEM NAME:

OIG Investigative Records.

SYSTEM LOCATION:

Office of Inspector General, Board of Governors of the Federal Reserve System, Suite 3000, 1709 New York Avenue NW., Washington, DC 20006.

SYSTEM MANAGER AND ADDRESS:

Brent L Bowen, Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, Washington, DC 20051. Office location is Suite 3000, 1709 New York Avenue NW., Washington, DC 20006.

BGFRS/OIG–2

SYSTEM NAME:

OIG Personnel Records.

SYSTEM LOCATION:

Office of Inspector General, Board of Governors of the Federal Reserve System, Suite 3000, 1709 New York Avenue NW., Washington, DC 20006.

SYSTEM MANAGER(S) AND ADDRESS:

Brent L Bowen, Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, Washington, DC 20051. Office location is Suite 3000, 1709 New York Avenue NW., Washington, DC 20006.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 11, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–12086 Filed 5–16–95; 8:45 am]

BILLING CODE 6210–01–P

[Docket No. R–0879]

Privacy Act of 1974; Proposed New Systems of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of new systems of records; request for comments.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act) and Appendix I of OMB Circular No. A–130, the Board of Governors of the Federal Reserve System (Board) is establishing four new systems of records. The new systems are called: Freedom of Information/Privacy Act (FOIA/PA) Case Tracking and Reporting System (BGFRS–23); Telephone Call Detail Records (BGFRS/SS–1); Staff Identification Card File (BGFRS/SS–2); Staff Parking Permit File (BGFRS/SS–3). These systems of records contain information about individuals and the records are retrieved by name or special identifier of the individual. Therefore, the Privacy Act requires notice of the systems to be published in the **Federal Register**.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Comments should refer to Docket No. R–0879, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m., weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2418.

SUPPLEMENTARY INFORMATION: The Board is establishing four new systems of records pursuant to the Privacy Act, entitled: (1) Freedom of Information/ Privacy Act (FOIA/PA) Case Tracking and Reporting System (BGFRS–23); (2) Telephone Call Detail Records (BGFRS/ S–1); (3) Staff Identification Card File (BGFRS/SS–2); (4) Staff Parking Permit File (BGFRS/SS–3).

The system called FOIA/PA Case Tracking and Reporting System will consist of a data base tracking system to assist the Freedom of Information Office in processing requests under the Freedom of Information Act (FOIA) and Privacy Act (PA). This data base will contain the names of requesters under FOIA and PA, dates of requests and responses, names of Board staff working on each request, fee data, and information required to be collected for periodic reports to Congress. In general, this information is publicly available; exceptions may be made for home addresses of individual requesters and for data concerning requests under the Privacy Act, the release of which may cause an unwarranted invasion of personal privacy.

The system called Telephone Call Detail Records will consist of records showing use of the Board's telephones by Board employees, consultants and contractors who have been assigned a telephone number by the Board. The purpose of the system is to determine accountability for telephone usage and to prevent waste or abuse of Board resources. The information will be derived primarily from telephone assignment records and call detail listings. Creation of this system is consistent with the Office of Management and Budget's (OMB) recommendation that agencies create systems of records to maintain telephone call detail records that contain information about individuals and are used to determine accountability for telephone usage. *See*, 52 FR 12990 (April 20, 1987).

The system called Staff Identification Card File will consist primarily of a data base containing information derived from an identification card containing a computer chip. This identification card interacts with the Board's computerized security system to permit and record access to the Board's premises. The identification card also permits an authorized employee to access secured areas at the Board, such as the exercise facility or the computer room, and records such access. The information in the system will be derived primarily from the individual employee, an official who authorizes access to secure areas, and use of the identification card.

The system called Staff Parking Permit File will consist primarily of records containing information derived from applications by Board employees for parking permits for the Board's garages. This information includes the employee's name, address, longevity at the Board, and vehicle identification information. Other information in the system will reflect any actions taken to enforce the Board's Parking Regulations. The purpose of the system is to allocate limited parking space among Board employees and to maintain safety in the use of the garages.

In accordance with 5 U.S.C. 552a(r), a report of these new systems of records is being filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget. These new systems of records will become effective on July 17, 1995, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register**.

Accordingly, the Board proposes the establishment of the following systems of records.

BGFRS–23

SYSTEM NAME:

Freedom of Information Act/Privacy Act (FOIA/PA) Case Tracking and Reporting System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Freedom of Information Office, Board of Governors of the Federal Reserve System (Board), 20th Street & Constitution Avenue, NW, Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests and individuals whose records are requested by others under the provisions of the Freedom of Information Act (FOIA) and/or the Privacy Act (PA).

CATEGORIES OF RECORDS IN THE SYSTEM:

A computer data base that includes: The log number assigned to the request, the name and address of a requester, the date of the request, the date a response is due, the date of the determination letter, the date responsive documents were mailed to requester, a brief description of the information requested, the names of Board staff to whom the request was assigned for processing, fee data, and other information used for tracking and to compile the FOIA Annual Report and Biennial Privacy Act Report to Congress and other ad hoc reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a; 12 CFR parts 261 and 261a.

PURPOSE:

To assist the Board in carrying out its responsibilities under the Freedom of Information Act and Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information may be provided to another Federal agency, which furnished information responsive to a request, for the purpose of making a decision regarding access or amendment to the responsive information.

(2) Information may be released to the news media and the public, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(3) Information may be released to a Member of Congress or congressional staff as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks.

RETRIEVABILITY:

Retrieved by name of requester, by log number assigned to the request, by the subject matter of the request, or any other field of information that is collected.

SAFEGUARDS:

Access to records is limited to Board personnel who have need for the records to perform their duties.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Freedom of Information Office, Mail Stop 132, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue Avenue, NW., Washington, DC 20551.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individuals making requests, other agencies referring requests for access to or correction of records originating at the Board, and Board employees engaged in processing or making determinations on the requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BGFRS/SS–1

SYSTEM NAME:

Telephone Call Detail Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Board employees, consultants and contractors who have been assigned a telephone number by the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of Board telephones to place local and long distance calls; records indicating assignment of telephone numbers to individuals covered by the system; and records relating to location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act, 12 U.S.C. 243 and 248(l).

PURPOSE(S):

To detect and prevent unauthorized usage of the Board's telephones.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed, as is necessary:

(1) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(2) To representatives of the National Archives and Records Administration who are conducting records management inspections.

(3) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(4) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by particular program statute, or by regulation, rule, or order issued pursuant thereto.

(5) To current or former Board employees and other individuals currently or formerly provided telephone services by the Board to determine their individual responsibility for telephone calls.

(6) To respond to a federal agency's request made in connection with the hiring or retention of an employee, the

letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic information is stored on disk and placed in a fire-proof safe.

RETRIEVABILITY:

Retrieved by name of individual or telephone number or by number(s) dialed.

SAFEGUARDS:

Access control mechanisms restrict access to authorized personnel. Passwords restrict access to sensitive information based upon level of authorization. Audit trails provide an additional level of security. The file used to set passwords is encrypted and may only be accessed by those with the highest level of authorization.

RETENTION AND DISPOSAL:

Backup is done monthly on disk, which are retained for three years. After three years the information on the disks is deleted and the disk re-used for backup. Disks that are no longer usable are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue NW., Washington, DC 20551. The request must contain the individual's name and the telephone number assigned to the individual by the Board.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance and local calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BGFRS/SS–2

SYSTEM NAME:

Staff Identification Card File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Board employees, consultants and contractors who have been issued a Board identification card.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of a data base that contains an image of a picture of the employee; the employee's name and employee number; and authorization (if applicable) to use the exercise facilities, computer room, Central Stock Room (CSR) or National Security Information Processing Center (NSIPC). The data base records the times of attempted and authorized access to and egress from the Board's buildings using the identification card, use of the exercise facilities, computer room, CSR and NSIPC. Records from the data base may also be maintained in hard copy form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act, 12 U.S.C. 243 and 248(l).

PURPOSE(S):

To maintain security of the Board's premises against unauthorized entry; to record entry to Board premises as well as entry into secured areas by authorized personnel; to record departure from secured areas after regular business hours; to control access to certain areas within Board premises. Routine uses of records maintained in the system, including categories of users and the purposes of such uses: To provide information to:

(1) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(2) Representatives of the National Archives and Records Administration who are conducting records management inspections.

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(4) Board security staff for security purposes, or to determine whether an individual had entered the Board on a particular day or had exited the Board after regular business hours.

(5) The system manager to determine compliance with the Board's rules regarding car pools and parking permits for the Board's garages.

(6) The Board's Health Unit to determine usage of the exercise facility for purposes of safety, program planning and space allocation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic information is stored on disk or on tape. Hard copy records are secured in a fire proof safe.

RETRIEVABILITY:

Information is retrieved by name of individual issued the identification card, employee number, or card credential number.

SAFEGUARDS:

Security passwords restrict access to authorized personnel. Different levels of access are provided based upon the authorization. The file used to set the passwords is encrypted and may only be accessed by those with the highest level of authorization.

RETENTION AND DISPOSAL:

Backup of log files is done daily. Tape and/or disk backup are done monthly and maintained for a period of two years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Personnel information is obtained from the Board's personnel records and/or from the individual being issued the identification card. Information

regarding entry into and egress from Board premises or secured areas is obtained from use of the card to open the doors. Authorization for access to secured facilities on Board premises is provided by the Board official responsible for that secured facility.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BGFRS/SS–3

SYSTEM NAME:

Staff Parking Permit File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Board employees, consultants and contractors who have applied for and/or been issued a parking permit for the Board's garages.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains completed parking application forms (FR 1103), disability parking applications, and contingency parking requests submitted by employees; unusual-work-demand permit, and special contingency parking authorizations submitted by division directors; requests for parking for official visitors and contractors; notifications of lost permits; a listing of permit numbers assigned to car pools, van pools and individual employees; investigations made of compliance with the Board's Parking Regulations; and official actions taken as a result of violation of the Board's Parking Regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act, 12 U.S.C. 243 and 248(l).

PURPOSE(S):

To allocate usage of the limited number of parking spaces in the Board's garages among Board staff, visitors and contractors; to enforce the Board's Parking Regulations for safe usage of the garages.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(2) To investigate possible violations of the Board's Parking Regulations.

(3) To determine eligibility for a parking permit.

(4) To determine eligibility for a public transit subsidy payment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic information is stored on tape and secured in a fire-proof safe. Hard copies are stored in a locked file cabinet.

RETRIEVABILITY:

Information is retrieved by name of individual, employee identification number, or license tag number.

SAFEGUARDS:

Access control mechanisms restrict access to authorized personnel. Passwords restrict access to sensitive information based upon level of authorization. The file used to set passwords is encrypted.

RETENTION AND DISPOSAL:

Retention of personnel data is maintained until separation from the Board. Backup of files is done daily. Backup tapes and disks are destroyed when no longer needed. Hard copy files are shredded when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the parking permit applications, authorizations and requests; and from written investigations of possible violations of the Board's Parking Regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 11, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–12087 Filed 5–16–95; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 042495, AND 050595

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Allergan, Inc., Allergan Ligand Retinoid Therapeutics, Inc., Allergan Ligand Retinoid Therapeutics, Inc.	95–1404	04/24/95
Daimler-Benz AG, Oshkosh Truck Corporation, Oshkosh Truck Corporation	95–1453	04/25/95
Welsh, Carson, Anderson & Stowe VI, L.P., Res-Care, Inc., Home Care Affiliates, Inc	95–1346	04/26/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 042495, AND 050595—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
WMX Technologies, Inc., Advanced Environmental Technical Services, L.L.C., Advanced Environmental Technical Services, L.L.C	95–1341	04/27/95
Robert W. Landmesser, Advanced Environmental Technical Services, L.L.C., Advanced Environmental Technical Services, L.L.C	95–1343	04/27/95
Lafarge Coppee S.A., Cemex S.A. de C.V., National Portland Cement Company	95–1367	04/28/95
Pharmhouse Corp., Woolworth Corporation, F.W. Woolworth Co	95–1452	04/28/95
The News Corporation Limited, Interactive Cable Systems, Inc., Interactive Cable Systems, Inc	95–1455	04/28/95
Imperial Credit Industries, Inc., Oren L. Benton, First Concord Acceptance Corporation	95–1466	04/28/95
Amgen Inc., The Rockefeller University, The Rockefeller University	95–1474	04/28/95
ENSERCH Corporation, Pacific Gas and Electric Company, DALEN Corporation	95–1476	04/28/95
FPL Group, Inc., The Southern Company, Georgia Power Company (Scherer Unit 4)	95–1477	04/28/95
ConAgra, Inc., Knott's Berry Farm Partnership, Kott's Berry Farm Foods, Inc	95–1479	04/28/95
PepsiCo, Inc., Joint Venture LLC, Joint Venture LLC	95–1480	04/28/95
PepsiCo, Inc., Sara Lee Corporation, Sara Lee Assets	95–1481	04/28/95
Tyco International Ltd., Unistrut International Corporation, Unistrut International Corporation	95–1482	04/28/95
Donald F. Flynn, Discovery Zone, Inc., Discovery Zone, Inc	95–1498	04/28/95
Central and South West Corporation, El Paso Electric Company, El Paso Electric Company	95–1503	04/28/95
Selmer Industries, Inc., Steinway Musical Properties, Inc., Steinway Musical Properties, Inc	95–1506	04/28/95
Pacific Physician Services, Inc., Team Health Group, Inc., Team Health Group, Inc	95–1174	05/01/95
Keith Rupert Murdoch, Ronald O. Perelman, WBRC and WGHP Holdings Corporation	95–1472	05/01/95
Thermo Electron Corporation, Clewmark Holdings, Clewmark Holdings	95–1495	05/01/95
Nine West Group Inc., The United States Shoe Corporation, Community Urban Redevelopment of Duck Creek, Inc.	95–1340	05/02/95
Granite Construction Incorporated, Gibbons Company, Gibbons Company	95–1382	05/02/95
Tenneco Inc., Adolf Koll, Lux Packaging Ltd. and Universal Asset Leasing Ltd	95–1438	05/02/95
Glenn R. Jones, Cable TV Fund 12-B, Ltd., Cable TV Fund 12-B, Ltd	95–1469	05/02/95
Value Health, Inc., Diagnostek, Inc., Diagnostek, Inc	95–1370	05/03/95
Citation Corporation, Thomas C. Butterbrodt, Berlin Foundry Corporation	95–1496	05/03/95
Ford Motor Company, Figgie international Inc., Figgie Leasing Corporation	95–1504	05/03/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–12161 Filed 5–16–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) and Model Plan.

OMB No.: 0970–0075.

Description: The information collected from grantees is required by the statue authorizing the Low Income Home Energy Assistance Program. It is used to establish eligibility and gain assurances from grantees on the use of federal funds.

Respondents: State and Tribal governments.

Annual Number of Respondents: 180 sites.

Number of Responses per Respondent: 1.

Total Annual Responses: 180 sites.

Hours per Response: 1.33.

Total Annual Burden Hours: 240.

Additional Information: Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment: This application is being submitted with a request for an expedited review and a determination by July 18, 1995. Consideration will be given to comments and suggestions received within 45 days of the publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: May 11, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–12045 Filed 5–16–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

[Announcement 541]

Project Grant To Coordinate the National Immunization and Education Action Committee Coalition Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a project grant to coordinate the Immunization Education and Action Committee (IEAC) and to foster local and State coalitions to improve immunization levels in the preschool age group.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (To order a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under the Public Health Service Act, Section 317(k) [42 U.S.C. 247b (k)], as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligibility

Only the member groups of the Immunization Education and Action Committee (IEAC) are eligible to apply.

The IEAC is a national coalition of approximately 175 private, non-profit, professional and volunteer organizations and public health agencies. The goal of the IEAC is to reduce vaccine-preventable diseases and deaths among children in the United States by increasing the awareness of health care providers, children's advocacy groups, and the general public about the need for and benefits of immunization.

Availability of Funds

Approximately $300,000 is available in FY 1995 to fund one project grant award. It is expected to begin on or about August 1, 1995, for a 12-month budget period within a project period of up to five years. The funding estimate may vary and is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress, receipt of an acceptable continuation application, and the availability of funds.

Purpose

The purpose of this project is to:

A. Coordinate the IEAC, a national coalition of public, private, non-profit, professional and voluntary groups, whose goal is to reduce vaccine-preventable diseases and related deaths among infants and young children in the United States by increasing the awareness of physicians and other health care providers, parents, and the general public about the need for and the benefits of immunization.

B. Enhance local demand for vaccination services through the development of information and education materials and facilitation of promotional activities for consumers and health professionals.

C. Facilitate the development of State and local coalitions to increase community awareness of the need for resources for childhood immunization.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the following activities:

A. Coordinate the activities of the IEAC. Coordination includes, but is not limited to, communicating with or among members of the national coalition; providing orientation and referral of potential new members and participants in the coalition; jointly developing meeting agendas and conducting meetings with CDC and others; and making logistical arrangements for meetings.

B. Develop a strategic plan describing the mission of IEAC and plans for the coordination and enhancement of IEAC activities. This may include establishing committee and subcommittee structure, future membership goals, and special projects.

C. Serve as a lead organization for the development and promotion of local coalitions of informed advocates, organizations, and community leaders to promote immunization services and programs.

D. Work with State and local health agencies and community-based primary care programs (e.g. community health centers) to identify the major immunization problems which require a broad base of community support to achieve resolution.

E. Convene meetings of public and private health care providers, volunteer groups, community-based organizations, consumer advocates, members of the corporate sector, and other organizations to inform them of immunization issues and to solicit and secure their support/contributions to these efforts.

F. Develop and/or disseminate instructional protocols and manuals to enable State/local coalition chapters to train individuals, organizations, and community leaders as advocates of immunization services.

G. Develop a plan to ensure continuation of IEAC activities beyond expiration of grant support.

H. Encourage and participate in the development of pilot projects.

Evaluation Criteria

The applicant will be evaluated according to the following criteria:

A. The quality and potential effectiveness of the applicant's plan for conducting program activities and methods for meeting the stated purpose (20%).

B. The extent to which the applicant demonstrates the ability to work with State and local health agencies, community-based primary health care agencies (e.g., community health centers), and other community-based service organizations, businesses, and others, through established networks and coalitions. (20%)

C. The extent to which the applicant's objectives are specific, realistic, measurable, time-phased, and related to activity requirements (15%).

D. The adequacy of plans to evaluate progress in implementing methods and achieving goals (15%).

E. The extent to which background information and other activities demonstrate that the applicant has the administrative support and accessibility to an adequate number of member organization representatives. This includes written evidence of collaboration describing previous collaborative efforts (10%).

F. An understanding of the importance of child health issues, and the feasibility of accomplishing the desired outcome (10%).

G. The extent to which qualified and experienced personnel are available to carry out the proposed activities (10%).

H. The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372

This application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.185.

Application and Submission Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Henry S. Cassell III, Grants Management Officer, Attn: Lisa Tamaroff, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, on or before July 5, 1995.

1. Deadline:

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.

2. Late Applications:

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Pace Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796.

Please refer to Announcement Number 541 when requesting information and submitting an application.

Technical assistance may be obtained from Kenneth Anderson, Project Officer, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road NE., Mailstop E–52, Atlanta, GA 30333, telephone (404) 639–8222.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001- 00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 11, 1995.

Joseph R. Carter,

Acting Associate Director for Managementnd Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–12114 Filed 5–16–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 552]

National Institute for Occupational Safety and Health, Farm Family Health and Hazard Surveillance Cooperative Agreement Program

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 1995 cooperative agreements to continue the current program of population-based farm family health and hazard surveys in six States. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section **Where to Obtain Additional Information.**)

Authority

This program is authorized under Section 20(a)(1) (29 U.S.C. 669(a)(1)) of the Occupational Safety and Health Act of 1970 and Section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act, as amended.

Smoke-Free Workplace

The PHS strongly encourages recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications will only be accepted from organizations currently obtaining prevalence and incidence data on the illness, injuries, and exposures to work-place hazards experienced by farmers and farm families (previously funded under CDC Announcement Number 040). The following is a list of those non-profit or public organizations: California Department of Health Services; California Public Health Foundation; Colorado State University; The University of Iowa; University of Kentucky; New York State Department of Health; and The Ohio State University.

Availability of Funds

Approximately $1.9 million is available in FY 1995 to fund up to six awards. It is expected that the average award will be $300,000. The awards are expected to begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

In 1990, Congress mandated "* * * a series of surveillance, research, and intervention initiatives that when sustained over a period of time will have a significant and measurable impact on these health effects among rural Americans. The purpose of the recommended surveillance and research efforts is to better assist the CDC and other parties in developing strategies to reduce the unacceptably high injury and disease rates among rural Americans." A "U.S. farm family health and hazard survey" was one of two specific surveillance initiatives called for by Congress "* * * to develop more complete information on agricultural injury and disease problems." The National Institute for Occupational Health (NIOSH), Farm Family Health and Hazard Surveillance (FFHHS), and other Congressionally mandated initiatives became the CDC/NIOSH National Initiative in Agricultural Safety and Health. A total of 2 million dollars was allocated in FY 1990 to the FFHHS.

The NIOSH/FFHHS cooperative agreement program was developed to respond to Congress' concern that agricultural workers and their families experience a disproportionate share of disease and injury associated with the chemical, biological, physical, ergonomic, and psychological hazards of agriculture. Specifically, population-based health and hazard data was unavailable on the incidence and prevalence of disease, injury, or exposure to workplace hazards among farmers and farm families.

The goal of the NIOSH/FFHHS cooperative agreement program is to obtain prevalence and incidence data on the illnesses, injuries, and exposures to work-place hazards experienced by farmers and farm families. The NIOSH/FFHHS has two primary survey objectives. The first objective of the program is to describe the health status of agricultural workers and their families. The second objective of the program is to describe work-related risk factors and conditions of exposure to potentially hazardous agents and events.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Provide periodic updates on health status and hazard surveys.
2. Complete health status and hazard surveys.
3. Conduct independent analyses and disseminate the information through appropriate technical, professional, and other printed media. Disseminate results to the agricultural community, technical and agricultural resource organizations within the State, and through appropriate professional conferences.
4. Provide health status and hazard survey data to CDC/NIOSH as part of an overall analysis of the separate surveys.

B. CDC/NIOSH Activities

1. Provide consultation and/or assistance in the collection and compilation of the survey data. Receive, compile, edit, and manage health and hazard survey data provided to CDC/NIOSH.
2. Coordinate the active involvement of CDC/NIOSH staff in the planning, analysis, and interpretation of the health status and hazard survey data.
3. Consult with recipients that are contributing data or providing technical consultation to CDC/NIOSH on the preparation and dissemination of survey reports.
4. Facilitate preparation and dissemination of survey results through CDC/NIOSH technical reports or other appropriate scientific journals or publications.
5. Provide staff involvement in the analysis, interpretation, and dissemination of the health status and hazard survey data and, in some capacity, in the writing or review of recipient-initiated draft and final reports.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Relevance of the proposal to the background, purpose, and objectives of the current program (see **Purpose** Section), and the technical merit and originality of the proposed approach to the problems in the measurement and identification of health conditions and health hazards within agricultural populations (25%);
2. Adequacy and feasibility of the methodology and approach (25%);
3. Prior progress and accomplishments under the NIOSH/FFHHS cooperative agreement program (20%);
4. Training, experience, and competence of the proposed Project Director(s) and staff. The project director must be a recognized scientist and technical expert, and must provide assurances of major time commitments to the project (20%);
5. Suitability of the facilities (10%);
6. Appropriateness and justification of the requested budget relative to the proposed work (not scored).

Executive Order 12372 Review

This program is not subject to Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to Public Health Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this project is 13.262.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, GA 30305, on or before June 28, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 552. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, GA 30305, telephone (404) 842–6546. Programmatic technical assistance may be obtained from John P. Sestito, Assistant Chief, Surveillance Branch, Division of Surveillance, Hazard Evaluations and Field Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop R–17, Cincinnati, OH 45226, telephone (513) 841–4303.

Please refer to Announcement Number 552 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 10, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–12110 Filed 5–16–95; 8:45 am]

BILLING CODE 4163–19–P

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare/Medicaid Psychiatric Hospital Survey Data; *Form No.:* HCFA–724; *Use:* The collection of these data will assure an accurate data base for program planning and evaluation, and survey team composition for surveys of psychiatric hospitals. All freestanding psychiatric hospitals surveyed will be required to respond; *Respondents:* Federal Government, State, local, or tribal government, not-for-profit, and businesses or other for-profit; *Number of Respondents:* 350; *Total Annual Responses:* 1; *Total Annual Hours Requested:* 175.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Hospice Request for Certification in the Medicare Program; *Form No.:* HCFA–417; *Use:* The Hospice Request for Certification form is the identification and screening form used to initiate the certification process and to determine if the provider has sufficient personnel to participate in the Medicare program; *Respondents:* Federal Government, State, local, or tribal government, not-for-profit, and businesses or other for-profit; *Number of Respondents:* 1,720; *Total Annual Responses:* 1; *Total Annual Hours Requested:* 430.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dora B. Ferguson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–11836 Filed 5–16–95; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health (NIH)

Public Health Services; Notice of the Meeting of the National Advisory Eye Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on June 1, 1995, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public on June 1 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on June 1 from approximately 11:30 a.m. until adjournment at approximately 5:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published later than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health)

Dated: May 10, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12083 Filed 5–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Vision Research Review Committee.

Date: June 5, 1995.

Time: 8:00 a.m. until adjournment at approximately 6:00 p.m.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 652–2000.

Contact Person: Lois DeNinno, Committee Management Officer, EPS 350, 6120 Executive Blvd. MSC 7164, Bethesda, MD 20892–7164, 301/496–5301.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health, HHS)

Dated: May 10, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12084 Filed 5–16–95; 8:45 am]

BILLING CODE 4140–01–M

Notice of the Meeting of the National Eye Institute Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute (NEI), June 5 and 6, 1995 in the NEI Conference Room, Building 31, Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 5 from 9 a.m. until approximately 4 p.m. for general remarks by the Director, Intramural Research Program, NEI, on matters concerning the intramural program of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 5 from approximately 4 p.m. until recess and on June 6 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Ophthalmic Genetics and Clinical Services Branch. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Lois DeNinno, Committee Management Officer, NEI, EPS/350, Bethesda, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: May 10, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12085 Filed 5–16–95; 8:45 am]

BILLING CODE 4140–01–M

Office of the Secretary

Assistant Secretary for Planning and Evaluation, Notice Inviting Applications for New Awards for Fiscal Year 1995

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) of the Department of Health and Human Services (HHS).

ACTION: Request for applications for a cooperative agreement to establish a Research Center to plan and conduct a broad program of policy research and training of young scholars to describe and analyze national and state policy affecting poor families with children. This research and evaluation program will focus on important and emerging social policy issues associated with the nature, causes, correlates, and effects of income dynamics, poverty, family functioning and child well-being.

SUMMARY: The U.S. is experiencing profound social changes relating to the economic security and functioning of families and the well-being of children. The manner by which government reacts to or precipitates these changes also is in flux. In order to inform the public and policy makers about these social trends and their causes, consequences, and cures DHHS is soliciting applications for a cooperative agreement to a university-based institution. ASPE expects to fund this Research Center for a period of five years. The first year funding is at least $1,500,000. We expect a total funding of approximately $7.5 to $8.0 million over the five year funding period. (See Part I, Available Funds)

Cooperative Agreements are assistance mechanisms and subject to the same administrative requirements as grants; however, they are different from either a grant or a contract. Compared to a grant, they allow more involvement and collaboration by the government in the affairs of project, but provide less direction of project activities than a contract. The Terms of Award are in addition to not in lieu of otherwise applicable guidelines and procedures.

DATES: The closing date for submitting applications under this announcement is September 14, 1995.

ADDRESSES: Send application to Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201. Attention: Albert A. Cutino, Grants Officer.

FOR FURTHER INFORMATION CONTACT: Application Instructions and Forms should be requested from and submitted to: Grants Officer, Department of Health and Human Services, ASPE/IO, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Telephone: (202) 690–8794. Requests for forms and questions (administrative and technical) will be accepted and responded to up to 30 days prior to closing date of receipt of Applications. Technical questions should be directed to Don Oellerich or Matt Stagner, DHHS, Office of Human Services Policy, Telephone: (202) 690–5877 or 690–5653. Questions also may be faxed to (202) 690–5672. Written technical questions should be addressed to Drs. Oellerich or Stagner at the above address. (Application submissions may not be faxed.)

ELIGIBLE APPLICANTS: The Department seeks applications from universities or other post-secondary degree granting entities. (For-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant.) Profit is any amount in excess of allowable direct and indirect costs of the grantee.

Part I—Supplementary Information

Legislative Authority

This cooperative agreement is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 103–112 (DHHS Appropriation Act for FY 1996).

Project History and Purpose

This award (cooperative agreement) replaces the current grant with the Institute for Research on Poverty (IRP) at the University of Wisconsin. (A brief description of the current Institute and its activities is attached to the Application Package.) Although the winning applicant will be expected to carry out IRP's strong scholarly traditions and concern for poverty, there are no specific projects that must be continued under this award.

Available Funds

1. The Assistant Secretary has available $1,500,000 to $2,000,000 for the first year of a five-year award of a grant pursuant to this announcement.

2. Applications are to include separate estimates for each of the five years, if they expect funding levels to be substantially different in subsequent years.

3. The amount of funds available for the grant in future years has not been established. Legislative support for continued funding of the Center cannot be guaranteed and funding is subject to future appropriations and approval of the Assistant Secretary. ASPE expects, however, that the Center will be supported during future fiscal years at an annual level of effort commensurate with the initial period.

Although a single award is anticipated, nothing in this announcement restricts the ability of the Assistant Secretary for Planning and Evaluation to make more than one award or to make a scaled-down award.

Period of Performance.

The award pursuant to this announcement will be made on or about December 15, 1995.

Part II—Establishment of a Research Center—Responsibilities of the Awardee and the Federal Government

Awardee Responsibilities

The successful applicant shall develop and conduct a program which appropriately balances research, mentoring young scholars, and dissemination activities directed to understanding the economic security of families and the well-being of children. The program is to focus on tracking and analyzing changes in State and national policies and their influences on child and family outcomes. Specifically, ASPE has identified four priority areas the applicant should address, at a minimum:

A. Strategies to encourage work, self-reliance, parent responsibility, community, and child well-being.

B. The changing labor market and its influence on low income families with children.

C. Non-marital child-bearing and teenage pregnancy.

D. State initiatives to reduce welfare dependency, provide employment and training, make work pay, reduce teenage pregnancy, improve child services, and increase family functioning.

While these are ASPE priorities, applications also may address other important aspects of poverty, for example: the implications of health and disability status for poverty policy; concerns for the well-being of individual adults in poverty, and the interaction between income security programs, like welfare, and service programs such as child care, child development, child welfare services and education.

The overall program will develop and disseminate knowledge about these and related issues. Activities will include tracking, evaluating, and analyzing state and local government initiatives to reduce poverty, encourage economic mobility, and alleviate the ill-effects of low income and inappropriate family functioning. Activities also should examine alternative public and private approaches.

The awardee will perform the following tasks:

1. *Research Program.* The Center will be expected to plan, initiate and maintain a research program of high caliber. It must meet the tests of social science rigor and objectivity. The program will strive for respect from the academic and policy communities (over a broad range of the political spectrum) for its scientific quality, fairness, and policy relevance. This program should include an appropriately balanced agenda of quantitative and qualitative field work, and primary and secondary analyses.

The research program should include supporting the work of members of the Center staff and other affiliated researchers. In addition, it should provide intellectual leadership in the national research community by establishing links with a broad range of other scholars, through visiting and post-doctoral appointments, research assistanceships, and a limited program of nonresident grants, for example.

ASPE anticipates working very closely with the National Institute for Child Health and Human Development (NICHD) to coordinate and possibly fund joint activities also studying children, families, and poverty. The research center funded under this announcement will be expected to participate with other ASPE–NICHD child and family poverty activities; for example, collaborative projects with the existing Family and Child Well-Being Research Network or Population Research Centers. This collaboration is expected to enhance the research in this field extending its breadth, depth, and variety.

The research program should include multi-disciplinary approaches to increase the understanding of the issues beyond what is possible from analysis within the framework of a single discipline. At a minimum, the staff should include competency in economics, sociology, public policy/administration, and other related disciplines.

Furthermore, it also is appropriate, for example, to engage in activities to make advances in research techniques, where they are needed for or related to primary objectives of the Center.

Planning and execution of the research program shall always consider the policy implications of research findings. The Center should link research to public and private efforts to improve the lives of low income families. The research and dissemination will be non-partisan and of value to all levels of policy making—Federal, State, and local government—and the general research community.

A national advisory committee (discussed below) shall periodically review the research agenda to assure its policy relevance, utility, and scope.

2. *Mentoring Young Scholars.* The Center is expected to develop and expand a diverse corps of young scholars/researchers who focus their analytical skills on research and policy issues central to its mission. To assure the quality of its research, dissemination, and training program, and to assure a careful examination of the output of the Center within the academic community, the Center must establish and maintain a formal tie with a university, including links with all appropriate departments within that university. The Center must have a major presence at a single site (university or city); however, innovative arrangements among universities and with individual scholars at other universities are encouraged and also may be proposed. The Center will be expected to financially support the work of graduate research assistants, PhD candidates, Post-Docs, and other research scholars. The application should anticipate that several of the scholars may spend time in residence in Washington, D.C.

3. *Dissemination.* Making knowledge and information available to the academic and policy communities is to be another integral feature of the Center's responsibilities. It will be expected to maintain a dissemination system of periodic newsletters, research papers, and occasional books intended both for the research and policy communities. In addition, the Center will be expected to organize workshops, lectures, seminars, and other ways of sharing current research activities and findings. Applicants are encouraged to propose use of innovative methods of disseminating data and information, such as Internet. Applications should show a sensitivity to the different dissemination stragegies which may be appropriate for different audiences—such as policy makers, practitioners, and academics.

Cooperative Agreement Responsibilities

Center Responsibilities: The awardee has the primary and lead responsibility to define objectives and approaches, and to plan research, conduct studies, analyze data, and publish results, interpretations, and conclusions of its work.

Occasionally, Center staff will be expected to comment on research plans, provide critical commentary on research products, perform statistical policy analyses, and other quick-response activities to support ASPE's research, evaluation, and policy analysis function. (Without compromising academic freedom, Center staff will be expected to comply with special requests for administrative confidentiality in specific sensitive situations.)

HHS will not interfere with nor infringe upon the academic freedom associated with the university setting. The awardee will retain custody of and have primary rights to the data developed under this award, subject to Government rights to access consistent with current HHS and ASPE regulations. The awardee shall make reasonable efforts, however, to provide other researchers appropriate and speedy access to research data from this project and establish public use files of research data developed under this award.

The ASPE Poverty Research Center will be expected to participate in various research and dissemination activities associated with the ASPE and NICHD. For planning purposes, applicants for this award should anticipate expenses to no more than $50,000 annually. Such expenses, for example, might cover commissioning papers or travel to meetings and conferences.

ASPE Responsibilities: ASPE will be involved with the Center in jointly establishing broad research priorities and planning strategies to accomplish the objectives of this announcement. ASPE, or its representatives, will provide the following types of support to the Center:

1. Consultation and technical assistance in planning, operating, and evaluating the Center's program activities.
2. Information about HHS programs, policies, and research priorities.
3. Assistance in collaborating with appropriate State and local governmental officials in the performance of program activities.
4. Assistance in identifying HHS information and technical assistance resources pertinent to the Center's success.
5. Assistance in the transfer of information to appropriate Federal, state, and local entities.
6. Review of Center activities and collegial feedback to ensure that objectives and award conditions are being met. ASPE retains the right, however, to withhold annual renewals to the awardee, if technical performance requirements are not met.

Joint: The awardee and ASPE will appoint an outside advisory committee, funded under this agreement, composed of approximately ten to twelve nationally recognized scholars and practitioners. This committee will be selected to provide assistance in formulating the research agenda and advice on carrying it out. Efforts will be made in selecting this committee to assure a broad range of academic disciplines and political viewpoints. (For example, the current National Advisory Committee is composed of 12 individuals of national reputation. ASPE and the current Institute for Research on Poverty each appoint six members.) This committee will meet once or twice a year rotating between Washington, D.C. and the Center location.

Arbitration Procedures: Both parties are expected to work in a collegial fashion to minimize misunderstandings and disagreements. They should explore every alternative to prevent impasses, including consultation with the National Advisory Committee, but on the rare occasion when agreement between the awardee and ASPE staff cannot be reached on significant programmatic or scientific-technical issues that might arise after the award, an arbitration panel shall be formed. The panel will consist of one person appointed by the awardee, one person appointed by the ASPE, and a third person appointed by these two members. The decision of the arbitration panel, by majority vote will be binding. These special arbitration procedures in no way affect the awardee's right to appeal an adverse action in accordance with HHS regulations at 45 CFR Part 16.

Part III—Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement, the forms necessary for submission and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

In general, ASPE seeks organizations with demonstrated capacity for providing quality policy research, training of young scholars, and working with state and local governments. Applicants for funding should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in the announcement. The application should specify in detail how administrative arrangements will be made to minimize start-up and transition delays. Applications which do not address all three major tasks discussed in Awardee Responsibilities in Part II will not be considered for award.

The applicant must have experience and a demonstrated capacity to work with governmental agencies—Federal, state, or local.

It is anticipated that the applicant will have additional funding and arrangements with other organizations and institutions. The applicant shall make all current and anticipated related funding arrangements explicit in the application.

Content and Organization of Technical Application (see "Components of a complete Application").

The application must begin with the required application forms and a three to five page overview and summary of the application. Staff resumes should be included in a separate appendix. The central core of the application must contain five sections, presented in the following order:

(1) A brief *analysis* of the key trends in individual and family economic security, the prevalence of poverty, family functioning, child well-being, and other primary research themes of the proposed Center. It should then examine the nature, causes, and correlates of one or two of the trends. The analysis should discuss concisely, but comprehensively, important priority research issues and demonstrate the applicant's grasp of the policy and research significance of recent and future social trends. The discussion should emphasize (but not necessarily be limited to) the past twenty years and the remainder of the decade. Examples of the kinds of issues that might be discussed include the effects of social and demographic trends (for example, changes in fertility, marital stability, welfare dependency, migration, and special problems facing children), economic trends (the effects of inflation, changing rates of economic growth, shifts in the location and types of jobs available, skills mismatches between labor supply and demand, the growth of fringe benefits as part of total compensation, economic stabilization policies, etc.) and government programs and policies (e.g., current welfare reform initiatives, employment and training programs, teenage pregnancy prevention projects, and the demand for new or revised programs.)

(2) A *prospectus* for a five year research agenda, outlining the major research themes to be investigated over the next five years. In particular, the prospectus will describe the activities planned for each of the research priority issues outlined in Part II, *Awardee Responsibilities* and other additional priority research topics proposed by the applicant. The prospectus should discuss the kind of research activities that are needed to anticipate future policy debates on important social issues—poverty and child well-being, in particular—and the role of the proposed Research Center in promoting those

activities. The prospectus should follow from the historical analysis section. It may, of course, also discuss research areas and issues that were not mentioned in that analysis if the author or authors of the application feel there have been gaps in past research, or that new factors have begun to affect or soon will begin to affect national social policy.

The prospectus shall include detailed descriptions of individual research projects that will be expected in the Center's first year of operation. It also should be specific about long-term research themes and projects. The lines of research described in the prospectus should be concrete enough that project descriptions in subsequent research plan amendments can be viewed as articulating a research theme discussed in the prospectus. An application that simply contains an *ad hoc* categorization of an unstructured set of research projects—as opposed to a set of projects which strike a coherent theme—will be judged unfavorably.

Note: Once a successful applicant has been selected and the national Advisory Committee appointed, they and ASPE will review the research agenda and determine research priorities. The Center will submit to ASPE a revised research plan that summarizes the deliberations and priorities. The research plan will be periodically reviewed and revised as necessary. (The awardee is not expected to participate in joint ASPE–NICHD activities before the spring or summer of 1996.) The application should discuss a proposed research planning process, including involvement of the national advisory committee and other advisors, and participation in the consortium.

The application will be judged on breadth and depth of the applicant's commitment to research of priority research areas, noted above. Evaluation scores also may be enhanced by applicants additions to this research priority list which help flesh out other links between other factors and poverty, family functioning, and child well-being. The entire prospectus will be judged on the likelihood of producing seminal research in the areas of highest priority. In addition, it will be judged on it relevance to government activities to reduce poverty and promote child well-being. Scoring also will consider whether there is a balance between data gathering and data analyses, between quantitative and qualitative research, and among research, dissemination and training of scholars.

This section should also discuss efforts which will assure a smooth transition between the current IRP grant and this project.

(3) A *staffing and organizational proposal* for the Research Center, including an analysis of the types of background needed among staff members, the Center's organizational structure, and linkages with the host university and other organizations. It is in this third section that the application should specify how it will assure a genuinely interdisciplinary approach to research, and where appropriate, the necessary links to university departments, other organizations and scholars engaged in research, and government policy making.

The applicant shall identify the director (or principal investigator) and key senior research staff. Full resumes of proposed staff members shall be included as a separate appendix to the application. The time commitment to the Center and other commitments for each proposed staff member shall be indicated. The kinds of administrative and tenure arrangements, if any, the Center proposes to make should also be discussed in this section. In addition, the author(s) of the application and the role which he or she (they) will play in the proposed Poverty Research Center must be specified.

This section shall discuss the financial arrangements for supporting research assistants, post-docs, affiliates, resident scholars, etc. The discussion should include the expected number and types of young scholars to be supported and the level of support anticipated.

If the application envisions an arrangement of several universities or institutions, this section will describe the specifics about the relationships, including leadership, management, and administration. It should pay particular attention to discussing how a focal point for research, teaching, and scholarship will be maintained given the arrangement proposed.

The application also should discuss the role, selection procedure, and expected contribution of the national advisory committee.

(4) The application will include an organizational summary of past work at the university or institution proposed as the location (or lead) of the Research Center that relates directly or indirectly to the research priorities of this request. This discussion should include more than a listing of the individual projects completed by the individuals who are included in the application. It should provide a sense of institutional commitment to policy research and resolution of the problems facing the nation's families and public institutions. Where specific individuals are proposed for the staff of the Center, it is legitimate to discuss their past research, whether or not it took place at the institution proposed to be the location of the new Research Center or the host university. The application must list in an appendix appropriate recent or current research projects, with a brief research summary, contact person references, and address and telephone number of reference.

This section also should include a discussion of the research staff experience working with government agencies and demonstrate a capacity to provide policy relevant support to these agencies.

(5) A budget summary narrative which links the research, training, and dissemination program to the Center funding level. This section should discuss how the five-year budget supports proposed research, training, and dissemination activities and should link the first year funding to a five year plan. The discussion should include the appropriateness of the level and distribution of funds to the successful completion of the research, training, and dissemination plans. Also, the limited amount of funds available for this award may indicate the desirability of using these funds as partial, core support for the proposed Center and applicant having or seeking additional support from other sources.

The availability, potential availability or hope for other funds (from the host university, other universities, foundations, states, other Federal agencies, etc.) and the uses to which they would be put, should be documented in this section. Applications which show funding from other sources that supplement funds from this grant will be given higher marks than if they have no extra financial support.

Review Process and Funding Information. A panel of at least three independent experts will review and score all applications that are submitted by the deadline date and which meet the screening criteria (all information and documents as required by this Announcement.) The panel will review the applications using the evaluation criteria listed below to score each application. These review results will be the primary element used by the ASPE in making funding decisions.

HHS reserves the option to discuss applications with other Federal or State staff, specialists, experts, and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

State Single Point of Contact (E.O. No. 12372). The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

Deadline for Submission of Applications. The closing date for submission of applications under this announcement is September 14, 1995. Applications must be postmarked or hand-delivered to the application receipt point no later than 4:30 p.m. on September 14, 1995.

Hand-delivered applications will be accepted Monday through Friday prior to and on September 14, 1995 during the hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick-up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before September 14, 1995, or (2) postmarked before midnight of the deadline date September 14, 1995 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.), or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the September 14, 1995 deadline are considered late applications and will not be considered or reviewed in the current competition. HHS will send a letter to this effect to each late applicant.

HHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Applications Forms. See section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Length of Application. Applications should be brief and concise as possible, but assure successful communication of the applicant's proposal to the reviewers. In no case shall an application (excluding the resume appendix and other appropriate attachments) be longer than 150 double-spaced pages; it should neither be unduly elaborate nor contain voluminous supporting documentation.

Selection Process and Evaluation Criteria. The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline.

Selection of the successful applicant(s) will be based on the technical and financial criteria laid out in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores—out of a possible 100 points. The review panel will prepare a summary of all applicant scores and strengths/weaknesses and recommendations and submit it to the ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical relative weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications. Applications will be reviewed as follows:

(a) Quality of the historical analysis. [See Part II, Type of Application Requested, Section 1.] (15 points) Applications will be judged on whether they provide a thoughtful and coherent discussion of economic, social, and demographic trends influencing the family and children. Reviewers will judge applicant's ability to discuss the past, present, and future role of government programs and policies which affect these trends. Applicants should tie the trends and influences discussed to their proposed research agenda.

(b) Quality of the research prospectus. [See Part II, Section 2.] (25 points) Reviewers will judge this section on the basis of whether the research agenda is scientifically sound and policy relevant. They also will consider whether the applicant is likely to make significant/seminal contributions to understanding poverty, families, child outcomes, and what governments can do to make the lives of single adults, children and families more secure, healthier, and open to opportunity. Although the discussion and research proposed must address the major themes of this announcement (low-skills labor market, out-of-wedlock childbearing, strategies to strengthen families and encourage independence, and evaluating state initiatives), applications with additional insightful research proposals also will score higher. Concise plans for research projects in the near term (one or two years) as well as a five-year agenda are important. We will rate applications on their plans to conduct policy relevant research and interact with various levels of government to research and evaluate significant government initiatives and policies. In addition, applicants will be judged on their dissemination plans—including convening conferences and workshops and communicating with a broad audience of academics, policymakers, and practitioners.

(c) Quality of the staffing proposal and proposed organizational arrangements. [See Part II, Sections 3. and 4.] (30 points) Reviewers will judge applicant's director/principal investigator and staff on research experience, demonstrated research skills, administrative skills, public administration experience, and relevant policymaking skills. Ratings may consider references on prior research projects. Director and staff time commitments to the Center also will be a factor in the evaluation. Whether the applicant can maintain a single location for research, teaching, and scholarship is an important consideration. Furthermore, reviewers will rate the applicant's pledge and ability to work in collaboration with other scholars in search of similar goals. Applicants will be judged on the nature and extent of the organizational support to research, mentoring scholars, and dissemination in topical areas related to the Center's central priorities and this request. Reviewers will evaluate the commitment of the university (and proposed institutional unit that will contain the Center) to assess its ability to support all three major Center

activities: (1) scholarly, policy relevant research; (2) the mentoring and development of young scholars interested in poverty, families, children, and public policy; and (3) dissemination of research and other information to a broad and disparate set of academic, research, and policy communities. Reviewers also will evaluate the applicant's demonstrated capacity to work with a range of government agencies.

(d) Training and mentoring young scholars. [See part II, Section 3.] (15 points) The applicant evaluation will consider proposed efforts to develop and expand a diverse corps of young scholars and researchers. The ratings will consider the proposed mentoring and support given to graduate research assistants, PhD candidates, Post-Docs, and other research scholars. The evaluation will include an assessment of plans to integrate the training of research scholars and exposing them to policy research activities at ASPE.

(e) Appropriations of the budget to carry out the planned staffing and activities. [See part II, Section 5.] (15 points) Ratings will consider whether: (a) The budget assures an efficient and effective allocation of funds to achieve the objectives of this solicitation and (2) the applicant has additional funding from other sources. When additional funding is contemplated, applicants shall note whether the funding is being donated by the institution, is in-hand from another funding source, or will be applied for from another funding source.

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of an application, the ASPE will either (a) approve the application in whole, as revised, or in part for such amount of funds and subject to such conditions as are deemed necessary or desirable for the initiation and operation of one or more Research Centers; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The ASPE will notify the applicants of the disposition of their application. A signed notification of award will be issued to notify the applicant of the approved application.

Components of a Complete Application. A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, Revised 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, Revised 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, Revised, 4–88);
4. Table of Contents;
5. Budget Justification for Section B—Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement if necessary;
8. Project Narrative Statement, organized in five sections addressing the following topics:
   (a) Understanding of the Effort,
   (b) Project Approach,
   (c) Staffing Utilization, Staff Background, and Experience,
   (d) Organizational Experience, and
   (e) Budget Narrative;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Work place;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel; and
14. Application for Federal Assistance Checklist.

Dated: May 8, 1995.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 95–12118 Filed 4–16–95; 8:45 am]

BILLING CODE 4151–04–M

Office of the Assistant Secretary for Health

Availability of Funds and Request for Applications for Bilingual/Bicultural Service Demonstration Projects in Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, PHS, DHHS.

ACTION: Notice of Extension of Application Deadline for Request for Applications.

The Notice of Availability of Funds published Thursday, April 13, 1995, (60 FR 18934) had a due date for application receipt of May 15, 1995. This notice extends the deadline date to May 31, 1995.

ADDRESSES/CONTACTS: Applications must be prepared on Form PHS 5161–1 (Revised July 1992 and approved by OMB under Control Number 09370189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD, 20852, (telephone 301/594–0758) or by Internet E-mail cwilliams@oash.ssw.dhhs.gov. Completed applications are to be submitted to the same address.

Technical assistance on the programmatic content for the Bilingual/Bicultural Grants may be obtained from Ms. Nina Darling or Ms. Rizalina Galicinao. They can be reached at the Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, (telephone 301/594–0769) or by Internet E-mail ndarling@oash.ssw.dhhs.gov or rgalicin@ash.ssw.dhhs.gov.

In addition, OMH Regional Minority Health Consultants (RMHCs) are available to provide technical assistance. a listing of the RMHCs and how they may be contacted is provided in the grant application kit. Applicants also can contact the OMH Resource Center (OMH/RC) at 1–800–444–6472 for health information and generic information on preparing grant applications.

DEADLINE: To receive consideration, grant applications must be received by the Grants Management Officer by May 31, 1995. Applications will be considered as meeting the deadline if they are either: (1) Received at the above address on or before the deadline date, or (2) Sent to the above address on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications submitted by facsimile transmission (FAX) WILL *not* be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Dated: May 8, 1995.

Clay E. Simpson, Jr., Ph.D.

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 95–12116 Filed 5–16–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1220–00]

Shooting Closure on Public Lands in Fremont County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure order.

SUMMARY: The BLM Canon City District is closing approximately 1,840 acres of public land in the Garden Park Fossil Area, located in Fremont County, Colorado, to recreational target shooting for the purpose of enhancing public safety. For this closure order, recreational target shooting is defined as the discharge of any weapon for any purpose other than the lawful taking of a game animal recognized by the State of Colorado. Bows and arrows are not included within this definition. Recreational shooters may use other public lands where public safety is not at risk. No person shall violate any Federal, State or local laws pertaining to use, possession or discharge of firearms while on any BLM administered public lands.

EFFECTIVE DATE: May 22, 1955.

ADDRESSES: Copies of the map and details of the closure can be obtained from the Area Manager, BLM Royal Gorge Resource Area, 3170 E. Main Street, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Diana Williams, Outdoor Recreation Planner, Royal Gorge Resource Area, at the above address or by calling (719) 275–0631.

SUPPLEMENTARY INFORMATION: BLM administers approximately 3,000 acres of public land in the Garden Park Fossil Area, located about 5 miles north of Canon City, CO. The area, especially along Fremont County Road 9, has been popular as a target shooting area due to its proximity to Canon City. Recently, the area's popularity has increased because of the interest in its internationally significant dinosaur fossils and the use of Fremont County Road 90 as part of the Gold Belt Tour Back Country Byway. In addition, there are private lands with residential structures adjacent to the public lands. The closure is necessary to protect recreationists and other users of the public lands, as well as persons and property adjacent to the public lands. BLM addressed these concerns in a public meeting and through a seven-member public committee. This committee developed a proposal to resolve the concerns. This closure order reflects the results of the committee's work. The public lands affected by this closure are located at:

6th Principal Meridian

T. 17 S., R. 70 W.,
Sections 20, 21, 23, 26–29, 33, 34; and
T. 18 S., R 70 W.,
Sections 2–4

A copy of this **Federal Register** notice and a map showing the closed area and those public lands available for recreational target shooting is posted in the Canon City District Office and in the Garden Park Fossil Area.

Authority for this action is found in 43 CFR 8364. Violation of this order is punishable by fine or imprisonment as defined in 18 USC 3571.

Stuart L. Freer,

Acting District Ranger.

[FR Doc. 94–12168 Filed 5–16–94; 8:45 am]

BILLING CODE 4310–JB–M

[MT–921–05–1320–01–P; MTM 83859]

Notice of Coal Lease Application—MTM 83859—Spring Creek Coal Company

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: This is Notice of Spring Creek Coal Company's Coal Lease Application MTM 83859 for certain coal resources within the Powder River Coal Region.

The land included in Coal Lease Application MTM 83859 is located in Big Horn County, Montana, and is described as follows:

T. 8 S., R. 39 E., P.M.M.
Sec. 25: SW¼SW¼
Sec. 26 S½NE¼NE¼SW¼, NW¼NE¼SW¼, N½S½NE¼SW¼, N½N½NW¼SW¼, SE¼NE¼NW¼SW¼, NE¼SE¼NW¼SW¼, N½S½NW¼SE¼
Sec. 27: N½SW¼NE¼, N½SE¼SW¼NE¼, NE¼SW¼SW¼NE¼, S½NW¼SE¼NE¼, S½SE¼NE¼, N½NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NE¼NE¼NE¼SE¼
T. 8 S., R. 40 E., P.M.M.
Sec. 30: S½NW¼NE¼SW¼, S½NE¼SW¼, NW¼SE¼NW¼SE¼, N½SW¼NW¼SE¼, S½S½N½SE¼, S½SE¼.

The 285.00-acre tract contains an estimated 37.8 million tons of recoverable coal reserves.

The application will be processed in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, et seq.), and the implementing regulations at 43 CFR 3400. A decision to allow leasing of the coal resources in said tract will result in a competitive lease sale to be held at a time and place to be announced through publication pursuant to 43 CFR 3422.

SUPPLEMENTARY INFORMATION: Spring Creek Coal Company is the lessee and operator of Coal Lease MTM 069782 at the Spring Creek Mine. The entire area included within this lease application lies south of and adjacent to the Spring Creek Mine and is within the Spring Creek Mine permit area.

On September 17, 1992, Spring Creek Coal Company received Federal Coal Exploration License MTM 81096 from the BLM to conduct drilling on lands contained within the Spring Creek coal lease application tract. The drilling program has been completed and the required information has been forwarded to the BLM.

Due to its coal reserve base and configuration, the Spring Creek lease application tract is a logical step to extend the life of the Spring Creek Mine. With the current permitted reserves of coal, the current level of production at the Spring Creek Mine can be maintained for approximately 19 additional years.

The area applied for would be mined as an extension of the Spring Creek Mine and would utilize the same methods as those currently being used. The lease being applied for can extend the life of the mine by about 4 years and enable recovery of coal that might never be mined if not mined as a logical extension of current pits at the Spring Creek Mine.

NOTICE OF AVAILABILITY: The application is available for review between the hours of 9 a.m. and 4 p.m. at the Bureau of Land Management, Montana State Office, 222 North 32nd Street, Billings, Montana 59101, and at the Bureau of Land Management, Miles City District Office, whose address is Garryowen Road, Miles City, Montana 59103, between the hours of 7:45 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ed Hughes telephone 406–255–2813, Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: May 8, 1995.

Larry E. Hamilton,

State Director.

[FR Doc. 95–12167 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–DN–P

[MT–921–05–1320–01–P; MTM 83997]

Coal Exploration License Application; Notice of Invitation

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Invitation; Coal Exploration License Application MTM 83997.

Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana:

T. 8 S., R. 39 E., P.M.M.
Sec. 13: SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, N½SE¼, SW¼SE¼
Sec. 14: E½NE¼, NE¼SE¼
Sec. 21: NE¼SW¼, SW¼SE¼
Sec. 23: NE¼NE¼ SE¼NW¼
Sec. 24: NW¼NW¼
Sec. 25: SW¼SW¼
Sec. 35: SE¼NE¼
T. 8 S., R. 40 E., P.M.M.
Sec. 29: SW¼SW¼
Sec. 30: SE¼
Sec. 31: Lots 1, 3, 4, NE¼SW¼
T. 9 S., R. 39 E., P.M.M.
Sec. 1: Lot 1
T. 9 S., R. 40 E., P.M.M.
Sec. 6: Lots 1, 3, 7, S½NE¼, NE¼SW¼, NE¼SE¼.
1,508.32 acres.

Any party electing to participate in this exploration program shall notify, *in writing,* both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 83997 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Sheridan Press, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the Sheridan Press.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Spring Creek Coal Company, is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: May 5, 1995.
Larry E. Hamilton,
State Director.
[FR Doc. 95–12074 Filed 5–16–95; 8:45 am]
BILLING CODE 4310–DN–P

[NM–040–1320–01]

Notice of Intent to Amend Oklahoma Resource Management Plan; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, is initiating preparation of a Resource Management Plan Amendment (RMP) and Environmental Assessment (EA) for BLM-managed Federal minerals in Le Flore County, Oklahoma. The Code of Federal Regulations, Title 43, Subpart 1600 (43 CFR 1600) will be followed in the preparation of this plan amendment. The public is invited to participate in this land use plan amendment effort. Written comments or suggested additional issues will be accepted through August 21, 1995. The BLM will hold a public scoping meeting at which time oral comments and suggestions will be accepted. This notice is to solicit coal resource information and indications of other interest and needs pursuant to 43 CFR 3420.1–2, and 3500, for inclusion in the Oklahoma RMP Amendment. Coal companies, other mineral extraction companies, state and local governments, and the general public are encouraged to submit information to the BLM to assist in the determinations of coal development potential and possible conflicts with other resources. If this information is determined to indicate development potential, further consideration for leasing will be given.

DATES: Comments relating to the identification of additional issues, and responses to this call for coal resource information will be accepted through August 21, 1995.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to: Bureau of Land Management, 221 North Service Road, Moore, Oklahoma 73160. Proprietary data should be identified as such to ensure confidentiality.

FOR FURTHER INFORMATION CONTACT: Catherine Wolff-White, Tulsa District BLM, (405) 794–9624.

SUPPLEMENTARY INFORMATION: The proposed Oklahoma RMP amendment will include the Federal coal lease application located in Section 3, T9N in Le Flore County, about 8 miles northwest of Spiro, Oklahoma. The property proposed to be leased, containing approximately 100 acres, is described as follows: NESW, SWSW, NWSESW.

The anticipated issue to be addressed by this RMP amendment effort is coal leasing and development.

We expect the development of this coal resource to be the issue addressed in the RMP amendment. Industry and other interested parties are asked to provide any information that will be useful in meeting the requirements of the Federal Coal Management Program defined in 43 CFR 3420, including application of the coal planning screens and possibly future activity planning such as tract delineation, ranking and selection. Information resulting from this call will be used to determine potential for coal development and likelihood of conflict with other resources within this 100-acre tract and any other tracts that may be determined to have additional interest.

Lands already considered in the Oklahoma Resource Management Plan, adopted in January 1994, need not be addressed.

The issue of Federal coal leasing and development will include:

1. Determining areas acceptable for further coal leasing consideration with standard stipulations;

2. Determining areas acceptable for consideration with special stipulations:

3. Determining areas unacceptable for further coal leasing consideration.

The BLM will apply the coal development potential, unsuitability criteria, multiple use conflict and consultation screens in order to make these determinations.

The type of information needed includes, but is not limited to, the following:

1. Location:

a. Federal coal tracts desired by mining companies should include a narrative description with areas delineated on a map with a scale of not less than ½ inch to the mile.

b. Descriptions of both public and private industry coal users in the general region.

2. Quantity needs (tonnage, dates) for both public and private industry coal users and coal developers.

3. Quality needs (by type and grade) for end users of the coal.

4. Coal reserve drilling data which may pertain to the planning area.

5. Information relating to surface and mineral ownership:

a. Surface owner consents previously granted, whether consent is transferable, surface owner leases with coal companies.

b. Non-federal, or fee coal ownership adjacent to Federal tracts currently leased or mined.

6. Other resource values occurring within the planning area which may conflict with coal development:

a. Describe the resource value, and locate it on a map at least ½ inch delineation.

b. State the reasons the particular resource would conflict with coal development.

Any individual, business entity, or public body may participate in this process by providing coal or other resource information under this call.

This planning issue is presented for public comment and is subject to change based upon such public comment. Comments should be received by close of business August 21, 1995. The planning team will seek public involvement throughout the planning amendment process. A public scoping meeting/open house will be held to provide the public an opportunity to participate in this planning effort.

The public meetings/open houses will start at 7:00 PM and is scheduled for: July 11, 1995 at the Bob Lee Kid Civic Center; 100 Pirate Lane, Poteau, OK.

Complete records of all phases of the planning process will be available for public review and comment at the Bureau of Land Management, Moore office, 221 North Service Road, Moore, Oklahoma.

The final RMP amendment documents will be available upon request.

Dated: May 8, 1995.

Jim Sims,

District Manager.

[FR Doc. 95–12075 Filed 5–16–95; 8:45 am]

BILLING CODE 1610–FB–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–802298

Applicant: National Zoological Park, Washington, D.C.

The applicant requests a permit to import skin biopsy samples and/or samples of blood and semen from cheetah (*Acionyx jubatus*), from Kruger National Park, Republic of South Africa for the purpose of enhancement of the species through scientific research.

PRT–802458

Applicant: Arturo J. Gutierrez, Weston, MA

The applicant requests a permit to import one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 12, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–12105 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The following applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.)

PRT–802451

Applicant: Dr. Steven W. Carothers, SWCA, Inc., Flagstaff, Arizona.

The applicant requests a permit to take the southwestern willow flycatcher (*Empidonax trailii extimus*) and Mexican spotted owl (*Strix occidentalis lucida*) at specific site locations in Arizona, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See Addresses above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–12112 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of Environmental Assessments/Habitat Conservation Plans and Receipt of Applications for Incidental Take Permits for Construction of Single-Family Residences on Lots in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Jim Herbert (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–801839. The requested permit, which is for a period of 1 year, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence at Westlake Highlands, Austin, Travis County, Texas.

Ralph Nichols Koster (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–801381. The requested permit, which is for a period of 1 year, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence on Lot 133, Cardinal Hills Subdivision, Unit 3, Travis County, Texas.

Carolyn Pratt (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The

Applicant has been assigned permit number PRT–801373. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence on Lot 23 (2.73 acres), Cloudy Ridge Road, Windmill Bluff Estates, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessments/Habitat Conservation Plans (EA/HCP) for each of the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by June 16, 1995.

ADDRESSES: Persons wishing to review the applications may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP's may obtain a copy by contacting Joseph E. Johnston or Alma Barrera, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (9:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Acting Field Supervisor, Ecological Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to the applicable permit number when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Alma Barrera at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANTS: The applicant (Herbert) plans to construct a single-family residence on Lot A, Westlake Highlands, Section 2–A, Travis County, Texas. This action will eliminate less than one-half acre of land and indirectly impact less than one-half additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

The Applicant (Koster), plans to construct a single-family residence on Lot 133 on Flamingo Road, Cardinal Hills Subdivision, Austin, Travis County, Texas. This action will eliminate less than one-half acre of land and indirectly impact less than one-half additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

The Applicant (Pratt) plans to construct a single-family residence on Lot 23 on Cloudy Ridge Road, Windmill Bluff Estates, Austin, Travis County, Texas. This action will eliminate less than one half acre of land and indirectly impacts less than one additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to each of these actions were rejected because selling or not developing the individual subject properties with federally listed species present was not economically feasible.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–12111 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–55–M

National Park Service

General Management Plan and Environmental Impact Statement for Sitka National Historical Park, Sitka, Alaska

ACTION: Notice of intent.

SUMMARY: The National Park Service (NPS) is preparing a general management plan (GMP) and accompanying environmental impact statement (EIS) for Sitka National Historical Park. Although the oldest National Park System unit in Alaska, a GMP has never been prepared for Sitka National Historical Park. The purpose of the EIS is to evaluate the impacts of alternative development and management scenarios proposed for the park in the GMP.

The NPS Gateway Community Planning Initiative selected this GMP/EIS as a pilot project. The initiative is designed to more directly involve communities in planning decisions for National Park System units with close geographic, historic, or cultural ties to the affected communities. Sitka National Historical Park lies entirely within the municipality of Sitka, Alaska.

Three public scoping meetings are scheduled to identify management issues for the park. These will be held on: Tuesday, June 6, 1995 at 7 pm in the auditorium of the Alaska Public Lands Information Center, Anchorage, Alaska; Wednesday, June 7, 1995 at 7 pm in the Hammond Room of Centennial Hall, Juneau, Alaska; and Friday, June 9, 1995 at 7 pm in the Park Visitor Center, Sitka National Historical Park, Sitka, Alaska.

The environmental impact statement will be prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 et seq.) and its implementing regulations at 40 CFR Part 1500. The NPS will prepare the EIS in conjunction with preparation of the GMP for Sitka National Historical Park.

Interested groups, organizations, individuals and government agencies are invited to comment on the plan at any time. The draft statement is anticipated to be available for public review in the summer of 1996.

FOR FURTHER INFORMATION CONTACT:

John Linquist, National Park Service, Alaska Regional Office, Division of Planning and Design, 2525 Gambell St., Room 107, Anchorage, Alaska 99503–2892. Telephone (907) 257–2465

or

Kevin Percival, Planning Team Captain, National Park Service, Denver Service Center, Team West, P.O. Box 25287, Denver, Colorado 80225–0287. Telephone (303) 969–2265

or

Gary Gauthier, Park Superintendent, Sitka National Historical Park, P.O. Box 738, Sitka, Alaska, 99835. Telephone (907) 747–6281

Dated: May 5, 1995.

Paul R. Anderson,

Deputy Regional Director, Alaska Region.

[FR Doc. 95–12032 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 6, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 1, 1995.

Carol D. Shull,

Chief of Registration, National Register.

Arkansas

Garland County

Visitors Chapel AME, 319 Church St., Hot Springs, 95000682

Hot Spring County

Hodges House, AR 7, Bismarck, 95000683

Sebastian County

Oak Cemetery, SE of jct. of Greenwood and Dobson Aves., Fort Smith, 95000665

Washington County

Landscape Features at No. 40 Crossover Rd., 40 Crossover Rd., Fayetteville, 95000666

Georgia

Lowndes County

Brookwood North Historic District, Roughly bounded by Patterson St., Georgia Ave., Oak St., Park Ave., Williams St. and Brookwood Dr., Valdosta,. 95000684

Idaho

Custer County

Niece Brothers' Store, Ace of Diamonds St., Stanley, 95000667

Kansas

Riley County

Elliot, Mattie M, House, 600 Houston St., Manhattan 95000672

Louisiana

Orleans Parish

Parkview Historic District, Roughly bounded by City Park Ave., Bayou St. John, Orleans, Rochbelave, Lafitte and St. Louis, New Orleans, 95000675

Massachusetts

Bristol County

Solider's Memorial Library, Jct. of Park Row and Union St., Mansfield, 95000681

Minnesota

Blue Earth County

Lincoln Park Residential Historic District, Roughly bounded by Shaubut, Record, Pleasant, 2nd, Liberty, Parsons Lock and Bradley Sts. and Grace and Wickersham Cts., Mankaot, 95000671

New Hampshire

Carroll County

Early Settlers Meeting House, Jct. of Granite and Foggs Ridge Rds., Town of Ossippe, Leighton Corner, 95000680

New York

Montgomery County

Guy Park Avenue School, 300 Guy Park Ave., Amsterdam, 95000669

Ontario County

Morgan Hook and Ladder Company, 18–20 Mill St., Naples, 95000668

North Carolina

Davie County

Boxwood Lodge, 132 Becktown Rd., Mocksville vicinity, 95000673

Henderson County

Reese House (Hendersonville MPS) 202 S. Washington St., Hendersonville, 95000676

Jackson County

Camp Merrie-Woode, US N side, 1.6 mi. N of jct. with NC 1120, at end of 1-mi.-long dirt rd., Cashiers vicinity, 95000674

Wade County

US Post Office, Former, 124 W. James St., Mount Olive, 95000670

Rhode Island

Newport County

Fort Hamilton Historic District, Rose Island, Newport, 95000663

Providence County

Freeman Plat Historic District, Roughly bounded by Morris, Sessions, Cole and Everett Aves., Providence, 95000664

Wisconsin

Fond Du Lac County

Ripon College Historic District, Jct. of Seward and Elm Sts., Ripon, 95000679

Waukesah County

Becker and Schafer Store Building, 1002–1004 White Rock Ave., Waukesha, 95000667

[FR Doc. 95–12096 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–696–698 (Final)]

Magnesium From China, Russia, and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, 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 materially injured [2] by reason of imports from China, Russia, and Ukraine of pure magnesium,[3] provided for in subheading 8104.11.00 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines 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 China and Russia of alloy magnesium,[4] provided for in subheading 8104.19.00 of the HTS, that have been found by the Department of

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice end Procedure (19 CFR § 207.2(f)).

[2] Cheirmen Wetson, Vice Cheirman Nuzum, end Commissioner Crewford dissenting.

[3] Pure megnesium encompasses: (1) Products thet contein et least 99.95 percent primary magnesium, by weight (generelly referred to es "ultra-pure" megnesium); (2) products containing less then 99.95 percent but not less then 99.8 percent primery megnesium, by weight (generelly referred to as "pure" magnesium); end (3) products (generelly referred to es "off-specification pure" magnesium) thet contein 50 percent or greater, but less then 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specificetions for elloy megnesium. "Off-specification pure" magnesium is pure primery megnesium conteining magnesium screp, secondery magnesium, oxidized magnesium or impurities (whether or not intentionally edded) that cause the primary magnesium content to fall below 99.8 percent by weight. It generelly does not contein, individuelly or in combination, 1.5 percent or more, by weight, of the following alloying elements: eluminum, mengenese, zinc, silicon, thorium, zirconium, and rare earths.

[4] Alloy magnesium contains 50 percent or greeter, but less than 99.8 percent, primary magnesium, by weight, end one or more of the following: eluminum, mangenese, zinc, silicon, thorium, zirconium, end rare earths, in emounts which, individuelly or in combinetion, constitute not less then 1.5 percent of the material, by weight. Products thet meet the eforementioned description but do not conform to ASTM specifications for alloy megnesium are not included in the definition of alloy magnesium. In eddition to primary megnesium, alloy megnesium mey contein magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

Commerce to be sold in the United States at LTFV.

Background

The Commission instituted these investigations effective November 7, 1994, following preliminary determinations by the Department of Commerce that imports of magnesium from China, Russia, and Ukraine 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 investigations 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 December 7, 1994 (59 FR 63105). The hearing was held in Washington, DC, on March 28, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 5, 1995. The views of the Commission are contained in USITC Publication 2885 (May 1995), entitled "Magnesium from China, Russia, and Ukraine: Investigations Nos. 731–TA–696–698 (Final)."

Issued: May 11, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12133 Filed 5–16–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–699 (Final)]

Stainless Steel Angle From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, 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 Japan of stainless steel angle, provided for in subheading 7222.40.30 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 November 10, 1994, following a preliminary determination by the Department of Commerce that imports of stainless steel angle from Japan 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 December 7 (59 FR 63106). The hearing was held in Washington, DC, on March 30, 1995, 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 May 10, 1995. The views of the Commission are contained in USITC Publication 2887 (May 1995), entitled Stainless Steel Angle from Japan: Investigation No. 731–TA–699 (Final).

Issued: May 11, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12134 Filed 5–16–95; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on April 28, 1995, a proposed Partial Consent Decree in *United States* v. *Abbott Laboratories, et al.*, Civil Action No. 3–95–1308–17, was lodged with the United States District Court for the District of South Carolina. The Complaint, brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeks injunctive relief to abate an imminent and substantial endangerment to the public health or welfare or the environment, and recovery of response costs incurred or to be incurred by the United States in connection with the Bluff Road Superfund Site in Richland County, South Carolina (the "Site"). The consent decree, which provides for partial funding of the Remedial Design and Remedial Action ("RD/RA") selected by EPA for the Site, is the final consent decree for the Site and brings to a conclusion the governments efforts to secure cleanup of on-Site contamination by private potentially responsible parties ("PRPs").

Under the terms of this proposed decree, the group of settling PRPs that implemented and completed the Remedial Investigation/Feasibility Study at the Site under an EPA Administrative Order by Consent ("AOC"), will also contribute to the funding of the RD/RA. The terms setting forth the responsibilities of the settling PRPs in this proposed decree incorporate the terms on funding as originally set forth in the AOC. Payments under the proposed decree, combined with funding by other PRPs under a consent decree entered in *U.S.* v. *Allied*, Civ. No. 92–1108–0, on September 28, 1992, represent 99.30% of the total past costs incurred by EPA at the Site, and 100% of future costs to be incurred by EPA in overseeing implementation of the remedy at the Site. The responsibility of implementing the RD/RA lies with other settling PRPs under the *Allied* consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. Comments should refer to the *United States* v. *Abbott Laboratories, et al.*, D.O.J. Ref. 90–7–1–61D.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of South Carolina, 1441 Main Street, Ste. 500, Columbia South Carolina, and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $34.75

(25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12076 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, notice is hereby given that a proposed partial consent decree ("Decree") with Chico Dairy Co. ("Chico") in *United States of America* v. *Chico Dairy Co. and David Marshall*, C.A. No. 1:94CV28 (D.N.W.Va) was lodged on May 3, 1995 with the United States District Court for the Northern District of West Virginia. This proposed Decree will, if entered, settle claims filed against Chico in the above proceeding by the United States, on behalf of the Environmental Protection Agency ("EPA"), pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, for violations of the National Emission Standard for Hazardous Air Pollution ("NESHAP") for asbestos. (The United States is not settling its claims against David Marshall, which were brought in the same proceeding for violations of the Asbestos NESHAP.)

The proposed Decree requires Chico to pay a civil penalty of $130,000 and to comply hereafter with the Asbestos NESHAP. The Decree binds Chico to detailed notification procedures, should Chico demolish or renovate (or contract for the demolition or renovation of) any building containing sufficient amounts of asbestos to cause the Asbestos NESHAP to apply. Further, Chico must inspect any building it seeks to demolish or renovate (or have demolished or renovated) to determine the amounts of regulated asbestos material contained therein and permit EPA entry to any such demolition or renovation site. In the event the Asbestos NESHAP should apply to any such demolition or renovation site, Chico is bound to appoint an onsite representative, whose qualifications and duties are set forth in detail in the Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Chico Dairy Co. and David Marshall*, C.A. No. 1:94CV28 (D.N.W.Va), DOJ Ref. #90–5–2–1–1877. The proposed Decree may be examined at the Office of the United States Attorney for the Northern District of West Virginia, 1125–1141 Chapline Street, Wheeling, West Virginia 26003; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12077 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 2, 1995, a proposed Consent Decree in *United States v. J.B. Waste Oil, Inc.*, Civil No. CV–90–2017, was lodged with the United States District Court for the Eastern District of New York. The proposed Consent Decree settles the United States' claims that the defendant had violated provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6921 *et seq.*, governing hazardous waste management, and the regulations promulgated thereunder at 40 CFR Parts 260–279, by improperly handling and marketing hazardous waste and/or off-specification used oil.

Under the terms of the Consent Decree, settling defendant will pay $20,000 in civil penalties, and implement a detailed work plan that contains testing, employee training, and record-keeping requirements.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States v. J.B. Waste Oil, Inc.*, D.O.J. Ref. 90–7–1–495.

The proposed Consent Decree may be examined at the Region II Office of the United States Environmental Protection Agency, 290 Broadway, New York, NY 10007 and at the Environmental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202 624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12078 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed amendment to the consent decree in *United States* v. *Ketchikan Pulp Company*, Civil Action No. A92–587, was lodged on March 21, 1995 with the United States District Court for the District of Alaska. The complaint in this case alleged claims arising out of the discharge of pollutants from Ketchikan Pulp Company's pulp mill into Ward Cove, near Ketchikan, Alaska. The decree provides for payment of a civil penalty, as well as injunctive relief, including remediation of Ward Cove sediments and an environmental audit of the mill. The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed amendment. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Ketchikan Pulp Company*, DOJ Ref. 90–5–1–1–3930.

The proposed amendment may be examined at the office of the United States Attorney, 222 W. 7th Ave., Anchorage, Alaska, the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library,

1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the consent decree, please enclose a check in the amount of $10.50 (25 cents per page reproduction costs) payable to the "Consent Decree Library". When requesting a copy please refer to *United States* v. *Ketchikan Pulp Company*, DOJ Ref. 90–5–1–1–3930.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12079 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,787; Bridgestone/Firestone, Inc., Decatur, IL

TA–W–30,786; Sandusky Plastic, Inc., Sandusky, OH

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,923; Angel Knitwear, Inc., South Hackensack, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,929; National Micronetics, Inc., Kingston, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,806; Enron Corp., Enron Gas Processing Transwestern Pipeline Co, Hobbs, NM

Increased imports did not contribute importantly to worker separations at the firm. In addition, US aggregate import statistics for dry natural gas were not significant prior to the sale of the subject from (1993–1994).

TA–W–30,845; Quantum Chemical Corp, Hanson PLC, Port Arthur, TX

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,933; T & H Drilling & Development Corp., Odessa. TX

A certification was issued covering all workers separated on or after April 5, 1994.

TA–W–30,784; IBM Corp., Integrated Systems Solutions Corp. Co., Endicott, NY

A certification was issued covering all workers separated on or after February 15, 1995.

TA–W–30,894; Jen Bel, Inc., Youngstown, OH

A certification was issued covering all workers separated on or after March 23, 1994.

TA–W–30,913; Heubein, Inc., Hartford, CT

A certification was issued covering all workers separated on or after March 25, 1994.

TA–W–30,926; Douglas Furniture, Bedford Park, IL

A certification was issued covering all workers separated on or after April 6, 1994.

TA–W–30,878; Russell-Neuman, Inc., Stamford, TX

A certification was issued covering all workers separated on or after March 17, 1994.

TA–W–30,891; Citation Oil & Gas Corp., Hays, KS

A certification was issued covering all workers separated on or after March 3, 1994.

TA–W–30,909; Redpath Apparel Group, Falfurrias, TX

A certification was issued covering all workers separated on or after March 22, 1994.

TA–W–30,879; Cabot Oil and Gas Corp., Houston, TX & Operating at Various Locations in the Following States: A; CO, B; OK, C; PA, D; TX, E; WV, F; WY

A certification was issued covering all workers separated on or after March 23, 1994.

TA–W–30,896; Phillips Petroleum Co., Exploration & Production Group (dba Exploration Div. & North American Production Div), Bartlesville, OK & Operating at Various Locations in the Following States: A; OK, B; KS, C; AR, D; TX, E; LA, F; NM, G; CA, H; AL, I; AK

A certification was issued covering all workers separated on or after March 23, 1994.

TA–W–30,944; Donkenny Apparel, Inc., Elkton Garment Plant, Elkton, VA

A certification was issued covering all workers separated on or after April 10, 1994.

TA–W–30,883; Jaclyn, Inc., West New York NJ

A certification was issued covering all workers separated on or after March 21, 1994.

TA–W–30,932; Thomas & Betts Co., Elizabeth, NJ

A certification was issued covering all workers separated on or after April 12, 1994.

TA–W–30,822; Mosbacker Energy Co., Houston, TX

A certification was issued covering all workers separated on or after February 28, 1994.

TA–W–30,851; Hancock Lumber, Inc., dba Diamond Pacific Milling & Dry Kilns, Inc., Salem, OR

A certification was issued covering all workers separated on or after February 20, 1994.

TA–W–30,914 & A; Dual Marine Drilling Co., Dallas, TX and Broussard, LA

A certification was issued covering all workers separated on or after March 1, 1994.

TA–W–30,870; Philips Components, Saugerties, NY

A certification was issued covering all workers separated on or after March 20, 1994.

TA–W–30,863; Johnson Controls, Inc., Garland, TX

A certification was issued covering all workers separated on or after March 15, 1994.

TA–W–30, 802; Fisher Controls International, Inc., Marshalltown, IA

A certification was issued covering all workers separated on or after February 27, 1994.

TA–W–30, 839; Chris Craft Industrial Products, Inc., Waterford, NY

A certification was issued covering all workers separated on or after March 17, 1994.

TA–W–30, 993; Alsy Lighting, Inc., Ellwood City, PA

A certification was issued covering all workers separated on or after April 25, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of May, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such worker's separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

None

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00425; Val Mode Lingerie, Inc., Bridgeton, NJ

A certification was issued covering all workers at Val Mode Lingerie, Inc., Bridgeton, NJ separated on or after March 29, 1994.

NAFTA–TAA–00428; Stetson Cedar Products, Forks, Washington

A certification was issued covering all workers at Stetson Cedar Products, Forks, Washington separated on or after April 10, 1994.

NAFTA–TAA–00419; Power Systems, Inc., Bloomfield, CT

A certification was issued covering all workers at Power Systems, Inc., Bloomfield, CT separated on or after March 30, 1994.

NAFTA–TAA–00412; Polk Audio, Inc., Baltimore, MD

A certification was issued covering all workers at Polk Audio, Inc., Baltimore, MD separated on or after March 27, 1994.

NAFTA–TAA–00414; Gentek Building Products, Inc., Woodbridge, NJ

A certification was issued covering all workers of Gentek Building Products, Inc., Woodbridge, NJ separated on or after March 29, 1994.

NAFTA–TAA–00411; Anchor Hocking Packaging Co., Closure Div., Glassboro, NJ

A certification was issued covering all workers of Anchor Hocking Packaging Co., Closure Div., Glassboro, NJ separated on or after March 20, 1994.

NAFTA–TAA–00416; Cabot Oil & Gas Corp., Houston, TX & Operating in The Following Locations: A; CO, B; OK, C; PA, D; TX, E; WV, F; WY

A certification was issued covering all workers of Cabot Oil & Gas Corp., Houston, TX & operating in various locations, in Colorado, Oklahoma, Pennsylvania, Texas, West Virginia & Wyoming separated on or after March 31, 1994.

NAFTA–TAA–00407; Summit Timber Co., Darrington, WA

A certification was issued covering all workers of Summit Timber Co., Darrington, WA separated on or after March 23, 1994.

NAFTA–TAA–00409; Strattec Security Corp., (Including Persons Leased From Briggs & Stratton Corp) Glendale, WI

A certification was issued covering all workers of Strattec Security Corp., Glendale, WI (including persons formally employed by Briggs and Stratton Corp & leased to the subject firm) separated on or after March 24, 1994.

NAFTA–TAA–00408; Smith Valve Corp., Whitinsville, MA

A certification was issued covering all workers of Smith Valve Corp., Whitinsville, MA separated on or after March 27, 1994.

NAFTA–TAA–00421; Campbell Soup Co., Dry Ramen Soup, Sidney, OH

A certification was issued covering all workers of Campbell Soup Co., Dry Ramen Soup, Sidney, OH separated on or after April 3, 1994.

NAFTA–TAA–00418; McCormick Ridge Co., Copalis Crossing, WA

A certification was issued covering all workers of McCormick Ridge Co., Copalis Crossing, WA separated on or after March 31, 1994.

NAFTA–TAA–00426 & 00426A; Collegeville Imagineering, Zionsville, PA and Norristown, PA

A certification was issued covering all workers of Collegeville Imagineering, Zionsville and Norristown, PA separated on or after April 5, 1994.

NAFTA–TAA–00413; Amphenol Corp., Amphenol Aerospace, Torrance, CA

A certification was issued covering all workers of Amphenol Corp., Amphenol Aerospace Div., Torrance, CA separated on or after March 28, 1994.

I hereby certify that the aforementioned determinations were issued during the months of May, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 10, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12166 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,204]

Smith Corona Corporation, Cortland, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Various field offices in the following states:

TA–W–30,205A	California
TA–W–30,205B	Connecticut
TA–W–30,205C	Florida
TA–W–30,205D	Georgia

TA–W–30,205E Illinois
TA–W–30,205F Kentucky
TA–W–30,205G Maryland
TA–W–30,205H Michigan
TA–W–30,205I New Jersey
TA–W–30,205J New York
TA–W–30,205K Ohio
TA–W–30,205L Pennsylvania
TA–W–30,205M Puerto Rico
TA–W–30,205N Texas
TA–W–30,205O Wisconsin

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 6, 1994, applicable to all workers of Smith Corona Corporation engaged in employment related to the production of typewriters and word processors in Cortland, New York. The notice was published in the **Federal Register** on October 21, 1994 (59 FR 53211).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that the support workers (sales, service and administrative) of the subject firm, located in various States, should have been included. The intent of the Department's certification is to include all workers of Smith Corona Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,205 is hereby issued as follows:

All workers of Smith Corona Corporation, Cortland, New York, and at various field offices in California, Connecticut, Florida, Georgia, Illinois, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Texas, and Wisconsin engaged in employment related to the production of typewriters and word processors who became totally or partially separated from employment on or after October 2, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12135 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00293, 00293A, 00293B]

Wirekraft Industries, Inc. Mishawaka, Indiana; et. al Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 29, 1994, applicable to all workers at the subject firm. The notice was published in the **Federal Register** on January 20, 1995 (60 FR 4196).

The certification was subsequently amended March 17, 1995. The amended notice was published in the **Federal Register** on March 27, 1995 (60 FR 15793).

New information received from the company show that the Wirekraft workers in Lakeville, Indiana also produce wire harnesses.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to include the Wirekraft workers in Lakeville, Indiana.

The amended notice applicable to NAFTA—00293 is hereby issued as follows:

All workers of Wirekraft Industries, Inc., Mishawaka, Indiana and Wirekraft Industries' Burcliff Industries, in Marion, Ohio and Lakeville, Indiana who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 1st day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12136 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Request for Possible Candidates for Service on Grant Application Review Panels

The National Endowment for the Arts, an independent agency of the Federal Government, was created by Congress in 1965 to encourage and support American arts and artists. Its mission is (1) to foster the excellence, diversity and vitality of the arts in the United States; and (2) to broaden the availability and appreciation of that excellence, diversity and vitality. It fulfills the this mission both by its leadership activities and by awarding grants to nonprofit arts organizations and agencies and to artists of exceptional talent in all fields.

All applications for funding to the Endowment receive three independent levels of review: advisory panels, National Council on the Arts, and the Chairman. At the first level, the advisory panels, composed of arts experts and knowledgeable lay persons from all over the country, review applications and supporting materials, and make recommendations for funding. At the second level, the Presidentially appointed National Council on the Arts considers and reviews panel recommendations in open meeting. Council rejection of applications is final. At the third level, the Chairman makes the final decision on applications recommended by the Council for support.

The Arts Endowment has a centralized database (Automated Panel Bank System) of information on the expertise and arts experience of both arts experts and knowledgeable lay people who are interested in serving on an advisory panel. We are seeking to expand this pool of potential panelists and to facilitate the aesthetic, geographic, racial and cultural diversity of our panels. The purpose of this notice is to solicit expressions of interest by individuals who have demonstrated expertise and ability in artistic genres or arts-related fields and who desire to serve on an Arts Endowment advisory panel. Persons wishing to recommend themselves or others should request a Panelist Profile Form from the Office of Council and Panel Operations by calling 202–682–5433 or by writing to the following address: Office of Council and Panel Operations, National Endowment for the Arts, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506–0001. A response to this notice does not guarantee selection for panel service.

DATES: Forms and resumes are being accepted indefinitely.

ADDRESSES: Completed Panelist Profile Forms and resumes should be sent to the address above.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts convenes more than 100 panels each year to review grant applications in the areas of dance, design arts, expansion arts, folk & traditional arts, presenting, literature, media arts, museums, music, opera-musical theater, theater, visual arts, international exchange, and assistance to state and local arts agencies and arts education programs. In addition to artists, arts administrators, scholars, and other such experts, lay persons with substantial experience in particular artistic disciplines or fields also serve on the

panels. The Endowment's authorizing statute defines lay persons as "individuals who are knowledgeable about the arts but who are not engaged in the arts as a profession and are not members of either artists organizations or arts organizations."

The panels meet at the National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506–0001. Panel members receive an honorarium of $100 a day, per diem up to limits set government-wide, and travel expenses.

Dated: May 11, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12138 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

Cooperative Agreement for Technical and Administrative Support for Professional Development Activities

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts requests proposals leading to the award of a Cooperative Agreement to provide administrative and technical assistance services that will support professional development activities for the State arts agency arts education coordinators. These activities may include, but are not limited to: Regional and national leadership institutes, coordinator exchanges, consultant assistance, a network newsletter, and other means of disseminating information. Responsibilities will include: Communicating effectively with the coordinators regarding support for professional development assistance; disbursing payments and reimbursements for allowable costs; arranging for meeting facilities; producing and distributing any network publications; and subcontracting with special consultants and others as necessary. Funding is anticipated to be $100,000. Those interested in receiving the Solicitation should reference Program Solicitation PS 95–06 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 95–06 is scheduled for release approximately June 8, 1995 with proposals due on July 10, 1995.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Ave., N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., N.W., Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 95–12081 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Folk & Traditional Arts Advisory Panel (Folks Art Organizations and State Apprenticeships Section) to the National Council on the Arts will be held on June 13–16, 1995. The panel will meet from 9:00 a.m. to 6:30 p.m. on June 13 and 15; from 9:00 a.m. to 10:30 p.m. on June 14; and from 9:00 a.m. to 4:00 p.m. on June 16 in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 1:00 p.m. to 2:30 p.m. on June 15 for a discussion of policy issues.

Remaining portions of this meeting from 9:00 a.m. to 6:30 p.m. on June 13; from 9:00 a.m. to 10:30 p.m. on June 14; from 9:00 a.m. to 1:00 p.m. and from 2:30 p.m. to 6:30 p.m. on June 15; and from 9:00 a.m. to 4:00 p.m. on June 16 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: May 11, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12139 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Office, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individual are advised that information on this matter may be obtained by contracting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 1–2, 1995.

Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications Special Projects for the Special Competition deadline of April 28, 1995, submitted to the Division of Public Programs, for projects beginning after August, 1995.

2. *Date:* June 5–6, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to Special Projects for the Special Competition deadline of April 28, 1995, for projects beginning after August, 1995.

3. *Date:* June 9, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to Special Projects for the Special Competition deadline of April 28, 1995, for projects beginning after August, 1995.

4. *Date:* June 12, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review "Nature, Technology, and Human Understanding" applications submitted by state humanities councils to Federal-State Partnership, for projects beginning after November, 1995.

5. *Date:* June 10, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for projects in Interpretive Research: Basic Research Projects, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–12050 Filed 5–16–95; 8:45 am]

BILLING CODE 7536–01–M

National Endowment for the Arts; Notice Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Fellowships for Translators Section) to the National Council on the Arts will be held on June 20–21, 1995. The panel will meet from 9:00 a.m. to 6:00 p.m. on June 20; and from 9:00 to 5:00 p.m. on June 21 in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 21 from 3:00 p.m. to 5:00 p.m. for a guideline review and policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 6:00 p.m. on June 20 and from 9:00 a.m. to 3:00 p.m. on June 21 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington D.C., 20506 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: May 11, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12140 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview/Special Projects Section) to the National Council on the Arts will be held on June 6–8, 1995 from 9:00 a.m. to 6:00 p.m. on June 6; from 9:00 a.m. to 5:30 p.m. on June 7; and from 9:00 a.m. to 5:00 p.m. on June 8 in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public on June 6 from 4:30 p.m. to 5:00 p.m. for a policy discussion and guidelines review; from 9:00 a.m. to 5:30 p.m. on June 7 for a discussion of the trends, opportunities, and priorities throughout the various music fields; trends in private philanthropy regarding the music fields; and current Music Program funding categories. On June 8, the meeting will be open from 9:00 a.m. to 5:00 p.m. to identify the future priorities of the Music Program; for a discussion of possible changes to the Music Program funding categories based on future priorities and probable reduced funding; and to identify future partnership possibilities.

The remaining sessions of this meeting from 9:00 a.m. to 4:30 p.m. and from 5:00 p.m. to 6:00 p.m. on June 6 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: May 11, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12141 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by June 16, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: NSF Informal Science Education Survey

Affected Public: Individuals, Business or other for-profit, Not for profit

Respondents/Reporting Burden: 965 respondents: average 40 minutes per response.

Abstract: The National Science Foundation needs this information to assess the impact of its Informal Science Education Program on three diverse populations: grantees, grantee organizations, and individuals who work in the sciences. These data, in aggregate statistical form, serve as a database for a program evaluation.

Dated: May 11, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–12029 Filed 5–16–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 40–3392]

Finding of No Significant Impact and Notice of Opportunity for a Hearing; Renewal of Source Material License Sub–526 AlliedSignal, Inc. Metropolis, Illinois

The U.S. Nuclear Regulatory Commission is considering the renewal of Source Material License SUB–526 for the continued operation of the AlliedSignal, Inc. (Allied), UF_6 conversion facility, located in Metropolis, Illinois.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of Allied's Source Material License SUB–526 for 10 years. With this renewal, the Metropolis facility will continue to convert natural uranium ore concentrates into UF_6 for the commercial nuclear power industry. The production of UF_6 is one phase in the fuel cycle resulting in production of fuel elements for nuclear reactors.

The Need for the Proposed Action

Allied performs a necessary service for the commercial nuclear power industry by converting natural uranium ore concentrates into UF_6. The UF_6 product is then shipped to gaseous diffusion plants for the enrichment of the uranium (U–235) isotope; following enrichment, the uranium is converted into fuel for use in nuclear power reactors. Currently, Allied is the only UF_6 conversion facility operating within the United States. Denial of the license renewal for Allied's Metropolis facility is an alternative available to the NRC, but would require the construction of a new facility at another site.

Environmental Impacts of the Proposed Action

The radiological impacts of the continued operation of the Metropolis facility were assessed by calculating the radiation dose to the maximally exposed individual located at the nearest residence and the collective radiation dose to the local population living within 80 kilometers (50 miles) of the plant site.

Doses From Routine Airborne Releases

Atmospheric releases were determined for three locations at the Metropolis facility: (1) the feed material building, (2) the uranium recovery facility, and (3) the ore sampling plant. Based on information provided in the application, the projected annual average quantity of uranium released from each emission point was estimated. The isotopic distribution of the uranium and the solubility class of the uranium were also determined. Relatively small amounts of thorium-230 and radium-226 are also released from the Metropolis facility. The radiation doses resulting from atmospheric releases were estimated using the XOQDOQ and GENII computer codes. The maximally exposed individual was located at the nearest residence, which was 564 meters (1,850 feet) north northeast of the Metropolis facility. The radiation dose Total Effective Dose Equivalent (TEDE) to the nearest resident is estimated to be 1.5 mrem per year. This estimated radiation dose is less than the limit of 10 mrem per year established by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 61 for the air pathway and less than the limit of 25 mrem per year established by the EPA in 40 CFR Part 190 for all pathways. It is also less than the 100 mrem per year limit established by the NRC in 10 CFR Part 20. The highest organ dose is to the lungs from insoluble forms of uranium. The estimated lung dose of 9.3 mrem per year is less than the dose limit established in 40 CFR Part 190; the thyroid doses were also an insignificant fraction of the 75 mrem per year thyroid dose limit established in 40 CFR Part 190.

The population surrounding Allied's facility is about 471,410 people, based on 1990 census data. The collective dose to the surrounding population is estimated to be 4.1 person-rem per year. Based on an average background radiation dose of 0.360 rem per year for individuals in the U.S., the same population would receive about 170,000 person-rem per year from background radiation. Thus, the collective radiation dose associated with atmospheric releases from Allied's facility is a very small percentage (0.0024%) of the collective radiation dose from background radiation for these same people.

Doses From Aqueous Releases

The projected annual average quantity of radionuclides released to the Ohio River from the Metropolis facility was estimated using information provided by the applicant. The GENII computer code was used to estimate radiation doses through ingestion, shoreline exposure, and water submersion pathways. The estimated radiation dose (TEDE) to the maximally exposed individual located 8 kilometers (5 miles) downstream of the Metropolis facility is estimated to be 0.0013 mrem per year. This estimated radiation dose is far less than the 100 mrem per year limit established by the NRC in 10 CFR Part 20 and the 25 mrem per year limit established by EPA in 40 CFR Part 190. The estimated radiation dose of 0.0013 mrem per year is also far less than the dose of 4 mrem per year that is the basis for the drinking water standards contained in 40 CFR Part 141.

The estimated collective radiation dose to the population (4,846 people) located in Cairo, Illinois, as a result of liquid releases is estimated to be 0.0030 person-rem per year. Based on an average background radiation dose of 0.360 rem per year for individuals in the U.S., this same population would receive about 1,700 person-rem per year from background radiation; the collective radiation dose associated with liquid releases from Allied's Metropolis facility thus is a small percentage of the collective radiation dose from background.

Accident Evaluation

In the Environmental Assessment, the NRC evaluated a suite of five accident scenarios. Four of the five scenarios

evaluated the accidental release of radioactive materials. The intakes and predicted doses for three of the radiological accident scenarios were small with negligible associated health impacts. The fourth radiological accident, rupture of a UF_6 cylinder (liquid), produced a dose of 3.9 rem at the nearest resident. While the potential consequences of such an event would be severe, the likelihood of such an event is low because of design and procedural controls. The fifth accident analyzed, the release of gaseous ammonia, would be expected to produce noticeable, but non-life-threatening effects both onsite and offsite. Given the low likelihood for these accidents, it is concluded that the proposed license renewal will not have a significant impact on the general population.

Alternatives to the Proposed Action

Alternatives to the proposed action include denial of Allied's renewal application. Not granting a license renewal for the facility would cause Allied to cease production of UF_6 at this site. The only benefits to be gained by nonrenewal would be the cessation of the minor environmental impact from operation of the facility. Because Allied's site is the only operating facility to convert uranium ore to UF_6, denial of a license for Allied would result in the transfer of the activity and associated environmental impact to an alternative site.

Agencies and Persons Consulted

The staff utilized the application dated July 11, 1994, and additional information dated September 6, and November 16, 1994. Discussions were held with the Agreement States of Illinois and Kentucky. The Region III inspectors and Allied representatives were also consulted in preparing this document.

Conclusion

The staff concludes that the environmental impacts associated with the proposed license renewal for continued operation of Allied's Metropolis facility are expected to be insignificant.

Finding of No Significant Impact

The NRC has prepared an Environmental Assessment related to the renewal of Source Material License SUB–526. On the basis of the assessment, NRC has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at NRC's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852), and on the licensee (AlliedSignal, Inc., Route 45 North, P.O. Box 430, Metropolis, IL 62960); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requester's interest.

Dated at Rockville, Maryland, this 11th day of May 1995.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 95–12103 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 72–10 (50–282/306)

Northern States Power Co. Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation; Exemption

I

Northern States Power Company (NSP or the licensee) holds materials license (SNM–2506) for receipt and storage of spent fuel from its Prairie Island Nuclear Generating Plant at an independent spent fuel storage installation (ISFSI) located on the Prairie Island Nuclear Generating Plant site. This facility is located at the licensee's site in Goodhue County, Minnesota.

II

Pursuant to 10 CFR 72.7, the Nuclear Regulatory Commission (NRC) may grant exemptions from the requirements of the regulations in 10 CFR Part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Section 72.82(e) of 10 CFR Part 72 requires each licensee to provide a report of preoperational test acceptance criteria and test results to the appropriate NRC Regional Office with a copy to the Director, Office of Nuclear Material Safety and Safeguards, at least 30 days prior to receipt of spent fuel or high level radioactive waste for storage in an ISFSI. The purpose of the 30-day period is to allow the NRC an opportunity to review test results prior to initial operation of the ISFSI.

III

By letter dated January 4, 1995, the licensee requested a schedular exemption pursuant to 10 CFR 72.7 from the requirement of 10 CFR 72.82(e). The licensee committed to submit its report no less than 3 days prior to receipt of spent fuel at its ISFSI.

In July 1993, NSP suspended cask fabrication and site construction activities until the Minnesota State Legislature authorized the ISFSI on May 10, 1994. After authorization, NSP resumed the ISFSI construction and the facility was completed in November 1994. The fist cask was received on January 26, 1995.

The NRC conducted an inspection of the quality assurance records related to the manufacture of the cask at vendor sites, and on October 11, 1994, and January 25, 1995, issued Inspection Reports Nos. 72–0010/94–210 and 72–0010/94–212, respectively, to NSP. On February 23, 1995, and March 8, 1995, NSP responded to the Notice of

Violation in the inspection report and provided additional information. In a letter dated March 21, 1995, NRC found NSP's corrective actions acceptable. Since receipt of the first cask on site, NRC has observed selected portions of the preoperational testing activities and has reviewed associated test procedures and results. In addition, during the weeks of April 17, and April 24, 1995, the NRC conducted a special team inspection of cask fabrication records and preoperational test results at the Prairie Island Nuclear Generating Plant. On April 28, 1995, NRC held an inspection exit meeting, which was open to public attendance, in Red Wing, Minnesota, to discuss its inspection findings and conclusions. NSP submitted the report of preoperational test acceptance criteria and test results required by 10 CFR 72.83(e) to the NRC on April 20, 1995. At the inspection exit meeting held on April 28, 1995, the following five outstanding issues and their resolution were:

Issue (1): Fabrication of the temperature and pressure monitoring equipment was not complete.

Resolution: NRC Resident Inspectors observed completion of installation of fabricated equipment.

Issue (2): NRC review of the unloading procedure was not complete.

Resolution: NRC Resident Inspectors have completed their review and all identified concerns have been acceptably resolved.

Issue (3): NRC review of licensee disposition of weld discrepancies was not complete.

Resolution: NRC staff have completed their review and have accepted the licensee's dispositions.

Issue (4): Resolution of cask hydrostatic testing requirements was not complete.

Resolution: NRC staff have resolved the cask hydrostatic testing requirements. In addition, the licensee performed a 10 CFR 72.48 evaluation to revise the Safety Analysis Report. The Resident Inspectors have reviewed the evaluation and found it acceptable.

Issue (5): NRC review of adequate spent fuel retrievability was not complete.

Resolution: The licensee provided information regarding retrievability in a letter dated May 3, 1995. In a letter to NSP dated May 5, 1995, NRC found NSP's rationale acceptable.

Based on the resolutions described above, the staff has completed its review and is granting the exemption.

An exemption to the requirement of 10 CFR 72.82(e) for a 30-day waiting period would allow NSP to start loading the first cask before May 20, 1995, the end of the 30-day period.

IV

As previously described in the foregoing discussion, and based on its oversight and inspection of NSP's ISFSI preoperational testing activities, the NRC finds that NSP has satisfactorily addressed all of the outstanding safety issues associated with cask loading, handling, and storage. The results of the NRC activities described above confirm there is adequate assurance that the cask can perform its intended safety functions and that NSP has the necessary equipment and procedures in place to safely conduct spent fuel cask handling activities.

Accordingly, the NRC has determined in accordance with 10 CFR 72.7 that this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC hereby grants the licensee an exemption from the 30-day waiting period required by 10 CFR 72.82(e) as requested by the licensee's letter of January 4, 1995.

The documents related to this proposed action are available for public inspection and for copying (for a fee) at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room located in the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pursuant to 10 CFR 51.32, the NRC has determined that granting this exemption will have no significant impact on the quality of the human environment (60 FR 13477).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11 day of May 1995.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–12100 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–M

Elimination of Low-Level Radioactive Waste Topical Report Review Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of elimination of program.

SUMMARY: This notice is in reference to low-level radioactive waste (LLW) topical reports (TRs) submitted in support of the implementation of 10 CFR Part 61, or compatible Agreement State regulations. The U.S. Nuclear Regulatory Commission's Division of Waste Management (DWM) is currently responsible for the Federal review of these TRs. However, due to higher priorities and limited staff availability, DWM has decided to terminate its LLW TR review program.

ADDRESSES: Documents referred to in this notice may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of technical positions and topical report review procedures may be obtained from the Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or by calling the contact listed below.

FOR FURTHER INFORMATION CONTACT: Robert J. Lewis, Engineering and Geosciences Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–6680.

SUPPLEMENTARY INFORMATION: To help ensure a cost effective and orderly implementation of 10 CFR Part 61, and since many licensees utilize similar services from the same firm, the U.S. Nuclear Regulatory Commission issued a **Federal Register** notice (48 FR 40512) encouraging these firms to submit, for NRC review, generic topical reports on these services.

To meet 10 CFR 20.2006(d), 10 CFR 61.55, and 10 CFR 61.56, radioactive waste generators and disposal operators must demonstrate compliance with the waste classification and waste form requirements. One acceptable approach to satisfying these regulations is to reference previously reviewed and approved TRs. A TR is a document submitted by an industry organization (i.e., a vendor) for review by NRC or an Agreement State, outside of specific licensing action. LLW TRs typically include reports on qualification of high-integrity containers, solidification procedures, or computer codes designed to classify waste.

The ultimate acceptability of a particular waste is subject to the disposal restrictions and requirements specified by the waste disposal facility operators and governing Agreement State regulatory agencies. NRC approved LLW TRs are often accepted by a State as an acceptable means of demonstrating compliance with the State equivalent regulations to 10 CFR Part 61. However, due to higher priorities and limited staff availability, DWM has decided to terminate the LLW TR review program. The number of LLW

disposal site applications currently under regulatory review and the number of new waste processing technologies do not support the need for a centralized review of generic LLW TRs by NRC.

DWM is currently not accepting new LLW TRs for review. Further, TRs currently under review but not showing progress towards resolution of open issues (e.g., no vendor or NRC action in the last six months) are being placed into "discontinued" status. Existing TRs currently in a "discontinued" or "withdrawn" status will not be reopened, nor will amendments or revisions to "approved" TRs be reviewed. In the future, NRC suggests that vendors contact individual disposal facility operators, or the regulatory agency exercising jurisdiction over that disposal facility, for guidance on the review and acceptance of a specific waste form and classification proposal, such as a topical report.

Dated at Rockville, Maryland, this 11th day of May, 1995.

For the U.S. Nuclear Regulatory Commission.

Michael J. Bell,

Chief, Engineering and Geosciences Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–12102 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529, 50–530; License Nos. DPR–67, NPF–16, DPR–31, DPR–41]

Florida Power & Light Company (Turkey Point and St. Lucie Nuclear Generating Stations); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petition filed by Mr. Thomas J. Saporito, Jr., (Petitioner) on Marcy 7, 1994. The Petition requested that the NRC: (1) Submit an amicus curiae brief to the Department of Labor (DOL) regarding his complaints numbered 89–ERA–007 and 89–ERA–017 concerning the Petitioner's claim that the licensee retaliated against him for engaging in protected activity during his employment at Turkey Point Nuclear Station in violation of 10 CFR 50.7; (2) institute a show cause proceeding pursuant to 10 CFR 2.202 to modify, suspend or revoke Florida Power & Light Company's licenses authorizing the operation of Turkey Point; and (3) institute a show cause proceeding pursuant to 10 CFR 2.202 and order the licensee to provide the Petitioner with a "make whole" remedy, including but not limited to, immediate reinstatement to his previous position, back wages and front pay with interest, compensatory damages for pain and suffering, and a posting requirement to offset any "chilling effect" Petitioner's discharge may have had upon other employees at the Turkey Point and St. Lucie Stations.

On March 13, 1994, Petitioner supplemented the Petition, reiterating the three requests noted in the preceding paragraph and providing additional information.

On April 7, 1994, Petitioner supplemented the Petition providing a chronology of events that relate to his request for action against FP&L. Petitioner also described what Petitioner believes should be the content of the *amicus curiae* brief to DOL, including the fact that a licensee employee can go directly to NRC with safety concerns, the NRC instructed Petitioner not to divulge his safety concerns to FP&L, that Petitioner's conduct should not be considered insubordinate, and the FP&L engaged in illegal conduct when its Vice President interrogated Petitioner about his safety concerns.

On June 7, 1994, the Petitioner submitted an additional request pursuant to 10 CFR 2.206 which has been incorporated into the above-mentioned request. The June 7 Petition requested: (1) Enforcement action against specific FP&L employees (2) an NRC investigation into the involvement of FP&L employees in the discrimination against the Petitioner with the results of this investigation being forwarded to the Department of Justice, and (3) an investigation into whether the work climate at Turkey Point and St. Lucie nuclear stations makes employees feel free to go to their management and/or the NRC with safety concerns. This June 7 Petition was supplemented on June 28 and 30, 1994.

Based on a review of Petitioner's requests and supplemental submissions, the Licensee's response dated May 20, 1994, and the June 3, 1994 decision by the Secretary of Labor on complaints filed by the Petitioner in these cases, the Director, Office of Enforcement, has denied this Petition. The reasons for the denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–95–07) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 11th day of May 1995.

For the Nuclear Regulatory Commission.

James Liberman,

Director, Office of Enforcement.

[FR Doc. 95–12101 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application for Search of Census Records (Railroad Retirement Purposes Only).

(2) *Form(s) submitted:* RRB Form G–256.

(3) *OMB Number:* 3220–0106.

(4) *Expiration date of current OMB clearance:* July 31, 1995.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 150.

(8) *Total annual responses:* 150.

(9) *Total annual reporting hours:* 25.

(10) *Collection description:* Under the Railroad Retirement Act, an application for benefits based on age must be supported by proof of the age claimed. The application obtains proof of an applicant's age from the Bureau of the Census when other evidence is unavailable.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive

Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–12082 Filed 5–16–95; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Appeal under the Railroad Retirement and Railroad Unemployment Insurance Act.

(2) *Form(s) submitted:* HA–1.

(3) *OMB Number:* 3220–0007.

(4) *Exiration date of current OMB clearance:* July 31, 1995.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,650.

(8) *Total annual responses:* 1,650.

(9) *Total annual reporting hours:* 549.

(10) *Collection description:* Under Section 7(b)(3) of the Railroad Retirement Act and Section 5(c) of the Railroad unemployment Insurance Act, a person aggrieved by a decision on his or her application for an annuity or other benefit has the right to appeal to the RRB. The collection provides the means for the appeal action.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–12132 Filed 5–16–95; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2771]

Louisiana; Declaration of Disaster Loan Area

Allen and Avoyelles Parishes and the contiguous Parishes of Beauregard, Catahoula, Concordia, Evangeline, Jefferson Davis, LaSalle, Pointe Coupee, Rapides, St. Landry, Vernon, and West Feliciana in the State of Louisiana constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on April 10–12, 1995. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 10, 1995 and for economic injury until the close of business on February 12, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 277106 and for economic injury the number is 851000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 10, 1995.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 95–12117 Filed 5–16–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2772]

New York (and Contiguous Counties in Connecticut and New Jersey); Declaration of Disaster Loan Area

Westchester County and the contiguous counties of Bronx, Putnam, and Rockland in the State of New York; Fairfield County in the State of Connecticut; and Bergen County in the State of New Jersey constitute a disaster area as a result of damages caused by a fire which occurred on April 25 in the City of Mount Vernon. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on July 10, 1995 and for economic injury until the close of business on February 12, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 277205 for New York; 277305 for Connecticut; and 277405 for New Jersey. For economic injury the numbers are 851100 for New York; 851200 for Connecticut; and 851300 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 10, 1995.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 95–12063 Filed 5–16–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 23–XX–21, Small Airplane Certification Compliance Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Proposed Advisory Circular (AC) 23–XX–21, and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed advisory circular (AC) which provides a compilation of acceptable means of compliance to

specifically selected sections of part 23 of the Federal Aviation Regulations (FAR) that have historically been deemed burdensome for small simple airplanes to show compliance. In general terms, a small simple airplane could be defined as non-turbine single engine, unpressurized, and under 4,000 pound maximum weight; however, applicability of these means of compliance remains the responsibility of the certification manager for each specific project. Utilization of these means of compliance does not affect the applicability of any other certification requirements that fall outside the scope of this AC. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Standards Office, ACE–110, Small Airplane Directorate, Aircraft Certification Service, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Terre Flynn, Regulations and Policy Branch, ACE–111, at the address above, telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Comments Invited

Interested parties are invited to submit such written data, views, or arguments as they may desire. Commenters must identify the AC and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the Standards Staff before issuing the final AC. Comments may be inspected at the Standards Office, ACE–110, Suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

Some industry and aviation organizations expressed concern that the typical means of compliance for some regulations might be more demanding than justified. As a consequence, industry, aviation groups, and the FAA formed a team to investigate the issue. Historical files, Designated Engineering Representatives (DER's), Aircraft Certification Offices (ACO's), and industry were used to determine target regulations and provide known means of compliance. This AC is a compilation of the study results, listing the regulations and attendant means of compliance that offered an improvement in certification efficiency. The listed means of compliance have been found acceptable and historically successful, but they are not the only methods which can be used to show compliance. In some cases, highly sophisticated airplanes may require more accurate or substantial solutions.

Issued in Kansas City, Missouri, on May 9, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12158 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

Second Public Hearing on the Draft Environmental Impact Statement for the Proposed Master Plan Update at Seattle-Tacoma International Airport, Seattle, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Environmental Impact Statement, Notice of Second Public Hearing.

SUMMARY: The FAA and the Port of Seattle (owner of the airport), as joint lead agencies, announce that a second Public Hearing will be held concerning the proposed Master Plan Update alternatives. The second Public Hearing will be held from 6:00 PM to 10:00 PM on Wednesday, June 14, 1995, at the Calvary Lutheran Church, 2415 S. 320th Street, Federal Way, Washington. The purpose of the Hearing is to consider the economic, social, and environmental effects of the proposed Master Plan Development. The public will be afforded the opportunity to present oral testimony and/or written testimony pertinent to the intent of the hearing. Individuals wishing to testify can obtain a pre-reserved testimony slot by calling the FAA at (206) 431–4993. The first half-hour of each hour of the Hearing will be allocated to pre-reserved testimony. Testimony from a group or agency representative will be limited to 5 minutes. All others will be given 3 minutes. Additional comments should be submitted no later than August 3, 1995, to Mr. Dennis Ossenkop, ANM–611, Federal Aviation Administration, Northwest Mountain Region, Airports Division, 1601 Lind Avenue, S.W., Renton, WA 98055–4056.

Any person desiring to review the Draft Environmental Impact Statement may do so during normal business hours at the following locations:

Federal Aviation Administration, Airports Division Regional Office, Room 540, 1601 Lind Avenue, S.W., Renton, Washington

Port of Seattle, Aviation Planning, Terminal Building, 3rd Floor, Room 301, Sea-Tac Airport, Seattle, Washington

Port of Seattle, Second Floor Bid Counter, Pier 69, 2711 Alaskan Way, Seattle, Washington

Boulevard Park Library, 12015 Roseberg, South, Seattle, Washington

Beacon Hill Library, 2519 15th Ave. South, Seattle, Washington

Burien Library, 14700-6th, S.W., Burien, Washington

Des Moines Library, 21620-11th, South, Des Moines, Washington

Federal Way Library, 34200-1st, South, Federal Way, Washington

Foster Library, 4205 South 142nd, Tukwila, Washington

Seattle Library, 1000-4th Avenue, Seattle, Washington

Tacoma Public Library, 1102 Tacoma Avenue, South, Tacoma, Washington

University of Washington, Suzallo Library, Government Publications, Seattle, Washington

Valley View Library, 17850 Military Road, South, SeaTac, Washington

Issued in Renton, Washington on May 10, 1995.

David A. Field,

Acting Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 95–12159 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Marietta, Washington County, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge replacement project in Marietta, Washington County, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Rodrigo, Planning and Program Development Manager, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone (614) 469–5877.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation and the Washington County Engineer will prepare an environmental impact statement (EIS) on a proposal to replace

the Putnam Street Bridge over the Muskingum River in Marietta, Washington County, Ohio. The preferred alternative (Putnam Street to Putnam Avenue alignment) would involve constructing a new bridge of greater vertical and horizontal clearance immediately south of the current two-lane, 786-foot facility and the removal of the existing bridge. Replacement of the existing bridge is considered necessary to provide for the existing and projected traffic demands. The existing Putnam Street Bridge is structurally deficient and is posted for a maximum vehicle weight of three tons. Local truck traffic is presently routed three blocks north to the bridge on Ohio Route 7. Alternatives under consideration include: (1) Taking no action; and alignments connecting (2) Butler Street to Gilman Street; and (3) Putnam Street to Putnam Avenue. Other alignment alternatives and rehabilitation of the existing bridge were considered early on, but are not being carried forward for further evaluation for various reasons.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public meeting was held on May 27, 1993. In addition, a public hearing will be held in conjunction with the public availability of the draft EIS. Public notice will be given of the time and place of any further meetings that may be held and the public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. Cooperating agency requests have been made to the Coast Guard and Army Corps of Engineers. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all relevant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 11, 1995.

Herman Rodrigo,

Planning and Program Development Manager, Columbus, Ohio.

[FR Doc. 95–12115 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–22–M

Research on the Feasibility of Standardized Diagnostic Devices to Aid in the Inspection and Maintenance of Commercial Motor Vehicles; Public Meeting

AGENCY: Federal Highway Administration (FHWA); DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public meeting to present the final results of its contractual research study to assess the feasibility of employing standardized electronic diagnostic devices for use by truck maintenance personnel and roadside safety and emissions inspectors. This meeting will be held for the benefit of representatives of the motor carrier industry, enforcement organizations, trade associations, and other interested persons.

DATES: The public meeting will be held on June 19, 1995, from 10 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Conference room 2230 of the NASSIF Building, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Hamilton, Federal Highway Administration, Office of Motor Carriers, 400 7th Street SW., room 3103, Washington, DC 20590, telephone (202) 366–0665. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA announces a public meeting to provide the results of its two-year assessment of the feasibility of standardized electronic diagnostic devices for commercial motor vehicle maintenance and inspection. Mandated by the Congress in Fiscal Year 1992, this research was performed for the FHWA by the Trucking Research Institute in cooperation with the Texas Transportation Institute. The research reviewed current literature on microelectronic technology that was, or could be, available for heavy-duty vehicle usage, and then proceeded to identify and evaluate sensors for application in diagnostic systems for major vehicle components on heavy trucks. Also evaluated were potential cost-sharing opportunities that would be available from the private sector to assist in the development of standardized diagnostic tools. Commercial motor carriers, original equipment manufacturers, engine manufacturers, components suppliers, diagnostic service tool suppliers, and other involved in the manufacture and use of heavy trucks were interviewed and provided extensive information for this study. Most of the organizations interviewed appeared willing to assist in some fashion in the implementation and testing of the diagnostic systems identified.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: May 11, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–12163 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–22–P

Federal Transit Administration

[FHWA/FTA Docket No. 95–9]

Notification of FY 95 Reviews

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: On April 28, 1994, the FHWA and the FTA Administrators jointly issued guidance to their respective regional administrators on the implementation of the Federal certification of the metropolitan planning process in transportation management area (TMA) planning areas. This notice announces the schedule of FY 1995 reviews as known at this time. The FHWA and the FTA are planning approximately 45 certification and 12 enhanced planning (EPR) reviews for FY 1995. Interested parties are invited to submit comments on the individual planning processes to be reviewed.

DATES: Comments on metropolitan planning processes under review must be received within sixty (60) days of the scheduled site review in order to be considered during the certification review process. Where reviews have already been completed prior to the publication of this notice, parties interested in commenting on these metropolitan planning processes should immediately contact Sheldon Edner (see following paragraph for phone number, address, and further instructions). Where dates are to be announced, a supplemental notice announcing these dates will be issued when the specific dates are confirmed.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Sheldon Edner, Planning

Operations Branch (HEP–21), (202) 366–4066 (metropolitan planning) or Mr. Reid Alsop, FHWA Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Ms. Deborah Burns, Resource Management Division (TGM–21), (202) 366–1637 or Mr. Scott Biehl, FTA Office of the Chief Counsel (TCC–40), (202) 366–4063. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

ADDRESSES: Submit written, signed comments to Docket Number 95–9, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at this address during the hours of 8:30 a.m. to 3:30 p.m., Monday through Friday. Those desiring notification of receipt of comments must enclose a self-addressed, stamped postcard.

SUPPLEMENTARY INFORMATION: Sections 1024, 1025, and 3012 of the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 1955, 1962, and 2098) amended 23 U.S.C. 134 and 135 and section 8 of the Federal Transit Act (now codified at 49 U.S.C. 5303, 5304, and 5305) to require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. The FHWA and the FTA metropolitan planning regulations implementing these requirements were published on October 28, 1993 (58 FR 58040). The statutes and the planning regulations cited require the FHWA and the FTA to periodically certify that the planning process in metropolitan planning areas designated as transportation management areas complies with the provisions of the ISTEA and its implementing regulations.

General

Public Involvement in Certification Process

The FHWA and the FTA are soliciting public comment on the planning processes of the FY 1995 certification review sites identified below. The agencies are particularly interested in input regarding the strengths and weaknesses of the planning process in light of the requirements identified in 23 CFR 450 Subpart C. Additionally, the views of local officials and the public are welcomed regarding the use of the planning process in transportation investment decisions.

Schedule of FY 1995 Certification Reviews

The following schedule is subject to revision. Changes will be announced in the **Federal Register.** Parties interested in providing comments on the metropolitan transportation planning processes in the identified areas should submit them directly to FHWA/FTA Docket No. 95–9 identified above, clearly identifying the metropolitan area that the comments address. Alternatively, interested parties may choose to provide comments through the individual procedures adopted for each metropolitan area. Information concerning the citizen input process to be utilized for each review may be obtained from the appropriate FHWA division or FTA region office.

Except where the certification review was completed prior to the publication of this notice, comments on metropolitan planning processes under review must be received within 60 days after the scheduled review in order to be considered during the certification review process. The FHWA and the FTA will make every effort to review comments received after this period and address them in their findings as long as final action has not been taken on the certification review. To ensure consideration of comments, commenters should submit their written comments as soon as possible.

Where a review was completed prior to publication of this notice, interested parties wishing to make comments on a particular certification must contact Sheldon Edner within two weeks of the date of publication of this notice. Where dates for a planned certification review have not been established, please contact the appropriate FHWA Division or FTA region office for the dates. The FHWA and the FTA will publish a second notice of scheduled fiscal year 1996 review dates as the remaining review schedules are finalized.

The site visits are intended to provide an opportunity for the FHWA and FTA review team to solicit information from the metropolitan planning organizations (MPO), State DOTs and transit agencies regarding the implementation of the planning process. In addition, the team will solicit input from the public and local officials. Each relevant MPO is being asked to provide public notice, through its regular public notice processes, of the review and the opportunity to provide public input to the review team. Public officials should contact the appropriate MPO to identify processes set up to solicit local government input.

The results of the certification reviews will be made public through the regular MPO public information process at a time to be set by each MPO policy board.

Region/State/TMA	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Region ½												
Connecticut:												
New Haven-Meriden	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hartford-Springfield (MA)	.....	.....	.....	.....	.....	7–9	.....	.....	.....	.....	.....	.....
Massachusetts:												
Boston (EPR* Week of May 15, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lawrence-Haverhill	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....	.....
Springfield	.....	.....	.....	10–11	.....	.....	.....	.....	.....	.....	.....	.....
New Hampshire:												
Lawrence-Haverhill	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....	.....
New York:												
Buffalo-Niagra Falls	.....	.....	.....	.....	15–17	.....	.....	.....	.....	.....	.....	.....
New York (EPR Week of September 11, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Puerto Rico: San Juan	.....	.....	.....	.....	.....	.....	.....	1–5	.....	.....	.....	.....

Region/State/TMA	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Region 3												
District of Columbia: DC (EPR Week of December 12, 1994)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Maryland: Baltimore	.....	.....	.....	.....	.....	27–29	.....	.....	.....	.....	.....	.....
Pennsylvania:												
Philadelphia (EPR Week of January 17, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Scranton/Wilkes Barre	.....	.....	.....	.....	.....	.....	.....	24–26	.....	.....	.....	.....
Virginia: Hampton Roads	.....	.....	.....	.....	.....	.....	.....	.....	19–21	.....	.....	.....
Region 4												
Alabama:												
Birmingham	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
Mobile	.....	.....	12–16	.....	.....	.....	.....	.....	.....	.....	.....	.....
Montgomery	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	14–19	.....
Florida:												
Fort Myers	.....	.....	.....	.....	27–3–3	.....	.....	.....	.....	.....	.....	.....
Melbourne	.....	.....	.....	.....	.....	.....	17–21	.....	.....	.....	.....	.....
Miami (EPR March 20–23, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pensacola	.....	.....	.....	.....	.....	.....	.....	.....	5–9	.....	.....	.....
Georgia:												
Atlanta	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	18–22
Augusta	.....	.....	.....	.....	.....	.....	.....	.....	19–23	.....	.....	.....
Columbus	.....	.....	.....	.....	.....	27–31	.....	.....	.....	.....	.....	.....
Kentucky: Lexington	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....
Mississippi: Jackson	.....	.....	.....	.....	.....	.....	24–28	.....	.....	.....	.....	.....
North Carolina:												
Charlotte	.....	.....	.....	.....	13–17	.....	.....	.....	.....	.....	.....	.....
Durham	.....	.....	.....	.....	.....	.....	.....	.....	.....	10–14	.....	.....
South Carolina												
Charleston	.....	.....	.....	23–27	.....	.....	.....	.....	.....	.....	.....	.....
Greenville	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	11–15
Tennessee: Memphis	.....	.....	.....	.....	.....	.....	.....	22–25	.....	.....	.....	.....
Region 5												
Illinois: Rockford	.....	.....	.....	.....	.....	.....	.....	.....	23–25	.....	.....	.....
Indiana:												
Fort Wayne	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
South Bend	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....
Michigan:												
Detroit	.....	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Flint	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....	.....
Ohio:												
Canton	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....	.....
Cleveland (EPR Week of August 7, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Columbus	.....	.....	.....	X	.....	.....	.....	.....	.....	.....	.....	.....
Toledo	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....	.....
Youngstown	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
Wisconsin: Milwaukee	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....	.....
Region 6												
Arkansas: Little Rock	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10–13	.....
Louisiana: Shreveport	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	7–10	.....
Oklahoma: Oklahoma City	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....	.....
Texas:												
Austin	.....	.....	.....	X	.....	.....	.....	.....	.....	.....	.....	.....
23/26Dallas (EPR Week of June 12, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Houston	.....	.....	.....	.....	27–3	.....	.....	.....	.....	.....	.....	.....
Region 7												
Iowa: Davenport	.....	.....	.....	.....	.....	.....	.....	2–4	.....	.....	.....	.....
Missouri: St. Louis (EPR September, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Region 8												
Colorado: Denver	.....	.....	.....	31–2	.....	.....	.....	.....	.....	.....	.....	.....
Utah: Salt Lake	.....	.....	.....	.....	X	.....	.....	.....	.....	.....	.....	.....

Region/State/TMA	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Region 9												
California:												
Fresno	.....	.....	.....	.....	.....	.....	.....	.....	14–15	.....	.....	.....
Los Angeles	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	12–14
Stockton	.....	.....	.....	.....	.....	.....	.....	.....	.....	13–14	.....	.....
Hawaii: Honolulu (EPR January 9–12, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Region 10												
Oregon: Portland	.....	.....	.....	.....	.....	.....	.....	.....	19–21	.....	.....	.....
Washington:												
Seattle (EPR Week of May 8–12, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Vancouver	.....	.....	.....	.....	.....	.....	.....	.....	19–21	.....	.....	.....

Note: "X" indicates month of certification review; dates are specified where they are scheduled.
*Enhanced Planning Reviews (EPR) generally are scheduled for approximately 3-4 days during a given week.

Guidance and Responsibility

The FHWA and the FTA published guidance on the certification of planning processes (59 FR 42873). The guidance indicated that the primary responsibility for the certification process rested with the respective regional offices of the FHWA and the FTA. The preparatory work and analysis would be conducted by the appropriate division office of the FHWA or regional office of FTA, as a prelude to a site visit by representatives of both agencies to the metropolitan planning area to be certified. During the site visit, the FHWA and FTA representatives would, in addition to meeting with representatives of the MPO, State DOTs, and transit agencies serving the metropolitan planning area, also provide an opportunity to meet with citizens and elected local officials of the principal local governments in the area. The purpose of these meetings is to afford the officials and citizens an opportunity to provide input to the certification decision in terms of the performance of the planning process.

As indicated above, the MPO and/or State DOT or transit operator may make arrangements for these meetings through their normal procedures. Other alternatives are acceptable based on arrangements between the Federal agencies and the appropriate transportation planning agencies. Officials and citizens wishing to obtain information regarding the process of providing input should contact the MPO for the metropolitan planning areas identified above. Alternatively, the Transportation Planner or Planning and Research Engineer for the appropriate Division office of the FHWA also can provide this information. Each FHWA Division office is located in or near the capitol of each State.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Pub. L. 102–240, Sections 1024, 1025 and 3012; 105 Stat. 1914, 1955, 1962, and 2098.

Issued on: May 10, 1995.

Gordon J. Linton,

Administrator, Federal Transit Administration.

Rodney E. Slater,

Administrator, Federal Highway Administration.

[FR Doc. 95–12164 Filed 5–16–95; 8:45 am]
BILLING CODE 4910–22–P

Federal Transit Administration

Environmental Impact Statement: Peninsula Commute Service San Francisco Downtown Extension (PCS–DTX) Project in the San Francisco Bay Area, California

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Penninsula Corridor Joint Powers Board (PCJPB), is resuming preparation of an Environmental Impact Statement for the PCS-DTX in accordance with the National Environmental Policy Act (NEPA). The PCJPB will ensure that the EIS also satisfies the requirements of the California Environmental Quality Act (CEQA). The NEPA Lead Agency will be FTA. The CEQA Lead Agency will be the PCJPB.

The Peninsula Commute Service, commonly referred to as CalTrain, is the commuter rail system that serves the San Francisco Peninsula between Gilroy and the existing terminal station in San Francisco located at Fourth and Townsend Streets. The present location of the terminal is not considered desirable from a transportation, land use, or public policy perspective. The prosposed project would extend CalTrain to a new station closer to downtown San Francisco.

The project was determined by the Bay Area Partnership, a body of transportation officials representing different modes, regulatory agencies and federal agencies, to belong in the category of projects "requiring a Major Investment Study (MIS) but may be satisfied by prior studies". The consultation group convened to discuss MIS requirements for this project agreed that past corridor studies such as PENTAP, SCR 74, BART/SFO AA/DEIS, and the MTC/JPBCalTrain Downtown Extension/System Upgrades Study satisfy MIS requirements and that the project could advance into preliminary engineering and environmental documentation.

DATES: Written comments on the alternatives and impacts to be considered must be postmarked no later than June 15, 1995, and send to PCJPB at the address below. Two public informational meetings will be held June 21, 1995 at 10 AM-noon and 5:30 PM-7:30 PM in Auditorium B, Golden Gate University, 536 Mission Street, San Francisco 94105. These meetings will mark the resumption of environmental studies and preparation of the EIS/EIR (see **SUPPLEMENTARY INFORMATION** below).

ADDRESSES: Written comments should be sent to Ms. Marie Pang, Environmental Manager, PCS-DTX Project, Peninsula Corridor JPB, P.O. Box 3006, San Carlos, CA 94070–1306. Phone: (415) 508–6338.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Hom, Director, Program Development, FTA Region IX, 201 Mission Street, San Francisco, CA 94105. Phone: (415) 744–3116.

SUPPLEMENTARY INFORMATION:

I. Scoping

A Notice of Intent to prepare an EIS was previously published in the **Federal Register** on January 18, 1989. The Scoping Process began with two public scoping meetings on February 15, 1989. An Administrative Draft EIS was prepared in 1991 but was not circulated due to lack of local funding commitments for the project.

The project was held in abeyance until March, 1993, when the PCJPB conducted four public meetings to solicit public input on key project issues, including which alternatives deserved further consideration. As a result, the PCJPB, jointly with the Metropolitan Transportation Commission (MTC), conducted a study to develop fundable extension alternatives and system upgrades that could be recommended by the PCJPB for inclusion in the MTC's financially constrained Regional Transportation Plan (RTP). The study evaluated nine alternatives and the results were reviewed in public meetings. In March, 1994, the PCJPB designated Alternative 8B (extension of CalTrain to an underground terminal at Beale and Market Streets) of that study as the Locally Preferred Alternative (LPA) for inclusion in the RTP. This alternative was subsequently included in the 1994 RTP adopted by MTC after extensive public review. The PCJPB is now resuming environmental studies for the preparation of a Draft EIS/EIR for public review and comment.

The public informational meetings will announce resumption of environmental studies. The environmental process will be outlined, and the public will be invited to become involved in this process through the Public Participation/Consensus Building Program that will be implemented for this project. The public will be invited to comment on all aspects of the project, including alignments, station design, and the environmental, social and economic impacts to be analyzed. The public will also be notified of future informational meetings and workshops as the studies progress.

II. Description of Study Area

The Peninsula Commute Service traverses three counties (San Francisco, San Mateo, and Santa Clara) from San Francisco to Gilroy for a distance of approximately 77 miles. However, most of the proposed project is located in the City of San Francisco, in an area generally bounded by Market Street, the Embarcadero, China Basin Channel, Sixteenth Street, Seventh Street, Bryant Street and Second Street. The primary east-west corridors are along Brannan, Townsend and King Streets; primary north-south corridors are along Beale Street and Colin P. Kelly/Essex Streets (to the Transbay Terminal). The proposed station location is at Beale and Market Streets; however, the existing Transbay Transit Terminal location will also be evaluated in the envent the LPA location proves infeasible.

III. Alternatives

Three alternatives with sub-options emerged from the evaluation and public involvement processes conducted previously. These alternatives will be evaluated in the DEIS/DEIR as follows:

- Alternative 1—No Build. The San Francisco station would remain at 4th and Townsend.
- Alternative 2 (The Proposed Project [LPA])—CalTrain would be extended to a station at Beale and Market Streets with the following routing and fuel options:

Option A—CalTrain would be routed on the surface along Townsend Street to 4th Street, underground via cut and cover under public streets from 4th Street to Market and Beale Streets. King and Brannan Streets, would be considered should Townsend Street prove infeasible. Full system electrification is included in this option.

Option B—Same as Option A, except existing locomotives with diesel power would be used or would be converted to liquified natural gas.

Option C—Same as Option A, except that a direct mined or bored tunnel alignment would be used from approximately 3rd Street to approximately Harrison and Beale Streets under private properties in the South Beach Area.

- Alternative 3—CalTrain would be extended to a station at the existing Transbay Transit Terminal location. The PCS would be routed on the surface along Townsend Street, underground via cut and cover and/or mined tunnel to Folsom/Essex Streets and from there to a new or rehabilitated Transbay Transit Terminal. King or Brannan Streets would be considered should Townsend prove infeasible. Full system electrification is included in this alternative.

IV. Probable Effects

Impacts proposed for analysis include changes in the physical environment (air quality, noise, water quality, geology, visual); changes in the social environment (land use, business disruptions, and neighborhoods); changes in traffic and pedestrian circulation; impacts on parklands and historic sites; changes in transit service and partonage; associated changes in highway congestion; capital, operating and maintenance costs; and financial implications. Impacts will be identified both for the construction period and for the long term operation of the alternatives. The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal (NEPA) and State (CEQA) environmental laws and current Council on Environmental Quality (CEQ) and FTA guidelines. Mitigating measures will be explored for adverse impacts that are identified.

Issued on: May 12, 1995.

Stewart F. Taylor,

Region IX Administrator.

[FR Doc. 95–12165 Filed 5–6–95; 8:45 am]

BILLING CODE 4910–57–M

Maritime Administration

[Docket S–920]

Kadampanattu Corp.; Notice of Application for Temporary Written Consent Pursuant to Section 506 of the Merchant Marine Act, 1936, as Amended, for the Temporary Transfer of the M/V STRONG/AMERICAN to the Domestic Trade

Notice is hereby given that Allen Freight Trailer Bridge (ATFB), by letter of April 25, 1995, requested written consent pursuant to section 506 of the Merchant Marine Act, 1936, as amended (Act), to temporarily transfer during the year commencing October 31, 1995, the construction-differential subsidy (CDS) built, M/V STRONG/AMERICAN, exclusively to the domestic trade for a period not to exceed six months in any year period. The M/V STRONG/AMERICAN is an integrated tug barge unit, built in the United States with the aid of CDS, and owned by Kadampanattu Corp., an affiliate of ATFB.

ATFB states that it operates a weekly RO/RO barge service between Jacksonville, Florida, and San Juan, Puerto Rico, utilizing two RO/RO barges owned by Kadampanattu Corp., the JAX-SAN JUAN BRIDGE and SAN JUAN-JAX BRIDGE. Each of these barges will require regulatory drydocking and repairs prior to February 28, 1996.

AFTB explains that the M/V STRONG/AMERICAN has a capacity equivalent of 56 percent of the RO/RO barges to be drydocked. The STRONG/AMERICAN will require drydocking at considerable expense before it can be

placed in service, and without the requested waiver, such funds will not be expended. AFTB explains that the waiver sought herein would allow AFTB the necessary flexibility to complete drydocking and repairs to the RO/RO barges without disrupting the weekly service which is currently provided to the shipping public.

Any person, firm, or corporation having any interest in the application for section 506 consent and desiring to submit comments concerning Kadampanattu Corp.'s request must by 5:00 p.m. on May 30, 1995, file written comments in triplicate, to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS))

By order of the Maritime Administrator.

Dated: May 11, 1995.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 95–12093 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. 95–39; Notice 1]

Volkswagen of America, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (VWoA) of Auburn Hills, Michigan, has determined that some of its vehicles fail to comply with the power window requirements of 49 CFR 571.118, Federal Motor Vehicle Safety Standard (FMVSS) No. 118, "Power-Operated Window, Partition, and Roof Panel Systems," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." VWoA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4(e) in FMVSS No. 118 states that power operated windows may be closed only "during the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of its front doors."

During the period of September 1, 1992 through March 5, 1995, VWoA manufactured approximately 1,200 1995 GTI vehicles and 18,795 1993–1995 Jetta III vehicles that do not comply with the power window requirements of FMVSS No. 118. The power windows in the subject vehicles can be operated when the ignition key is in the "off" position and the passenger side front door has been opened. The windows should not be able to be operated in this scenario.

VWoA supports its application for inconsequential noncompliance with the following:

The purpose of the requirement in S4(e) of FMVSS 118 specifying that the power window system not be functional if the ignition key is in the "off" position and one of the front doors have been opened, is to reduce the possibility of unsupervised children operating the power windows in the vehicle. S4(e) is based upon the assumption that before one of the front doors has been opened, an adult remains in the vehicle to supervise and protect children from the safety risks associated with the operation of the power window system. S4(e) further assumes that after one of the front vehicle doors has been opened, no adult remains in the vehicle and thereby creates a risk that children remaining in the vehicle may injure themselves by activating operational power windows without supervision. S4(e) seeks to eliminate that risk.

In the case of the affected vehicles, the power windows cease to be operable if the driver door is opened, but remain operational for a period of 10 minutes after the passenger side front door has been opened. The rationale supporting the 10 minute period is to allow the driver to close any open windows even though he may already have turned off the ignition and the passenger may have opened to door and exited the vehicle. It is a convenience feature permitted by law in Europe and offered by Volkswagen to the market in Europe as a convenience feature.

The power-operated roof panel systems cannot be operated after the ignition key has been turned off.

VWoA believes that its European configuration inadvertently built into certain vehicles delivered in the United States does not affect their safety in a discernible way. VWoA believes that as long as the driver door of the vehicle has not been opened, a person of driving age inevitably remains in the vehicle because the exiting of the driver on the passenger side front door is extremely difficult and therefore unlikely. The affected vehicles are equipped with bucket seats and a center transmission console which cause the movement of the driver to the passenger side of the vehicle without contortion to be difficult and virtually impossible. Also, it makes no sense to suggest that a driver would exit the vehicle on the passenger side of a vehicle with bucket seats and [a] floor mounted transmission lever when he can conveniently open the driver's door for exit.

VWoA has received no customer compliants or claims relating to the ability of the windows to operate after the passenger door has been opened.

It should also be noted that the Volkswagen Owner's Manual contains an express warning against leaving children unattended in a vehicle and against misuse of the ignition key. The warning reads as follows:

WARNING

Do not leave children unattended in the vehicle especially with access to vehicle keys. Unsupervised use of the keys can result in starting of the engine and use of vehicle systems such as the power windows and power sunroof, which could result in serious personal injury.

As explained, the probability of unsupervised children being exposed to injury from power-operated window systems during the 10 minute interval after the ignition key has been turned off and the passenger sidé front door is opened and before the driver side front door is opened, is non-existent and that therefore this noncompliance is inconsequential to motor vehicle safety.

VWoA requests that this [application] be granted so that an unnecessary and costly consumer recall action [can] be avoided. VWoA expects a particularly low owner response to such a recall, if it were undertaken, because the ability to operate the power windows after the front passenger side door has been opened would likely be viewed by the owner to offer a valuable convenience feature without any apparent safety disadvantage.

Interested persons are invited to submit written data, views, and arguments on the application of VWoA, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 16, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 11, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–12090 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–60–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Reserach and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 16, 1995.

ADDRESS COMMENTS TO: Docket Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building. 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11449–N ...	Kleen Brite Lab., Inc., Rochester, NY.	49 CFR 174.67(i)(j)	To authorize chlorine filled rail cars to remain attached to connectors without the physical presence of an unloader. (modes 1, 2, 3)
11450–N ...	Coast Gas Inc., Bakersfield, CA.	49 CFR 173.315(a)	To authorize the transportation in commerce of corrosive liquefied petroleum gases in internally coated MC 331 cargo tanks. (mode 1)
11451–N ...	Gabriel Chemicals Inc., Houston, TX.	49 CFR 180.407	To authorize DOT–412 cargo tank inspection every five years when used in chlorosulfonic acid service. (mode 1)
11453–N ...	Heatec, Inc., Chattanooga, TN.	49 CFR 173.32c(g)(1)	To authorize the transportation in commerce of a flammable liquid in non-DOT specification steel portable tanks permanently fitted within an ISO frame. (modes 1, 2, 3)
11454–N ...	Hodgdon Powder Co., Inc., Shawnee Mission, KS.	49 CFR 173.71	To authorize the transportation in commerce of smokeless powder reclassified in Division 4.1 not to exceed 100 pounds to be shipped by cargo vessel. (mode 3)
11457–N ...	Entergy Services, Inc., Beaumont, TX.	49 CFR 174.67(i)&(j)	To authorize chlorine filled tank cars to remain connected to fittings without the physical presence of an unloader. (mode 2)
11458–N ...	Bristol-Myers Squibb Co., et al, Cranbury, NJ.	49 CFR 172.203(a), 173.150(b), 173.152(b), 173.154(b), 173.155(b), 173.306 (a) & (h), Part 107, Subpart B, Appendix B, Part 107, Subpart B, Appendix B.	To authorize the transportation in commerce of consumer commodities eligible for reclassification as ORM–D in pallet-sized display packs that exceed the gross weight limit for limited quantities packages. (mode 1)
11459–N ...	Quality Containment Co., Owensboro, KY.	49 CFR 173.34, 173.302, 173.304	To authorize the manufacture, mark and sale of a recovery cylinder for use in transporting damaged sulfur dioxide cylinders. (mode 1)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 11, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–12091 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–60–M

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. Application numbers with the suffix "P" denote a

party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 1, 1995.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
3216–M	DuPont de Nemours & Co., Inc., Wilmington, DE (See Footnote 1)	3216
7765–M	Carleton Technologies Inc., Orchard Park, NY (See Footnote 2).	7765
7774–M	Pipe Recovery Systems, Inc., Houston, TX (See Footnote 3)	7774
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY (See Footnote 4)	9184
9778–M	Western Atlas International, Houston, TX (See Footnote 5)	9778
11059–M ..	U.S. Department of the Interior, Amarillo, TX (See Footnote 6)	11059
11441–M ..	Radian Corporation, Research Triangle Park, NC (See Footnote 7)	11441

[1] To modify exemption to provide for shipment of a mixture of two fluorinated hydrocarbons classed in Division 2.2 in DOT-specification 110A2000W and 110A3000W tanks.

[2] To modify exemption to provide for cargo vessel as an additional mode of transportation for use in transporting nonrefillable, non-DOT specification cylinders containing Division 2.2 material.

[3] To modify exemption to provide for additional size non-DOT cylinders for shipment of bromine trifluoride.

[4] To modify exemption to provide for reusable bulk bags for use in transporting calcium carbide and substances which in contact with water emit flammable gases, solid n.o.s. in truckload or carload lots only.

[5] To modify exemption to provide for additional packaging methods for shipment of sulfur hexafluoride, classed as nonflammable gas, in non-DOT specification tanks and tubes, used in oil well logging service.

[6] To modify exemption to authorize highway as an additional mode of transportation for shipment of DOT-Specification 107A compressed gas cylinders containing helium, classed in Division 2.2.

[7] To modify exemption to provide for highway and rail as additional modes of transportation.

Application	Applicant	Parties to exemption
3216–P	Solkatronic Chemicals, Fairfield, NJ	3216
6691–P	C S Gases, Inc., Buffalo, NY	6691
7616–P	The Indiana Rail Road Company, Indianapolis, IN	7616
7774–P	Arrow Electric Line, Inc., LaFayette, LA	7774
7835–P	Environmental Products & Services, Inc., Syracuse, NY	7835
8445–P	Specialty Systems Hazardous Waste, Inc., Indianapolis, IN	8445
8554–P	Intermountain IRECO, Inc., Gillette, WY	8554
8915–P	Liquid Carbonic Industries, Oak Brook, IL	8915
9184–P	American Carbide, L.L.C., Newport Beach, CA	9184
9248–P	Total Resources International, Walnut, CA	9248
9275–P	MEM Company, Inc., Northvale, NJ	9275
9723–P	Environmental Options, Inc., Rocky Mount, VA	9723
10232–P ...	Aerosol Systems, Macedonia, OH	10232
10288–P ...	Chevron Chemical Company, Houston, TX	10288
10440–P ...	McDonnell Douglas Aerospace, Mesa, AZ	10440
10441–P ...	Environmental Products & Services, Inc., Syracuse, NY	10441
10688–P ...	Rust's Flying Service, Anchorage, AK	10688
10688–P ...	Ketchum Air Service, Inc., Anchorage, AK	10688
10933–P ...	Aptus, Inc., Lakeville, MN	10933
11043–P ...	Environmental Products & Services, Inc., Syracuse, NY	11043
11055–P ...	Environmental Products & Services, Inc., Syracuse, NY	11055
11055–P ...	Aptus, Inc., Lakeville, MN	11055
11156–P ...	Olson Explosives, Inc., Decorah, IA	11156
11173–P ...	Lockheed Missiles & Space Co., Sunnyvale, CA	11173
11197–P ...	Nalco Chemical Company, Naperville, IL	11197
11197–P ...	Fisher Scientific Company, Pittsburgh, PA	11197
11197–P ...	Betz Laboratories, Inc., Trevose, PA	11197
11197–P ...	Pace International LP, Kirkland, WA	11197
11220–P ...	Environmental Products & Services, Inc., Syracuse, NY	11220
11230–P ...	Intermountain IRECO, Inc., Gillette, WY	11230
11281–P ...	Environmental Products & Services, Inc., Syracuse, NY	11281
11328–P ...	Alaska Pacific Powder Company, Anchorage, AK	11328
11346–P ...	Allegheny Wireline Services, Inc., Weston, WV	11346
11346–P ...	Hitwell Surveys, Inc., Parkersburg, WV	11346

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 11, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–12092 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 811]

Appointments of Individuals To Serve as Members of the Performance Review Board (PRB); Senior Executive Service

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Performance Review Board for the Bureau of Alcohol, Tobacco and Firearms (ATF) for the rating year beginning July 1, 1994, and ending June 30, 1995. This notice effects changes in the membership of the ATF PRB previously appointed April 12, 1989 (54 FR 14730).

The *names* and *titles* of the ATF PRB members are as follows:

Bradley A. Buckles, Acting Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

John A. Dooher, Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury

Suellen P. Hamby, Executive Director, Treasury Executive Institute, Department of the Treasury

FOR FURTHER INFORMATION CONTACT: Steve L. Mathis, Personnel Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8600.

Signed: May 10, 1995.

John W. Magaw,

Director.

[FR Doc. 95–12046 Filed 5–16–95; 8:45 am]

BILLING CODE 4810–31–M

Internal Revenue Service

Tax on Certain Imported Substances (Hexabromocyclododecane, et al.); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include hexabromocyclododecane and ethylenebistetrabromophthalimide.

EFFECTIVE DATE: This modification is effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 CB 717, sets forth the rules relating to the determination process.

Determination

On May 8, 1995, the Secretary determined that hexabromocyclododecane and ethylenebistetrabromophthalimide should be added to the list of taxable substances in section 4672(a)(3), effective October 1, 1993.

The rate of tax prescribed for hexabromocyclododecane, under section 4671(b)(3), is $4.55 per ton. This is based upon a conversion factor for bromine of 0.747 and a conversion factor for butadiene of 0.253.

The rate of tax prescribed for ethylenebistetrabromophthalimide, under section 4671(b)(3), is $4.51 per ton. This is based upon a conversion factor for bromine of 0.672, a conversion factor for ethylene of 0.029, a conversion factor for xylene of 0.223, a conversion factor for ammonia of 0.036, and a conversion factor for chlorine of 0.075.

The petitioner is Ethyl Corporation, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Hexabromocyclododecane

HTS number: 2903.59.00.00
CAS number: 3194–55–6

Hexabromocyclododecane is derived from the taxable chemicals bromine and butadiene. Hexabromocyclododecane is a solid produced predominantly by reacting cyclododecatriene with bromine in a solvent system, followed by a neutralization, a centrifugation, a strip, a wash, drying, and grinding (as required).

The stoichiometric material consumption formula for hexabromocyclododecane is:

3 Br_2 (bromine) + 3 C_4H_6 (butadiene) ——> $C_{12}H_{18}Br_6$ (hexabromocyclododecane)

Hexabromocyclododecane has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Ethylenebistetrabromophthalimide

HTS number: 2925.19.10.00
CAS number: 32588–76–4

Ethylenebistetrabromophthalimide is derived from the taxable chemicals bromine, ethylene, xylene, ammonia, and chlorine. Ethylenebistetrabromophthalimide is a solid produced predominantly by sulfonating and brominating phthalic anhydride in the presence of oleum and then hydrolyzing the resulting tetrabromophthalic anhydride in the presence of a solvent system and reacting it with ethylene diamine. The resulting ethylenebistetrabromophthalimide is centrifuged, washed, dried/converted, milled, and packaged.

The stoichiometric material consumption formula for ethylenebistetrabromophthalimide is:

4 Br_2 (bromine) + C_2H_4 (ethylene) + 2 C_8H_{10} (o-xylene) + 2 NH_3 (ammonia) + Cl_2 (chlorine) + 6 O_2 (oxygen) + 8 SO_3 (sulfur trioxide) ——> $C_{18}H_4O_4N_2Br_8$ (ethylenebistetrabromophthalimide) + 8 H_2O (water) + 4 SO_2 (sulfur dioxide) + 4 H_2SO_4 (sulfuric acid) + 2 HCl (hydrochloric acid)

Ethylenebistetrabromophthalimide has been determined to be a taxable substance because a review of its

stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 54.1 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–12028 Filed 5–16–95; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 60, No. 95
Wednesday, May 17, 1995

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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting, described below, regarding DOE's standard-based safety management program.

TIME AND DATE: May 31, 1995, 9:00 a.m.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: 42 U.S.C. § 2286b requires that the Board review and evaluate the content and implementation of standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy. Those standards include rules, DOE safety Orders, and other requirements. The Board, acting pursuant to its enabling statute, has issued a series of Recommendations (most notably 90–2, 93–1, and 94–5) designed to foster the development of an effective standards-based nuclear safety program within DOE. The Secretary of Energy has accepted each of these Recommendations. In the meantime, DOE is engaged in a number of initiatives designed to simplify existing safety Orders and the promulgation of new rules. The Secretary of Energy's commitment to implementing Board recommendations calling for an effective standards-based safety program will require careful integration with these recent DOE initiatives. The Board will hold a public meeting to consider the essential elements of a safety management program that is standards-based and to review DOE's progress in developing such a program.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indian Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board has a responsibility for oversight of DOE's development of nuclear health and safety requirements as the transition is being made from the use of safety Orders to rules. The Board understands the reasons for development and promulgation of nuclear safety requirements through rulemaking and is concerned that the conversion process not compromise the requirements-based safety program now embodied in the DOE's safety Orders. The Board's most recent effort to ensure that the "good engineering practices" codified in DOE's safety Orders are maintained was expressed in its Recommendation 94–5, dated December 29, 1994. In that Recommendation, the Board noted the results of its review of selected DOE contracts and DOE advisories and stated, among other things, that:

> The provisions [of these DOE contracts and advisories by DOE management] indicate that the integrated use of nuclear safety-related Rules, Orders, standards and guides in defining and executing DOE's safety management program may not be sufficiently well understood by either the M & O contractors or DOE managers. This issue was raised in the Board's letter of May 6, 1994 to the Department of Energy.
>
> Given the situation as described above, the Board believes that further DOE actions are needed to ensure that there is no relaxation of commitments made to achieve compliance with requirements in Orders while proposed rules are undergoing the development process. These actions should also provide for smooth transition of Orders to rules once promulgated.

Recommendation 94–5, in its entirety, is on file in DOE's Pubic Reading Rooms, at the Defense Nuclear Facilities Safety Board's Washington office, and on the Internet through access to the Board's electronic bulletin board at the following address: gopher://gopher.dnfsb.gov:7070. It is also set forth in the **Federal Register** at 60 FR 2089.

In accord with the statute establishing the Board, a public meeting will be conducted to lay the groundwork for a full assessment of how Standards/Requirements Identification Documents (S/RIDs), rules, Orders, and other safety requirements are integrated into an overall safety management program for defense nuclear facilities. To assist the Board and inform the public, individual Board members will present their views, and the Board's staff will brief the Board on related topics, including, but not limited to:

1. Framework and Application of an Integrated Safety Management Program
2. Standards-Based Safety Management Practices at Selected DOE Defense Nuclear Facilities
3. Regulatory Approaches to Standards-Based Safety Management
4. Tailoring Standards-Based Safety Management for R&D Activities

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office.

The Board also intends to notice and conduct public hearings pursuant to 42 U.S.C. § 2286b, at a later date, to assess the Department of Energy's (DOE) progress in implementing an effective standards-based safety program for DOE's defense nuclear facilities and to assure that DOE's activities in streamlining DOE's nuclear safety order system and converting to a regulatory program do not eliminate the engineering practices now codified in DOE's safety Orders that are necessary to adequately protect public health and safety.

The Board reserves its right to further schedule and otherwise regulate the course of these meetings and hearings, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: May 15, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–12279 Filed 5–15–95; 2:36 pm]

BILLING CODE 3670–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, May 22, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12213 Filed 5–15–95; 10:16 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 15, 1995.

A closed meeting will be held on Tuesday, May 16, 1995, at 10:00 a.m. Open meetings will be held on Wednesday, May 17, 1995, at 9:00 a.m. and on Friday, May 19, 1995, at 11:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 16, 1995, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Formal orders of investigation.

Withdraw settlement of administrative proceedings of an enforcement nature.

Opinions.

The subject matter of the open meeting scheduled for Wednesday, May 17, 1995, at 9:00 a.m., will be:

The Commission will hold a roundtable discussion with members of the Federal Regulation of Securities Committee of the ABA's Business Law Section. The topics discussed may include alternative approaches to an improved safe harbor for forward looking documents; pending legislative proposals that affect the Securities & Exchange Commission; and sales practices for sophisticated investment products and evolving suitability standards. For further information, please contact Jonathan Katz (202) 942–7070.

The subject matter of the open meeting scheduled for Friday, May 19, 1995, at 11:00 a.m., will be:

1. Consideration of whether to propose amendments to the all-holder's/best price provisions of: (i) Rule 13e–4; and (ii) 14d–10 to prohibit a tender offeror from paying a soliciting dealer fee to a security holder with respect to any tender by that holder for its own account. For further information, please contact Gregg Corso or Laurie Green at (202) 942–2920, Division of Corporation Finance; Nancy Sanow or Carlene Kim at (202) 942–0772, Division of Market Regulation.

2. Consideration of whether to approve a National Association of Securities Dealers ("NASD") proposed rule change (SR–NASD–94–62) to amend its Interpretation under Article III, Section 1 of the NASD Rules of Fair Practice to prohibit a Nasdaq market maker from trading ahead of customer limit orders sent to it for execution from another broker-dealer. For further information, please contact Ethan Corey at (202) 942–0174.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 12, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12239 Filed 5–15–95; 12:41 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 60, No. 95
Wednesday, May 17, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERNATIONAL TRADE ADMINISTRATION

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

Correction

In notice document 95–11531 beginning on page 24831 in the issue of Wednesday, May 10, 1995, make the following correction:

On page 24831, under the heading "Antidumping Duty Proceedings", in the first listing for "Taiwan" in the table, "(A-583-507)" should read "(A-583-008)".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

Correction

In notice document 95–11616 beginning on page 25260 in the issue of Thursday, May 11, 1994, make the following corrections:

On page 25261, in the table, in the first column, Application numbers "10012-N", "10022-N" and "10098-N" should read "11012-N", '11022-N" and "11098-N" respectively.

BILLING CODE 1505–01–D

federal register

Wednesday
May 17, 1995

Part II

Office of Management and Budget

Cost Principles for State, Local and Indian Tribal Governments (Circular A–87); Notice

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for State, Local and Indian Tribal Governments

AGENCY: Office of Management and Budget.

ACTION: Final Revision to OMB Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments".

SUMMARY: An interagency task force was established to review existing cost principles for Federal awards to State and local governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from State and local governments, and compared for consistency the provisions of other Office of Management and Budget cost principles covering non-profit organizations and universities. Proposed revisions reflecting the results of those efforts were published on October 12, 1988 (53 FR 40352–40367) and August 19, 1993 (58 FR 44212–44234). The extensive comments received on these proposed revisions, discussions with interested groups, and other related developments were considered in developing this final revision.

DATES: Agencies shall issue codified regulations to implement the provisions of this Circular by September 1, 1995.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, Room 6025, New Executive Office Building, Washington, DC 20503. For a copy of the revised Circular, contact Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202)395–7332.

FOR FURTHER INFORMATION CONTACT: Non-Federal organizations should contact the organization's cognizant Federal funding agency. Federal agencies should contact Gilbert H. Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, telephone: (202)395–3993.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget (OMB) received about 200 comments from governmental units, Federal agencies, professional organizations and others in response to the **Federal Register** notice of August 19, 1993 (58 FR 44212). All comments were considered in developing this final revision.

OMB also considered the National Performance Review's recommendations to reduce paperwork and red tape. Changes were made to the Circular to streamline the cost negotiation process and defer to State and local accounting procedures whenever possible. Also, the policy guides in the Circular were amended to provide that Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs.

Section B presents a summary of the major public comments grouped by subject and a response to each comment. Other changes have been made to increase clarity and readability. Section C addresses procurement issues. Section D discusses the Federal Acquisition Streamlining Act of 1994.

B. Public Comments and Responses

Basic Circular

Comment: The policy subsection states that "no provision for profit or increment above allowable cost is intended." This statement is currently contained in the Circular, but it is different from that contained in other OMB cost principles circulars and is literally incorrect. This seems to say no profit or increment above cost is permitted.

Response: This sentence was changed to conform with the other OMB cost principles circulars. There is no policy change intended by this change.

General Principles for Determining Allowable Costs—Attachment A

Comment: The requirement in the basic guidelines that "a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a Federal award as an indirect cost" appears to be too expansive and should be clarified.

Response: There is no policy change intended from that in the existing Circular. The wording in the consistency provision was changed to make it clear that all costs incurred for the same purpose in like circumstances are either direct costs only or indirect costs only with respect to final cost objectives (e.g., grants). No final cost objective shall have allocated to it as an indirect cost any cost if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. For example, a grantee normally allocates all travel as an indirect cost. For purposes of a new grant proposal, the grantee intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the grant. Since travel costs of personnel whose time is accounted for as direct labor working on other grants are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any other grant.

Comment: The Circular lists the market price of comparable goods or services as one test of reasonableness. This statement may cause problems for State agencies that are required to make purchases from State-wide contracts.

Response: OMB recognizes that market fluctuations may result in a State paying higher prices on State-wide contracts. However, significant differences between State prices and market prices should be analyzed. For example, Federal awards should not be paying higher prices for State awards based on geographical preferences.

Comment: The prohibition against shifting costs allocable to a particular Federal award or other cost objective to other Federal awards needs to be clarified. Governmental units should not be precluded from shifting allowable cost in accordance with program agreements.

Response: This section was expanded to recognize that there are instances when it may be appropriate for governmental units to transfer costs from one cost objective to another cost objective.

Comment: It is not logical to require governmental units to allocate indirect costs to all activities including donated services.

Response: The Circular is designed to provide that Federal awards bear their fair share of costs. If non-Federal activities use donated services that require a substantial amount of support costs, it would be inequitable to charge these costs to Federal awards.

Comment: The section on applicable credits needs to be clarified.

Response: The language in this section has been revised to remove inappropriate examples of applicable credits and references to program income which are covered by the grants management common rule.

Selected Items of Cost—Attachment B

Advertising and Public Relations Costs

Comment: Clarify the allowability of certain public relations type costs, such as job fairs and activities to promote ridership on public transportation.

Response: The allowability of these types of costs depends upon the circumstances surrounding the individual case. In determining whether

Federal awards should participate in these types of costs, the recipient should consider how similar types of costs are charged, and whether there is a direct benefit to Federal awards resulting from these costs.

Audit Services

Comment: The Circular limits the allowability of audit costs to single audits and does not provide reimbursement for audits of a less comprehensive nature.

Response: This section was revised to allow the costs of other audits.

Automatic Electronic Data Processing

Comment: The requirement for governmental units to amortize the costs associated with the development and testing of automated systems would impose an unreasonable financial and administrative burden on the governmental units.

Response: OMB eliminated the requirement for governmental units to amortize the costs of developing and testing automated systems until a uniform Federal policy covering all types of recipients of Federal awards can be developed.

Compensation for Personnel Services

Comment: The potential paperwork burdens associated with accounting for employee leave payments and accruals could be substantial.

Response: This section was simplified by modifying many of the prescriptive accounting rules for leave.

Comment: Interest cost associated with pension contributions should be allowed if the governmental unit's contributions are delayed.

Response: References to interest payments were deleted. However, language was inserted into the Circular to make it clear that Federal reimbursement of pension cost must be adjusted when the governmental unit's payments to the fund are late. The adjustment should compensate for the additional cost because of the timing of the charges to the Federal Government and the governmental unit's contribution to the pension fund.

Comment: Governmental units should not be required to use separate cost allocation procedures for classes of employees that experience different actuarial gains and losses (e.g., police and fire departments).

Response: This requirement was deleted from the Circular.

Comment: The requirement that a governmental unit obtain Federal approval for changing its method for determining pension and post-retirement health benefit costs should be deleted.

Response: This requirement was deleted. Pension costs and post-retirement health benefit costs determined in accordance with Generally Accepted Accounting Principles (GAAP) and the provisions of the Circular will be allowable. For contracts covered under Cost Accounting Standards (CAS), CAS 412 and 413 promulgated by the Cost Accounting Standards Board shall establish the allocability of pension costs.

Comment: The current principles applicable to support of personnel costs have worked well and require no change.

Response: OMB believes additional guidance is necessary. Federal agencies have found that the absence of sufficient guidance on documentation to support salaries charged to Federal awards has caused numerous audit findings and resulted in endless wasted hours of negotiation between Federal agencies and governmental units. Based on the comments received, OMB made a number of changes to the requirements in this section of the Circular to clarify and simplify Federal requirements for documenting salaries charged to Federal awards.

Defense and Prosecution of Criminal and Civil Proceedings, and Claims

Comment: OMB proposed to substantially amend the provisions on the allowability of legal and related expenses. In the 1981 version of the Circular, this provision is found at Attachment B, section 16 (46 FR 9552). In the latest proposal, the proposed revisions were at Attachment B, section 14 (58 FR 44222).

State and local governments contended that the proposed revisions on the allowability of legal and related expenses would be unfair and would deny them due process.

State and local governments also objected to the specific proposed revisions dealing with legal proceedings based on the Major Fraud Act and the Federal Acquisition Regulation (48 CFR 31.205–47) in Attachment B, sections 14.a. through f. State and local governments contended that those provisions are ambiguous, inconsistent and overly broad. In addition, these commenters argued that the provisions were designed for commercial contractors and should not be applied to grants.

Response: After reviewing the comments on the proposed revisions, OMB decided not to amend the current provision on the allowability of legal and related expenses. In the revised Circular, this provision is now found at section 14.b.

In this revision, OMB has added a provision at section 14.a. This provision, which was in the proposal, simply restates the currently-applicable, statutory restrictions in 10 U.S.C. 2324(k).

Depreciation and Use Allowances

Comment: It is unclear if a use charge can be charged while an asset is in service.

Response: The Circular now provides that a reasonable use allowance may be negotiated for fully depreciated assets; therefore, OMB believes a reasonable use allowance could be negotiated for an asset for as long as the asset is in service.

Comment: It is not clear whether accelerated depreciation is allowed.

Response: The preferred method of depreciation is the straight line method. However, other methods may be used when there is evidence that an asset will be used up faster in the earlier portion of its useful life.

Comment: The estimated useful lives of equipment and buildings used to compute use allowances should be shortened.

Response: No changes were made. Governmental units have the option of claiming depreciation which is usually based on the actual life of the asset.

Comment: It is not clear why classes of assets needed to be determined on a State-wide, local-wide, or Tribal-wide basis.

Response: This section was amended to say classes of assets shall be determined on the same bases used for the governmental unit's financial statements.

Equipment and Other Capital Expenditures

Comment: The capitalization level for equipment seems to be arbitrarily low. The criterion of $25,000, which is recognized by the Department of Health and Human Services (HHS), might be more appropriate.

Response: The $5000 criterion is in line with capitalization levels used by government contractors and others. The HHS criterion is limited to equipment used on a few very large programs where equipment purchases are a very small percentage of total program costs. For CAS-covered contracts subject to "full coverage", the threshold for equipment is $1500 as established under CAS 404.

Comment: Clarify the term "article" as used in the definition of equipment. The Circular defines equipment "as

being an article of nonexpendable property."

Response: The definition of "capital expenditure" was added to further define the term "equipment." However, if further guidance is needed in this area, governmental units should follow their own accounting practices when defining equipment.

Comment: It is not clear what is meant by "The total acquisition costs are not allowable as indirect costs during the period acquired."

Response: This section was clarified. It now says that capital expenditures which are not authorized to be charged directly to an award may be recovered through use allowances or depreciation.

Comment: The impact of depreciation as proposed in the Circular would shift costs to the governmental unit, not make any provision for the time value of money, increase administrative costs to track resulting depreciation schedules, and erode the partner relationship between Federal agencies and governmental units.

Response: The accounting treatment for depreciation as prescribed by the Circular is based on GAAP. Further, the provisions ensure that the Federal Government pays its fair share of costs, including interest on financing.

Fund Raising and Investment Management Costs

Comment: It is not clear whether costs related to raising funds from employees within an organization for charitable activities, such as the United Way, would be allowable since the Circular disallows fund raising costs.

Response: Generally, the prohibition on fund raising activities covered by the Circular is for those activities where the governmental unit raises funds for its own use. Incidental fund raising from an organization's own employees for charitable organizations, such as the United Way, is considered part of normal operating expenses and, therefore, allowable.

Gains and Losses on Disposition of Depreciable Property and Other Capital Assets and Substantial Relocation of Federal Programs

Comment: The provisions which would require governmental units to reimburse the Federal Government when Federal awards were relocated from facilities where the Federal Government participated in the financing is inappropriate.

Response: This section was amended. It now requires governmental units to obtain prior approval from the cognizant agency for substantial relocations of Federal awards from buildings for which the Federal Government participated in the financing.

Insurance and Indemnification

Comment: It is not apparent why provisions for liabilities, which do not become payable for more than one year after a self insurance provision is made, are limited to the discounted value of the liability.

Response: This requirement is designed to cover only those cases where the amount of the liability is firm or reasonably certain. This provision helps to avoid excessive reserve balances for the current fiscal year. It limits current year premiums to the present value of the future (known or reasonably certain) liability. When that future liability becomes due, prior years premiums plus earnings (i.e., interest or investment income) from those premiums will be available to satisfy that debt.

Comment: The Circular states that self-insurance reserves must be based on sound actuarial principles using the most likely assumptions. This seems to be an attempt to limit sound actuarial principles.

Response: This language was not intended to restrict sound actuarial principles. The language was changed to clarify that sound actuarial assumptions should recognize actual past, as well as probable future, events when determining premiums and reserve levels.

Interest

Comment: Interest expense should be allowable not only for building modifications, as provided in the 1981 revision of Circular A–87, but also for acquisitions of equipment made prior to the issuance date of the revised Circular. The proposed provision is objectionable because it would require dual records and impose an unreasonable and unnecessary administrative burden on State and local governments.

Response: The provision was rewritten to allow interest expense paid or incurred on or after the revised Circular's effective date to be charged to Federal awards for existing as well as newly-acquired equipment.

Historically, OMB has not allowed interest on debt issued prior to the effective date of an interest policy revision (pre-revision debt). In 1980, OMB allowed State and local governments interest on debt issued to acquire buildings, but not on pre-revision debt (45 FR 27363). In 1982, in a revision to Circular A–21, "Cost Principles for Educational Institutions," OMB allowed interest on debt issued to acquire buildings and equipment, but not on pre-revision debt (47 FR 33658). In 1994, in a proposed revision to Circular A–122, "Cost Principles for Non-Profit Organizations," OMB proposed to allow interest debt issued to acquire buildings and equipment, but not on pre-revision debt (59 FR 49091).

In view of the fact that pre-revision debt was incurred with full knowledge of the cost policy that was in effect at that time, OMB does not believe that grantees should expect the Federal Government to allow interest on this debt without such a decision being cost-justified from the Federal Government's perspective. OMB believes the Federal Government should only allow interest on pre-revision debt when the cost of maintaining dual records on pre-revision and post-revision assets and related debt (all or a portion of these recordkeeping costs are chargeable to the Federal programs as administrative costs) is less than the interest cost on pre-revision debt.

With respect to debt incurred to purchase buildings, OMB believes that the cost of maintaining dual records is cost-justified in view of the limited number of buildings and debt issues for which separate records would have to be maintained, and the substantial interest cost associated with long term debt used to finance buildings. Thus, as OMB has previously explained, "[a]applying the new rules to old buildings would appear to provide a windfall recovery, and might drive up overhead costs of federally assisted programs" (47 FR 33658, also see 45 FR 27363).

Equipment acquired by State and local governments (except computers), while substantial in terms of the number of pieces, is relatively nominal in cost and has a relatively short life span. As a result, the outstanding interest on debt issued to finance this equipment is relatively nominal. Moreover, State and local governments would still bear the major share of the financing costs, even if pre-revision debt were allowable. By contrast, the cost of maintaining dual records for a large number of items and related debt would likely be substantial. Given the different balance between administrative and interest costs, OMB has decided that, in this instance, the administrative costs associated with maintaining separate records to track pre-revision and post-revision debt is not cost-justifiable from the Federal Government's perspective.

The basis for the allowance of pre-revision debt for equipment of State and local governments is consistent with the basis for OMB's treatment of such debt for educational institutions (in 1982) and OMB's proposed treatment of such

debt for non-profit organizations (in 1994). The cost of equipment acquired by educational institutions and non-profit organizations through debt financing can be significant (e.g., over $650,000 for x-ray crystallography equipment, $348,000 for a vantage flow cytometer for high speed cell analysis, and $265,000 for an electron microscope). Equipment of this type and related debt has a longer life, and in turn, significantly higher interest cost. Moreover, as with buildings, there are only a limited number of pieces of such equipment, which reduces the administrative costs of dual records. Given the amount of interest involved in the financing of these assets compared with the relatively nominal administrative burden associated with maintaining dual records, OMB believes the cost of maintaining dual records is justifiable.

Comment: The requirement for a governmental unit to document, as part of its decisionmaking process, that capital leasing is the most economical option does not belong in Circular A–87.

Response: The requirement for lease analysis as part of the governmental unit's decisionmaking process and its proper documentation is addressed in the Grants Management Common Rule under Section ____.36(b)(4). This requirement is not addressed in Circular A–87.

Comment: Governmental units would not recover their full costs because of provisions in the Circular which provide that a credit is due the Federal Government when Federal payments for interest, depreciation, use charges and other contributions for building use exceed the interest and principal payments made by the government (positive cash flow).

Response: OMB deleted the provisions in the Circular which would require credits under the conditions described above. However, governmental units will be required to negotiate the amount of allowable interest whenever cash payments (interest, use allowances, depreciation and contributions) exceed governmental unit cash payments and other governmental unit contributions. OMB will study this matter further to ensure fair and equitable policies are established for the States and the Federal Government.

Memberships, Subscriptions, and Professional Activities

Comment: Membership costs in some civic and community organizations should be allowable when the purpose is to promote services provided by the Federal award.

Response: The language has been revised to allow memberships in civic and community organizations as a direct cost with the prior approval of the Federal awarding agency.

Professional Service Costs

Comment: Simplify the section on professional service costs by eliminating the factors to consider in determining the allowability of professional service costs.

Response: Eight subsections listing the factors were deleted.

Proposal Costs

Comment: It is not clear why proposal costs should normally be treated as indirect costs and allocated to all activities. Such costs should be treated as direct costs if they can be identified with a specific award.

Response: OMB added a provision to allow governmental units to charge proposal costs directly to a Federal award with the prior approval of the Federal awarding agency.

Taxes

Comment: If OMB adopts the proposed revision affecting sales tax reimbursement, the revision should become effective at some later date to allow time to change State and local laws.

Response: OMB agrees that there should be a phase-in period. The Circular allows governmental units three years to phase-in the change.

Comment: If the sales tax proposal were adopted, it would become a burden to separately account for State sales taxes paid on Federal grant purchases.

Response: The Circular allows reasonable approximations to be used where the identification of the actual amount of unallowed taxes would require an inordinate amount of effort.

Comment: State sales taxes should be allowable when a governmental unit is in a position that makes exclusion administratively impossible, i.e., when employees in travel status must pay sales taxes upon receipt of goods and services.

Response: States should attempt a reasonable approximation.

Comment: Some State and local governments and Indian Tribal governments would lose substantial amounts of revenue if sales taxes were not chargeable to purchases made in connection with federally-funded programs.

Response: The intention of the tax provision is to address State or local government taxes, or changes in tax policy, that disproportionately affect a federally-funded program. Under the Circular, such taxes are unallowable. (As explained in the next comment-and-response, where a Federal statute prescribes a different treatment for taxes, that statute controls.)

For example, a tax would disproportionately affect a Federal program if the tax were defined or applied so that it was imposed only in connection with that program, or only in connection with Federal programs generally. Another example would be if a sales tax were imposed on a good or service that in practice is used solely or disproportionately in connection with Federal programs. These examples are for illustration, and are not meant to be exclusive. Whether a particular tax, or change in tax policy, would disproportionately affect a Federal program will have to be determined based on a review of the tax and the Federal programs in question.

When a governmental unit pays a tax to itself, that self-assessed tax is not a true cost to the governmental unit. Especially where a self-assessed tax disproportionately affects a Federal program, it is not appropriate for the governmental unit to be able to characterize that tax as a "cost" of its participation in the Federal program. If such disproportionate, self-assessed taxes were treated as allowable, even though they disproportionately affect Federal programs, governmental units could define or apply taxes in such a way that their net impact would largely be to increase the Federal Government's contribution, rather than to raise revenues from the taxpayer. To the extent that making such taxes unallowable would result in a loss of Federal assistance awards, the Circular allows three years for governmental units to phase-out any existing taxes that disproportionately affect Federal programs. (For the larger formula grant programs, the disallowance of such taxes would not result in any loss of Federal assistance awards; the funds which are now used to pay self-assessed taxes could be used to further the objectives of the Federal assistance.)

Comment: The proposed revision on sales taxes is directly contrary to the legislative intent of Public Law 102–234, "Medicaid Voluntary Contributions and Provider Specific Tax Amendments of 1991." The proposal should be revised to preclude its application to broad-based health care related taxes paid by public entities.

Response: The Circular would not take precedence over a statute. If any statute specifically prescribes policies

and specific requirements that differ from the Circular, the statute will govern.

Comment: State sales taxes collected by another level of government should be exempt from the provisions of the Circular.

Response: As noted above, the Circular's disallowance is directed at self-assessed taxes. Thus, if a local government receives an award directly from the Federal Government, and pays a State sales tax on purchases made in connection with that award, the tax is an allowable cost. (However, as previously noted, the Circular does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate.)

However, if the local government does not receive the award directly from the Federal Government, but instead receives the award indirectly by virtue of a State pass-through, then the sales tax that the local government pays the State is in reality a self-assessed tax, which would be unallowable if the tax disproportionately affects a Federal program.

Comment: It is not clear whether the prohibition on payment of sales taxes applies to out-of-state sales tax.

Response: Since they are not self-assessed, taxes assessed by other States, or political subdivisions of other States, are not unallowable under the Circular. (However, as previously noted, the Circular does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate.)

Travel Costs

Comment: Airfare costs in excess of the lowest available commercial discount fare are unallowable. With today's confusing array of super savers and fare wars, the burden involved in proving the lowest airfare would be considerable.

Response: The travel provisions were changed to say travel costs in excess of the customary standard (coach or equivalent) airfare are unallowable.

State/Local-Wide Central Service Cost Allocation Plans—Attachment C

Comment: Working capital reserves in many cases should not be limited to 60 days cash expenses. Time consuming collections, uneven usage levels, and unanticipated demand for services are some of the reasons for authorizing a larger reserve.

Response: OMB believes the 60 day reserve should provide the flexibility required by most funds to operate from one billing cycle to the next. However, the Circular was amended to provide for a larger reserve in exceptional cases when approved by the cognizant Federal agency.

Comment: The Circular should not restrict governmental units from engaging an accounting firm to prepare an indirect cost proposal and then engaging the same firm to make subsequent audits.

Response: This provision was deleted from the Circular. This issue will be addressed as part of OMB policy changes to other OMB grants management circulars.

Comment: What are the criteria OMB uses for making cognizant assignments and for defining "major governments"?

Response: OMB is in the process of reviewing the cognizant assignments for governmental units. Only governmental units receiving substantial amounts of direct Federal assistance will be assigned a Federal cognizant agency and be required to submit plans to those cognizant agencies. Because the mix of Federal awards has changed so much since the last list was issued, OMB needs to develop a new dollar criterion for defining "major."

Comment: States and other prime grantees should not be required to monitor subrecipient cost allocation plans and/or negotiate sub-recipient indirect costs.

Response: The grants management common rule requires governmental units to monitor subawards to assure compliance with applicable Federal requirements. These requirements include compliance with the cost principles. In those cases where the subrecipient does not receive any Federal awards directly from the Federal Government, Federal agencies would not have any direct responsibility for negotiating indirect costs.

Comment: Attachment C, Section E states that "The documentation requirements in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis." This specific sentence might allow a Federal cognizant agency to unreasonably and unilaterally expand the documentation requirements.

Response: Federal agencies should have the flexibility to obtain additional data, when necessary. However, OMB agrees that this type of request should be the exception rather than the rule.

Comment: Documentation for internal service funds seems excessive since these areas are audited. This documentation is more appropriately included in a State or local government's financial statements and work papers for the fiscal year rather than in the entity's cost allocation plan.

Response: OMB amended this section to require only the largest funds to submit data. If the required data are included in the governmental unit's financial statements, submission of the financial statements to the Federal cognizant agency will meet the requirements of the Circular.

Comment: OMB proposed to add provisions requiring the certification of cost allocation plans and of indirect cost rates (see preamble (58 FR 44218); Attachment C, Section E.4 (58 FR 44229); Attachment D, Section D.3 (58 FR 44230–31); and Attachment E, Section D.3 (58 FR 44233)). States objected to the inclusion of the phrase "under penalty of perjury" in the proposed certification. They contended that the phrase is unnecessary.

Response: OMB has decided to amend the Circular to add the proposed certifications, but OMB has accepted the commenters' suggestion that the phrase "under penalty of perjury" not be included in the certifications. OMB believes that, when the Federal Government is dealing with State and local governments, it is unnecessary to require that the certifying government official sign a certification stating that it is made "under penalty of perjury." State and local officials should not conclude, however, that the omission of the phrase "under penalty of perjury" means that no potential legal liability is associated with a certification's submission. In this regard, note the provision in Federal law imposing criminal penalties for "false, fictitious or fraudulent statements or representations" (18 U.S.C. 1001). The Department of Justice is responsible for enforcing this provision (and other laws regarding false statements and claims). OMB expresses no opinion concerning the potential legal liabilities that are associated with making the certifications in the revised Circular.

Comment: Restricting the authority to reopen Central Service Plans to the Federal cognizant agency is inequitable.

Response: This section was changed to state that agreements may be subject to reopening only if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate.

Comment: GAAP for State and local governments do not require internal service activities to be accounted for and reported in proprietary accounts.

Response: The requirement for internal service activities to be accounted for in proprietary accounts was deleted.

Comment: Remove the requirement that a carry forward adjustment is not

permitted for a central service activity that was not included in the approved plan.

Response: The carry forward technique was intended to permit adjustments for differences between actual and estimated costs of services included in a cost allocation plan. It was not intended to shift the entire cost of an activity excluded from the year of the plan to a future year. There may be circumstances where a change to the plan should be considered (e.g., the service did not exist when the plan was established and was initiated during the year covered by the plan). This type of amendment should modify the plan itself and would not be handled through a carry forward adjustment.

Comment: Adjustments of billed services do not provide a workable solution for the larger central services of the States. The dollar limitation of $50,000 for making adjustments through allocated central services is too low.

Response: This section was rewritten to provide governmental units more options and flexibility in making adjustments to Federal awards.

Public Assistance Cost Allocation Plans—Attachment D

Comment: The public assistance cost allocation plans are narrative descriptions of cost allocation procedures rather than allocations of actual costs. The provisions dealing with refunds or adjustments related to unallowable costs and the certification of cost allowability do not appear appropriate.

Response: The certification and the provisions dealing with refunds and adjustments were deleted.

State and Local Indirect Cost Rate Proposals—Attachment E

Comment: The Circular is silent on the time period for use of predetermined rates.

Response: The Circular was amended to encourage the use of indirect cost rates for a period of two to four years.

Comment: Governmental units should notify the Federal Government of any accounting changes that might make it necessary to renegotiate the predetermined rate.

Response: A provision was added to the certification which requires the governmental unit to notify the Federal Government of any accounting changes that would effect the application of the predetermined rate.

C. Procurement Issues

Several procurement issues arose during the Federal Government's internal review process. This section clarifies the procurement issues.

Effective Date for Governmental Units With Predetermined Rates Beyond September 1, 1995

For a governmental unit that already has established indirect cost rates beyond September 1, 1995, the effective date of the revised Circular shall be at the start of the next accounting period beginning on or after September 1, 1995, for which the governmental unit has not yet established a predetermined indirect cost rate.

Depreciation Method(s) for CAS-Covered Contracts

CAS-covered contracts subject to "full coverage" under CASB shall follow the standards promulgated by CASB in the computation of depreciation.

Allowability of Interest Expenses for CAS-Covered Contracts

For contracts subject to CAS 414 (48 CFR 9903.414, cost of money as an element of the cost of capital), and CAS 417 (48 CFR 9903.417, cost of money as an element of the cost of capital assets under construction), the imputed cost of money determined allocable in accordance with CAS 414 and 417 may be claimed as an allowable cost. When cost of money is claimed, interest shall not be an allowable direct or indirect cost under such contracts.

D. Federal Acquisition Streamline Act

The Federal Acquisition Streamlining Act (FASA) of 1994, enacted on October 13, 1994, amended Section 306(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256, Public Law 103–355, Section 2151, 108 Stat. 3309–12), to specify certain items of costs as not allowable under Federal covered contracts. OMB is undertaking a review of these FASA provisions, for the purpose of determining whether the unallowable cost provisions of Circular A–87, and of OMB's other cost principles circulars, should be amended in light of the FASA provisions on unallowable costs. If OMB ultimately concludes that amendments may be appropriate, OMB will issue a proposal seeking public comment on the proposed revisions.

John B. Arthur,

Associate Director for Administration.

Executive Office of The President

Office of Management and Budget

Washington, DC 20503

May 4, 1995.

Circular No. A–87 Revised

To the Heads of Executive Departments and Establishments

From: Alice M. Rivlin, Director

Subject: Cost Principles for State, Local, and Indian Tribal Governments

1. *Purpose.* This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

3. *Background.* An interagency task force was established in 1987 to review existing cost principles for Federal awards to State, local, and Indian tribal governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from governmental units, and compared for consistency the provisions of other OMB cost principles circulars covering non-profit organizations and universities. A proposed revised Circular reflecting the results of those efforts was issued on October 12, 1988, and August 19, 1993. Extensive comments on the proposed revisions, discussions with interest groups, and related developments were considered in developing this revision.

4. *Rescissions.* This Circular rescinds and supersedes Circular A–87, issued January 15, 1981.

5. *Policy.* This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this Circular.

6. *Definitions.* Definitions of key terms used in this Circular are contained in Attachment A, Section B.

7. *Required Action.* Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall

issue codified regulations to implement the provisions of this Circular and its Attachments by September 1, 1995.

8. *OMB Responsibilities.* The Office of Management and Budget (OMB) will review agency regulations and implementation of this Circular, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

9. *Information Contact.* Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202–395–3993.

10. *Policy Review Date.* OMB Circular A–87 will have a policy review three years from the date of issuance.

11. *Effective Date.* This Circular is effective as follows:

—For costs charged indirectly or otherwise covered by the cost allocation plans described in Attachments C, D and E, this revision shall be applied to cost allocation plans and indirect cost proposals submitted or prepared for a governmental unit's fiscal year that begins on or after September 1, 1995.

—For other costs, this revision shall be applied to all awards or amendments, including continuation or renewal awards, made on or after September 1, 1995.

OMB Circular No. A–87—Cost Principles for State, Local and Indian Tribal Governments

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Attachment A—General Principles for Determining Allowable Costs

Table of Contents

A. Purpose and Scope

1. *Objectives.* This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Policy guides.*

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. *Application.*

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) Publicly-financed educational institutions subject to OMB Circular A–21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A–21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A–122, "Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that OMB Circular A–87 requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034–8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq.

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. Basic Guidelines

1. *Factors affecting allowability of costs.* To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of this Circular.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like

circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. *Reasonable costs.* A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. *Allocable costs.*

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. *Applicable credits.*

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Attachment B, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. Composition of Cost

1. *Total cost.* The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. Direct Costs

1. *General.* Direct costs are those that can be identified specifically with a particular final cost objective.

2. *Application.* Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. *Minor items.* Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. Indirect Costs

1. *General.* Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. *Cost allocation plans and indirect cost proposals.* Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.

3. *Limitation on indirect or administrative costs.*

a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. Required Certifications

Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

Attachment B—Selected Items of Cost

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Sections 1 through 42 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems is allowable.

2. *Advertising and public relations costs.*

a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. Advertising costs are allowable only when incurred for the recruitment of personnel, the procurement of goods and services, the disposal of surplus materials, and any other specific purposes necessary to meet the requirements of the Federal award. Advertising costs associated with the disposal of surplus materials are not allowable where all disposal costs are reimbursed based on a standard rate as specified in the grants management common rule.

d. Public relations costs are allowable when:

(1) Specifically required by the Federal award and then only as a direct cost;

(2) Incurred to communicate with the public and press pertaining to specific activities or accomplishments that result from performance of the Federal award and then only as a direct cost; or

(3) Necessary to conduct general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c. and d.;

(2) Except as otherwise permitted by these cost principles, costs of conventions, meetings, or other events

related to other activities of the governmental unit including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs; and

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

3. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

4. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

5. *Audit services.* The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act, as implemented by Circular A–128, "Audits of State and Local Governments." Generally, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage derived by dividing Federal funds expended by total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

6. *Automatic electronic data processing.* The cost of data processing services is allowable (but see section 19, Equipment and other capital expenditures).

7. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal program award regulations.

8. *Bonding costs.* Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. *Communications.* Costs of telephone, mail, messenger, and similar communication services are allowable.

11. *Compensation for personnel services.*

a. *General.* Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. *Unallowable costs.* Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. *Fringe benefits.*

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 25, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. *Pension plan costs.* Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year

within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written polices of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. *Severance pay.*

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. *Support of salaries and wages.* These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal

awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Aid to Families with Dependent Children (AFDC), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. *Donated services.*

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

12. *Contingencies.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see subsection 25.c.), pension plan reserves (see subsection 11.e.), and post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods.

13. *Contributions and donations.* Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable.

14. *Defense and prosecution of criminal and civil proceedings, and claims.*

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

15. *Depreciation and use allowances.*

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefitting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these

criteria will be subject to the 6⅔ percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

16. *Disbursing service.* The cost of disbursing funds by the Treasurer or other designated officer is allowable.

17. *Employee morale, health, and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

18. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

19. Equipment and other capital expenditures.

a. As used in this section the following terms have the meanings as set forth below:

(1) "Capital expenditure" means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) $5000.

(3) "Other capital assets" mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 15). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other capital assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as a direct cost when approved by the awarding agency. Federal awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than $5000 are considered to be supplies and are allowable as direct costs of Federal awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

20. *Fines and penalties.* Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

21. *Fund raising and investment management costs.*

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

22. *Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.*

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 15 and 19.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 25.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

23. *General government expenses.*

a. The general costs of government are unallowable (except as provided in section 41). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally-recognized Indian tribal governments;

(2) Salaries and other expenses of State legislatures, tribal councils, or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;

(3) Cost of the judiciary branch of a government;

(4) Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

24. *Idle facilities and idle capacity.*

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. *Insurance and indemnification.*

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks.

However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 11.f. for post retirement health benefits), are allowable in the year of payment provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

26. *Interest.*

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the conditions in (1)–(4). Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1)–(4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal awards.

27. *Lobbying.* The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

28. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 15 and 19).

29. *Materials and supplies.* The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

30. *Memberships, subscriptions, and professional activities.*

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences where the primary purpose is the dissemination of technical information, including meals, transportation, rental of meeting facilities, and other incidental costs are allowable.

d. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

e. Costs of membership in organizations substantially engaged in lobbying are unallowable.

31. *Motor pools.* The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or

provides vehicle maintenance, inspection, and repair services are allowable.

32. *Pre-award costs.* Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

33. *Professional service costs.*

a. Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to section 14 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. Retainer fees supported by evidence of bona fide services available or rendered are allowable.

34. *Proposal costs.* Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

35. *Publication and printing costs.* Publication costs, including the costs of printing (including the processes of composition, plate-making, press work, and binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

36. *Rearrangements and alterations.* Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

37. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

38. *Rental costs.*

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:

(1) One party to the lease is able to control or substantially influence the actions of the other;

(2) Both parties are parts of the same governmental unit; or

(3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 26.

39. *Taxes.*

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

40. *Training.* The cost of training provided for employee development is allowable.

41. *Travel costs.*

a. *General.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally-sponsored activities. Notwithstanding the provisions of section 23, travel costs of officials covered by that section, when specifically related to Federal awards, are allowable with the prior approval of a grantor agency.

b. *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy. In the absence of a written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code "Travel and Subsistence Expenses; Mileage Allowances," or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall be used as guidance for travel under Federal awards (41 U.S.C. 420, "Travel Expenses of Government Contractors").

c. *Commercial air travel.* Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing, require travel during unreasonable hours, excessively prolong travel, greatly increase the duration of the flight, result in increased cost that would offset transportation savings, or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of customary standard airfare or Federal Government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government,

unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. *Air travel by other than commercial carrier.* Cost of travel by governmental unit-owned, -leased, or -chartered aircraft, as used in this section, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in subsection c.

42. *Underrecovery of costs under Federal agreements.* Any excess costs over the Federal contribution under one award agreement are unallowable under other award agreements.

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A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. Definitions

1. "Billed central services" means central services that are billed to benefitted agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. "Agency or operating agency" means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the **Federal Register.**

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. *General.* All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a

certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. *Allocated central services.* For each allocated central service, the plan must also include the following: a brief description of the service*, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. *Billed services.*

a. *General.* The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. *Internal service funds.*

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan shall include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. *Required certification.* Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of OMB Circular A–87, "Cost Principles for State and Local Governments," and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit _____

Signature _____

Name of Official _____

Title _____

Date of Execution _____

F. Negotiation and Approval of Central Service Plans

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. *Billed central service activities.* Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. *Working capital reserves.* Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

3. *Carry-forward adjustments of allocated central service costs.* Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. *Adjustments of billed central services.* Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000.

5. *Records retention.* All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. *Appeals.* If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. *OMB assistance.* To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Attachment D—Public Assistance Cost Allocation Plans

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A. General

Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid to Families with Dependent Children, Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.

2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative

nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

Attachment E—State and Local Indirect Cost Rate Proposals

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A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B. Definitions

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable

level of indirect costs during the ensuing accounting periods.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. *General.*

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. *Simplified method.*

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. *Multiple allocation base method.*

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. *Special indirect cost rates.*

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost

pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3., and (2) the award to which the rate would apply is material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. *Submission of indirect cost rate proposals.*

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. *Documentation of proposals.* The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. *Required certification.* Each indirect cost rate proposal shall be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and OMB Circular A–87, "Cost Principles for State and Local Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit _____

Signature _____

Name of Official _____

Title _____

Date of Execution: _____

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that (a) are unallowable (i) as specified

by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. *Fringe benefit rates.* If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. *Billed services provided by the grantee agency.* In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. *Indirect cost allocations not using rates.* In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. *Appeals.* If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. *Collection of unallowable costs and erroneous payments.* Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. *OMB assistance.* To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

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Part III

Environmental Protection Agency

40 CFR Part 9, et al.
Acid Rain Program; Final, Proposed and Interim Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 72, and 75

[FRL–5203–3]

Acid Rain Program: Permits Regulation General Provisions and Continuous Emission Monitoring Rule Technical Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic deposition and its serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On April 17, 1995, the EPA and the parties signed a settlement agreement addressing continuous emission monitoring (CEM) issues.

This direct final rule would amend the Continuous Emission Monitoring (CEM) provisions and the General Provisions of the Acid Rain Program for the purpose of making the implementation of the program simpler, streamlined, and more efficient for both the EPA and industry. The rule amendment is being issued as a direct final rule because the corrections are technical in nature and address various implementation issues without major changes in policy. Furthermore, the rule amendments are consistent with the April 17, 1995 settlement agreement. Therefore, EPA believes these amendments are noncontroversial and has provided for the amendments to be effective 60 days after publication in the **Federal Register**.

DATES: *Effective Dates.* This final rule will be effective July 17, 1995. However, if significant adverse comments on portions of the rule are received by June 16, 1995, then the effective date of those provisions will be delayed, EPA will withdraw those portions of the rule, and timely notice will be published in the **Federal Register**. Sections 75.50, 75.51 and 75.52; redesignated section 2.4.3.1 of appendix D of part 75; and sections 4.3.1, 4.3.2, 4.3.3, 4.4.3, 5.3. and 5.4 of appendix F of part 75 are effective through December 31, 1995. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 17, 1995.

Compliance Dates. Information on compliance dates is in the Supplementary Information section of this preamble and in appendix J of part 75.

ADDRESSES: Any written comments must be identified with Docket No. A–94–16, must be identified as comments on the direct final rule and companion proposal, and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying. A detailed rationale for the revisions is set forth in the technical support document for the direct final rule, which can be obtained by writing to the Air Docket at the address given above.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone number (202) 233–9180.

SUPPLEMENTARY INFORMATION: The EPA is revising the CEM provisions as a direct final rule without prior proposal because the Agency views these revisions as noncontroversial and anticipates no significant adverse comments. The EPA is also publishing a companion proposed rule to this direct final rule in this issue of the **Federal Register** in order to take comment on provisions of the direct final rule. If EPA does receive significant adverse comments, EPA will publish a document in the **Federal Register** withdrawing portions of the direct final rule. In addition, EPA is publishing an interim final rule in today's **Federal Register** to address other monitoring issues that may be controversial. The EPA will not institute a second comment period on the proposed rule, on the interim final rule, or on any subsequent final rule. Any parties interested in commenting on these revisions to parts 72 and 75 should do so at this time.

Significant adverse comment will be addressed in a subsequent final rulemaking document. If EPA withdraws portions of the direct final rule, EPA will accept comments for 15 days after publication of the notice of withdrawal in order to receive additional comments on withdrawn portions of the rule. If the effective date is delayed, timely notice will be published in the **Federal Register**.

The owner or operator shall comply with the following requirements from July 17, 1995 through December 31, 1995: for the recordkeeping requirements of subpart F of part 75, by following either §§ 75.50, 75.51 and 75.52 or §§ 75.54, 75.55 and 75.56; for the missing data substitution requirements for carbon dioxide (CO_2) and heat input, by following either §§ 75.35 and 75.36 or sections 4.3.1 through 4.3.3, section 4.4.3 and section 5.3 and 5.4 of appendix F of part 75; and for the missing data substitution requirements for fuel flowmeters by following either section 2.4.3.1 or sections 2.4.3.2 and 2.4.3.3 of appendix D of part 75.

On or after January 1, 1996, the owner or operator shall comply with the following requirements: for the recordkeeping requirements of subpart F of part 75, by meeting the requirements of §§ 75.54, 75.55, and 75.56; and for the missing data substitution requirements for CO_2 concentration, heat input and fuel flowmeters by meeting the requirements of §§ 75.35 and 75.36 and sections 2.4.3.2 through 2.4.3.3 of appendix D of part 75.

The EPA has been engaged in settlement discussions with several parties who challenged certain provisions of the Acid Rain CEM rules promulgated on January 11, 1993. [See *Environmental Defense Fund* v. *Browner*, No. 93–1203 and consolidated cases, "Complex" (D.C. Cir. filed March 12, 1993).] Although the parties have been able to reach agreement on a number of issues, which are addressed in this direct final rulemaking, some additional issues remain outstanding. The outstanding issues, unlike the noncontroversial and routine technical corrections and other amendments addressed by this direct final rule, may not be considered noncontroversial and therefore are being addressed separately in an interim final rule, published elsewhere in this **Federal Register**.

I. Acid Rain Program Background

A. Rulemaking Background

On January 11, 1993, EPA promulgated the "core" regulations that implemented the major provisions of title IV of the Clean Air Act (CAA or the Act), as amended November 15, 1990, including the General Provisions of the Permits Regulation (40 CFR part 72) and the CEM regulation at 40 CFR part 75 authorized under Sections 412 and 821 of the Act. The CEM rule specifies how each affected utility unit must install a system to continuously monitor the

emissions and to collect, record, and report emissions data to ensure that the mandated reductions in sulfur dioxide (SO_2) and nitrogen dioxide (NO_X) emissions are achieved, that opacity and CO_2 emissions are measured, and that SO_2 emissions are accurately measured so that the allowance system functions in an orderly manner. Technical corrections were published on June 23, 1993 and July 30, 1993. An amendment to the certification deadline for NO_X and CO_2 monitoring for oil-fired units and gas-fired units was published on August 18, 1994.

Since the CEM rule was promulgated, the operation of Phase I utility units have essentially completed the first stage of implementation of the rule, having submitted monitoring plans, conducted certification testing, submitted certification applications, and submitted their first quarterly reports. In addition, many Phase II utility units also have begun implementation. During early implementation, many technical issues have been raised, including many minor issues which could be addressed by technical corrections. The preamble discussion that follows outlines the changes that are contained in today's direct final rulemaking that will make these technical corrections.

B. Implementation Background

The EPA held three Acid Rain Implementation Conferences (January 5–6, 1993; January 25–26, 1993; and March 16–17, 1993). In these public meetings, EPA staff presented an overview of the Acid Rain Program and Acid Rain core rules. Some of the changes in today's revised rule resulted from issues raised by the public at these conferences.

In order to respond to a multitude of questions raised by industry, EPA instituted a new "Acid Rain monitoring" section on the Agency's computerized Technology Transfer Network Bulletin Board System (TTNBBS). This bulletin board can be accessed by computer modem at (919) 541–5742. The EPA's Acid Rain Division periodically updates this section of the bulletin board with notices of meetings, interpretations of part 75, policy determinations, and other information relevant to State environmental regulators and the regulated community. In particular, EPA has published three installments of commonly asked questions and their answers in the "Acid Rain CEM (Part 75) Policy Manual" (Docket Item I–D–54). Many of these policy determinations and clarifications of part 75 are incorporated into today's revised rule.

Some standard forms have been revised to be consistent with the changes in this rulemaking. Packages of revised standard forms, with instructions, will contain revised monitoring plan forms, certification forms, and electronic data reporting format, and will be available from EPA in electronic form from the TTNBBS by using computer modem at (919) 541–5742 or on paper by calling the Acid Rain Hotline at (202) 233–9620.

II. Changes to Parts 72 and 75—General Provisions of the Permits Regulation and Continuous Emission Monitoring

Several of the definitions in § 72.2 related to monitoring have been revised. As explained below, EPA edited these definitions and added a few definitions to explain or clarify new or existing terms in part 75.

The changes to part 75 are clarifications intended to ease implementation, and do not constitute major policy changes. The most significant changes in today's revised part 75 concern deadlines for completing certification testing, the procedures for exceptions to the use of CEMS found in appendices D and E, and the provisions for determining the span of NO_X pollutant concentration monitors. The EPA has added to the list of certification testing deadlines to apply to more types of units that might require certification after the statutory deadline for installation of CEMS. In addition, the Agency rewrote major portions of appendices D and E to make them easier to understand and to implement. Changes to appendix E also substantially reduce the time and difficulty of testing required to obtain NO_X emission rate data. Finally, the procedures for determining NO_X span have been revised so that utilities with units having low NO_X emission rates may select a single span representative of the situation at their plant, rather than being required to use both a high scale and a low scale measurement range. A list of compliance dates for the revised recordkeeping requirements and missing data substitution procedures are included in the new appendix J.

The rationale and effect of the revisions to parts 72 and 75 are discussed in detail in a technical support document. This document may be obtained from the EPA Air Docket as Docket Item II–F–2, "Technical Support Document (Attachment A)," in Docket No. A–94–16. In addition, EPA is publishing this document under the CAA Title IV portion of EPA's TTNBBS. This bulletin board can be accessed by computer modem at (919) 541–5742. The topics in the rule revisions discussed in the Technical Support Document are as follows:

III. Impact Analyses

A. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2060–0258.

This collection of information has an estimated reporting burden averaging 40 hours per response and an estimated annual recordkeeping burden averaging 160 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The control numbers assigned to collections of information in certain EPA regulations by the OMB have been consolidated under 40 CFR part 9. The EPA finds there is "good cause" under Sections 553(b)(B) and 553(d)(3) of the Administrative Procedure Act to amend the applicable table in 40 CFR part 9 to display the OMB control number for this rule without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For additional information, see 58 FR 18014, April 7, 1993, and 58 FR 27472, May 10, 1993.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

B. Executive Order Requirements

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The revisions to part 75 slightly decrease the overall cost of compliance for the regulated community. Therefore, the Agency did not prepare a Regulatory Impact Analysis (RIA). Revisions to appendix D of part 75, "Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units," reduce the frequency of sampling and analysis of diesel fuel, reducing the cost of SO_2 monitoring for units using No. 2 fuel oil as a backup fuel. Revisions to appendix E of part 75, "Optional NO_X Emission Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units," reduce the amount of testing for gas-fired peaking units and oil-fired peaking units using this optional procedure. A small gas-fired or oil-fired peaking unit using appendix D or appendix E would have monitoring costs reduced by 10 to 40 percent from the cost of the promulgated rule of January 11, 1993.

2. Executive Order 12875

Executive Order 12875 generally prohibits Agencies from issuing regulations not required by statute that impose mandates on State, local, and tribal governments unless federal funding is provided for the direct costs of compliance or the Agency, after consultation with the affected entities, justifies the need for an unfunded mandate. Clean Air Act Section 412(a) required EPA to issue regulations specifying requirements for CEMS and alternative monitoring systems, as well as for recordkeeping and reporting of

information from such systems. This direct final rule revises the regulation required under Section 412(a) in order to address various issues that have come to light during early implementation and is therefore a statutorily-required regulation. In addition, as discussed above, the revisions to the regulation do not impose additional costs, but rather slightly decrease the overall cost of compliance for the regulated community. Therefore, the revisions meet the requirements of Executive Order 12875.

C. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies on April 28, 1995 that this rule revision will not have a significant economic impact on a substantial number of small entities.

The EPA performed an analysis of the effects upon small utilities of the Acid Rain core rules (58 FR 3649, January 11, 1993), including permitting, allowances, and continuous emission monitoring. The earlier document concluded that significant costs would occur to small utilities as a result of statutory requirements. For example, based upon a worst case for model utilities, total regulatory costs could represent as much as 6 to 7 percent of the average value of electricity produced in the year 2000. About one-third of the 105 small utilities currently affected could face impacts of up to this magnitude.

Today's revisions to part 75 have a beneficial impact on small entities by reducing the burden of complying with the Acid Rain Program monitoring requirements for approximately 800 small utility units. Revisions to appendix D of part 75 reduce the frequency of sampling and analysis of diesel fuel, reducing the cost of SO_2 monitoring for units using diesel fuel (No. 2 fuel oil) as a backup fuel. The EPA estimates that this will reduce the cost of complying with monitoring requirements by 15 percent per year for SO_2 monitoring for units using diesel fuel. Revisions to appendix E of part 75 reduce the amount of testing for gas-fired peaking units and oil-fired peaking units. The EPA estimates that these changes will reduce the cost of appendix E testing by one-third for boilers and by one-tenth for stationary gas turbines and diesel reciprocating engines. A small gas-fired or oil-fired peaking unit monitoring using appendix D or appendix E would have monitoring costs reduced by 10 to 40 percent from the cost of the promulgated rule of January 11, 1993.

D. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or why the selection of this alternative is inconsistent with law.

Because this direct final rule and its associated proposed and interim final rules are estimated to have an impact of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by the revisions to parts 72 and 75, the Agency is not required to develop a plan with regard to small governments. However, as discussed in this preamble, the rule revisions have the net effect of reducing the burden of part 75 of the Acid Rain regulations on regulated entities, including both investor-owned and State and municipally-owned utilities.

List of Subjects in 40 CFR Parts 9, 72, and 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9, 72, and 75 of title 40, chapter I, of the Code of Federal Regulations are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 58 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7767q, 7542, 9601–9657, 11023, 11048.

2. The table in § 9.1 under the heading "Continuous Emission Monitoring" by removing the entries for "§§ 75.50 through 75.53" and by adding entries for "§§ 75.50 through 75.52" and "§§ 75.53 through 75.56" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control No.
* * * * *	
Continuous Emission Monitoring	
* * * * *	
75.50–75.52	2060–0258
75.53–75.56	2060–0258
* * * * *	

PART 72—PERMITS REGULATION

3. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7651, *et seq.*

Subpart A—Acid Rain Program General Provisions

4. Section 72.2 is amended by revising the definitions of "Calibration gas", "Capacity factor", "Diesel fuel", "Gas-fired", "Maximum potential NO_x emission rate", "Monitor operating hour", "Natural gas", "Oil-fired", "Peaking unit", "Quality assured monitoring operating hour", "Stationary gas turbine" and "Unit operating hours", and by adding, in alphabetical order, new definitions for "Backup fuel", "By-pass operating quarter", "Diesel-fired unit", "Emergency fuel", "Excepted monitoring system", "Flue gas desulfurization system", "Gaseous fuel", "Hour before and after", "NIST traceable reference material", "Ozone nonattainment area", "Ozone transport region", "Pipeline natural gas",

"Research gas material", "Unit operating day", and "Unit operating quarter"; and by removing the definition of "zero ambient air material" and adding a definition of "zero air material" to read as follows:

§ 72.2 Definitions.

* * * * *

Backup fuel means a fuel for a unit where: (1) For purposes of the requirements of the monitoring exception of appendix E of part 75 of this chapter, the fuel provides less than 10.0 percent of the heat input to a unit during the three calendar years prior to certification testing for the primary fuel and the fuel provides less than 15.0 percent of the heat input to a unit in each of those three calendar years; or the Administrator approves the fuel as a backup fuel; and (2) For all other purposes under the Acid Rain Program, a fuel that is not the primary fuel (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

* * * * *

Bypass operating quarter means a calendar quarter during which emissions pass through a stack, duct or flue that bypasses add-on emission controls.

* * * * *

Calibration gas means: (1) a standard reference material; (2) a NIST traceable reference material; (3) a Protocol 1 gas; (4) a research gas material; or (5) zero air material.

Capacity factor means either: (1) the ratio of a unit's actual annual electric output (expressed in MWe-hr) to the unit's nameplate capacity times 8760 hours, or (2) the ratio of a unit's annual heat input (in million British thermal units or equivalent units of measure) to the unit's maximum design heat input (in million British thermal units per hour or equivalent units of measure) times 8,760 hours.

* * * * *

Diesel-fired unit means, for the purposes of part 75 of this chapter, an oil-fired unit that combusts diesel fuel as its fuel oil, where the supplementary fuel, if any, shall be limited to natural gas or gaseous fuels containing no more sulfur than natural gas.

Diesel fuel means a low sulfur fuel oil of grades 1–D or 2–D, as defined by the American Society for Testing and Materials standard ASTM D975–91, "Standard Specification for Diesel Fuel Oils," grades 1–GT or 2–GT, as defined by ASTM D2880–90a, "Standard Specification for Gas Turbine Fuel Oils," or grades 1 or 2, as defined by ASTM D396–90, "Standard Specification for Fuel Oils" (incorporated by reference in § 72.13).

* * * * *

Emergency fuel means either:

(1) For purposes of the requirements for a fuel flowmeter used in an excepted monitoring system under appendix D or E of part 75 of this chapter, the fuel identified by the designated representative in the unit's monitoring plan as the fuel which is combusted only during emergencies where the primary fuel is not available; or

(2) For purposes of the requirement for stack testing for an excepted monitoring system under appendix E of part 75 of this chapter, the fuel identified in the State, local, or Federal permit for a plant and is identified by the designated representative in the unit's monitoring plan as the fuel which is combusted only during emergencies where the primary fuel is not available, as established in a petition under § 75.66 of this chapter.

* * * * *

Excepted monitoring system means a monitoring system that follows the procedures and requirements of appendix D or E of part 75 of this chapter for approved exceptions to the use of continuous emission monitoring systems.

* * * * *

Flue gas desulfurization system means a type of add-on emission control used to remove sulfur dioxide from flue gas, commonly referred to as a "scrubber."

* * * * *

Gaseous fuel means a material that is in the gaseous state at standard atmospheric temperature and pressure conditions and that is combusted to produce heat.

* * * * *

Gas-fired means:

(1) The combustion of:

(i) Natural gas or other gaseous fuel (including coal-derived gaseous fuel), for at least 90.0 percent of the unit's average annual heat input during the previous three calendar years and for at least 85.0 percent of the annual heat input in each of those calendar years; and

(ii) Any fuel other than coal or coal-derived fuel (other than coal-derived gaseous fuel) for the remaining heat input, if any; *provided* that for purposes of part 75 of this chapter, any fuel used other than natural gas, shall be limited to:

(A) Gaseous fuels containing no more sulfur than natural gas; or

(B) Fuel oil.

(2) For purposes of part 75 of this chapter, a unit may initially qualify as gas-fired under the following circumstances:

(i) If the designated representative provides fuel usage data for the unit for the three calendar years immediately prior to submission of the monitoring plan, and if the unit's fuel usage is projected to change on or before January 1, 1995, the designated representative submits a demonstration satisfactory to the Administrator that the unit will qualify as gas-fired under the first sentence of this definition using the years 1995 through 1997 as the three calendar year period; or

(ii) If a unit does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan, the designated representative submits:

(A) The unit's designed fuel usage;

(B) Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;

(C) The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and

(D) Demonstration satisfactory to the Administrator that the unit will qualify as gas-fired under the first sentence of this definition using those three consecutive calendar years as the three calendar year period.

* * * * *

Hour before and after means, for purposes of the missing data substitution procedures of part 75 of this chapter, the quality-assured hourly SO_2 or CO_2 concentration, hourly flow rate, or hourly NO_X emission rate recorded by a certified monitor during the unit operating hour immediately before and the unit operating hour immediately after a missing data period.

Maximum potential NO_X emission rate means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2) under all operating conditions of the unit except for unit start-up, shutdown, and upsets.

* * * * *

Monitor operating hour means any unit operating hour or portion thereof over which a CEMS, or other monitoring system approved by the Administrator under part 75 of this chapter is operating, regardless of the number of measurements (i.e., data points)

collected during the hour or portion of an hour.

* * * * *

Natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) containing 1 grain or less hydrogen sulfide per 100 standard cubic feet, and 20 grains or less total sulfur per 100 standard cubic feet), produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure under ordinary conditions.

* * * * *

NIST traceable reference material (NTRM) means a calibration gas mixture tested by and certified by the National Institutes of Standards and Technologies (NIST) to have a certain specified concentration of gases. NTRMs may have different concentrations from those of standard reference materials.

* * * * *

Oil-fired means:

(1) The combustion of:

(i) Fuel oil for more than 10.0 percent of the average annual heat input during the previous three calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years; and

(ii) Any solid, liquid, or gaseous fuel (including coal-derived gaseous fuel), other than coal or any other coal derived fuel, for the remaining heat input, if any; provided that for purposes of part 75 of this chapter, any fuel used other than fuel oil shall be limited to gaseous fuels containing no more sulfur than natural gas.

(2) For purposes of part 75 of this chapter, a unit that does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan may initially qualify as oil-fired under the following circumstances: the designated representative submits:

(i) Unit design fuel usage,

(ii) The unit's designed fuel usage,

(iii) Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992,

(iv) The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years, and

(v) A demonstration satisfactory to the Administrator that the unit will qualify as oil-fired under the first sentence of this definition using those three consecutive calendar years as the three calendar year period.

* * * * *

Ozone nonattainment area means an area designated as a nonattainment area for ozone under subpart C of part 81 of this chapter.

Ozone transport region means the ozone transport region designated under Section 184 of the Act.

* * * * *

Peaking unit means:

(1) A unit that has:

(i) An average capacity factor of no more than 10.0 percent during the previous three calendar years and

(ii) A capacity factor of no more than 20.0 percent in each of those calendar years.

(2) For purposes of part 75 of this chapter, a unit may initially qualify as a peaking unit under the following circumstances:

(i) If the designated representative provides capacity factor data for the unit for the three calendar years immediately prior to submission of the monitoring plan and if the unit's capacity factor is projected to change on or before the certification deadline for NO_X monitoring in § 75.4 of this chapter, the designated representative submits a demonstration satisfactory to the Administrator that the unit will qualify as a peaking unit under the first sentence of this definition using the three calendar years beginning with the year of the certification deadline for NO_X monitoring in § 75.4 of this chapter (either 1995 or 1996) as the three year period; or

(ii) If the unit does not have capacity factor data for any one or more of the three calendar years immediately prior to submission of the monitoring plan, the designated representative submits:

(A) Any capacity factor data, beginning with the unit's first calendar year of commercial operation following the first year of the three calendar years immediately prior to the certification deadline for NO_X monitoring in § 75.4 of this chapter (either 1992 or 1993),

(B) Capacity factor information for the unit for any remaining future period needed to provide capacity factor data for three consecutive calendar years, and

(C) A demonstration satisfactory to the Administrator that the unit will qualify as a peaking unit under the first sentence of this definition using the three consecutive calendar years specified in (2) (ii) (A) and (B) as the three calendar year period.

* * * * *

Pipeline natural gas means natural gas that is provided by a supplier through a pipeline.

* * * * *

Quality-assured monitor operating hour means any unit operating hour or portion thereof over which a certified CEMS, or other monitoring system approved by the Administrator under part 75 of this chapter, is operating:

(1) Within the performance specifications set forth in part 75, appendix A of this chapter and the quality assurance/quality control procedures set forth in part 75, appendix B of this chapter, without unscheduled maintenance, repair, or adjustment; and

(2) In accordance with § 75.10(d), (e), and (f) of this chapter.

* * * * *

Research gas material (RGM) means a calibration gas mixture developed by agreement of a requestor and the National Institutes for Standards and Technologies (NIST) that NIST analyzes and certifies as "NIST traceable." RGMs may have concentrations different from those of standard reference materials.

* * * * *

Stationary gas turbine means a turbine that is not self-propelled and that combusts natural gas, other gaseous fuel with a sulfur content no greater than natural gas, or fuel oil in order to heat inlet combustion air and thereby turn a turbine, in addition to or instead of producing steam or heating water.

* * * * *

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour means any hour (or fraction of an hour) during which a unit combusts any fuel.

Unit operating quarter means a calendar quarter in which a unit combusts any fuel.

* * * * *

Zero air material means either: (1) a calibration gas certified by the gas vendor not to contain concentrations of either SO_2, NO_X, or total hydrocarbons above 0.1 parts per million (ppm); a concentration of CO above 1 ppm; and a concentration of CO_2 above 400 ppm, or (2) ambient air conditioned and purified by a continuous emission monitoring system for which the continuous emission monitoring system manufacturer or vendor certifies that the particular continuous emission monitoring system model produces conditioned gas that does not contain concentrations of either SO_2 or NO_X above 0.1 ppm or CO_2 above 400 ppm; and that does not contain concentrations of other gases that interfere with instrument readings or cause the instrument to read concentrations of SO_2, NO_X, or CO_2 for a particular continuous emission monitoring system model.

* * * * *

5. Section 72.13 is amended by redesignating paragraphs (a)(8) and

(a)(9) as (a)(9) and (a)(10), and by adding paragraph (a)(8), and by revising newly designated paragraphs (a)(9) and (a)(10) to read as follows:

§ 72.13 Incorporation by reference.

* * * * *

(8) ASTM D2880–90a, Standard Specification for Gas Turbine Fuel Oils, for § 72.2 of this part.

(9) ASTM D4057–88, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, for § 72.7 of this part.

(10) ASTM D4294–90, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy, for § 72.7 of this part.

* * * * *

PART 75—CONTINUOUS EMISSIONS MONITORING

6–7. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 75.2 [Amended]

8. Section 75.2 is amended by removing paragraph (b)(4).

9. Section 75.4 is amended by revising the last sentence of paragraph (a) introductory text and by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b), (c), and (d), by redesignating and revising paragraph (e) as paragraph (h) and by adding new paragraphs (e), (f), and (g) to read as follows:

§ 75.4 Compliance dates.

(a) * * * In accordance with § 75.20, the owner or operator of each existing affected unit shall ensure that all monitoring systems required by this part for monitoring SO_2, NO_X, CO_2, opacity, and volumetric flow are installed and all certification tests are completed not later than the following dates (except as provided in paragraphs (d) through (h) of this section):

(1) For a unit listed in Table 1 of § 73.10(a) of this chapter, November 15, 1993.

(2) For a substitution or a compensating unit that is designated under an approved substitution plan or reduced utilization plan pursuant to § 72.41 or § 72.43 of this chapter, or for a unit that is designated an early election unit under an approved NO_X compliance plan pursuant to part 76 of this chapter, that is not conditionally approved and that is effective for 1995, the earlier of the following dates:

(i) January 1, 1995; or

(ii) 90 days after the issuance date of the Acid Rain permit (or date of approval of permit revision) that governs the unit and contains the approved substitution plan, reduced utilization plan, or NO_X compliance plan.

(3) For either a Phase II unit, other than a gas-fired unit or an oil-fired unit, or a substitution or compensating unit that is not a substitution or compensating unit under paragraph (a)(2) of this section: January 1, 1995.

(4) For a gas-fired Phase II unit or an oil-fired Phase II unit, January 1, 1995, except that installation and certification tests for continuous emission monitoring systems for NO_X and CO_2 or excepted monitoring systems for NO_X under appendix E or CO_2 estimation under appendix G of this part shall be completed as follows:

(i) For an oil-fired Phase II unit or a gas-fired Phase II unit located in an ozone nonattainment area or the ozone transport region, not later than July 1, 1995; or

(ii) For an oil-fired Phase II unit or a gas-fired Phase II unit not located in an ozone nonattainment area or the ozone transport region, not later than January 1, 1996.

(5) * * *

(b) In accordance with § 75.20, the owner or operator of each new affected unit shall ensure that all monitoring systems required under this part for monitoring of SO_2, NO_X, CO_2, opacity, and volumetric flow are installed and all certification tests are completed on or before the later of the following dates:

(1) January 1, 1995, except that for a gas-fired unit or oil-fired unit located in an ozone nonattainment area or the ozone transport region, the date for installation and completion of all certification tests for NO_X and CO_2 monitoring systems shall be July 1, 1995 and for a gas-fired unit or an oil-fired unit not located in an ozone nonattainment area or the ozone transport region, the date for installation and completion of all certification tests for NO_X and CO_2 monitoring systems shall be January 1, 1996; or

(2) Not later than 90 days after the date the unit commences commercial operation, notice of which date shall be provided under subpart G of this part.

(c) In accordance with § 75.20, the owner or operator of any unit affected under any paragraph of § 72.6(a)(3) (ii) through (vii) of this chapter shall ensure that all monitoring systems required under this part for monitoring of SO_2, NO_X, CO_2, opacity, and volumetric flow are installed and all certification tests are completed on or before the later of the following dates:

(1) January 1, 1995, except that for a gas-fired unit or oil-fired unit located in an ozone nonattainment area or the ozone transport region, the date for installation and completion of all certification tests for NO_X and CO_2 monitoring systems shall be July 1, 1995 and for a gas-fired unit or an oil-fired unit not located in an ozone nonattainment area or the ozone transport region, the date for installation and completion of all certification tests for NO_X and CO_2 monitoring systems shall be January 1, 1996; or

(2) Not later than 90 days after the date the unit becomes subject to the requirements of the Acid Rain Program, notice of which date shall be provided under subpart G of this part.

(d) In accordance with § 75.20, the owner or operator of an existing unit that is shutdown and is not yet operating by the applicable dates listed in paragraph (a) of this section, shall ensure that all monitoring systems required under this part for monitoring of SO_2, NO_X, CO_2, opacity, and volumetric flow are installed and all certification tests are completed not later than the earlier of 45 unit operating days or 180 calendar days after the date that the unit recommences commercial operation of the affected unit, notice of which date shall be provided under subpart G of this part. The owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, and flow data for all unit operating hours after the applicable compliance date in paragraph (a) of this section until all required certification tests are successfully completed using either:

(1) The maximum potential concentration of SO_2, the maximum potential NO_X emission rate, the maximum potential flow rate, as defined in section 2.1 of appendix A of this part, or the maximum CO_2 concentration used to determine the maximum potential concentration of SO_2 in section 2.1.1.1 of appendix A of this part; or

(2) Reference methods under § 75.22(b); or

(3) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

(e) In accordance with § 75.20, if the owner or operator of an existing unit completes construction of a new stack, flue, or flue gas desulfurization system after the applicable deadline in paragraph (a) of this section, then the owner or operator shall ensure that all monitoring systems required under this part for monitoring SO_2, NO_X, CO_2, opacity, and volumetric flow are installed on the new stack or duct and all certification tests are completed not later than 90 calendar days after the date that emissions first exit to the

atmosphere through the new stack, flue, or flue gas desulfurization system, notice of which date shall be provided under subpart G of this part. Until emissions first pass through the new stack, flue or flue gas desulfurization system, the unit is subject to the appropriate deadline in paragraph (a) of this section. The owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, and flow data for all unit operating hours after emissions first pass through the new stack, flue, or flue gas desulfurization system until all required certification tests are successfully completed using either:

(1) The appropriate value for substitution of missing data upon recertification pursuant to § 75.20(b)(3); or

(2) Reference methods under § 75.22(b) of this part; or

(3) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

(f) In accordance with § 75.20, the owner or operator of a gas-fired or oil-fired peaking unit, if planning to use appendix E of this part, shall ensure that the required certification tests for excepted monitoring systems under appendix E are completed for backup fuel as defined in § 72.2 of this chapter by no later than the later of: 30 unit operating days after the date that the unit first combusted that backup fuel after the certification testing of the primary fuel; or the deadline in paragraph (a) of this section. The owner or operator shall determine and report NO_X emission rate data for all unit operating hours that the backup fuel is combusted after the applicable compliance date in paragraph (a) of this section until all required certification tests are successfully completed using either:

(1) The maximum potential NO_X emission rate; or

(2) Reference methods under § 75.22(b) of this part; or

(3) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

(g) In accordance with § 75.20, whenever the owner or operator of a gas-fired or oil-fired unit uses an excepted monitoring system under appendix D or E of this part and combusts emergency fuel as defined in § 72.2 of this chapter, then the owner or operator shall ensure that a fuel flowmeter measuring emergency fuel is installed and the required certification tests for excepted monitoring systems are completed by no later than 30 unit operating days after the first date after January 1, 1995 that the unit combusts emergency fuel. For all unit operating hours that the unit combusts emergency fuel after January 1, 1995 until the owner or operator installs a flowmeter for emergency fuel and successfully completes all required certification tests, the owner or operator shall determine and report SO_2 mass emission data using either:

(1) The maximum potential fuel flow rate, as described in appendix D of this part, and the maximum sulfur content of the fuel, as described in section 2.1.1.1 of appendix A of this part;

(2) Reference methods under § 75.22(b) of this part; or

(3) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

(h) In accordance with § 75.20, the owner or operator of a unit with a qualifying Phase I technology shall ensure that all certification tests for the inlet and outlet SO_2-diluent continuous emission monitoring systems are completed no later than January 1, 1997 if the unit with a qualifying Phase I technology requires the use of an inlet SO_2-diluent continuous emission monitoring system for the purpose of monitoring SO_2 emissions removal from January 1, 1997 through December 31, 1999.

10. Section 75.5 is amended by revising paragraph (e) and by adding paragraph (f) to read as follows:

§ 75.5 Prohibitions.

* * * * *

(e) No owner or operator of an affected unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2, NO_X, or CO_2 emissions discharged to the atmosphere, except for periods of recertification, or periods when calibration, quality assurance, or maintenance is performed pursuant to § 75.21 and appendix B of this part.

(f) No owner or operator of an affected unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, the continuous opacity monitoring system, or any other approved emission monitoring system under this part, except under any one of the following circumstances:

(1) During the period that the unit is covered by an approved retired unit exemption under § 72.8 of this chapter that is in effect; or

(2) The owner or operator is monitoring emissions from the unit with another certified monitoring system that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(3) The designated representative submits notification of the date of recertification testing of a replacement monitoring system in accordance with §§ 75.20 and 75.61, and the owner or operator recertifies thereafter a replacement monitoring system in accordance with § 75.20.

11. Section 75.6 is amended by revising paragraphs (a), (b)(1) through (b)(6); by removing paragraphs (b)(7) through (b)(9); and by adding paragraphs (c), (d), and (e) to read as follows:

§ 75.6 Incorporation by reference.

* * * * * *

(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D129–91, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), for appendices A and D of this part.

(2) ASTM D240–87 (Reapproved 1991), Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, for appendices A, D and F of this part.

(3) ASTM D287–82 (Reapproved 1987), Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method), for appendix D of this part.

(4) ASTM D388–92, Standard Classification of Coals by Rank, incorporation by reference for appendix F of this part.

(5) ASTM D941–88, Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Lipkin Bicapillary Pycnometer, for appendix D of this part.

(6) ASTM D1072–90, Standard Test Method for Total Sulfur in Fuel Gases, for appendix D of this part.

(7) ASTM D1217–91, Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Bingham Pycnometer, for appendix D of this part.

(8) ASTM D1250–80 (Reapproved 1990), Standard Guide for Petroleum Measurement Tables, for appendix D of this part.

(9) ASTM D1298–85 (Reapproved 1990), Standard Practice for Density, Relative Density (Specific Gravity) or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, for appendix D of this part.

(10) ASTM D1480–91, Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Bingham Pycnometer, for appendix D of this part.

(11) ASTM D1481–91, Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Lipkin Bicapillary Pycnometer, for appendix D of this part.

(12) ASTM D1552–90, Standard Test Method for Sulfur in Petroleum Products (High Temperature Method), for appendices A and D of the part.

(13) ASTM D1826–88, Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, for appendix F of this part.

(14) ASTM D1945–91, Standard Test Method for Analysis of Natural Gas by Gas Chromatography, for appendices F and G of this part.

(15) ASTM D1946–90, Standard Practice for Analysis of Reformed Gas by Gas Chromatography, for appendices F and G of this part.

(16) ASTM D1989–92, Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Isoperibol Calorimeters, for appendix F of this part.

(17) ASTM D2013–86, Standard Method of Preparing Coal Samples for Analysis, for § 75.15 and appendix F of this part.

(18) ASTM D2015–91, Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter, for § 75.15 and appendices A, D and F of this part.

(19) ASTM D2234–89, Standard Test Methods for Collection of a Gross Sample of Coal, for § 75.15 and appendix F of this part.

(20) ASTM D2382–88, Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), for appendices D and F of this part.

(21) ASTM D2502–87, Standard Test Method for Estimation of Molecular Weight (Relative Molecular Mass) of Petroleum Oils from Viscosity Measurements, for appendix G of this part.

(22) ASTM D2503–82 (Reapproved 1987), Standard Test Method for Molecular Weight (Relative Molecular Mass) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure, for appendix G of this part.

(23) ASTM D2622–92, Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry, for appendices A and D of this part.

(24) ASTM D3174–89, Standard Test Method for Ash in the Analysis Sample of Coal and Coke From Coal, for appendix G of this part.

(25) ASTM D3176–89, Standard Practice for Ultimate Analysis of Coal and Coke, for appendices A and F of this part.

(26) ASTM D3177–89, Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, for § 75.15 and appendix A of this part.

(27) ASTM D3178–89, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke, for appendix G of this part.

(28) ASTM D3238–90, Standard Test Method for Calculation of Carbon Distribution and Structural Group Analysis of Petroleum Oils by the n-d-M Method, for appendix G of this part.

(29) ASTM D3246–81 (Reapproved 1987), Standard Test Method for Sulfur in Petroleum Gas By Oxidative Microcoulometry, for appendix D of this part.

(30) ASTM D3286–91a, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter, for appendix F of this part.

(31) ASTM D3588–91, Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density (Specific Gravity) of Gaseous Fuels, for appendix F of this part.

(32) ASTM D4052–91, Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter, for appendix D of this part.

(33) ASTM D4057–88, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, for appendix D of this part.

(34) ASTM D4177–82 (Reapproved 1990), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, for appendix D of this part.

(35) ASTM D4239–85, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, for § 75.15 and appendix A of this part.

(36) ASTM D4294–90, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy, for appendices A and D of this part.

(37) ASTM D4468–85 (Reapproved 1989), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, for appendix D of this part.

(38) ASTM D4891–89, Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, for appendix F of this part.

(39) ASTM D5291–92, Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants, for appendix G of this part.

(40) ASTM D5504–94, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, for appendix D of this part.

(b) * * *

(1) ASME MFC–3M–1989 with September 1990 Errata, Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi, for § 75.20 and appendix D of this part.

(2) ASME MFC–4M–1986 (Reaffirmed 1990), Measurement of Gas Flow by Turbine Meters, for § 75.20 and appendix D of this part.

(3) ASME-MFC–5M–1985, Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters, for § 75.20 and appendix D of this part.

(4) ASME MFC–6M–1987 with June 1987 Errata, Measurement of Fluid Flow in Pipes Using Vortex Flow Meters, for § 75.20 and appendix D of this part.

(5) ASME MFC–7M–1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles, for § 75.20 and appendix D of this part.

(6) ASME MFC–9M–1988 with December 1989 Errata, Measurement of Liquid Flow in Closed Conduits by Weighing Method, for § 75.20 and appendix D of this part.

(c) The following materials are available for purchase from the American National Standards Institute (ANSI), 11 W. 42nd Street, New York NY 10036: ISO 8316: 1987(E) Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank, for § 75.20 and appendices D and E of this part.

(d) The following materials are available for purchase from the following address: Gas Processors Association (GPA), 6526 East 60th Street, Tulsa, Oklahoma 74145:

(1) GPA Standard 2172–86, Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis, for appendices D, E, and F of this part.

(2) GPA Standard 2261–90, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography, for appendices D, F, and G of this part.

(e) The following materials are available for purchase from the following address: American Gas Association, 1515 Wilson Boulevard, Arlington VA 22209: American Gas Association Report No. 3: Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, Part 1: General Equations and Uncertainty

Guidelines (October 1990 Edition), Part 2: Specification and Installation Requirements (February 1991 Edition) and Part 3: Natural Gas Applications (August 1992 Edition), for § 75.20 and appendices D and E of this part.

12. Section 75.8 is added to Subpart A to read as follows:

§ 75.8 Relative accuracy and availability analysis.

(a) The Agency will conduct an analysis of monitoring data submitted to EPA under this part between November 15, 1993 and December 31, 1996 to evaluate the appropriateness of the current performance specifications for relative accuracy and availability trigger conditions for missing data substitution for SO_2 and CO_2 pollutant concentration monitors, flow monitors, and NO_x continuous emission monitoring systems.

(b) Prior to July 1, 1997, the Agency will prepare a report evaluating quarterly report data for the period between January 1, 1994 and December 31, 1996 and initial certification test data. Based upon this evaluation, the Administrator will sign for publication in the **Federal Register**, either:

(1) A notice that the Agency has completed its analysis and has determined that retaining the current performance specifications for relative accuracy and availability trigger conditions are appropriate; or

(2) A notice that the Agency will develop a proposed rule, based on the results of the study, proposing alternatives to the current performance specifications for relative accuracy and availability trigger conditions.

(c) If the Administrator signs a notice that the Agency will develop a proposed rule, the Administrator will:

(1) Sign a notice of proposed rulemaking by October 31, 1997; and

(2) Sign a notice of final rulemaking by October 31, 1998.

Subpart B—Monitoring Provisions

13. Section 75.10 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (d), (e), and (f) to read as follows:

§ 75.10 General operating requirements.

(a) * * *

(1) The owner or operator shall install, certify, operate, and maintain, in accordance with all the requirements of this part, a SO_2 continuous emission monitoring system and a flow monitoring system with the automated data acquisition and handling system for measuring and recording SO_2 concentration (in ppm), volumetric gas flow (in scfh), and SO_2 mass emissions (in lb/hr) discharged to the atmosphere, except as provided in §§ 75.11 and 75.16 and subpart E of this part;

(2) The owner or operator shall install, certify, operate, and maintain, in accordance with all the requirements of this part, a NO_x continuous emission monitoring system (consisting of a NO_x pollutant concentration monitor and an O_2 or CO_2 diluent gas monitor) with the automated data acquisition and handling system for measuring and recording NO_x concentration (in ppm), O_2 or CO_2 concentration (in percent O_2 or CO_2) and NO_x emission rate (in lb/mmBtu) discharged to the atmosphere, except as provided in §§ 75.12 and 75.17 and subpart E of this part. The owner or operator shall account for total NO_x emissions, both NO and NO_2, either by monitoring for both NO and NO_2 or by monitoring for NO only and adjusting the emissions data to account for NO_2;

(3) The owner or operator shall determine CO_2 emissions by using one of the following options, except as provided in § 75.13 and subpart E of this part:

(i) The owner or operator shall install, certify, operate, and maintain, in accordance with all the requirements of this part, a CO_2 continuous emission monitoring system and a flow monitoring system with the automated data acquisition and handling system for measuring and recording CO_2 concentration (in ppm or percent), volumetric gas flow (in scfh), and CO_2 mass emissions (in tons/hr) discharged to the atmosphere;

(ii) The owner or operator shall determine CO_2 emissions based on the measured carbon content of the fuel and the procedures in appendix G of this part to estimate CO_2 emissions (in ton/day) discharged to the atmosphere; or

(iii) The owner or operator shall install, certify, operate, and maintain, in accordance with all the requirements of this part, a flow monitoring system and a CO_2 continuous emission monitoring system using an O_2 concentration monitor in order to determine CO_2 emissions using the procedures in appendix F of this part with the automated data acquisition and handling system for measuring and recording O_2 concentration (in percent), CO_2 concentration (in percent), volumetric gas flow (in scfh), and CO_2 mass emissions (in tons/hr) discharged to the atmosphere; and

* * * * *

(d) *Primary equipment hourly operating requirements.* The owner or operator shall ensure that all continuous emission and opacity monitoring systems required by this part are in operation and monitoring unit emissions or opacity at all times that the affected unit combusts any fuel except as provided in § 75.11(e) and during periods of calibration, quality assurance, or preventive maintenance, performed pursuant to § 75.21 and appendix B of this part, periods of repair, periods of backups of data from the data acquisition and handling system, or recertification performed pursuant to § 75.20. The owner or operator shall also ensure, subject to the exceptions above in this paragraph, that all continuous opacity monitoring systems required by this part are in operation and monitoring opacity during the time following combustion when fans are still operating, unless fan operation is not required to be included under any other applicable Federal, State, or local regulation, or permit. The owner or operator shall ensure that the following requirements are met:

(1) The owner or operator shall ensure that each continuous emission monitoring system and component thereof is capable of completing a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-min interval. The owner or operator shall reduce all SO_2 concentrations, volumetric flow, SO_2 mass emissions, SO_2 emission rate in lb/mmBtu (if applicable), CO_2 concentration, O_2 concentration, CO_2 mass emissions (if applicable), NO_x concentration, and NO_x emission rate data collected by the monitors to hourly averages. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour, where the unit combusted fuel during that quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant of an hour) if data are unavailable as a result of the performance of calibration, quality assurance, or preventive maintenance activities pursuant to § 75.21 and appendix B of this part, backups of data from the data acquisition and handling system, or recertification, pursuant to § 75.20. The owner or operator shall use all valid measurements or data points collected during an hour to calculate the hourly averages. All data points collected during an hour shall be, to the extent practicable, evenly spaced over the hour.

(2) The owner or operator shall ensure that each continuous opacity monitoring system is capable of completing a minimum of one cycle of sampling and analyzing for each successive 10-sec

period and one cycle of data recording for each successive 6-min period. The owner or operator shall reduce all opacity data to 6-min averages calculated in accordance with the provisions of part 51, appendix M of this chapter, except where the applicable State implementation plan or operating permit requires a different averaging period, in which case the State requirement shall satisfy this Acid Rain Program requirement.

(3) Failure of an SO_2, CO_2 or O_2 pollutant concentration monitor, flow monitor, or NO_X continuous emission monitoring system, to acquire the minimum number of data points for calculation of an hourly average in paragraph (d)(1) of this section, shall result in the failure to obtain a valid hour of data and the loss of such component data for the entire hour. An hourly average NO_X or SO_2 emission rate in lb/mmBtu is valid only if the minimum number of data points are acquired by both the pollutant concentration monitor (NO_X or SO_2) and the diluent monitor (CO_2 or O_2). Except for SO_2 emission rate data in lb/mmBtu, if a valid hour of data is not obtained, the owner or operator shall estimate and record emission or flow data for the missing hour by means of the automated data acquisition and handling system, in accordance with the applicable procedure for missing data substitution in subpart D of this part.

(e) *Optional backup monitor requirements.* If the owner or operator chooses to use two or more continuous emission monitoring systems, each of which is capable of monitoring the same stack or duct at a specific affected unit, or group of units using a common stack, then the owner or operator shall designate one monitoring system as the primary monitoring system, and shall record this information in the monitoring plan, as provided for in § 75.53. The owner or operator shall designate the other monitoring system(s) as backup monitoring system(s) in the monitoring plan. The backup monitoring system(s) shall be designated as redundant backup monitoring system(s), non-redundant backup monitoring system(s), or reference method backup system(s), as described in § 75.20(d). When the certified primary monitoring system is operating and not out-of-control as defined in § 75.24, only data from the certified primary monitoring system shall be reported as valid, quality-assured data. Thus, data from the backup monitoring system may be reported as valid, quality-assured data only when the backup is operating and not out-of-control as defined in § 75.24 (or in the applicable reference method in appendix A of part 60 of this chapter) and when the certified primary monitoring system is not operating (or is operating but out-of-control). A particular monitor may be designated both as a certified primary monitor for one unit and as a certified redundant backup monitor for another unit.

(f) *Minimum measurement capability requirement.* The owner or operator shall ensure that each continuous emission monitoring system and component thereof is capable of accurately measuring, recording, and reporting data, and shall not incur a full scale exceedance, except as provided in sections 2.1.1.4, 2.1.2.4, and 2.1.4 of appendix A of this part.

* * * * *

14. Section 75.11 is amended by revising paragraphs (c) and (d), redesignating paragraph (e) as paragraph (f), and reserving paragraph (e) to read as follows:

§ 75.11 Specific provisions for monitoring SO_2 emissions (SO_2 and flow monitors).

* * * * *

(c) *Unit with no location for a flow monitor meeting siting requirements.* Where no location exists that satisfies the minimum physical siting criteria in appendix A to this part for installation of a flow monitor in either the stack or the ducts serving an affected unit or installation of a flow monitor in either the stack or ducts is demonstrated to the satisfaction of the Administrator to be technically infeasible, either:

(1) The designated representative shall petition the Administrator for an alternative method for monitoring volumetric flow in accordance with § 75.66; or

(2) The owner or operator shall construct a new stack or modify existing ductwork to accommodate the installation of a flow monitor, and the designated representative shall petition the Administrator for an extension of the required certification date given in § 75.4 and approval of an interim alternative flow monitoring methodology in accordance with § 75.66. The Administrator may grant existing Phase I affected units an extension to January 1, 1995, and existing Phase II affected units an extension to January 1, 1996 for the submission of the certification application for the purpose of constructing a new stack or making substantial modifications to ductwork for installation of a flow monitor; or

(3) The owner or operator shall install a flow monitor in any existing location in the stack or ducts serving the affected unit at which the monitor can achieve the performance specifications of this part.

(d) *Gas-fired units and oil-fired units.* The owner or operator of an affected unit that qualifies as a gas-fired or oil-fired unit, as defined in § 72.2 of this chapter, based on information submitted by the designated representative in the monitoring plan, shall measure and record SO_2 emissions using one of the following methods:

(1) Meet the general operating requirements in § 75.10 for an SO_2 continuous emission monitoring system and flow monitoring system except as provided in paragraph (e) of this section. When the owner or operator uses an SO_2 continuous emission monitoring system and flow monitoring system to monitor SO_2 mass emissions from an affected unit, the owner or operator shall comply with applicable monitoring provisions in paragraph (a) of this section; or

(2) Provide other information satisfactory to the Administrator using the procedure specified in appendix D to this part for estimating hourly SO_2 mass emissions.

(e) [Reserved]

* * * * *

15. Section 75.12 is amended by revising paragraph (c) to read as follows:

§ 75.12 Specific provisions for monitoring NO_X emissions (NO_X and diluent gas monitors).

* * * * *

(c) *Gas-fired peaking units or oil-fired peaking units.* The owner or operator of an affected unit that qualifies as a gas-fired peaking unit or oil-fired peaking unit, as defined in § 72.2 of this chapter, based on information submitted by the designated representative in the monitoring plan shall comply with one of the following:

(1) Meet the general operating requirements in § 75.10 for a NO_X continuous emission monitoring system; or

(2) Provide information satisfactory to the Administrator using the procedure specified in appendix E of this part for estimating hourly NO_X emission rate. However, if in the years after certification of an excepted monitoring system under appendix E of this part, a unit's operations exceed a capacity factor of 20 percent in any calendar year or exceed a capacity factor of 10.0 percent averaged over three years, the owner or operator shall install, certify, and operate a NO_X continuous emission monitoring system no later than December 31 of the following calendar year.

* * * * *

16. Section 75.13 is amended by revising paragraphs (a) and (c) to read as follows:

§ 75.13 Specific provisions for monitoring CO_2 emissions.

(a) *CO_2 continuous emission monitoring system.* If the owner or operator chooses to use the continuous emission monitoring method, then the owner or operator shall meet the general operating requirements in § 75.10 for a CO_2 continuous emission monitoring system and flow monitoring system for each affected unit. The owner or operator shall comply with the applicable provisions specified in § 75.11 (a) through (e) or § 75.16, except that the phrase "SO_2 continuous emission monitoring system" is replaced with "CO_2 continuous emission monitoring system," the term "maximum potential concentration for SO_2" is replaced with "maximum CO_2 concentration," and the phrase "SO_2 mass emissions" is replaced with "CO_2 mass emissions."

* * * * *

(c) *Determination of CO_2 mass emissions using an O_2 monitor according to appendix F.* If the owner or operator chooses to use the appendix F method, then the owner or operator may determine hourly CO_2 concentration and mass emissions with a flow monitoring system, a continuous O_2 concentration monitor, fuel F and F_c factors, and where O_2 concentration is measured on a dry basis, hourly corrections for the moisture content of the flue gases, using the methods and procedures specified in appendix F to this part. For units using a common stack, multiple stack, or by-pass stack, the owner or operator may use the provisions of § 75.16, except that the phrase "SO_2 continuous emission monitoring system" is replaced with "CO_2 continuous emission monitoring system," the term "maximum potential concentration of SO" is replaced with "maximum CO_2 concentration," and the phrase "SO_2 mass emissions" is replaced with "CO_2 mass emissions."

17. Section 75.14 is amended by revising paragraph (c) to read as follows:

§ 75.14 Specific provisions for monitoring opacity.

* * * * *

(c) *Gas-fired units.* The owner or operator of an affected unit that qualifies as gas-fired, as defined in § 72.2 of this chapter, based on information submitted by the designated representative in the monitoring plan is exempt from the opacity monitoring requirements of this part.

* * * * *

18. Section 75.15 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), and Equations 5 and 7 in paragraph (b)(1) to read as follows:

§ 75.15 Specific provisions for monitoring SO_2 emissions removal by qualifying Phase I technology.

(a) *Additional monitoring provisions.* In addition to the SO_2 monitoring requirements in § 75.11 or § 75.16, for the purposes of adequately monitoring SO_2 emissions removal by qualifying Phase I technology operated pursuant to § 72.42 of this chapter, the owner or operator shall, except where specified below, use both an inlet SO_2-diluent continuous emission monitoring system and an outlet SO_2-diluent continuous emission monitoring system, consisting of an SO_2 pollutant concentration monitor and a diluent CO_2 or O_2 monitor. (The outlet SO_2-diluent continuous emission monitoring system may consist of the same SO_2 pollutant concentration monitor that is required under § 75.11 or § 75.16 for the measurement of SO_2 emissions discharged to the atmosphere and the diluent monitor used as part of the NO_X continuous emission monitoring system that is required under § 75.12 or § 75.17 for the measurement of NO_X emissions discharged into the atmosphere.) During the period when required to measure emissions removal efficiency, from January 1, 1997 through December 31, 1999, the owner or operator shall meet the general operating requirements in § 75.10 for both the inlet and the outlet SO_2-diluent continuous emission monitoring systems, and in addition, the owner or operator shall comply with the monitoring provisions in this section. On January 1, 2000, the owner or operator may cease operating and/or reporting on the inlet SO_2-diluent continuous emission monitoring system results for the purposes of the Acid Rain Program.

(1) *Pre-combustion technology.* The owner or operator of an affected unit for which a precombustion technology has been employed for the purpose of meeting qualifying Phase I technology requirements shall use sections 4 and 5 of Method 19 in appendix A of part 60 of this chapter to estimate, daily, for the purposes of this part, the percentage SO_2 removal efficiency from such technology, and shall substitute the following ASTM methods for sampling, preparation, and analysis of coal for those cited in Method 19: ASTM D2234–89, Standard Test Method for Collection of a Gross Sample of Coal (Type I, Conditions A, B, or C and systematic spacing), ASTM D2013–86, Standard Method of Preparing Coal Samples for Analysis, ASTM D2015–91, Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Calorimeter, and ASTM D3177–89, Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, or ASTM D4239–85, Standard Test Method for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods. Each of the preceding ASTM methods is incorporated by reference in § 75.6.

(2) *Combustion technology.* The owner or operator of an affected unit for which a combustion technology has been installed and operated for the purpose of meeting qualifying Phase I technology requirements shall use the coal sampling and analysis procedures in paragraph (a)(1) of this section and Equation 5 in paragraph (b) of this section to estimate the percentage SO_2 removal efficiency from such technology.

* * * * *

(b) * * *

(1) * * *

$$\%R_c = 100\left[1.0 - \frac{E_{co}}{E_{ci}}\right] \qquad \text{(Eq. 5)}$$

where,

E_{co}=Average hourly SO_2 emission rate in lb/mmBtu, measured at the outlet of the combustion emission controls during the calendar year, calculated from Equation 6.

E_{ci}=Average hourly SO_2 emission rate in lb/mmBtu, determined by coal sampling and analysis according to the methods and procedures in paragraph (a)(1) of this section, calculated from Equation 7.

(Eq. 6) * * *

$$E_{ci} = \sum_{j=1}^{p} E_{icj} \qquad \text{(Eq. 7)}$$

where,

E_{icj}=Each average hourly SO_2 emission rate in lb/mmBtu, determined by the coal sampling and analysis methods and procedures in paragraph (a)(1) of this section and calculated using appendix A, Method 19 of part 60 of this chapter, performed once a day.

p=Total unit operation hours during which coal sampling and analysis is performed to determine SO_2 emissions at the inlet to the combustion controls.

* * * * *

19. Section 75.16 is revised to read as follows:

§ 75.16 Special provisions for monitoring emissions from common, by-pass, and multiple stacks for SO_2 emissions and heat input determinations.

(a) *Phase I common stack procedures.* Prior to January 1, 2000, the following procedures shall be used when more than one unit utilize a common stack:

(1) *Only Phase I units or only Phase II units using common stack.* When a Phase I unit uses a common stack with one or more other Phase I units, but no other units, or when a Phase II unit uses a common stack with one or more Phase II units, but no other units, the owner or operator shall either:

(i) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct to the common stack from each affected unit; or

(ii) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the common stack; and

(A) Combine emissions for the affected units for recordkeeping and compliance purposes; or

(B) Provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions measured in the common stack to each of the affected units. The designated representative shall provide the information to the Administrator through a petition submitted under § 75.66. The Administrator may approve such substitute methods for apportioning SO_2 mass emissions measured in a common stack whenever the method ensures complete and accurate accounting of all emissions regulated under this part.

(2) *Phase I unit using common stack with non-Phase I unit(s).* When one or more Phase I units uses a common stack with one or more Phase II or nonaffected units, the owner or operator shall either:

(i) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct to the common stack from each affected unit; or

(ii) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the common stack; and

(A) Designate any Phase II unit(s) as a substitution or compensating unit(s) accordance with part 72 of this chapter and any nonaffected unit(s) as opt-in units in accordance with part 74 of this chapter and combine emissions for recordkeeping and compliance purposes; or

(B) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each Phase II or nonaffected unit; calculate SO_2 mass emissions from the Phase I units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the Phase II and nonaffected units; record and report the calculated SO_2 mass emissions from the Phase I units; and combine emissions for the Phase I units for compliance purposes; or

(C) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each Phase I or nonaffected unit; calculate SO_2 mass emissions from the Phase II units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the Phase I and nonaffected units; and combine emissions for the Phase II units for recordkeeping and compliance purposes; or

(D) Record the combined emissions from all units as the combined SO_2 mass emissions for the Phase I units for recordkeeping and compliance purposes; or

(E) Provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions measured in the common stack to each of the units using the common stack. The designated representative shall provide the information to the Administrator through a petition submitted under § 75.66. The Administrator may approve such substitute methods for apportioning SO_2 mass emissions measured in a common stack whenever the method ensures complete and accurate accounting of all emissions regulated under this part.

(3) *Phase II unit using common stack with non-affected unit(s).* When one or more Phase II units uses a common stack with one or more nonaffected units, the owner or operator shall follow the procedures in paragraph (b)(2) of this section.

(b) *Phase II common stack procedures.* On or after January 1, 2000, the following procedures shall be used when more than one unit uses a common stack:

(1) *Unit utilizing common stack with other affected unit(s).* When a Phase I or Phase II affected unit utilizes a common stack with one or more other Phase I or Phase II affected units, but no nonaffected units, the owner or operator shall either:

(i) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct to the common stack from each affected unit; or

(ii) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the common stack; and

(A) Combine emissions for the affected units for recordkeeping and compliance purposes; or

(B) Provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions measured in the common stack to each of the Phase I and Phase II affected units. The designated representative shall provide the information to the Administrator through a petition submitted under § 75.66. The Administrator may approve such substitute methods for apportioning SO_2 mass emissions measured in a common stack whenever the method ensures complete and accurate accounting of all emissions regulated under this part.

(2) *Unit utilizing common stack with nonaffected unit(s).* When one or more Phase I or Phase II affected units utilizes a common stack with one or more nonaffected units, the owner or operator shall either:

(i) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct to the common stack from each Phase I and Phase II unit; or

(ii) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the common stack; and

(A) Designate the nonaffected units as opt-in units in accordance with part 74 of this chapter and combine emissions for recordkeeping and compliance purposes; or

(B) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each nonaffected unit; determine SO_2 mass emissions from the affected units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the nonaffected units; and combine emissions for the Phase I and Phase II affected units for recordkeeping and compliance purposes; or

(C) Record the combined emissions from all units as the combined SO_2 mass emissions for the Phase I and Phase II affected units for recordkeeping and compliance purposes; or

(D) Petition through the designated representative and provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions measured in the common stack to each of the units using the common stack. The Administrator may approve such demonstrated substitute methods for apportioning SO_2 mass emissions measured in a common stack whenever the demonstration ensures

complete and accurate accounting of all emissions regulated under this part.

(c) *Unit with bypass stack.* Whenever any portion of the flue gases from an affected unit can be routed so as to avoid the installed SO_2 continuous emission monitoring system and flow monitoring system, the owner or operator shall either:

(1) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system or flow monitoring system on the bypass flue, duct, or stack gas stream and calculate SO_2 mass emissions for the unit as the sum of the emissions recorded by all required monitoring systems; or

(2) Monitor SO_2 mass emissions on the bypass flue, duct, or stack gas stream using the reference methods in § 75.22(b) for SO_2 and flow and calculate SO_2 mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems; or

(3) Where a Federal, State, or local regulation or permit prohibits operation of the bypass stack or duct or limits operation of the bypass stack or duct to emergency situations resulting from the malfunction of a flue gas desulfurization system record the following values for each hour during which emissions pass through the bypass stack or duct: the maximum potential concentration for SO_2 as determined under section 2 of appendix A of this part, and the hourly volumetric flow value that would be substituted for the flow monitor installed on the main stack or flue under the missing data procedures in subpart D of this part if data from the flow monitor installed on the main stack or flue were missing for the hour. Calculate SO_2 mass emissions for the unit as the sum of the emissions calculated with the substitute values and the emissions recorded by the SO_2 and flow monitoring systems installed on the main stack.

(d) *Unit with multiple stacks or ducts.* When the flue gases from an affected unit utilize two or more ducts feeding into two or more stacks (that may include flue gases from other affected or nonaffected units), or when the flue gases utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than the stack, the owner or operator shall either:

(1) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in each duct feeding into the stack or stacks and determine SO_2 mass emissions from each affected unit as the sum of the SO_2 mass emissions recorded for each duct; or

(2) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in each stack. Determine SO_2 mass emissions from each affected unit as the sum of the SO_2 mass emissions recorded for each stack, except that where another unit also exhausts flue gases to one or more of the stacks, the owner or operator shall also comply with the applicable common stack requirements of this section to determine and record SO_2 mass emissions from the units using that stack.

(e) *Heat input.* The owner or operator of an affected unit using a common stack, bypass stack, or multiple stacks shall account for heat input according to the following:

(1) The owner or operator of an affected unit using a common stack, bypass stack, or multiple stack with a diluent monitor and a flow monitor on each stack may choose to determine the heat input for the affected unit, wherever flow and diluent monitor measurements are used to determine the heat input, using the procedures specified in paragraphs (a) through (d) of this section, except that the terms "SO_2 mass emissions" and "emissions" are replaced with the term "heat input" and the phrase "SO_2 continuous emission monitoring system and flow monitoring system" is replaced with the phrase "a diluent monitor and a flow monitor".

(2) Notwithstanding paragraph (e)(1) of this section, for any common stack where any unit utilizing the common stack has a NO_x emission limitation pursuant to Section 407(b) of the Act, the owner or operator shall not combine heat input for compliance purposes and shall determine heat input for that unit separately.

(3) Notwithstanding paragraph (e)(1) of this section, during the period prior to January 1, 2000, the owner or operator shall not combine heat input for units utilizing a common stack in order to determine heat input for each unit for purposes of § 75.10.

(4) In the event that an owner or operator of a unit with a bypass stack does not install and certify a diluent monitor and flow monitoring system in a bypass stack, the owner or operator shall determine total heat input to the unit for each unit operating hour during which the bypass stack is used according to the missing data provisions for heat input under § 75.36 or the procedures for calculating heat input from fuel sampling and analysis in section 5.5 of appendix F of this part.

20. Section 75.17 is amended by revising paragraph (a)(2)(i)(B), adding paragraph (a)(2)(i)(C), removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising the newly designated paragraph (c) to read as follows:

§ 75.17 Specific provisions for monitoring emissions from common, by-pass, and multiple stacks for NO_x emission rate.

(a) * * *

(2) * * *

(i) * * *

(B) Each unit will comply with the applicable NO_x emission limitation by averaging its emissions with the other unit(s) utilizing the common stack, pursuant to the emissions averaging plan submitted under part 76 of this chapter; or

(C) Each unit's compliance with the applicable NO_x emission limit will be determined by a method satisfactory to the Administrator for apportioning to each of the units the combined NO_x emission rate (in lb/mmBtu) measured in the common stack, as provided in a petition submitted by the designated representative. The Administrator may approve such demonstrated substitute methods for apportioning NO_x emission rate measured in a common stack whenever the demonstration ensures complete and accurate estimation of all emissions regulated under this part.

* * * * *

(c) *Unit with multiple stacks or bypass stack.* When the flue gases from an affected unit utilize two or more ducts feeding into two or more stacks (that may include flue gases from other affected or nonaffected units), or when flue gases utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than the stack, the owner or operator shall monitor the NO_x emission rate representative of each affected unit. Where another unit also exhausts flue gases to one or more of the stacks where monitoring systems are installed, the owner or operator shall also comply with the applicable common stack monitoring requirements of this section. The owner or operator shall either:

(1) Install, certify, operate, and maintain a NO_x continuous emission monitoring system in each stack or duct and determine the NO_x emission rate for the unit as the Btu-weighted sum of the NO_x emission rates measured in the stacks or ducts using the heat input estimation procedures in appendix F of this part; or

(2) Install, certify, operate, and maintain a NO_x continuous emission monitoring system in one stack or duct

from each affected unit and record the monitored value as the NO_X emission rate for the unit. The owner or operator shall account for NO_X emissions from the unit during all times when the unit combusts fuel.

21. Section 75.18 is amended by revising paragraph (b) to read as follows:

§ 75.18 Specific provisions for monitoring emissions from common and by-pass stacks for opacity.

(a) * * *

(b) *Unit using bypass stack.* Where any portion of the flue gases from an affected unit can be routed so as to bypass the installed continuous opacity monitoring system, the owner or operator shall install, certify, operate, and maintain a certified continuous opacity monitoring system on each bypass stack flue, duct, or stack gas stream unless either:

(1) An applicable Federal, State, or local opacity regulation or permit exempts the unit from a requirement to install a continuous opacity monitoring system in the bypass stack; or

(2) A continuous opacity monitoring system is already installed and certified at the inlet of the add-on emissions controls; or

(3) The owner or operator monitors opacity using Method 9 of appendix A, part 60 of this chapter whenever emissions pass through the bypass stack.

Subpart C—Operation and Maintenance Requirements

22. Section 75.20 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4) introductory text, (a)(4)(iii), (a)(4)(iv), (a)(5), (b), the last sentence of paragraph (c) introductory text, (c)(1)(v), (c)(2)(ii), (c)(2)(iii), (c)(4), (c)(5) introductory text, (c)(5)(iv), (c)(6)(i), (c)(8), (d), (f) introductory text, (f)(1), the last sentence of paragraph (f)(2), (f)(3) and (g), by adding a new sentence at the end of paragraph (f)(2), and by removing paragraph (c)(9) to read as follows:

§ 75.20 Certification and recertification procedures.

(a) *Initial certification approval process.* The owner or operator shall ensure that each continuous emission or opacity monitoring system required by this part, which includes the automated data acquisition and handling system, and, where applicable, the CO_2 continuous emission monitoring system, meets the initial certification requirements of this section and shall ensure that all applicable certification tests under paragraph (c) of this section are completed by the deadlines specified in § 75.4 and prior to use in the Acid Rain Program. In addition, whenever the owner or operator installs a continuous emission or opacity monitoring system in order to meet the requirements of §§ 75.13 through 75.18 where no continuous emission or opacity monitoring system was previously installed, initial certification is required.

(1) *Notification of initial certification test dates.* The owner or operator or designated representative shall submit a written notice of the dates of initial certification testing at the unit as specified in § 75.60 and § 75.61(a)(1)(i).

(2) *Certification application.* The owner or operator shall apply for certification of each continuous emission or opacity monitoring system used under the Acid Rain Program. The owner or operator shall submit the certification application in accordance with § 75.60 and each complete certification application shall include the information specified in § 75.63.

(3) *Provisional approval of certification applications.* Upon the successful completion of the required certification procedures of this section for each continuous emission or opacity monitoring system or component thereof, each continuous emission or opacity monitoring system or component thereof shall be deemed provisionally certified for use under the Acid Rain Program for a period not to exceed 120 days following receipt by the Administrator of the complete certification application under paragraph (a)(4) of this section; provided that no continuous emission or opacity monitor systems for a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall be deemed provisionally certified for use under the Acid Rain Program. Data measured and recorded by a provisionally certified continuous emission or opacity monitoring system or component thereof, in accordance with the requirements of appendix B of this part, will be considered valid quality-assured data (retroactive to the date and time of successful completion of all certification tests), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application.

(4) *Certification application formal approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application. In the event the Administrator does not issue such a written notice within 120 days of receipt, each continuous emission or opacity monitoring system which meets the performance requirements of this part and is included in the certification application will be deemed certified for use under the Acid Rain Program.

* * * * *

(iii) *Disapproval notice.* If the certification application is complete but shows that any continuous emission or opacity monitoring system or component thereof does not meet the performance requirements of this part, the Administrator shall issue a written notice of disapproval of the certification application within 120 days of receipt. By issuing the notice of disapproval, the provisional certification is invalidated by the Administrator, and the data measured and recorded by each uncertified continuous emission or opacity monitoring system or component thereof shall not be considered valid quality-assured data from the date and time of completion of the invalid certification tests until the date and time that the owner or operator completes subsequently approved initial certification tests. The owner or operator shall follow the procedures for loss of certification in paragraph (a)(5) of this section for each continuous emission or opacity monitoring system or component thereof which was disapproved.

(iv) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a continuous emission or opacity monitoring system or component thereof, in accordance with § 75.21.

(5) *Procedures for loss of certification.* When the Administrator issues a notice of disapproval of a certification application or a notice of disapproval of certification status (as specified in paragraph (a)(4) of this section), then:

(i) The owner or operator shall substitute the following values, as applicable, for each hour of unit operation during the period of invalid data specified in paragraph (a)(4)(iii) of this section or in § 75.21: the maximum potential concentration of SO_2 as defined in section 2.1 of appendix A of this part to report SO_2 concentration; the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter to report NO_X emissions, the maximum potential flow rate, as defined in section 2.1 of appendix A of this part to report volumetric flow, or the maximum CO_2 concentration used to determine the maximum potential concentration of SO_2 in section 2.1.1.1 of appendix A of

this part to report CO_2 concentration data until such time, date, and hour as the continuous emission monitoring system or component thereof can be adjusted, repaired, or replaced and certification tests successfully completed; and

(ii) The designated representative shall submit a notification of certification retest dates as specified in § 75.61(a)(1)(ii) and a new certification application according to the procedures in paragraph (a)(2) of this section; and

(iii) The owner or operator shall repeat all certification tests or other requirements that were failed by the continuous emission or opacity monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(b) *Recertification approval process.* Whenever the owner or operator makes a replacement, modification, or change in the certified continuous emission monitoring system or continuous opacity monitoring system (which includes the automated data acquisition and handling system, and, where applicable, the CO_2 continuous emission monitoring system), that significantly affects the ability of the system to measure or record the SO_2 concentration, volumetric gas flow, SO_2 mass emissions, NO_X emission rate, CO_2 concentration, or opacity, or to meet the requirements of § 75.21 or appendix B of this part, the owner or operator shall recertify the continuous emission monitoring system, continuous opacity monitoring system, or component thereof according to the procedures in this paragraph. Examples of changes which require recertification include: replacement of the analytical method, including the analyzer; change in location or orientation of the sampling probe or site; rebuilding of the analyzer or all monitoring system equipment; and replacement of an existing continuous emission monitoring system or continuous opacity monitoring system. In addition, if a continuous emission monitoring system is not operating for more than two calendar years, then the owner or operator shall recertify the continuous emission monitoring system. The Administrator may determine whether a replacement, modification or change in a monitoring system significantly affects the ability of the monitoring system to measure or record the SO_2 concentration, volumetric gas flow, SO_2 mass emissions, NO_X emission rate, CO_2 concentration, or opacity. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit operation that significantly changes the flow or concentration profile or opacity of monitored emissions, the owner or operator shall recertify the continuous emission or opacity monitoring system or component thereof according to the procedures in this paragraph. Recertification is not required prior to use of a non-redundant backup continuous emission monitoring system in cases where all of the following conditions have been met: the non-redundant backup continuous emission monitoring system has previously been certified at the same sampling location; all components of the non-redundant backup continuous emission monitoring system have previously been certified; and component monitors of the non-redundant backup continuous emission monitoring system pass a linearity check (for pollutant concentration monitors) or a calibration error test (for flow monitors) prior to their use for monitoring of emissions or flow. In addition, changes resulting from routine or normal corrective maintenance and/or quality assurance activities do not require recertification, nor do software modifications in the automated data acquisition and handling system, where the modification is only for the purpose of generating additional or modified reports for the State Implementation Plan or for reporting requirements under subpart G of this part.

(1) *Tests required.* For recertification testing, the owner or operator shall complete all certification tests in paragraph (c) of this section applicable to the monitoring system, except as approved by the Administrator. Such approval may be obtained by petition under § 75.66 or may be provided in written guidance from the Administrator.

(2) *Notification of recertification test dates.* The owner or operator or designated representative shall submit notice of testing dates for recertification under this paragraph as specified in § 75.61(a)(1)(ii), unless such testing is required as a result of a change in the flue gas handling system, a change in location or orientation of the sampling probe or site, or the planned replacement of a continuous emission or opacity monitoring system or component thereof. In such cases, the owner or operator shall provide notice in accordance with the notice provisions for initial certification testing in § 75.61(a)(1)(i).

(3) *Substitution of missing data.* (i) The owner or operator shall substitute for missing data during the period following the replacement, modification, or change to the monitoring system up to the time of successful completion of all recertification testing according to the standard missing data procedures in §§ 75.33 through 75.36, and shall use the standard missing data substitution procedures for all missing data periods following the recertification, except as provided below.

(ii) If the replacement, modification, or change is such that the data collected by the prior certified monitoring system are no longer representative, such as after a change to the flue gas handling system or unit operation that requires changing the span value to be consistent with Section 2.1 of appendix A of this part, the owner or operator must also substitute the appropriate one of the following values: for a change that results in a significantly higher concentration or flow rate, substitute maximum potential values according to the procedures in paragraph (a)(5) of this section during the period following the replacement, modification, or change up to the time of the successful completion of all recertification testing; or for a change that results in a significantly lower concentration or flow rate, substitute data using the standard missing data procedures during the period following the replacement, modification, or change up to the time of the successful completion of all recertification testing. The owner or operator shall then use the initial missing data procedures in § 75.31 following provisional certification, unless otherwise provided by § 75.34 for units with add-on emission controls.

(4) *Recertification application.* The designated representative shall apply for recertification of a continuous emission or opacity monitoring system used under the Acid Rain Program according to the procedures in paragraph (a)(2) of this section. Each complete recertification application shall include the information specified in § 75.63 of this part.

(5) *Approval/disapproval of request for recertification.* The procedures for provisional certification in paragraph (a)(3) of this section shall apply. The Administrator will issue a written notice of approval or disapproval according to the procedures in paragraph (a)(4) of this section, except that the period for the Administrator's review provided under paragraph (a)(4) of this section shall not exceed 60 days following receipt of the complete recertification application by the Administrator. The missing data substitution procedures under paragraph (b)(3) of this section shall

apply in the event of a loss of recertification.

(c) * * * Except as specified in paragraphs (b)(1), (d) and (e) of this section, the owner or operator shall perform the following tests for initial certification or recertification of continuous emission or opacity monitoring systems or components according to the requirements of appendix A of this part:

(1) * * *

(v) A cycle time test.

(2) * * *

(ii) Relative accuracy test audits at three flue gas velocities; and

(iii) A bias test (at normal operating load).

(3) * * *

(4) The certification test data from an O_2 or a CO_2 diluent gas monitor certified for use in a NO_X continuous emission monitoring system may be submitted to meet the requirements of § 75.20(c)(5).

(5) For each CO_2 pollutant concentration monitor or O_2 monitor which is part of a CO_2 continuous emission monitoring system or is used to monitor heat input and for each SO_2-diluent continuous emission monitoring system:

* * * * *

(iv) A cycle-time test.

(6) * * *

(i) Performance of the tests for certification or recertification, according to the requirements of Performance Specification 1 in appendix B to part 60 of this chapter.

* * * * *

(8) The owner or operator shall provide, or cause to be provided, adequate facilities for certification or recertification testing that include:

(i) Sampling ports adequate for test methods applicable to such facility, such that:

(A) Volumetric flow rate, pollutant concentration, and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(B) A stack or duct free of cyclonic flow during performance tests is available, as demonstrated by applicable test methods and procedures.

(ii) Basic facilities (e.g., electricity) for sampling and testing equipment.

(d) *Certification/recertification procedures for optional backup continuous emission monitoring systems*—(1) *Redundant backups.* The owner or operator of an optional redundant backup continuous emission monitoring system shall comply with all the requirements for initial certification and recertification according to the procedures specified in paragraphs (a), (b), and (c) of this section. The owner or operator shall operate the redundant backup continuous emission monitoring system during all periods of unit operation, except for periods of calibration, quality assurance, maintenance, or repair. The owner or operator shall perform upon the redundant backup continuous emission monitoring system all quality assurance and quality control procedures specified in appendix B of this part.

(2) *Non-redundant backups.* The owner or operator of an optional non-redundant backup continuous emission monitoring system shall comply with all the requirements for initial certification and recertification according to the procedures specified in paragraphs (a), (b) and (c) of this section for each non-redundant backup continuous emission monitoring system, except that: the owner or operator of a non-redundant backup continuous emission monitoring system may omit the 7-day calibration error test for certification or recertification of an SO_2 pollutant concentration monitor, flow monitor, NO_X pollutant concentration monitor, or diluent gas monitor, provided the non-redundant backup system is not used for reporting on any affected unit for more than 720 hours in any calendar year. In addition, the owner or operator shall ensure that the certified non-redundant backup continuous emission monitoring system passes a linearity check (for pollutant concentration monitors) or a calibration error test (for flow monitors) prior to each use for recording and reporting emissions and complies with the daily and quarterly quality assurance and quality control requirements in appendix B of this part for each day and quarter that the non-redundant backup monitoring system is used to report data. If the owner or operator does not perform semi-annual or annual relative accuracy test audits upon the non-redundant backup continuous emission monitoring system, then the owner or operator shall recertify the non-redundant continuous emission monitoring system once every two calendar years, performing all certification tests applicable under this paragraph. However, if a non-redundant backup system is used for reporting data from any affected unit or common stack for more than 720 hours in any one calendar year, then reported data after the first 720 hours is not valid, quality-assured data unless the owner or operator has ensured that the non-redundant backup monitoring system has also passed the 7-day calibration error test, before data is recorded for any period in excess of 720 hours for that calendar year for that monitoring system.

(3) *Reference method backups.* A monitoring system that is operated as a reference method backup system pursuant to the reference method requirements of Methods 2, 6C, 7E, or 3A in appendix A of part 60 of this chapter need not perform and pass the certification tests required by paragraph (c) of this section prior to its use pursuant to this paragraph.

* * * * *

(f) *Certification/recertification procedures for alternative monitoring systems.* The designated representative representing the owner or operator of each alternative monitoring system approved by the Administrator as equivalent to or better than a continuous emission monitoring system according to the criteria and procedures in subpart E of this part shall apply for certification to the Administrator prior to use of the system under the Acid Rain Program, and shall apply for recertification to the Administrator following a replacement, modification, or change by performing all of the tests under paragraph (c) of this section that can be applied to the alternative monitoring system. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification or recertification according to the procedures specified in paragraphs (f)(1), (f)(2), and (f)(3) of this section.

(1) Each alternative monitoring system shall be certified by the Administrator before it may be authorized for use under the Acid Rain Program.

(i) *Certification testing notification.* The designated representative shall provide certification testing notification according to the procedures in subparagraph (a)(1) of this section prior to conducting certification testing.

(ii) *Monitoring plan.* The designated representative shall submit an initial monitoring plan at least 45 days prior to the first day of certification testing.

(iii) *Certification application.* The designated representative shall submit a certification application for the alternative monitoring system prior to use in the Acid Rain Program. Each complete certification application shall include:

(A) Information and test results for the relative accuracy test and any other applicable tests in paragraph (c) of this section;

(B) A revised monitoring plan; and

(C) Results of the tests for verification of the accuracy of emissions calculations and missing data

procedures performed by the automated data acquisition and handling system.

(2) * * * The procedures for provisional certification under paragraph (a)(3) of this section and for a 120-day EPA review period for initial certification under paragraph (a)(4) of this section shall apply to alternative monitoring systems, provided that the Administrator has already approved the petition or petitions required under subpart E of this part. The designated representative shall report no data from an alternative monitoring system in a quarterly report from a period prior to both Administrator approval of the petition or petitions under subpart E of this part and also successful completion of certification testing.

(3) The recertification requirements of paragraph (b) of this section shall apply to alternative monitoring systems, except that the owner or operator shall perform the tests specified under paragraph (f)(1)(iii) of this section.

(g) *Certification procedures for excepted monitoring systems under appendices D and E.* The owner or operator of a gas-fired unit, oil-fired unit, or diesel-fired unit using the optional protocol under appendix D or E of this part shall ensure that an excepted monitoring system under appendix D or E of this part meets the applicable general operating requirements of § 75.10, the applicable requirements of appendices D and E to this part, and the certification requirements of this paragraph.

(1) *Certification testing.* The owner or operator shall use the following procedures for certification of an excepted monitoring system under appendix D or E of this part.

(i) When the optional SO_2 mass emissions estimation procedure in appendix D of this part or the optional NO_X emissions estimation protocol in appendix E of this part is used, the owner or operator shall provide data from a calibration test for each fuel flowmeter according to the appropriate calibration procedures using one of the following standard methods: ASME MFC–3M–1989 with September 1990 Errata, "Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi", ASME MFC–4M–1986 (Reaffirmed 1990) "Measurement of Gas Flow by Turbine Meters", ASME MFC–5M–1985 "Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters", ASME MFC–6M–1987 with June 1987 Errata, "Measurement of Fluid Flow in Pipes Using Vortex Flow Meters", ASME MFC–7M–1987 (Reaffirmed 1992), "Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles", ASME MFC–9M–1988 with December 1989 Errata, "Measurement of Liquid Flow in Closed Conduits by Weighing Method", ISO 8316: 1987(E) "Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank", or American Gas Association Report No. 3: Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids Part 1: General Equations and Uncertainty Guidelines (October 1990 Edition), Part 2: Specification and Installation Requirements (February 1991 Edition) and Part 3: Natural Gas Applications (August 1992 Edition), excluding the modified calculation procedures of Part 3, as required by appendices D and E of this part (all methods incorporated by reference under § 75.6). The Administrator may also approve other procedures that use equipment traceable to National Institute of Standards of Technology (NIST) standards. The designated representative shall document the procedure and the equipment used in the monitoring plan for the unit and in a petition submitted in accordance with § 75.66(c).

(ii) For the automated data acquisition and handling system used under either the optional SO_2 mass emissions estimation procedure in appendix D of this part or the optional NO_X emissions estimation protocol in appendix E of this part, the owner or operator shall perform tests designed to verify:

(A) The proper computation of hourly averages for pollutant concentrations, fuel flow rates, emission rates, heat input, and pollutant mass emissions; and

(B) Proper computation and application of the missing data substitution procedures in appendix D or E of this part.

(iii) When the optional NO_X emissions protocol in appendix E is used, the owner or operator shall complete all initial performance testing under section 2.1 of appendix E.

(2) *Certification testing notification.* The designated representative shall provide initial certification testing notification and periodic retesting notification for an excepted monitoring system under appendix E of this part as specified in § 75.61. The designated representative shall submit recertification testing notification as specified in § 75.61 for quality assurance/quality control-related NO_X emission rate testing under section 2.3 of appendix E of this part for an excepted monitoring system under appendix E of this part. Certification testing notification or periodic retesting notification is not required for testing of a fuel flowmeter or testing for an excepted monitoring system under appendix D of this part.

(3) *Monitoring plan.* The designated representative shall submit an initial monitoring plan in accordance with § 75.62(a).

(4) *Certification application.* The designated representative shall submit a certification application in accordance with §§ 75.60 and 75.63.

(5) *Provisional approval of certification applications.* Upon the successful completion of the required certification procedures for each excepted monitoring system under appendix D or E of this part, each excepted monitoring system under appendix D or E of this part shall be deemed provisionally certified for use under the Acid Rain Program during the period for the Administrator's review. The provisions for the certification application formal approval process in paragraph (a)(4) of this section shall apply. Data measured and recorded by a provisionally certified excepted monitoring system under appendix D or E of this part, will be considered quality-assured data from the date and time of completion of the final certification test, provided that the Administrator does not revoke the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application in accordance with the provisions in paragraph (a)(4) of this section.

23. Section 75.21 is amended by adding paragraphs (d) and (e) to read as follows:

§ 75.21 Quality assurance and quality control requirements.

* * * * *

(d) *Notification for periodic relative accuracy test audits.* The owner or operator or the designated representative shall submit a written notice of the dates of relative accuracy testing as specified in § 75.61.

(e) *Consequences of audits.* The owner or operator shall invalidate data from a continuous emission monitoring system or continuous opacity monitoring system upon failure of an audit under paragraph (a)(1)(iv) of § 75.20, under appendix B of this part, or any other audit, beginning with the unit operating hour of completion of a failed audit as determined by the Administrator. The owner or operator shall not use invalidated data for reporting emissions or heat input, nor for calculations of monitor data availability.

(1) *Audit decertification.* Whenever both: an audit (including audits required under appendix B of this part)

of a continuous emission or opacity monitoring system or component thereof, including the data acquisition and handling system, and a review of the initial certification application or recertification application, reveal that any continuous emission or opacity monitoring system or component should not have been certified because it did not meet a particular performance specification or other requirement of this part both at the time of the certification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such system or component. By issuing the notice of disapproval, the certification status is revoked, prospectively, by the Administrator. The data measured and recorded by each continuous emission or opacity monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved certification tests. The owner or operator shall follow the procedures for loss of certification in § 75.20(a)(5) for initial certification or § 75.20(b)(3) for recertification to replace, prospectively, all of the invalid, non-quality-assured data for each disapproved continuous emission or opacity monitoring system.

(2) *Out-of-control period.* Whenever a continuous emission monitoring system or continuous opacity monitoring system fails a periodic quality assurance audit, an audit under § 75.20(a)(1)(iv), a field audit from EPA personnel or other audit, the system is out-of-control. The owner or operator shall follow the procedures for out-of-control periods in § 75.24.

24. Section 75.22 is amended by revising paragraphs (a) introductory text, (a)(5), and (a)(6) and by adding paragraphs (b) and (c) to read as follows:

§ 75.22 Reference test methods.

(a) The owner or operator shall use the following methods included in appendix A to part 60 of this chapter to conduct monitoring system tests for certification or recertification of continuous emission monitoring systems and excepted monitoring systems under appendix E of this part and quality assurance and quality control procedures.

* * * * *

(5) Methods 6, 6A, 6B or 6C, and 7, 7A, 7C, 7D or 7E, as applicable, are the reference methods for determining SO_2 and NO_X pollutant concentrations. (Methods 6A and 6B may also be used to determine SO_2 emission rate in lb/mmBtu. Methods 7, 7A, 7C, 7D, or 7E must be used to measure total NO_X emissions, both NO and NO_2, for purposes of this part. The owner or operator shall not use the exception in section 5.1.2 of Method 7E.)

(6) Method 20 is the reference method for determining NO_X and diluent emissions from stationary gas turbines for testing under appendix E of this part.

(b) The owner or operator may use the following methods in Appendix A of part 60 of this chapter as a reference method backup monitoring system to provide quality-assured monitor data:

(1) Method 3A for determining O_2 or CO_2 concentration;

(2) Method 6C for determining SO_2 concentration;

(3) Method 7E for determining total NO_X concentration (both NO and NO_2); and

(4) Method 2 for determining volumetric flow. The sample point(s) for reference methods shall be located according to the provisions of section 6.5.5 of appendix A of this part.

(c) (1) Performance tests shall be conducted and data reduced in accordance with the test methods and procedures of this part unless the Administrator:

(i) Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

(ii) Approves the use of an equivalent method; or

(iii) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

(2) Nothing in this paragraph shall be construed to abrogate the Administrator's authority to require testing under Section 114 of the Act.

25. Section 75.23 is revised to read as follows:

§ 75.23 Alternatives to standards incorporated by reference.

(a) The designated representative of a unit may petition the Administrator for an alternative to any standard incorporated by reference and prescribed in this part in accordance with § 75.66(c).

(b) (reserved)

26. Section 75.24 is amended by revising paragraphs (d) and (e) introductory text to read as follows:

§ 75.24 Out-of-control periods.

* * * * *

(d) When the bias test indicates that an SO_2 monitor, volumetric flow monitor, or NO_X continuous emission monitoring system is biased low (i.e., the arithmetic mean of the differences between the reference method value and the monitor or monitoring system measurements in a relative accuracy test audit exceed the bias statistic in section 7 of appendix A to this part), the owner or operator shall adjust the monitor or continuous emission monitoring system to eliminate the cause of bias such that it passes the bias test or calculate and use the bias adjustment factor as specified in section 2.3.3 of appendix B to this part and in accordance with § 75.7.

(e) The owner or operator shall determine if a continuous opacity monitoring system is out-of-control and shall take appropriate corrective actions according to the procedures specified for State Implementation Plans, pursuant to appendix M of part 51 of this chapter. The owner or operator shall comply with the monitor data availability requirements of the State. If the State has no monitor data availability requirements for continuous opacity monitoring systems, then the owner or operator shall comply with the monitor data availability requirements as stated in the data capture provisions of appendix M, part 51 of this chapter.

Subpart D—Missing Data Substitution Procedures

27. Section 75.30 is revised to read as follows:

§ 75.30 General provisions.

(a) Except as provided in § 75.34, the owner or operator shall provide substitute data for each affected unit using a continuous emission monitoring system according to the missing data procedures in this subpart whenever the unit combusts any fuel and:

(1) A valid, quality-assured hour of SO_2 concentration data (in ppm) has not been measured and recorded for an affected unit by a certified SO_2 pollutant concentration monitor, or by an approved alternative monitoring method under subpart E of this part, except as provided in paragraph (d) of this section; or

(2) A valid, quality-assured hour of flow data (in scfh) has not been measured and recorded for an affected unit from a certified flow monitor, or by an approved alternative monitoring system under subpart E of this part; or

(3) A valid, quality-assured hour of NO_X emission rate data (in lb/mmBtu) has not been measured and recorded for an affected unit by a certified NO_X continuous emission monitoring system, or by an approved alternative monitoring system under subpart E of this part; or

(4) A valid, quality-assured hour of CO_2 concentration data (in percent CO_2,

or percent O_2 converted to percent CO_2 using the procedures in appendix F of this part) has not been measured and recorded for an affected unit by a certified CO_2 continuous emission monitoring system, or by an approved alternative monitoring method under subpart E of this part.

(b) However, the owner or operator shall have no need to provide substitute data according to the missing data procedures in this subpart if the owner or operator uses SO_2 or CO_2 (or O_2) concentration, flow, or NO_X emission rate data recorded from either a certified redundant or non-redundant backup continuous emission monitor or a backup reference method monitoring system when the certified primary monitor is not operating or out-of-control. A redundant or non-redundant backup continuous emission monitoring system must have been certified according to the procedures in § 75.20 prior to the missing data period. Non-redundant backup continuous emission monitoring system must pass a linearity check (for pollutant concentration monitors) or a calibration error test (for flow monitors) prior to each period of use of the certified backup monitor for recording and reporting emissions. Use of a certified backup monitoring system or backup reference method monitoring system is optional and at the discretion of the owner or operator.

(c) When the certified primary monitor is not operating or out-of-control, then data recorded for an affected unit from a certified backup continuous emission monitor or backup reference method monitoring system are used, as if such data were from the certified primary monitor, to calculate monitor data availability in § 75.32, and to provide the quality-assured data used in the missing data procedures in §§ 75.31 and 75.33, such as the "hour after" value.

(d) [Reserved]

(e) [Reserved]

28. Section 75.31 is amended by revising paragraphs (a), (b) and (c)(3) to read as follows:

§ 75.31 Initial missing data procedures.

(a) During the first 720 quality-assured monitor operating hours following initial certification (i.e., following the date and time of completion of successful certification tests), of the SO_2 and CO_2 (or O_2) pollutant concentration monitor and during the first 2,160 quality-assured monitor operating hours following initial certification of the flow monitor and NO_X continuous emission monitoring system(s), the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraphs (b) and (c) of this section. The owner or operator of a unit shall use these procedures for no longer than three years (26,280 clock hours) following initial certification.

(b) *SO_2 or CO_2 (or O_2) concentration data.* For each hour of missing SO_2 or CO_2 concentration data (including CO_2 data converted from O_2 data using the procedures in appendix F of this part) or O_2 concentration data used to calculate heat input, the owner or operator shall calculate the substitute data as follows:

(1) Whenever prior quality-assured data exist, the owner or operator shall substitute, by means of the data acquisition and handling system, the average of the hourly SO_2 or CO_2 (or O_2) concentrations recorded for an affected unit by a certified monitor for the unit operating hour immediately before and the unit operating hour immediately after the missing data period for each hour of missing data.

(2) Whenever no prior quality-assured SO_2 or CO_2 (or O_2) concentration data exist, the owner or operator shall substitute the maximum potential concentration for SO_2 or CO_2 (or minimum O_2 concentration, for determination of heat input), as specified in section 2.1 of appendix A of this part, for each hour of missing data.

(c) * * *

(3) Whenever no prior quality-assured flow or NO_X emission rate data exist for the corresponding load range, or any higher load range, the owner or operator shall calculate and substitute the maximum potential flow rate or shall substitute the maximum potential NO_X emission rate, as specified in § 72.2 of this chapter and section 2.1 of appendix A, for each hour of missing data.

29. Section 75.32 is amended by revising paragraphs (a) introductory text, the first sentence of paragraphs (a)(1) and (a)(2) and paragraph (b) to read as follows:

§ 75.32 Determination of monitor data availability for standard missing data procedures.

(a) Following initial certification, upon completion of the first 720 quality-assured monitor operating hours of the SO_2 or CO_2 (or O_2) pollutant concentration monitor or the first 2,160 quality-assured monitor operating hours of the flow monitor or NO_X continuous emission monitoring system, the owner or operator shall calculate and record, by means of the automated data acquisition and handling system, the percent monitor data availability for the SO_2 and CO_2 (or O_2) pollutant concentration monitor, the flow monitor, the NO_X continuous emission monitoring system as follows:

(1) Prior to completion of 8,760 unit operating hours following initial certification, the owner or operator shall, for the purpose of applying the standard missing data procedures of § 75.33, use Equation 8 to calculate, hourly, percent monitor data availability. * * *

(2) Upon completion of 8,760 unit operating hours following initial certification (or, for a unit with less than 8,760 unit operating hours three years (26,280 clock hours) after initial certification, upon completion of three years (26,280 clock hours) following initial certification) and thereafter, the owner or operator shall, for the purpose of applying the standard missing data procedures of § 75.33, use Equation 9 to calculate, hourly, percent monitor data availability. * * *

(3) * * *

(b) The monitor data availability need not be calculated during the missing data period. The owner or operator shall record the percent monitor data availability for the last hour of each missing data period as the monitor availability used to implement the missing data substitution procedures.

30. Section 75.33 is amended by adding a sentence to the end of paragraph (a) and by adding paragraph (c)(5) to read as follows:

§ 75.33 Standard missing data procedures.

(a) * * * The owner or operator of a unit shall substitute for missing data using only quality-assured monitor operating hours of data from the three years (26,280 clock hours) prior to the date and time of the missing data period. * * *

* * * * *

(c) * * *

(5) Whenever no proper quality-assured flow or NO_X emission rate data exist for either the corresponding load range or a higher load range, the owner or operator shall substitute the maximum potential NO_X emission rate or the maximum potential flow rate, as defined in section 2.1 of appendix A of this part.

* * * * *

31. Section 75.35 is added as follows:

§ 75.35 Missing data procedures for CO_2 data.

(a) On or after January 1, 1996, the owner or operator of a unit with a CO_2 continuous emission monitoring system shall substitute for missing CO_2 concentration data using the procedures of this section. Prior to January 1, 1996, the owner or operator of a unit with a

CO_2 continuous emission monitoring system may substitute for missing CO_2 concentration data using the procedures of this section.

(b) During the first 720 quality-assured monitor operating hours following initial certification (i.e., following the date and time of completion of successful certification tests), of the CO_2 continuous emission monitoring system, the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraph (b) of § 75.31.

(c) Upon completion of the first 720 quality-assured monitor operating hours following initial certification of the CO_2 continuous emission monitoring system, the owner or operator shall provide substitute data for CO_2 concentration or CO_2 mass emissions required under this subpart according to the procedures in paragraphs (c)(1), (c)(2), or (c)(3) of this section, including CO_2 data calculated from O_2 measurements using the procedures in appendix F of this part.

(1) Whenever a quality-assured monitoring operating hour of CO_2 concentration data has not been obtained and recorded for a period less than or equal to 72 hours or for a missing data period where the percent monitor data availability for the CO_2 continuous emission monitoring system as of the last unit operating hour of the previous calendar quarter was greater than or equal to 90.0 percent, then the owner or operator shall substitute the average of the recorded CO_2 concentration for the hour before and the hour after the missing data period for each hour in each missing data period.

(2) Whenever no quality-assured CO_2 concentration data are available for a period of 72 consecutive unit operating hours or more, the owner or operator shall begin substituting CO_2 mass emissions calculated using the procedures in appendix G of this part beginning with the seventy-third hour of the missing data period until quality-assured CO_2 concentration data are again available. The owner or operator shall use the CO_2 concentration from the hour before the missing data period to substitute for hours 1 through 72 of the missing data period.

(3) Whenever no quality-assured CO_2 concentration data are available for a period where the percent monitor data availability for the CO_2 continuous emission monitoring system as of the last unit operating hour of the previous calendar quarter was less than 90.0 percent, the owner or operator shall substitute CO_2 mass emissions calculated using the procedures in appendix G of this part for each hour of the missing data period until quality-assured CO_2 concentration data are again available.

32. Section 75.36 is added as follows:

§ 75.36 Missing data procedures for heat input.

(a) On or after January 1, 1996, the owner or operator of a unit monitoring heat input with a CO_2 or O_2 pollutant concentration monitor and a flow monitoring system shall substitute for missing heat input data using the procedures of this section. Prior to January 1, 1996, the owner or operator of a unit monitoring heat input with a CO_2 or O_2 pollutant concentration monitor and a flow monitoring system may substitute for missing heat input data using the procedures of this section.

(b) During the first 720 quality-assured monitor operating hours following initial certification (i.e., following the date and time of completion of successful certification tests), of the CO_2 or O_2 pollutant concentration monitor and during the first 2,160 quality-assured monitoring operating hours following initial certification of the flow monitor, the owner or operator shall provide substitute data for heat input calculated under section 5.2 of appendix F of this part by substituting the CO_2 or O_2 concentration measured or substituted according to paragraph (b) of § 75.31, and by substituting the flow rate measured or substituted according to § 75.31.

(c) Upon completion of the first 720 quality-assured monitor operating hours following initial certification of the CO_2 (or O2) pollutant concentration monitor, the owner or operator shall provide substitute data for CO_2 or O_2 concentration to calculate heat input or shall substitute heat input determined under appendix F of this part according to the procedures in paragraphs (c)(1), (c)(2), or (c)(3) of this section. Upon completion of 2,160 quality-assured monitor operating hours following initial certification of the flow monitor, the owner or operator shall provide substitute data for volumetric flow according to the procedures in § 75.33 in order to calculate heat input, unless required to determine heat input using the fuel sampling procedures in appendix F of this part under paragraphs (c)(1), (c)(2) or (c)(3) of this section.

(1) Whenever a quality-assured monitor operating hour of CO_2 or O_2 concentration data has not been obtained and recorded for a period less than or equal to 72 hours or for a missing data period where the percent monitor data availability for the CO_2 or O_2 pollutant concentration monitor as of the last unit operating hour of the previous calendar quarter was greater than or equal to 90.0 percent, the owner or operator shall substitute the average of the recorded CO_2 or O_2 concentration for the hour before and the hour after the missing data period for each hour in each missing data period to calculate heat input.

(2) Whenever a quality-assured monitor operating hour of CO_2 or O_2 concentration data has not been obtained and recorded for a period of 72 consecutive unit operating hours or more, the owner or operator shall begin substituting heat input calculated using the procedures in section 5.5 of appendix F of this part beginning with the seventy-third hour of the missing data period until quality-assured CO_2 or O_2 concentration data are again available. The owner or operator shall use the CO_2 or O_2 concentration from the hour before the missing data period to substitute for hours 1 through 72 of the missing data period.

(3) Whenever no quality-assured CO_2 or O_2 concentration data are available for a period where the percent monitor data availability for the CO_2 continuous emission monitoring system (or O_2 diluent monitor) as of the last unit operating hour of the previous calendar quarter was less than 90.0 percent, the owner or operator shall substitute heat input calculated using the procedures in section 5.5 of appendix F of this part for each hour of the missing data period until quality-assured CO_2 or O_2 concentration data are again available.

(d) For a unit that has no diluent monitor certified during the period between the certification deadline in § 75.4(a) for flow monitoring systems and the certification deadline in § 75.4(a) for NO_X and CO_2 continuous emission monitoring systems, the owner or operator shall calculate heat input using the procedures in section 5.5 of appendix F of this part until quality-assured data are available from both a flow monitor and a diluent monitor.

Subpart E—Alternative Monitoring Systems

33. Section 75.41 is amended by adding a sentence to the end of paragraph (a)(1), revising paragraphs (b)(1)(i), (b)(2)(iv)(A), (b)(2)(iv)(C), (c)(1)(i), (c)(1)(ii) and (c)(2)(ii) to read as follows:

§ 75.41 Precision criteria.

(a) * * *

(1) * * * For the purposes of this subpart, each reference method run shall be 30 to 60 minutes in duration.

* * * * *

(b) * * *

(1) * * *

(i) Apply the log transformation to each measured value of either the certified continuous emissions monitoring system, certified flow monitor or reference method, using the following equation:

$l_v = \ln ev$ (Eq. 11)

Where:

e_v= Hourly value generated by the certified continuous emissions monitoring system, certified flow monitoring system, or reference method.

* * * * *

(2) * * *

(iv) * * *

(A) The set of measured hourly values, e_v, generated by the certified continuous emissions monitoring system, certified flow monitoring system, or reference method.

* * * * *

(C) The set of hourly differences, $e_v - e_p$, between the hourly values, e_v, generated by the certified continuous emissions monitoring system, certified flow monitoring system, or reference method and the hourly values, e_p, generated by the proposed alternative monitoring system.

* * * * *

(c) * * *

(1) * * *

(i) Calculate the variance of the certified continuous emission monitoring system, certified flow monitor, or reference method as applicable, S_v^2, and the proposed method, S_p^2, using the following equation.

$$S^2 = \frac{\sum_{i=1}^{n}(e_i - e_m)^2}{n-1} \quad \text{(Eq. 23)}$$

(Eq. 23)

Where:

e_i = Measured values of either the certified continuous emission monitoring system, certified flow monitor, or reference method, as applicable, or proposed method.

e_m = Mean of either the certified continuous emission monitoring system or certified flow monitor, or reference method, as applicable, or proposed method values.

n = Total number of paired samples.

(ii) Determine if the variance of the proposed method is significantly different from that of the certified continuous emission monitoring system, certified flow monitor, or reference method, as applicable, by calculating the F-value using the following equation.

$$F = \frac{S_p^2}{S_v^2} \quad \text{(Eq. 24)}$$

(Eq. 24)

Compare the experimental F-value with the critical value of F at the 95-percent confidence level with n-1 degrees of freedom. The critical value is obtained from a table for F-distribution. If the calculated F-value is greater than the critical value, the proposed method is unacceptable.

(2) * * *

(ii) Use the following equation to calculate the coefficient of correlation, r, between the emissions data from the alternative monitoring system and the continuous emission monitoring system using all hourly data for which paired values were available from both monitoring systems.

$$r = \frac{\sum e_p e_v - \left(\sum e_p\right)\left(\sum e_v\right)/n}{\left(\left[\sum e_p^2 - \left(\sum e_p\right)^2/n\right]\left[\sum e_v^2 - \left(\sum e_v\right)^2/n\right]\right)^{1/2}} \quad \text{(Eq. 27)}$$

(Eq. 27)

Where:

e_p = Hourly value generated by the alternative monitoring system.

e_v = Hourly value generated by the continuous emission monitoring system.

n = Total number of hours for which data were generated for the tests.

* * * * *

34. Section 75.47 is revised to read as follows:

§ 75.47 Criteria for a class of affected units.

(a) The owner or operator of an affected unit that is determined by the Administrator to be representative of a class of affected units may petition the Administrator under § 75.48 for approval of an alternative monitoring system that may be used at any unit in that class based on testing performed only at the representative unit.

(b) The owner or operator of an affected unit representing a class of affected units shall provide the following information to obtain class status:

(1) A description of the affected unit at which the demonstration will be performed and how it appropriately represents the class of affected units; and

(2) A description and listing of the class of affected units, including a listing of all units and data describing all the affected units which will comprise the class; and

(3) A demonstration that the magnitude of emissions for all units which will comprise the class of affected units are *de minimis*.

(c) If the Administrator determines that the emissions from all affected units which will comprise the class of units are *de minimis*, then the Administrator shall publish notice in the **Federal Register** of each request for approval of class status and shall provide a 30-day period for public comment, prior to granting approval.

(d) The designated representative shall provide the information required in § 75.48 based on testing at the representative unit when petitioning for approval of the alternative monitoring system for members of the class. A request for class status under this section may be submitted simultaneously with a petition under § 75.48, or following approval of a petition under § 75.48.

35. Section 75.48 is amended by revising paragraphs (a) introductory text, and (a)(1), and by adding paragraphs (b) and (c) to read as follows:

§ 75.48 Petition for an alternative monitoring system.

(a) The designated representative shall submit the following information in the petition for approval of an alternative monitoring system for an affected unit, or a class of affected units approved pursuant to § 75.47.

(1) Source identification information for the affected unit at which testing was performed.

* * * * *

(b) The Administrator will publish a notice of receipt of each petition for approval of an alternative monitoring

system in the **Federal Register** and, following a public comment period of 30 days, will issue a notice of approval or disapproval of the alternative monitoring system.

(c) No alternative monitoring system approved under this section shall be used under the Acid Rain Program prior to successful completion of all certification tests under § 75.20(f).

Subpart F—Recordkeeping Requirements

36. Section 75.50 is amended by revising paragraph (a) to read as follows:

§ 75.50 General recordkeeping provisions.

(a) *Recordkeeping requirements for affected sources.* The provisions of this section shall remain in effect prior to January 1, 1996. The owner or operator shall meet the requirements of either §§ 75.50 or 75.54 prior to January 1, 1996. On or after January 1, 1996, the owner or operator shall meet the requirements of § 75.54 only.

* * * * *

37. Section 75.51 is amended by adding paragraph (e) to read as follows:

§ 75.51 General recordkeeping provisions for specific situations.

* * * * *

(e) The provisions of this section shall remain in effect prior to January 1, 1996. The owner or operator shall meet the requirements of either §§ 75.51 or 75.55 prior to January 1, 1996. On or after January 1, 1996, the owner or operator shall meet the requirements of § 75.55 only.

38. Section 75.52 is amended by adding paragraph (b) to read as follows:

§ 75.52 Certification, quality assurance and quality control record provisions.

(a) * * *

(b) The provisions of this section shall remain in effect prior to January 1, 1996. The owner or operator shall meet the requirements of either §§ 75.52 or 75.56 prior to January 1, 1996. On or after January 1, 1996, the owner or operator shall meet the requirements of § 75.56 only.

39. Section 75.53 is amended by revising paragraphs (a), (b), (c) introductory text, (c)(1), (c)(2)(ii), (c)(4) introductory text, (c)(4)(ii), (c)(4)(vi), (c)(5)(ii), (c)(6), (c)(7), (c)(8), (c)(9), (d)(1), and (d)(2) and by adding paragraphs (c)(10), and (d)(3) to read as follows:

§ 75.53 Monitoring plan.

(a) *General provisions.* The owner or operator of an affected unit shall prepare and maintain a monitoring plan. Except as provided in paragraph (d) of this section, a monitoring plan shall contain sufficient information on the continuous emission or opacity monitoring systems or excepted monitoring systems under appendix D or E of this part and the use of data derived from these systems to demonstrate that all unit SO_2 emissions, NO_X emissions, CO_2 emissions, and opacity are monitored and reported.

(b) Whenever the owner or operator makes a replacement, modification, or change, either in the certified continuous emission monitoring system or continuous opacity monitoring system or excepted monitoring systems under appendix D or E of this part, including a change in the automated data acquisition and handling system or in the flue gas handling system, that requires recertification, then the owner or operator shall update the monitoring plan.

(c) *Contents of the monitoring plan.* Each monitoring plan shall contain the following:

(1) Precertification information, including, as applicable, the identification of the test strategy, protocol for the relative accuracy test audit, other relevant test information, span calculations, and apportionment strategies under §§ 75.13 through 75.17 of this part.

(2) * * *

(ii) Classification of unit as one of the following: Phase I (including substitution or compensating units), Phase II, new, or nonaffected;

* * * * *

(4) *Monitoring component table.* Identification and description of each monitoring component (including each monitor and its identifiable components such as analyzer and/or probe) in the continuous emission monitoring systems (i.e., SO_2 pollutant concentration monitor, flow monitor, moisture monitor; NO_X pollutant concentration monitor and diluent gas monitor) the continuous opacity monitoring system, or excepted monitoring system (i.e., fuel flowmeter, data acquisition and handling system), including:

* * * * *

(ii) Component/system identification code assigned by the utility to each identifiable monitoring component (such as the analyzer and/or probe). The code shall use a six-digit format, unique to each monitoring component, where the first three digits indicate the number of the component and the second three digits indicate the system to which the component belongs;

* * * * *

(vi) A designation of the system as a primary, redundant backup, non-redundant backup or reference method backup system, as provided for in § 75.10(e).

(5) * * *

(ii) For software components, identification of the provider and a brief description of features;

* * * * *

(6) *Emissions formula table.* A table giving explicit formulas for each reported unit emission parameter, using component/system identification codes to link continuous emission monitoring system or excepted monitoring system observations with reported concentrations, mass emissions, or emission rates, according to the conversions listed in appendix D, E, or F to this part. The formulas must contain all constants and factors required to derive mass emissions or emission rates from component/system code observations, and each emissions formula is identified with a unique three digit code.

(7) *Schematic stack diagrams.* For units monitored by a continuous emission or opacity monitoring system, a schematic diagram identifying entire gas handling system from boiler to stack for all affected units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in paragraphs (c)(2), (c)(4), (c)(5), and (c)(6) of this section. The schematic diagram must depict stack height and the height of any monitor locations. Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common stack.

(8) *Stack and duct engineering diagrams.* For units monitored by a continuous emission or opacity monitoring system, stack and duct engineering diagrams showing the dimensions and location of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports and other equipment which affects the monitoring system location, performance or quality control checks.

(9) Inside crosssectional area (ft^2) at flue exit and at flow monitoring location.

(10) *Span and calibration gas.* A table or description identifying maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, maximum potential NO_X emission rate, span value, and full-scale range for each SO_2, NO_X, CO_2, O_2, or flow component monitor. In addition, the table must identify

calibration gas levels for the calibration error test and the linearity check, and calculations made to determine each span value.

(d) * * *

(1) For each gas-fired unit or oil-fired unit for which the owner or operator uses the optional protocol in appendix D of this part for estimating SO_2 mass emissions or appendix E of this part for estimating NO_x emission rate (using a fuel flow meter), the designated representative shall include in the monitoring plan:

(i) A description of the fuel flowmeter (and data demonstrating its flow meter accuracy, when available);

(ii) The installation location of each fuel flowmeter;

(iii) The fuel sampling location(s); and

(iv) Procedures used for calibrating each fuel flowmeter.

(2) For each gas-fired peaking unit and oil-fired peaking unit for which the owner or operator uses the optional procedures in appendix E of this part for estimating NO_x emission rate, the designated representative shall include in the monitoring plan:

(i) A protocol containing methods used to perform the baseline or periodic NO_x emission test, and a copy of initial performance test results (when such results are available);

(ii) Unit operating and capacity factor information demonstrating that the unit qualifies as a peaking unit, as defined in § 72.2 of this chapter; and

(iii) Unit operating parameters related to NO_x formation by the unit.

(3) For each gas-fired unit and diesel-fired unit or unit with a wet flue gas pollution control system for which the designated representative claims an opacity monitoring exemption under § 75.14, the designated representative shall include in the monitoring plan information demonstrating that the unit qualifies for the exemption.

40. Section 75.54 is added to read as follows:

§ 75.54 General recordkeeping provisions.

(a) *Recordkeeping requirements for affected sources.* On or after January 1, 1996, the owner or operator shall meet the requirements of this section. The owner or operator of any affected source subject to the requirements of this part shall maintain for each affected unit a file of all measurements, data, reports, and other information required by this part at the source in a form suitable for inspection for at least three (3) years from the date of each record. Unless otherwise provided, throughout this subpart the phrase "for each affected unit" also applies to each group of affected or nonaffected units utilizing a common stack and common monitoring systems, pursuant to §§ 75.13 through 75.18, or utilizing a common pipe header and common fuel flowmeter, pursuant to section 2.1.2 of appendix D of this part. The file shall contain the following information:

(1) The data and information required in paragraphs (b) through (f) of this section, beginning with the earlier of the date of provisional certification, or the deadline in § 75.4(a), (b) or (c);

(2) The supporting data and information used to calculate values required in paragraphs (b) through (f) of this section, excluding the subhourly data points used to compute hourly averages under § 75.10(d), beginning with the earlier of the date of provisional certification, or the deadline in § 75.4(a), (b) or (c);

(3) The data and information required in § 75.55 of this part for specific situations, as applicable, beginning with the earlier of the date of provisional certification, or the deadline in § 75.4(a), (b) or (c);

(4) The certification test data and information required in § 75.56 for tests required under § 75.20, beginning with the date of the first certification test performed, and the quality assurance and quality control data and information required in § 75.56 for tests and the quality assurance/quality control plan required under § 75.21 and appendix B of this part, beginning with the date of provisional certification;

(5) The current monitoring plan as specified in § 75.53, beginning with the initial submission required by § 75.62; and

(6) The quality control plan as described in appendix B to this part, beginning with the date of provisional certification.

(b) *Operating parameter record provisions.* The owner or operator shall record for each hour the following information on unit operating time, heat input, and load separately for each affected unit, and also for each group of units utilizing a common stack and a common monitoring system or utilizing a common pipe header and common fuel flowmeter, except that separate heat input data for each unit shall not be required after January 1, 2000 for any unit, other than an opt-in source, that does not have a NO_x emission limitation under part 76 of this chapter.

(1) Date and hour;

(2) Unit operating time (rounded up to nearest 15 minutes);

(3) Total hourly gross unit load (rounded to nearest MWge) (or steam load in lb/hr at stated temperature and pressure, rounded to the nearest 1000 lb/hr, if elected in the monitoring plan);

(4) Operating load range corresponding to total gross load of 1–10, except for units using a common stack or common pipe header, which may use the number of unit load ranges up to 20 for flow, as specified in the monitoring plan; and

(5) Total heat input (mmBtu, rounded to the nearest tenth).

(c) *SO_2 emission record provisions.* The owner or operator shall record for each hour the information required by this paragraph for each affected unit or group of units using a common stack and common monitoring systems, except as provided under § 75.11(e) or for a gas-fired or oil-fired unit for which the owner or operator is using the optional protocol in appendix D to this part for estimating SO_2 mass emissions:

(1) For SO_2 concentration, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code as provided for in § 75.53;

(ii) Date and hour;

(iii) Hourly average SO_2 concentration (ppm, rounded to the nearest tenth);

(iv) Hourly average SO_2 concentration (ppm, rounded to the nearest tenth) adjusted for bias, if bias adjustment factor is required as provided for in § 75.24(d);

(v) Percent monitor data availability (recorded to the nearest tenth of a percent) calculated pursuant to § 75.32; and

(vi) Method of determination for hourly average SO_2 concentration using Codes 1–15 in Table 4 of this section.

(2) For flow as measured and reported from each certified primary monitor, certified back-up monitor or other approved method of emissions determination:

(i) Component/system identification code as provided for in § 75.53;

(ii) Date and hour;

(iii) Hourly average volumetric flow rate (in scfh, rounded to the nearest thousand);

(iv) Hourly average volumetric flow rate (in scfh, rounded to the nearest thousand) adjusted for bias, if bias adjustment factor required as provided for in § 75.24(d);

(v) Hourly average moisture content of flue gases (percent, rounded to the nearest tenth) where SO_2 concentration is measured on dry basis;

(vi) Percent monitor data availability (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32; and

(vii) Method of determination for hourly average flow rate using Codes 1–15 in Table 4.

(3) For SO_2 mass emissions as measured and reported from the certified primary monitoring system(s), certified redundant or non-redundant back-up monitoring system(s), or other approved method(s) of emissions determination:

(i) Date and hour;

(ii) Hourly SO_2 mass emissions (lb/hr, rounded to the nearest tenth);

(iii) Hourly SO_2 mass emissions (lb/hr, rounded to the nearest tenth) adjusted for bias, if bias adjustment factor required, as provided for in § 75.24(d); and

(iv) Identification code for emissions formula used to derive hourly SO_2 mass emissions from SO_2 concentration and flow data in paragraphs (c)(1) and (c)(2) of this section as provided for in § 75.53.

TABLE 4.—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION

[Amended]

Code	Hourly emissions/flow measurement or estimation method
1	Certified primary emission/flow monitoring system.
2	Certified back-up emission/flow monitoring system.
3	Approved alternative monitoring system.
4	Reference method: SO_2: Method 6C. Flow: Method 2. NO_X: Method 7E. CO_2 or O_2: Method 3A.
5	For units with add-on SO_2 and/or NO_X emission controls: SO_2 concentration or NO_X emission rate estimate from Agency preapproved parametric monitoring method.
6	Average of the hourly SO_2 concentrations, CO_2 concentrations, flow, or NO_X emission rate for the hour before and the hour following a missing data period.
7	Hourly average SO_2 concentration, CO_2 concentration, flow rate, or NO_X emission rate using initial missing data procedures.
8	90th percentile hourly SO_2 concentration, flow rate, or NO_X emission rate.
9	95th percentile hourly SO_2 concentration, flow rate, or NO_X emission rate.
10	Maximum hourly SO_2 concentration, flow rate, or NO_X emission rate.
11	Hourly average flow rate or NO_X emission rate in corresponding load range.
12	Maximum potential concentration of SO_2, maximum potential flow rate, or maximum potential NO_X emission rate, as determined using section 2.1 of appendix A of this part, or maximum CO_2 concentration.
13	Other data (specify method).
14	Minimum CO_2 concentration of 5.0 percent CO_2 or maximum O_2 concentration of 14.0 percent to be substituted optionally for measured diluent gas concentrations during unit startup, for NO_X emission rate or SO_2 emission rate in lb/mmBtu or for CO_2 concentration.
15	Fuel analysis data from appendix G of this part for CO_2 mass emissions.

(d) *NO_X emission record provisions.* The owner or operator shall record the information required by this paragraph for each affected unit for each hour, except for a gas-fired peaking unit or oil-fired peaking unit for which the owner or operator is using the optional protocol in appendix E to this part for estimating NO_X emission rate. For each NO_X emission rate as measured and reported from the certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(1) Component/system identification code as provided for in § 75.53;

(2) Date and hour;

(3) Hourly average NO_X concentration (ppm, rounded to the nearest tenth);

(4) Hourly average diluent gas concentration (percent O_2 or percent CO_2, rounded to the nearest tenth);

(5) Hourly average NO_X emission rate (lb/mmBtu, rounded to nearest hundredth);

(6) Hourly average NO_X emission rate (lb/mmBtu, rounded to nearest hundredth) adjusted for bias, if bias adjustment factor is required as provided for in § 75.24(d);

(7) Percent monitoring system data availability, (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32;

(8) Method of determination for hourly average NO_X emission rate using Codes 1–15 in Table 4; and

(9) Identification code for emissions formula used to derive hourly average NO_X emission rate, as provided for in § 75.53.

(e) *CO_2 emission record provisions.* The owner or operator shall record or calculate CO_2 emissions for each affected unit using one of the following methods specified in this section:

(1) If the owner or operator chooses to use a CO_2 continuous emission monitoring system (including an O_2 monitor and flow monitor as specified in appendix F of this part), then the owner or operator shall record for each hour the following information for CO_2 mass emissions, as measured and reported from the certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component/system identification code as provided for in § 75.53;

(ii) Date and hour;

(iii) Hourly average CO_2 concentration (in percent, rounded to the nearest tenth);

(iv) Hourly average volumetric flow rate (scfh, rounded to the nearest thousand scfh);

(v) Hourly CO_2 mass emissions (tons/hr, rounded to the nearest tenth);

(vi) Percent monitor data availability (recorded to the nearest tenth of a percent); calculated pursuant to § 75.32;

(vii) Method of determination for hourly CO_2 mass emissions using Codes 1–15 in Table 4; and

(viii) Identification code for emissions formula used to derive average hourly CO_2 mass emissions, as provided for in § 75.53.

(2) As an alternative to § 75.54(e)(1), the owner or operator may use the procedures in § 75.13 and in appendix G to this part, and shall record daily the following information for CO_2 mass emissions:

(i) Date;

(ii) Daily combustion-formed CO_2 mass emissions (tons/day, rounded to the nearest tenth);

(iii) For coal-fired units, flag indicating whether optional procedure to adjust combustion-formed CO_2 mass emissions for carbon retained in flyash has been used and, if so, the adjustment;

(iv) For a unit with a wet flue gas desulfurization system or other controls generating CO_2, daily sorbent-related CO_2 mass emissions (tons/day, rounded to the nearest tenth); and

(v) For a unit with a wet flue gas desulfurization system or other controls generating CO_2, total daily CO_2 mass emissions (tons/day, rounded to the nearest tenth) as sum of combustion-formed emissions and sorbent-related emissions.

(f) *Opacity records.* The owner or operator shall record opacity data as specified by the State or local air pollution control agency. If the State or local air pollution control agency does not specify recordkeeping requirements for opacity, then record the information required by paragraphs (f) (1) through (5) of this section for each affected unit, except as provided for in § 75.14 (b), (c), and (d). The owner or operator shall

also keep records of all incidents of opacity monitor downtime during unit operation, including reason(s) for the monitor outage(s) and any corrective action(s) taken for opacity, as measured and reported by the continuous opacity monitoring system:

(1) Component/system identification code;

(2) Date, hour, and minute;

(3) Average opacity of emissions for each six minute averaging period (in percent opacity);

(4) If the average opacity of emissions exceeds the applicable standard, then a code indicating such an exceedance has occurred; and

(5) Percent monitor data availability, recorded to the nearest tenth of a percent, calculated according to the requirements of the procedure recommended for State Implementation Plans in appendix M of part 51 of this chapter.

41. Section 75.55 is added to read as follows:

§ 75.55 General recordkeeping provisions for specific situations.

(a) *Specific SO_2 emission record provisions for units with qualifying Phase I technology.* In addition to the SO_2 emissions information required in § 75.54(c), from January 1, 1997, through December 31, 1999, the owner or operator shall record the applicable information in this paragraph for each affected unit on which SO_2 emission controls have been installed and operated for the purpose of meeting qualifying Phase I technology requirements pursuant to § 72.42 of this chapter and § 75.15.

(1) For units with post-combustion emission controls:

(i) Component/system identification codes for each inlet and outlet SO_2-diluent continuous emission monitoring system;

(ii) Date and hour;

(iii) Hourly average inlet SO_2 emission rate (lb/mmBtu, rounded to nearest hundredth);

(iv) Hourly average outlet SO_2 emission rate (lb/mmBtu, rounded to nearest hundredth);

(v) Percent data availability for both inlet and outlet SO_2-diluent continuous emission monitoring systems (recorded to the nearest tenth of a percent), calculated pursuant to Equation 8 of § 75.32 (for the first 8,760 unit operating hours following initial certification) and Equation 9 of § 75.32, thereafter; and

(vi) Identification code for emissions formula used to derive hourly average inlet and outlet SO_2 mass emissions rates for each affected unit or group of units using a common stack.

(2) For units with combustion and/or pre-combustion emission controls:

(i) Component/system identification codes for each outlet SO_2-diluent continuous emission monitoring system;

(ii) Date and hour;

(iii) Hourly average outlet SO_2 emission rate (lb/mmBtu, rounded to nearest hundredth);

(iv) For units with combustion controls, average daily inlet SO_2 emission rate (lb/mmBtu, rounded to nearest hundredth), determined by coal sampling and analysis procedures in § 75.15; and

(v) For units with pre-combustion controls (i.e., fuel pretreatment), fuel analysis demonstrating the weight, sulfur content, and gross calorific value of the product and raw fuel lots.

(b) [Reserved]

(c) *Specific SO_2 emission record provisions for gas-fired or oil-fired units using optional protocol in appendix D of this part.* In lieu of recording the information in § 75.54(c) of this section, the owner or operator shall record the applicable information in this paragraph for each affected gas-fired or oil-fired unit for which the owner or operator is using the optional protocol in appendix D of this part for estimating SO_2 mass emissions.

(1) For each hour when the unit is combusting oil:

(i) Date and hour;

(ii) Hourly average flow rate of oil with the units in which oil flow is recorded, (gal/hr, lb/hr, m^3/hr, or bbl/hr, rounded to the nearest tenth)(flag value if derived from missing data procedures);

(iii) Sulfur content of oil sample used to determine SO_2 mass emissions, rounded to nearest hundredth for diesel fuel or to the nearest tenth of a percent for other fuel oil (flag value if derived from missing data procedures);

(iv) Method of oil sampling (flow proportional, continuous drip, as delivered or manual);

(v) Mass of oil combusted each hour (lb/hr, rounded to the nearest tenth);

(vi) SO_2 mass emissions from oil (lb/hr, rounded to the nearest tenth);

(vii) For units using volumetric oil flowmeters, density of oil (flag value if derived from missing data procedures);

(viii) Gross calorific value (heat content) of oil, used to determine heat input (Btu/mass unit) (flag value if derived from missing data procedures);

(ix) Hourly heat input rate from oil according to procedures in appendix F of this part (mmBtu/hr, to the nearest tenth); and

(x) Fuel usage time for combustion of oil during the hour, rounded up to the nearest 15 min.

(2) For gas-fired units or oil-fired units using the optional protocol in appendix D of this part of daily manual oil sampling, when the unit is combusting oil, the highest sulfur content recorded from the most recent 30 daily oil samples rounded to nearest tenth of a percent.

(3) For each hour when the unit is combusting gaseous fuel,

(i) Date and hour;

(ii) Hourly heat input rate from gaseous fuel according to procedures in appendix F to this part (mmBtu/hr, rounded to the nearest tenth);

(iii) Sulfur content or SO_2 emission rate, in one of the following formats, in accordance with the appropriate procedure from appendix D of this part:

(A) Sulfur content of gas sample, (rounded to the nearest 0.1 grains/100 scf) (flag value if derived from missing data procedures); or

(B) SO_2 emission rate of 0.0006 lb/mmBtu for pipeline natural gas;

(iv) Hourly flow rate of gaseous fuel, in 100 scfh (flag value if derived from missing data procedures);

(v) Gross calorific value (heat content) of gaseous fuel, used to determine heat input (Btu/scf) (flag value if derived from missing data procedures);

(vi) Heat input rate from gaseous fuel (mmBtu/hr, rounded to the nearest tenth);

(vii) SO_2 mass emissions due to the combustion of gaseous fuels, lb/hr; and

(viii) Fuel usage time for combustion of gaseous fuel during the hour, rounded up to the nearest 15 min.

(4) For each oil sample or sample of diesel fuel:

(i) Date of sampling;

(ii) Sulfur content (percent, rounded to the nearest hundredth for diesel fuel and to the nearest tenth for other fuel oil) (flag value if derived from missing data procedures);

(iii) Gross calorific value or heat content (Btu/lb) (flag value if derived from missing data procedures); and

(iv) Density or specific gravity, if required to convert volume to mass (flag value if derived from missing data procedures).

(5) For each daily sample of gaseous fuel:

(i) Date of sampling;

(ii) Sulfur content (grains/100 scf, rounded to the nearest tenth) (flag value if derived from missing data procedures);

(6) For each monthly sample of gaseous fuel:

(i) Date of sampling;

(ii) Gross calorific value or heat content (Btu/scf) (flag value if derived from missing data procedures).

(d) *Specific NO_x emission record provisions for gas-fired peaking units or*

oil-fired peaking units using optional protocol in appendix E of this part. In lieu of recording the information in paragraph § 75.54(d), the owner or operator shall record the applicable information in this paragraph for each affected gas-fired peaking unit or oil-fired peaking unit for which the owner or operator is using the optional protocol in appendix E of this part for estimating NO_X emission rate.

(1) For each hour when the unit is combusting oil,

(i) Date and hour;

(ii) Hourly average fuel flow rate of oil with the units in which oil flow is recorded (gal/hour, lb/hr or bbl/hour) (flag value if derived from missing data procedures);

(iii) Gross calorific value (heat content) of oil, used to determine heat input (Btu/lb) (flag value if derived from missing data procedures);

(iv) Hourly average NO_X emission rate from combustion of oil (lb/mmBtu);

(v) Heat input rate of oil (mmBtu/hr, rounded to the nearest tenth); and

(vi) Fuel usage time for combustion of oil during the hour, rounded to the nearest 15 min.

(2) For each hour when the unit is combusting gaseous fuel,

(i) Date and hour;

(ii) Hourly average fuel flow rate of gaseous fuel (100 scfh) (flag value if derived from missing data procedures);

(iii) Gross calorific value (heat content) of gaseous fuel, used to determine heat input (Btu/scf) (flag value if derived from missing data procedures);

(iv) Hourly average NO_X emission rate from combustion of gaseous fuel (lb/mmBtu, rounded to nearest hundredth);

(v) Heat input rate from gaseous fuel (mmBtu/hr, rounded to the nearest tenth); and

(vi) Fuel usage time for combustion of gaseous fuel during the hour, rounded to the nearest 15 min.

(3) For each hour when the unit combusts any fuel:

(i) Date and hour;

(ii) Total heat input from all fuels (mmBtu, rounded to the nearest tenth);

(iii) Hourly average NO_X emission rate for the unit for all fuels;

(iv) For stationary gas turbines and diesel or dual-fuel reciprocating engines, hourly averages of operating parameters under section 2.3 of appendix E (flag if value is outside of manufacturer's recommended range);

(v) For boilers, hourly average boiler O_2 reading (percent, rounded to the nearest tenth) (flag if value exceeds by more than 2 percentage points the O_2 level recorded at the same heat input during the previous NO_X emission rate test).

(4) For each fuel sample:

(i) Date of sampling;

(ii) Gross calorific value (heat content) (Btu/lb for oil, Btu/scf for gaseous fuel); and

(iii) Density or specific gravity, if required to convert volume to mass.

(e) [Reserved]

(f) The owner or operator shall meet the requirements of this section on or after January 1, 1996.

42. Section 75.56 is added to read as follows:

§ 75.56 Certification, quality assurance and quality control record provisions.

(a) *Continuous emission or opacity monitoring systems.* The owner or operator shall record the applicable information in this section for each certified monitor or certified monitoring system (including certified backup monitors) measuring and recording emissions or flow from an affected unit.

(1) For each SO_2 or NO_X pollutant concentration monitor, flow monitor, CO_2 monitor, or diluent gas monitor, the owner or operator shall record the following for all daily and 7-day calibration error tests, including any follow-up tests after corrective action:

(i) Component/system identification code;

(ii) Instrument span;

(iii) Date and hour;

(iv) Reference value, (i.e., calibration gas concentration or reference signal value, in ppm or other appropriate units);

(v) Observed value (monitor response during calibration, in ppm or other appropriate units);

(vi) Percent calibration error (rounded to nearest tenth of a percent); and

(vii) For 7-day calibration tests for certification or recertification, a certification from the cylinder gas vendor or CEMS vendor, that calibration gas as defined in § 72.2 and appendix A of this part, were used to conduct calibration error testing; and

(viii) Description of any adjustments, corrective actions, or maintenance following test.

(2) For each flow monitor, the owner or operator shall record the following for all daily interference checks, including any follow-up tests after corrective action:

(i) Code indicating whether monitor passes or fails the interference check; and

(ii) Description of any adjustments, corrective actions, or maintenance following test.

(3) For each SO_2 or NO_X pollutant concentration monitor, CO_2 monitor, or diluent gas monitor, the owner or operator shall record the following for the initial and all subsequent linearity check(s), including any follow-up tests after corrective action:

(i) Component/system identification code;

(ii) Instrument span;

(iii) Date and hour;

(iv) Reference value (i.e., reference gas concentration, in ppm or other appropriate units);

(v) Observed value (average monitor response at each reference gas concentration, in ppm or other appropriate units);

(vi) Percent error at each of three reference gas concentrations (rounded to nearest tenth of a percent); and

(vii) Description of any adjustments, corrective action, or maintenance following test.

(4) For each flow monitor, where applicable, the owner or operator shall record the following for all quarterly leak checks, including any follow-up tests after corrective action:

(i) Code indicating whether monitor passes or fails the quarterly leak check; and

(ii) Description of any adjustments, corrective actions, or maintenance following test.

(5) For each SO_2 pollutant concentration monitor, flow monitor, CO_2 pollutant concentration monitor; NO_X continuous emission monitoring system, SO_2-diluent continuous emission monitoring system, and approved alternative monitoring system, the owner or operator shall record the following information for the initial and all subsequent relative accuracy tests and test audits:

(i) Date and hour;

(ii) Reference method(s) used;

(iii) Individual test run data from the relative accuracy test audit for the SO_2 concentration monitor, flow monitor, CO_2 pollutant concentration monitor, NO_X continuous emission monitoring system, SO_2-diluent continuous emission monitoring system, or approved alternative monitoring systems, including:

(A) Date, hour, and minute of beginning of test run,

(B) Date, hour, and minute of end of test run,

(C) Component/system identification code,

(D) Run number,

(E) Run data for monitor;

(F) Run data for reference method; and

(G) Flag value (0 or 1) indicating whether run has been used in calculating relative accuracy and bias values.

(iv) Calculations and tabulated results, as follows:

(A) Arithmetic mean of the monitoring system measurement values, reference method values, and of their differences, as specified in Equation A–7 in appendix A to this part.

(B) Standard deviation, as specified in Equation A–8 in appendix A to this part.

(C) Confidence coefficient, as specified in Equation A–9 in appendix A to this part.

(D) Relative accuracy test results, as specified in Equation A–10 in appendix A to this part. (For the 3-level flow monitor test only, relative accuracy test results should be recorded at each of three gas velocities. Each of these three gas velocities shall be expressed as a total gross unit load, rounded to the nearest MWe or as steam load, rounded to the nearest thousand lb/hr.)

(E) Bias test results as specified in section 7.6.4 in appendix A to this part.

(F) Bias adjustment factor from Equations A–11 and A–12 in appendix A to this part for any monitoring system or component that failed the bias test and 1.0 for any monitoring system or component that passed the bias test. (For flow monitors only, bias adjustment factors should be recorded at each of three gas velocities).

(v) Description of any adjustment, corrective action, or maintenance following test.

(vi) F-factor value(s) used to convert NO_X pollutant concentration and diluent gas (O_2 or CO_2) concentration measurements into NO_X emission rates (in lb/mmBtu), heat input or CO_2 emissions.

(6) [Reserved]

(7) Results of all trial runs and certification tests and quality assurance activities and measurements (including all reference method field test sheets, charts, records of combined system responses, laboratory analyses, and example calculations) necessary to substantiate compliance with all relevant appendices in this part. This information shall include, but shall not be limited to, the following reference method data:

(i) For each run of each test using Method 2 in appendix A of part 60 of this chapter to determine volumetric flow rate:

(A) Pitot tube coefficient;

(B) Date of pitot tube calibration;

(C) Average square root of velocity head of stack gas (inches of water) for the run;

(D) Average absolute stack gas temperature, °R;

(E) Barometric pressure at test port, inches of mercury;

(F) Stack static pressure, inches of H_2O;

(G) Absolute stack gas pressure. inches of mercury;

(H) Moisture content of stack gas, percent;

(I) Molecular weight of stack gas, wet basis (lb/lb-mole);

(J) Number of reference method measurements during the run; and

(K) Total volumetric flowrate (scfh, wet basis).

(ii) For each test using Method 2 in appendix A of part 60 of this chapter to determine volumetric flow rate:

(A) Information indicating whether or not the location meets requirements of Method 1 in appendix A of part 60 of this chapter;

(B) Information indicating whether or not the equipment passed the leak check after every run included in the relative accuracy test;

(C) Stack inside diameter at test port (ft);

(D) Duct side height and width at test port (ft);

(E) Stack or duct cross-sectional area at test port (ft^2); and

(F) Designation as to the load level of the test.

(iii) For each run of each test using Method 6C, 7E, or 3A in appendix A of part 60 of this chapter to determine SO_2, NO_X, CO_2, or O_2 concentration:

(A) Run start date;

(B) Run start time;

(C) Run end date;

(D) Run end time;

(E) Span of reference method analyzer;

(F) Reference gas concentration (low, mid-, and high gas levels);

(G) Initial and final analyzer calibration response (low, mid- and high gas levels);

(H) Analyzer calibration error (low, mid-, and high gas levels);

(I) Pre-test and post-test analyzer bias (zero and upscale gas levels);

(J) Calibration drift and zero drift of analyzer;

(K) Indication as to which data are from a pretest and which are from a posttest;

(L) Calibration gas level (zero, mid-level, or high); and

(M) Moisture content of stack gas, in percent, if needed to convert to moisture basis of CEMS being tested:

(iv) For each test using Method 6C, 7E, or 3A in appendix A of part 60 of this chapter to determine SO_2, NO_X CO_2, or O_2 concentration:

(A) Pollutant being measured;

(B) Test number;

(C) Date of interference test;

(D) Results of interference test;

(E) Date of NO_2 to NO conversion test (Method 7E only);

(F) Results of NO_2 to NO conversion test (Method 7E only).

(v) For each calibration gas cylinder used to test using Method 6C, 7E, or 3A in appendix A of part 60 of this chapter to determine SO_2, NO_X, CO_2, or O_2 concentration:

(A) Cylinder gas vendor name from certification;

(B) Cylinder number;

(C) Cylinder expiration date;

(D) Pollutant(s) in cylinder; and

(E) Cylinder gas concentration(s).

(b) *Excepted monitoring systems for gas-fired and oil-fired units.* The owner or operator shall record the applicable information in this section for each excepted monitoring system following the requirements of appendix D of this part or appendix E of this part for determining and recording emissions from an affected unit.

(1) For each oil-fired unit or gas-fired unit using the optional procedures of appendix D of this part for determining SO_2 mass emissions and heat input or the optional procedures of appendix E of this part for determining NO_X emission rate, for certification and quality assurance testing of fuel flowmeters:

(i) Date of test,

(ii) Upper range value of the fuel flowmeter,

(iii) Flowmeter measurements during accuracy test,

(iv) Reference flow rates during accuracy test,

(v) Average flowmeter accuracy as a percent of upper range value,

(vi) Fuel flow rate level (low, mid-level, or high); and

(vi) Description of fuel flowmeter calibration specification or procedure (in the certification application, or periodically if a different method is used for annual quality assurance testing).

(2) For gas-fired peaking units or oil-fired peaking units using the optional procedures of appendix E of this part, for each initial performance, periodic, or quality assurance/quality control-related test:

(i) For each run of emissions data;

(A) Run start date and time;

(B) Run end date and time;

(C) Fuel flow (lb/hr, gal/hr, scf/hr, bbl/hr, or m^3/hr);

(D) Gross calorific value (heat content) of fuel (Btu/lb or Btu/scf);

(E) Density of fuel (if needed to convert mass to volume);

(F) Total heat input during the run (mmBtu);

(G) Hourly heat input rate for run (mmBtu/hr);

(H) Response time of the O_2 and NO_X reference method analyzers;

(I) NO_X concentration (ppm);

(J) O_2 concentration (percent O_2);

(K) NO_X emission rate (lb/mmBtu); and

(L) Fuel or fuel combination (by heat input fraction) combusted.

(ii) For each unit load and heat input;

(A) Average NO_X emission rate (lb/mmBtu);

(B) F-factor used in calculations;

(C) Average heat input rate (mmBtu/hr);

(D) Unit operating parametric data related to NO_X formation for that unit type (e.g., excess O_2 level, water/fuel ratio); and

(E) Fuel or fuel combination (by heat input fraction) combusted.

(iii) For each test report;

(A) Graph of NO_X emission rate against heat input rate;

(B) Results of the tests for verification of the accuracy of emissions calculations and missing data procedures performed by the automated data acquisition and handling system, and the calculations used to produce NO_X emission rate data at different heat input conditions; and

(C) Results of all certification tests and quality assurance activities and measurements (including reference method field test sheets, charts, laboratory analyses, example calculations, or other data as appropriate), necessary to substantiate compliance with the requirements of appendix E of this part.

(c) The owner or operator shall meet the requirements of this section on or after January 1, 1996.

Subpart G—Reporting Requirements

43. Section 75.60 is amended by revising paragraphs (b)(1) and (b)(2), and by adding paragraph (c) to read as follows:

§ 75.60 General provisions.

* * * * *

(b) * * *

(1) All initial certification or recertification testing notifications, initial certification or recertification applications, monitoring plans, petitions for alternative monitoring systems, notifications, electronic quarterly reports, and other communications required by this subpart shall be submitted to the Administrator.

(2) Copies of initial certification or recertification testing notifications, certification or recertification applications and monitoring plans shall be submitted to the appropriate Regional office of the U.S. Environmental Protection Agency and appropriate State or local air pollution control agency.

(c) *Confidentiality of data.* The following provisions shall govern the confidentiality of information submitted under this part.

(1) All emission data reported in quarterly reports under § 75.64 shall remain public information.

(2) For information submitted under this part other than emission data submitted in quarterly reports, the designated representative must assert a claim of confidentiality at the time of submission for any information he or she wishes to have treated as confidential business information (CBI) under subpart B of part 2 of this chapter. Failure to assert a claim of confidentiality at the time of submission may result in disclosure of the information by EPA without further notice to the designated representative.

(3) Any claim of confidentiality for information submitted in quarterly reports under § 75.64 must include substantiation of the claim. Failure to provide substantiation may result in disclosure of the information by EPA without further notice.

(4) As provided under subpart B of part 2 of this chapter, EPA may review information submitted to determine whether it is entitled to confidential treatment even when confidentiality claims are initially received. The EPA will contact the designated representative as part of such a review process.

44. Section 75.61 is revised to read as follows:

§ 75.61 Notifications.

(a) *Submission.* The designated representative for an affected unit (or owner or operator, as specified) shall submit notice to the Administrator, to the appropriate EPA Regional Office, and to the applicable State air pollution control agency for the following purposes, as required by this part.

(1) *Initial certification and recertification test notifications.* The owner or operator or designated representative for an affected unit shall submit written notification of initial certification tests, recertification tests, and revised test dates as specified in § 75.20 for continuous emission monitoring systems, for alternative monitoring systems under subpart E of this part, or for excepted monitoring systems under appendix E of this part, except as provided in paragraph (a)(4) of this section and except for testing only of the data acquisition and handling system.

(i) *Notification of initial certification testing.* Initial certification test notifications shall be submitted not later than 45 days prior to the first scheduled day of initial certification testing. Testing may be performed on a date other than that already provided in a notice under this subparagraph as long as notice of the new date is provided either in writing or by telephone or other means at least 7 days prior to the original scheduled test date or the revised test date, whichever is earlier.

(ii) *Notification of certification retesting and recertification testing.* For retesting following a loss of certification under § 75.20(a)(5) or for recertification under § 75.20(b), notice of testing shall be submitted either in writing or by telephone at least 7 days prior to the first scheduled day of testing; except that in emergency situations when testing is required following an uncontrollable failure of equipment that results in lost data, notice shall be sufficient if provided within 2 business days following the date when testing is scheduled. Testing may be performed on a date other than that already provided in a notice under this subparagraph as long as notice of the new date is provided by telephone or other means at least 2 business days prior to the original scheduled test date or the revised test date, whichever is earlier.

(iii) *Repeat of testing without notice.* Notwithstanding the above notice requirements, the owner or operator may elect to repeat a certification test immediately, without advance notification, whenever the owner or operator has determined during the certification testing that a test was failed or that a second test is necessary in order to attain a reduced relative accuracy test frequency.

(2) *New unit, newly affected unit, new stack, or new flue gas desulfurization system operation notification.* The designated representative for an affected unit shall submit written notification: For a new unit or a newly affected unit, of the planned date when a new unit or newly affected unit will commence commercial operation or, for new stack or flue gas desulfurization system, of the planned date when a new stack or flue gas desulfurization system will be completed and emissions will first exit to the atmosphere.

(i) Notification of the planned date shall be submitted not later than 45 days prior to the date the unit commences commercial operation, or not later than 45 days prior to the date when a new stack or flue gas desulfurization system exhausts emissions to the atmosphere.

(ii) If the date when the unit commences commercial operation or the date when the new stack or flue gas desulfurization system exhausts emissions to the atmosphere, whichever

is applicable, changes from the planned date, a notification of the actual date shall be submitted not later than 7 days following: The date the unit commences commercial operation or, the date when a new stack or flue gas desulfurization system exhausts emissions to the atmosphere.

(3) *Unit shutdown and recommencement of commercial operation.* The designated representative for an affected unit that will be shutdown on the relevant compliance date in § 75.4(a) and that is relying on the provisions in § 75.4(d) to postpone certification testing shall submit notification of unit shutdown and recommencement of commercial operation as follows:

(i) For planned unit shutdowns, written notification of the planned shutdown date and planned date of recommencement of commercial operation shall be submitted 45 calendar days prior to the deadline in § 75.4(a). For unit shutdowns that are not planned 45 days prior to the deadline in § 75.4(a), written notification of the planned shutdown date and planned date of recommencement of commercial operation shall be submitted no later than 7 days after the date the owner or operator is able to schedule the shutdown date and date of recommencement of commercial operation. If the actual shutdown date or the actual date of recommencement of commercial operation differs from the planned date, written notice of the actual date shall be submitted no later than 7 days following the actual date of shutdown or of recommencement of commercial operation, as applicable;

(ii) For unplanned unit shutdowns, written notification of actual shutdown date and the expected date of recommencement of commercial operation shall be submitted no later than 7 days after the shutdown. If the actual date of recommencement of commercial operation differs from the expected date, written notice of the actual date shall be submitted no later than 7 days following the actual date of recommencement of commercial operation.

(4) *Use of backup fuels for appendix E procedures.* The designated representative for an affected oil-fired or gas-fired peaking unit that is using an excepted monitoring system under appendix E of this part and that is relying on the provisions in § 75.4(f) to postpone testing of a fuel shall submit written notification of that fact no later than 45 days prior to the deadline in § 75.4(a). The designated representative shall also submit a notification that such a fuel has been combusted no later than 7 days after the first date of combustion of any fuel for which testing has not been performed under appendix E after the deadline in § 75.4(a). Such notice shall also include notice that testing under Appendix E either was performed during the initial combustion or notice of the date that testing will be performed.

(5) *Periodic relative accuracy test audits.* The owner or operator or designated representative of an affected unit shall submit written notice of the date of periodic relative accuracy testing performed under appendix B of this part no later than 21 days prior to the first scheduled day of testing. Testing may be performed on a date other than that already provided in a notice under this subparagraph as long as notice of the new date is provided either in writing or by telephone or other means at least 7 days prior to the original scheduled test date or the revised test date, whichever is earlier. Notwithstanding these notice requirements, the owner or operator may elect to repeat a periodic relative accuracy test immediately, without additional notification whenever the owner or operator has determined that a test was failed, or that a second test is necessary in order to attain a reduced relative accuracy test frequency.

(6) *Notice of combustion of emergency fuel under appendix D or E.* The designated representative of an oil-fired unit or gas-fired unit using appendix D or E of this part shall provide notice of the combustion of emergency fuel according to the following:

(i) For an affected oil-fired or gas-fired unit that is using an excepted monitoring system under appendix D or E of this part, where the owner or operator is postponing installation or testing of a fuel flowmeter for emergency fuel under § 75.4(g), the designated representative shall submit written notification of postponement of installation or testing no later than 45 days prior to the deadline in § 75.4(a). The designated representative shall also submit a notification that emergency fuel has been combusted no later than 7 days after the first date of combustion of the emergency fuel after the deadline in § 75.4(a).

(ii) The designated representative of a unit that has received approval of a petition under § 75.66 for exemption from one or more of the requirements of appendix E of this part for certification of an excepted monitoring system under appendix E of this part for a unit combusting emergency fuel shall submit written notice of each period of combustion of the emergency fuel with the next quarterly report submitted under § 75.64 for each calendar quarter in which emergency fuel is combusted, including notice specifying the exact dates and hours during which the emergency fuel was combusted.

(b) The owner or operator or designated representative shall submit notification of certification tests and recertification tests for continuous opacity monitoring systems, as specified in § 75.20(c)(6) to the State or local air pollution control agency.

(c) If the Administrator determines that notification substantially similar to that required in this section is required by any other State or local agency, the owner or operator or designated representative may send the Administrator a copy of that notification to satisfy the requirements of this section, provided the ORISPL unit identification number(s) is denoted.

45. Section 75.62 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 75.62 Monitoring plan.

(a) *Submission.* The designated representative for an affected unit shall submit the monitoring plan to the Administrator no later than 45 days prior to the first scheduled certification test, other than testing of a fuel flowmeter or an excepted monitoring system under appendix D of this part. The designated representative shall submit the monitoring plan for a Phase II unit using an excepted monitoring system under appendix D of this part to the Administrator no later than November 15, 1994.

* * * * *

(c) *Format.* Each monitoring plan shall be submitted in a format specified by the Administrator, including information in electronic format and on paper.

46. Section 75.63 is revised to read as follows:

§ 75.63 Initial certification or recertification application.

(a) *Submission.* The designated representative for an affected unit or a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall submit the application to the Administrator within 45 days after completing all initial certification tests or recertification tests:

(b) *Contents.* Each application for initial certification or recertification shall contain the following information:

(1) A copy of the monitoring plan (or any modifications to the monitoring plan) for the unit, or units, or combustion sources seeking to enter the Opt-in Program in accordance with part

74 of this chapter, if not previously submitted.

(2) The results of the test(s) required by § 75.20, including the type of test conducted, testing date, and field data sheets required by § 75.52 (or § 75.56, no later than January 1, 1996), and including the results of any failed tests that had been repeated pursuant to the requirements in § 75.20.

(3) Results of the tests for verification of the accuracy of emissions and volumetric flow calculations performed by the automated data acquisition and handling system, including a summary of equations used to convert component data to units of the standard and to calculate substitute data for missing data periods, including sample calculations.

(c) *Format.* Each certification application shall be submitted in a format to be specified by the Administrator, including test results in electronic format and field data sheets required by § 75.52 (or § 75.56, no later than January 1, 1996) on paper where the information required under § 75.56(a)(7) shall be submitted on paper.

47. Section 75.64 is amended by revising the first two sentences of paragraph (a) introductory text, by revising paragraphs (a)(5), (b) and (d), by revising the last sentence of paragraph (e) introductory text and by removing paragraphs (e)(1) and (2) to read as follows:

§ 75.64 Quarterly reports.

(a) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in paragraphs (a), (b), and (c) of this section to the Administrator quarterly, beginning with the data from the later of: the last (partial) calendar quarter of 1993 (where the calendar quarter data begins at November 15, 1993); or the calendar quarter corresponding to the relevant deadline for certification in § 75.4(a), (b), or (c). For any provisionally-certified monitoring system, some or all of the quarterly data may be invalidated, if the Administrator subsequently issues a notice of disapproval within 120 days of receipt of the complete initial certification application or within 60 days of receipt of the complete recertification application for the monitoring system. * * *

(5) Total heat input (mmBtu) for quarter and cumulative heat input for calendar year.

* * * * *

(b) The designated representative shall affirm that the component/system identification codes and formulas in the quarterly electronic reports, submitted to the Administrator pursuant to § 75.53, represent current operating conditions.

* * * * *

(d) *Electronic format.* Each quarterly report shall be submitted in a format to be specified by the Administrator, including both electronic submission of data and paper submission of compliance certifications.

(e) * * * Each report shall include all measurements and calculations necessary to substantiate that the qualifying technology achieves the overall percentage reduction in SO_2 emissions.

48. Section 75.65 is revised to read as follows:

§ 75.65 Opacity reports.

The owner or operator or designated representative shall report excess emissions of opacity recorded under §§ 75.50(f) or 75.54(f) to the applicable State or local air pollution control agency, in a format specified by the applicable State or local air pollution control agency.

49. Section 75.66 is amended by redesignating paragraphs (a), (b), (c), (d), (e) and (f) as paragraphs (b), (c), (d), (e), (f) and (i), by adding new paragraphs (a), (g), and (h), and by revising newly designated paragraphs (b), (c), and (i), to read as follows:

§ 75.66 Petitions to the Administrator.

(a) *General.* The designated representative for an affected unit subject to the requirements of this part may submit petitions to the Administrator. Any petitions shall be submitted in accordance with the requirements of this section. The designated representative shall comply with the signatory requirements of § 72.21 of this chapter for each submission.

(b) *Alternative flow monitoring method petition.* In cases where no location exists for installation of a flow monitor in either the stack or the ducts serving an affected unit that satisfies the minimum physical siting criteria in appendix A of this part or where installation of a flow monitor in either the stack or duct is demonstrated to the satisfaction of the Administrator to be technically infeasible, the designated representative for the affected unit may petition the Administrator for an alternative method for monitoring volumetric flow. The petition shall, at a minimum, contain the following information:

(1) Identification of the affected unit(s);

(2) Description of why the minimum siting criteria cannot be met within the existing ductwork or stack(s). This description shall include diagrams of the existing ductwork or stack, as well as documentation of any attempts to locate a flow monitor; and

(3) Description of proposed alternative method for monitoring flow.

(c) *Alternative to standards incorporated by reference.* The designated representative for an affected unit may apply to the Administrator for an alternative to any standard incorporated by reference and prescribed in this part. The designated representative shall include the following information in an application:

(1) A description of why the prescribed standard is not being used;

(2) A description and diagram(s) of any equipment and procedures used in the proposed alternative;

(3) Information demonstrating that the proposed alternative produces data acceptable for use in the Acid Rain Program, including accuracy and precision statements, NIST traceability certificates or protocols, or other supporting data, as applicable to the proposed alternative.

* * * * *

(g) *Petitions for emissions or heat input apportionments.* The designated representative of an affected unit shall provide information to describe a method for emissions or heat input apportionment under §§ 75.13, 75.16, 75.17, or appendix D of this part. This petition may be submitted as part of the monitoring plan. Such a petition shall contain, at a minimum, the following information:

(1) A description of the units, including their fuel type, their boiler type, and their categorization as Phase I units, substitution units, compensating units, Phase II units, new units, or non-affected units;

(2) A formula describing how the emissions or heat input are to be apportioned to which units;

(3) A description of the methods and parameters used to apportion the emissions or heat input; and

(4) Any other information necessary to demonstrate that the apportionment method accurately measures emissions or heat input and does not underestimate emissions or heat input from affected units.

(h) *Partial recertification petition.* The designated representative of an affected unit may provide information and petition the Administrator to specify which of the certification tests required by § 75.20 apply for partial recertification of the affected unit. Such

a petition shall include the following information:

(1) Identification of the monitoring system(s) being changed;

(2) A description of the changes being made to the system;

(3) An explanation of why the changes are being made; and

(4) A description of the possible effect upon the monitoring system's ability to measure, record, and report emissions.

(i) *Any other petitions to the Administrator under this part.* The designated representative for an affected unit shall include sufficient information for the evaluation of any other petition submitted to the Administrator under this part.

50. Section 75.67 is amended by revising paragraph (a) to read as follows:

§ 75.67 Retired units petitions.

(a) For units that will be permanently retired prior to January 1, 1995, if the designated representative submits a complete petition, as required in § 72.8 of this chapter, to the Administrator prior to the deadline in § 75.4 by which the continuous emission or opacity monitoring systems must complete the required certification tests, the Administrator will issue an exemption from the requirements of this part, including the requirement to install and certify continuous emission monitoring systems.

* * * * *

Appendix A to Part 75—Specifications and Test Procedures

51. Appendix A to part 75, section 1 is amended by revising section 1.1.2, by revising the fourth sentence in section 1.2; and by revising section 1.2.1 and by revising the first sentence of section 1.2.2 to read as follows:

1. Installation and Measurement Location

1.1 * * *

1.1.1 * * *

1.1.2 Path Pollutant Concentration and CO_2 or O_2 Gas Monitors

Locate the measurement path (1) totally within the inner area bounded by a line 1.0 meter from the stack or duct wall, or (2) such that at least 70.0 percent of the path is within the inner 50.0 percent of the stack or duct cross-sectional area, or (3) such that the path is centrally located within any part of the centroidal area.

1.2 Flow Monitors

* * * The EPA recommends (but does not require) performing a flow profile study following the procedures in 40 CFR part 60, appendix A, Method, 1, section 2.5 or 2.4 for each of the three operating or load levels indicated in section 6.5.2 of this appendix to determine the acceptability of the potential flow monitor location and to determine the number and location of flow sampling points required to obtain a representative flow value. * * *

1.2.1 Acceptability of Monitor Location

The installation of a flow monitor is acceptable if either (1) the location satisfies the minimum siting criteria of Method 1 in Appendix A to part 60 of this chapter (i.e., the location is greater than or equal to eight stack or duct diameters downstream and two diameters upstream from a flow disturbance; or, if necessary, two stack or duct diameters downstream and one-half stack or duct diameter upstream from a flow disturbance), or (2) the results of a flow profile study, if performed, are acceptable (i.e., there are no cyclonic (or swirling) or stratified flow conditions), and the flow monitor also satisfies the performance specifications of this part. If the flow monitor is installed in a location that does not satisfy these physical criteria, but nevertheless the monitor achieves the performance specifications of this part, then the location is acceptable, notwithstanding the requirements of this section.

1.2.2 Flow Monitor Certification Date Extension

Whenever the designated representative successfully demonstrates that modifications to the exhaust duct or stack (such as installation of straightening vanes, modifications of ductwork, and the like) are necessary for the flow monitor to meet the performance specifications, the Administrator may approve an interim alternative flow monitoring methodology and an extension to the required certification date for the flow monitor. * * *

* * * * *

52. Appendix A to part 75, section 2 is amended by revising sections 2.1.1; revising the first paragraph of section 2.1.1.1, and by revising sections 2.1.1.2, 2.1.1.4, 2.1.2, 2.1.2.1, 2.1.2.2, 2.1.2.4, 2.1.3 and 2.1.4 to read as follows:

2. Equipment Specifications

2.1 * * *

2.1.1 SO_2 Pollutant Concentration Monitors

Determine, as indicated below, the span value for an SO_2 pollutant concentration monitor so that all expected concentrations can be accurately measured and recorded.

2.1.1.1 Maximum Potential Concentration

The monitor must be capable of accurately measuring up to 125 percent of the maximum potential concentration (MPC) as calculated using Equation A–1a or A–1b. Calculate the maximum potential concentration by using Equation A–1a or A–1b and the maximum percent sulfur and minimum gross calorific value (GCV) for the highest sulfur fuel to be burned, using daily fuel sample data if they are available. If an SO_2 CEMS is already installed, the owner or operator may determine an MPC based upon the maximum concentration observed during the previous 30 unit operating days when using the type of fuel to be burned. For initial certification, base the maximum percent sulfur and minimum GCV on the results of all available fuel sampling and analysis data from the previous 12 months (where such data exists). If the unit has not been operated during that period, use the maximum sulfur content and minimum GCV from the fuel contract for fuel that will be combusted by the unit. Whenever the fuel supply changes such that these maximum sulfur and minimum GCV values may change significantly, base the maximum percent sulfur and minimum GCV on the new fuel with the highest sulfur content. Use the one of the two following methods that results in a higher MPC: (1) Results of samples representative of the new fuel supply, or (2) maximum sulfur and minimum GCV from the fuel contract for fuel that will be combusted by the unit. Whenever performing fuel sampling to determine the MPC, use ASTM Methods ASTM D3177–89, "Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke," ASTM D4239–85, "Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods," ASTM D4294–90, "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy," ASTM D1552–90, "Standard Test Method for Sulfur in Petroleum Products (High Temperature Method)," ASTM D129–91, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," or ASTM D2622–92, "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry" for sulfur content of solid or liquid fuels, or ASTM D3176–89, "Standard Practice for Ultimate Analysis of Coal and Coke", ASTM D240–87 (Reapproved 1991), "Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter", or ASTM D2015–91, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter" for GCV (incorporated by reference under § 75.6). Multiply the maximum potential concentration by 125 percent, and round up the resultant concentration to the nearest multiple of 100 ppm to determine the span value. The span value will be used to determine the concentrations of the calibration gases. Include the full-scale range setting and calculations of the span and MPC in the monitoring plan for the unit. Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix, and to be greater than or equal to the span value. This selected monitor range with a span rounded up from 125 percent of the maximum potential concentration will be the "high-scale" of the SO_2 pollutant concentration monitor.

$$MPC = 11.32 \times 10^6 \left(\frac{\%S}{GCV} \right) \left(\frac{20.9 - \%O_{2w}}{20.9} \right) \quad \text{(Eq. A–1a)}$$

or

$$MPC = 66.93 \times 10^6 \left(\frac{\%S}{GCV} \right) \left(\frac{\%CO_{2w}}{100} \right) \quad \text{(Eq. A–1b)}$$

2.1.1.2 Maximum Expected Concentration

If the majority of SO_2 concentration values are predicted to be less than 25 percent of the full-scale range of the instrument selected under section 2.1.1.1 of this appendix, (e.g., where an SO_2 add-on emission control is used or where fuel with different sulfur contents are blended), use an additional (lower) measurement range. For this second range, use Equation A–2 to calculate the maximum expected concentration (MEC) for units with emission controls. For units blending fuels, calculate the MEC using a best estimate of the highest sulfur content and lowest gross calorific value expected for the blend and inserting these values into Equation A–1. If an SO_2 CEMS is already installed, the owner or operator may calculate an MEC based upon the maximum concentration measured by the CEMS over a thirty-day period, provided that there have been no full-scale exceedances since the range was last selected. Multiply the maximum expected concentration by 125 percent, and round up the resultant concentration to the nearest multiple of 10 ppm to determine the span value for the additional (lower) range. The span value of this additional range will also be used to determine concentrations of the calibration gases for this additional range. Report the full-scale range setting and calculations of the MEC and span in the monitoring plan for the unit. Select the full-scale range of the instrument of this additional (lower) range to be consistent with section 2.1 of this appendix, and to be greater than or equal to the lower range span value. This selected monitor range with a span rounded up from 125 percent of the MEC will be the "low-scale" of the SO_2 pollutant concentration monitor. Units using a low-scale range must also be capable of accurately measuring the anticipated concentrations up to and including 125 percent of the maximum potential concentration. If an existing State, local, or Federal requirement for span of an SO_2 pollutant concentration monitor requires a span other than that required in this section, but less than that required for the high-scale by this appendix, the State, local or Federal span value may be approved, where a satisfactory explanation is included in the monitoring plan.

MEC=MPC[(100–RE)/100] (Eq. A–2)

Where:

MEC=Maximum expected concentration (ppm).

MPC=Maximum potential concentration (ppm), as determined by Eq. A–1a or A–1b.

RE = Expected average design removal efficiency of control equipment (%).

2.1.1.3 * * *

2.1.1.4 Adjustment of Span

Wherever the SO_2 concentration exceeds the maximum potential concentration but does not exceed the full-scale range during more than one clock-hour and the monitor can measure and record the SO_2 concentration accurately, it may be reported for use in the Acid Rain Program. If the concentration exceeds the monitor's ability to measure and record values accurately during a clock hour, and the full-scale exceedance is not during an out-of-control period, report the full-scale value as the SO_2 concentration for that clock hour. If full-scale exceedances occur during more than one clock hour since the last adjustment of the full-scale range setting, adjust the full-scale range setting to prevent future exceedances.

Whenever the fuel supply or emission controls change such that the maximum expected or potential concentration may change significantly, adjust the span and range setting to assure the continued proper operation of the monitoring system. Determine the adjusted span using the procedures in sections 2.1.1.1 or 2.1.1.2 of this appendix. Select the full scale range of the instrument to be greater than or equal to the new span value and to be consistent with the guidelines of section 2.1 of this appendix. Record and report the new full-scale range setting, calculations of the span, MPC, and MEC (if appropriate), and the adjusted span value, in an updated monitoring plan. In addition, record and report the adjusted span as part of the records for the daily calibration error test and linearity check specified by appendix B of this part. Whenever the span value is adjusted, use calibration gas concentrations based on the most recent adjusted span value. Perform a linearity check according to section 6.2 of this appendix whenever making a change to the monitor span or range. Recertification under § 75.20(b) is required whenever a significant change in the monitor's range also requires an internal modification to the monitor (e.g., a change of measurement cell length).

2.1.2 NO_X Pollutant Concentration Monitors

Determine, as indicated below, the span value(s) for the NO_X pollutant concentration monitor so that all expected NO_X concentrations can be determined and recorded accurately including both the maximum expected and potential concentration.

2.1.2.1 Maximum Potential Concentration

The monitor must be capable of accurately measuring up to 125 percent of the maximum potential concentration (MPC) as determined below in this section. Use 800 ppm for coal-fired and 400 ppm for oil- or gas-fired units as the maximum potential concentration of NO_X, unless a more representative MPC is determined by one of the following methods (If an MPC of 1600 ppm for coal-fired units or 480 ppm for oil- or gas-fired units was previously selected under this part, that value may still be used.): (1) NO_X emission test results, (2) historical CEM data over the previous 30 unit operating days; or (3) specific values based on boiler-type and fuel combusted, listed in Table 2–1 or Table 2–2 if other data under (1) or (2) were not available. Multiply the MPC by 125 percent and round up to the nearest multiple of 100 ppm to determine the span value. The span value will be used to determine the concentrations of the calibration gases.

Report the full-scale range setting, and calculations of the MPC, maximum potential NO_X emission rate, and span in the monitoring plan for the unit. Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix, and to be greater than or equal to the span value. This selected monitor range with a span rounded up from 125 percent of the maximum potential concentration will be the "high-scale" of the NO_X pollutant concentration monitor.

If NO_X emission testing is used to determine the maximum potential NO_X concentration, use the following guidelines: Use Method 7E from appendix A of part 60 of this chapter to measure total NO_X concentration. Operate the unit, or group of units sharing a common stack, at the minimum safe and stable load, the normal load, and the maximum load. If the normal load and maximum load are identical, an intermediate level need not be tested. Operate at the highest excess O_2 level expected under normal operating conditions. Make at least three runs with three traverse points of at least 20 minutes duration at each operating condition. Select the highest NO_X concentration from all measured values as the maximum potential concentration for NO_X. If historical CEM data are used to determine the MPC, the data must represent various operating conditions, including the minimum safe and stable load, normal load, and maximum load. Calculate the MPC and span using the highest hourly NO_X concentration in ppm. If no test data or historical CEM data are available, use Table 2–1 or Table 2–2 to estimate the maximum potential concentration based upon boiler type and fuel used.

TABLE 2–1.—MAXIMUM POTENTIAL CONCENTRATION FOR NO_X—COAL-FIRED UNITS

Unit type	Maximum potential concentration for NO_X (ppm)
Tangentially-fired dry bottom and fluidized bed	460
Wall-fired dry bottom, turbo-fired dry bottom, stokers	675
Roof-fired (vertically-fired) dry bottom, cell burners, arch-fired	975
Cyclone, wall-fired wet bottom, wet bottom turbo-fired	1200
Others	As approved by the Administrator.

TABLE 2–2.—MAXIMUM POTENTIAL CONCENTRATION FOR NO_X—GAS- AND OIL-FIRED UNITS

Unit type	Maximum potential concentration for NO_X (ppm)
Tangentially-fired dry bottom	380
Wall-fired dry bottom	600
Roof-fired (vertically-fired) dry bottom, arch-fired	550
Existing combustion turbine or combined cycle turbine	200
New stationary gas turbine/combustion turbine	50
Others	As approved by the Administrator.

2.1.2.2 Maximum Expected Concentration

If the majority of NO_X concentrations are expected to be less than 25 percent of the full-scale range of the instrument selected under section 2.1.2.1 of this appendix (e.g., where a NO_X add-on emission control is used) use a "low-scale" measurement range. For units with add-on emission controls, determine the maximum expected concentration (MEC) of NO_X using Equation A–2, inserting the maximum potential concentration, as determined using the procedures in section 2.1.2.1 of this appendix. Where Equation A–2 is not appropriate, set the MEC, either (1) by measuring the NO_X concentration using the testing procedures in section 2.1.2.1 of this appendix, or (2) by using historical CEM data over the previous 30 unit operating days. Other methods for determining the MEC may be accepted if they are satisfactorily explained in the monitoring plan. If an existing State, local, or Federal requirement for span of an NO_X pollutant concentration monitor requires a span other than that required in this section, but less than that required for the high scale by this appendix, the State, local, or Federal span value may be approved, where a satisfactory explanation is included in the monitoring plan. Calculate the span for the additional (lower) range by multiplying the maximum expected concentration by 125 percent and by rounding up the resultant concentration to the nearest multiple of 10 ppm. The span value of this additional (lower) range will also be used to determine the concentrations of the calibration gases. Include the full-scale range setting and calculations of the MEC and span in the monitoring plan for the unit. Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix, and to be greater or equal to the lower range span value. This selected monitor range with a span rounded up from 125 percent of the maximum expected concentration is the "low-scale" of NO_X pollutant concentration monitors. NO_X pollutant concentration monitors on affected units with NO_X emission controls, or on other units with monitors using a low-scale range, must also be capable of accurately measuring up to 125 percent of the maximum potential concentration. For dual-span NO_X pollutant concentration monitors, determine the concentration of calibration gases based on both span values.

2.1.2.3 * * *

2.1.2.4 Adjustment of Span

Wherever the actual NO_X concentration exceeds the maximum potential concentration but does not exceed the full-scale range for more than one clock-hour and the monitor can measure and record the NO_X concentration values accurately, the NO_X concentration values may be reported for use in the Acid Rain Program. If the concentration exceeds the monitor's ability to measure and record values accurately during a clock hour, and the full-scale exceedance is not during an out-of-control period, report the full-scale value as the NO_X concentration for that clock hour. If full-scale exceedances occur during more than one clock hour since the last adjustment of the full-scale range setting, adjust the full-scale range setting to prevent future exceedances.

Whenever the fuel supply, emission controls, or other process parameters change such that the maximum expected concentration or the maximum potential concentration may change significantly, adjust the NO_X pollutant concentration span and monitor range to assure the continued accuracy of the monitoring system. Determine the adjusted span value using the procedures in sections 2.1.2.1 or 2.1.2.2 of this appendix. Select the new full scale range of the instrument to be greater than or equal to the adjusted span value and to be consistent with the guidelines of section 2.1 of this appendix. Record and report the new full-scale range setting, calculations of the span value, MPC, and MEC (if appropriate), maximum potential NO_X emission rate and the adjusted span value in an updated monitoring plan for the unit. In addition, record and report the adjusted span as part of the records for the daily calibration error test and linearity check required by appendix B of this part. Whenever the span value is adjusted, use calibration gas concentrations based on the most recent adjusted span value. Perform a linearity check according to section 6.2 of this appendix whenever making a change to the monitor span or range. Recertification under § 75.20(b) is required whenever a significant change is made in the monitor's range that requires an internal modification to the monitor (e.g., a change of measurement cell length).

2.1.3 CO_2 and O_2 Monitors

Define the "high scale" span value as 20 percent O_2 or 20 percent CO_2. All O_2 and CO_2 analyzers must have "high-scale" measurement capability. Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix, and to be greater than or equal to the span value. If the O_2 or CO_2 concentrations are expected to be consistently low, a "low scale" measurement range may be used for increased accuracy, provided that it is consistent with section 2.1 of this appendix. Include a span value for the low-scale range in the monitoring plan. Select the calibration gas concentrations as percentages of the span value.

2.1.4 Flow Monitors

Select the full-scale range of the flow monitor so that it is consistent with section 2.1 of this appendix, and can accurately measure all potential volumetric flow rates at the flow monitor installation site. For this purpose, determine the span value of the flow monitor using the following procedure. Calculate the maximum potential velocity (MPV) using Equation A–3a or A–3b or determine the MPV or maximum potential flow rate (MPF) in scfh (wet basis) from velocity traverse testing. If using test values, use the highest velocity measured at or near the maximum unit operating load. Calculate the MPV in units of wet standard fpm. Then, if necessary, convert the MPV to equivalent units of flow rate (e.g., scfh or kscfh) or differential pressure (inches of water), consistent with the measurement units used for the daily calibration error test to calculate the span value. Multiply the MPV (in

equivalent units) by 125 percent, and round up the result to no less than 2 significant figures. Report the full-scale range setting, and calculations of the span value, MPV and MPF in the monitoring plan for the unit.

$$MPV = \left(\frac{F_d H_f}{A}\right)\left(\frac{20.9}{20.9 - \%O_{2d}}\right)\left[\frac{100}{100 - \%H_2O}\right] \qquad \text{(Eq. A–3a)}$$

or

$$MPV = \left(\frac{F_d H_f}{A}\right)\left(\frac{100}{\%CO_{2d}}\right)\left[\frac{100}{100 - \%H_2O}\right] \qquad \text{(Eq. A–3b)}$$

Where:

MPV=maximum potential velocity (fpm, standard wet basis),
Fd=dry-basis F factor (dscf/mmBtu) from Table 1, Appendix F of this part,
Fc=carbon-based F factor (scfCO2/mmBtu) from Table 1, Appendix F of this part,
Hf=maximum heat input (mmBtu/minute) for all units, combined, exhausting to the stack or duct where the flow monitor is located,
A=inside cross sectional area (ft2) of the flue at the flow monitor location,
%O2d=maximum oxygen concentration, percent dry basis, under normal operating conditions,
%CO2d=minimum carbon dioxide concentration, percent dry basis, under normal operating conditions,
$\%H_2O$ = maximum percent flue gas moisture content under normal operating conditions.

If the volumetric flow rate exceeds the maximum potential flow calculated from the maximum potential velocity but does not exceed the full scale range during more than one clock hour and the flow monitor can accurately measure and record values, the flow rate may be reported for use in the Acid Rain Program. If the volumetric flow rate exceeds the monitor's ability to measure and record values accurately during a clock hour, and the full-scale exceedance is not during an out-of-control period, report the full-scale value as the flow rate for that clock hour. If full-scale exceedance occurs during more than one hour since the last adjustment of the full-scale range setting, adjust the full-scale range setting to prevent future exceedances. If the fuel supply, process parameters or other conditions change such that the maximum potential velocity may change significantly, adjust the range to assure the continued accuracy of the flow monitor. Calculate an adjusted span using the procedures in this section. Select the full-scale range of the instrument to be greater than or equal to the adjusted span value. Record and report the new full-scale range setting, calculations of the span value, MPV, and MPF, and the adjusted span value in an updated monitoring plan for the unit. Record and report the adjusted span and reference values as parts of the records for the calibration error test required by appendix B of this part. Whenever the span value is adjusted, use reference values for the calibration error test based on the most recent adjusted span value.

Perform a calibration error test according to section 2.1.2 of this appendix whenever making a change to the flow monitor span or range. Recertification under § 75.20(b) is required whenever making a significant change in the flow monitor's range that requires an internal modification to the monitor.

* * * * *

53. Appendix A to part 75, section 3 is amended by revising sections 3.3.3 and 3.5 to read as follows:

3. Performance Specifications

* * * * *

3.3 * * *

3.3.1 * * *

3.3.2 * * *

3.3.3 Relative Accuracy for CO_2 and O_2 Pollutant Concentration Monitors

The relative accuracy for CO_2 and O_2 monitors shall not exceed 10.0 percent. The relative accuracy test results are also acceptable if the mean difference of the CO_2 or O_2 monitor measurements and the corresponding reference method measurement, calculated using Equation A–7 of this appendix, is within 1.0 percent CO_2 or O_2.

* * * * *

3.5 Cycle Time

The cycle time for pollutant concentration monitors, and continuous emission monitoring systems shall not exceed 15 min.

* * * * *

54. Appendix A to part 75, section 4 is amended by adding a third paragraph to read as follows:

4. Data Acquisition and Handling Systems

* * * * *

For an excepted monitoring system under appendix D or E of this part, data acquisition and handling systems shall:

(1) Read and record the full range of fuel flowrate through the upper range value;

(2) Calculate and record intermediate values necessary to obtain emissions, such as mass fuel flowrate and heat input rate;

(3) Calculate and record emissions in units of the standard (lb/hr of SO_2, lb/mmBtu of NO_X);

(4) Predict and record NO_X emission rate using the heat input rate and the NO_X/heat input correlation developed under appendix E of this part;

(5) Calculate and record all missing data substitution values specified in appendix D or E of this part; and

(6) Provide a continuous, permanent record of all measurements and required information as an ASCII flat file capable of transmission via an IBM-compatible personal computer diskette or other electronic media.

* * * * *

55. Appendix A to part 75, section 5 is amended by revising section 5.1.2 and by adding sections 5.1.4, 5.1.5, and 5.1.6 to read as follows:

5. Calibration Gas

5.1 Reference Gases

5.1.1 * * *

5.1.2 NIST Traceable Reference Materials

Contact the Quality Assurance Division (MD 77), Environmental Monitoring System Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 or the Organic Analytical Research Division of NIST at the above address for Standard Reference Materials for a list of vendors and cylinder gases.

5.1.3 * * *

5.1.4 Research Gas Mixtures

Contact the Quality Assurance Division (MD 77), Environmental Monitoring System Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 or the Organic Analytical Research Division of NIST at the above address for Standard Reference Materials for a list of vendors and cylinder gases.

5.1.5 Zero Air Material

Use zero air material for calibrating at zero-level concentrations only. Zero air material shall be certified by the gas vendor or instrument manufacturer or vendor not to contain concentrations of SO_2 or NO_X above 0.1 ppm or CO_2 above 400 ppm, and not to contain concentrations of other gases that will interfere with instrument readings or cause the instrument to read concentrations of SO_2, NO_X, or CO_2.

5.1.6 NIST/EPA-approved Certified Reference Materials

Existing certified reference materials as previously certified under EPA's former certified reference material program may be used for the remainder of the cylinder's shelf life.

* * * * *

56. Appendix A to part 75, section 6 is amended by adding a sentence to the end of section 6.1; by revising the first sentence in the second paragraph of section 6.2; and by revising sections 6.5, 6.5.1, 6.5.2, 6.5.5, 6.5.6, 6.5.7, and 6.5.10 to read as follows:

6. Certification Tests and Procedures

6.1 Pretest Preparation

* * * To the extent practicable, test the DAHS software prior to testing the monitoring hardware.

6.2 Linearity Check

* * * * *

Challenge each pollutant concentration or CO_2 or O_2 monitor with NIST/EPA-approved certified reference material, NIST traceable reference material, standard reference material, or Protocol 1 calibration gases certified to be within 2 percent of the concentration specified on the label at the low-, mid-, or high-level concentrations specified in section 5.2 of this appendix.

* * *

* * * * *

6.5 Relative Accuracy and Bias Tests

Perform relative accuracy test audits for each CO_2 and SO_2 pollutant concentration monitor, each O_2 monitor used to calculate heat input or CO_2 concentration, each SO_2-diluent continuous emission monitoring system (lb/mmBtu) used by units with a qualifying Phase I technology for the period during which the units are required to monitor SO_2 emission removal efficiency, from January 1, 1997 through December 31, 1999, flow monitor, and NO_X continuous emission monitoring system. For monitors or monitoring systems with dual ranges, perform the relative accuracy test on one range measuring emissions in the stack at the time of testing. Record monitor or monitoring system output from the data acquisition and handling system. Perform concurrent relative accuracy test audits for each SO_2 pollutant concentration monitor and flow monitor, at least once a year (see section 2.3.1 of appendix B of this part), during the flow monitor test at the normal operating level specified in section 6.5.2 of this appendix. Concurrent relative accuracy test audits may be performed by conducting simultaneous SO_2 and flow relative accuracy test audit runs, or by alternating an SO_2 relative accuracy test audit run with a flow relative accuracy test audit run until all relative accuracy test audit runs are completed. Where two or more probes are in the same proximity, care should be taken to prevent probes from interfering with each other's sampling. For each SO_2 pollutant concentration monitor, each flow monitor, and each NO_X continuous emission monitoring system, calculate bias, as well as relative accuracy, with data from the relative accuracy test audits.

Complete each relative accuracy test audit within a 7-day period while the unit (or units, if more than one unit exhausts into the flue) is combusting the fuel that is normal for that unit. When relative accuracy test audits are performed on continuous emission monitoring systems or component(s) on bypass stacks/ducts, use the fuel normally combusted by the unit (or units, if more than one unit exhausts into the flue) when emissions exhaust through the bypass stack/ducts. Do not perform corrective maintenance, repairs, replacements or adjustments during the relative accuracy test audit other than as required in the operation and maintenance manual.

6.5.1 SO_2, O_2 and CO_2 Pollutant Concentration Monitors and SO_2-Diluent and NO_X Continuous Emission Monitoring Systems

Perform relative accuracy test audits for each SO_2, O_2 or CO_2 pollutant concentration monitor or NO_X continuous emission monitoring system or SO_2-diluent continuous emission monitoring system (lb/mmBtu) used by units with a qualifying Phase I technology for the period during which the units are required to monitor SO_2 emission removal efficiency, from January 1, 1997 through December 31, 1999, at a normal operating level for the unit (or combined units, if common stack).

6.5.2 Flow Monitors

Except for flow monitors on bypass stacks/ducts and peaking units, perform relative accuracy test audits for each flow monitor at three different exhaust gas velocities, expressed in terms of percent of flow monitor span, or different operating or load levels. For a common stack/duct, the three different exhaust gas velocities may be obtained from frequently used unit/load combinations for units exhausting to the common stack. Select the operating levels as follows: (1) A frequently used low operating level selected within the range between the minimum safe and stable operating level and 50 percent load, (2) a frequently used high operating level selected within the range between 80 percent of the maximum operating level and the maximum operating level, and (3) the normal operating level. If the normal operating level is within 10.0 percent of the maximum operating level of either (1) or (2) above, use a level that is evenly spaced between the low and high operating levels used. The maximum operating level shall be equal to the nameplate capacity less any physical or regulatory limitations or other deratings. Calculate flow monitor relative accuracy at each of the three operating levels. If a flow monitor fails the relative accuracy test on any of the three levels of a three-level relative accuracy test audit, the three-level relative accuracy test audit must be repeated. For flow monitors on bypass stacks/ducts and peaking units, the flow monitor relative accuracy test audit is required only at the normal operating level.

6.5.3 * * *

6.5.4 * * *

6.5.5 Reference Method Measurement Location

Select a location for reference method measurements that is (1) accessible; (2) in the same proximity as the monitor or monitoring system location; and (3) meets the requirements of Performance Specification 2 in appendix B of part 60 of this chapter for SO_2 and NO_X continuous emission monitoring systems, Performance Specification 3 in appendix B of part 60 of this chapter for CO_2 or O_2 monitors, or Method 1 (or 1A) in appendix A of part 60 of this chapter for volumetric flow, except as otherwise indicated in this section or as approved by the Administrator.

6.5.6 Reference Method Traverse Point Selection

Select traverse points that (1) ensure acquisition of representative samples of pollutant and diluent concentrations, moisture content, temperature, and flue gas flow rate over the flue cross section; and (2) meet the requirements of Performance Specification 2 in appendix B of part 60 of this chapter (for SO_2 and NO_X), Performance Specification 3 in appendix B of part 60 of this chapter (for O_2 and CO_2), Method 1 (or 1A) (for volumetric flow), Method 3 (for molecular weight), and Method 4 (for moisture determination) in appendix A of part 60 of this chapter.

6.5.7 Sampling Strategy

Conduct the reference method tests so they will yield results representative of the pollutant concentration, emission rate, moisture, temperature, and flue gas flow rate from the unit and can be correlated with the pollutant concentration monitor, CO_2 or O_2 monitor, flow monitor, and SO_2 or NO_X continuous emission monitoring system measurements. Conduct the diluent (O_2 or CO_2) measurements and any moisture measurements that may be needed simultaneously with the pollutant concentration and flue gas flow rate measurements. If an O_2 monitor is used as a CO_2 continuous emission monitoring system, but not as a diluent monitor, measure CO_2 with the reference method. To properly correlate individual SO_2 and CO_2 pollutant concentration monitor data, O_2 monitor data, SO_2 or NO_X continuous emission monitoring system data (in lb/mmBtu), and volumetric flow rate data with the reference method data, mark the beginning and end of each reference method test run (including the exact time of day) on the individual chart recorder(s) or other permanent recording device(s).

6.5.8 * * *

6.5.9 * * *

6.5.10 Reference Methods

The following methods from appendix A to part 60 of this chapter or their approved alternatives are the reference methods for performing relative accuracy test audits: Method 1 or 1A for siting; Method 2 (or 2A, 2C, or 2D) for velocity; Methods 3, 3A, or 3B for O_2 or CO_2; Method 4 for moisture;

Methods 6, 6A, or 6C for SO_2; Methods 7, 7A, 7C, 7D, 7E for NO_X, excluding the exception in section 5.1.2 of Method 7E. When using Method 7E for measuring NO_X concentration, total NO_X, both NO and NO_2, must be measured.

* * * * *

58. Appendix A to part 75, section 7 is amended by revising section 7.2.2; by revising the section heading for section 7.3; and by revising sections 7.6.4 and 7.6.5 to read as follows:

7. Calculations

* * * * *

7.2.2 Flow Monitor Calibration Error

For each reference value, calculate the percentage calibration error based upon span using the following equation:

$$CE = \frac{|R-A|}{S} \times 100 \qquad \text{(Eq. A–6)}$$

where:

CE=Calibration error;

R=Low or high level reference value specified in section 2.2.2.1 of this appendix;

A=Actual flow monitor response to the reference value; and

S=Flow monitor span or equivalent reference value (e.g., pressure pulse or electronic signal).

7.3 Relative Accuracy for SO_2 and CO_2 Pollutant Concentration Monitors, SO_2-Diluent Continuous Emission Monitoring Systems, and Flow Monitors

* * * * *

7.6.4 Bias Test

If the mean difference, d , is greater than the absolute value of the confidence coefficient, |cc|, the monitor or monitoring system has failed to meet the bias test requirement. For flow monitor bias tests, if the mean difference, $\bar{d}$, is greater than |cc| at the operating level closest to normal operating level during the 3-level RATA, the monitor has failed to meet the bias test requirement. For flow monitors, apply the bias test at the operating level closest to normal operating level during the 3-level RATA.

7.6.5 Bias Adjustment

If the monitor or monitoring system fails to meet the bias test requirement, adjust the value obtained from the monitor using the following equation:

$$CEM_i^{Adjusted} = CEM_i^{Monitor} \times BAF \qquad \text{(Eq. A–11)}$$

Where:

$CEM_i^{Adjusted}$=Data (measurement) provided by the monitor at time i.

$CEM_i^{Monitor}$=Data value, adjusted for bias, at time i.

BAF=Bias adjustment factor, defined by

$$BAF = 1 + \frac{|\bar{d}|}{CEM} \qquad \text{(Eq. A–12)}$$

Where:

BAF=Bias adjustment factor, calculated to the nearest thousandth.

d=Arithmetic mean of the difference obtained during the failed bias test using Equation A–7.

CEM=Mean of the data values provided by the monitor during the failed bias test.

If the bias test is failed by a flow monitor at the operating level closest to normal on a 3-level relative accuracy test audit, calculate the bias adjustment factor for each of the three operating levels. Apply the largest of the three bias adjustment factors to subsequent flow monitor data using Equation A–11.

Apply this adjustment prospectively to all monitor or monitoring system data from the date and time of the failed bias test until the date and time of a relative accuracy test audit that does not show bias. Use the adjusted values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the concentration of SO_2, the flow rate, and the average NO_X emission rate and calculated mass emissions of SO_2 and CO_2 during the quarter and calendar year, as specified in subpart G of this part.

* * * * *

APPENDIX B TO PART 75—QUALITY ASSURANCE AND QUALITY CONTROL PROCEDURES

59. Appendix B to part 75, section 2 is amended by revising sections 2.1.4, 2.2, 2.2.1, 2.2.2, 2.3, 2.3.1, and 2.3.2; and by amending Figure 2 at the end of the appendix to read as follows:

* * * * *

2. Frequency of Testing

2.1 Daily Assessments * * *

2.1.1 * * *

2.1.2 * * *

2.1.3 * * *

2.1.4 Recalibration

The EPA recommends adjusting the calibration, at a minimum, whenever the daily calibration error exceeds the limits of the applicable performance specification for the pollutant concentration monitor, CO_2, or O_2 monitor, or flow monitor in appendix A of this part.

* * * * *

2.2 Quarterly Assessments

For each monitor or continuous emission monitoring system, perform the following assessments during each unit operating quarter, or for monitors or monitoring systems on bypass ducts or bypass stacks, during each bypass operating quarter to be performed not less than once every 2 calendar years. This requirement is effective as of the calendar quarter following the calendar quarter in which the monitor or continuous emission monitoring system is provisionally certified.

2.2.1 Linearity Check

Perform a linearity check for each SO_2 and NO_X pollutant concentration monitor and each CO_2 or O_2 monitor at least once during each unit operating quarter or each bypass operating quarter, in accordance with the procedures in appendix A, section 6.2 of this part. For units using emission controls and other units using a low-scale span value to determine calibration gases, perform a linearity check on both the low- and high-scales. Conduct the linearity checks no less than 2 months apart, to the extent practicable.

2.2.2 Leak Check

For differential pressure flow monitors, perform a leak check of all sample lines (a manual check is acceptable) at least once during each unit operating quarter or each bypass operating quarter. Conduct the leak checks no less than 2 months apart, to the extent practicable.

2.2.3 * * *

2.3 Semiannual and Annual Assessments

For each monitor or continuous emission monitoring system, perform the following assessments once semiannually (within two calendar quarters) or once annually (within four calendar quarters) after the calendar quarter in which the monitor or monitoring system was last tested, as specified below for the type of test and the performance achieved, except as provided below in section 2.3.1 of this appendix for monitors or continuous emission monitoring systems on bypass ducts or stacks or on peaking units. This requirement is effective as of the calendar quarter, unit operating quarter (for peaking units), or bypass operating quarter (for bypass stacks or ducts) following the calendar quarter in which the monitor or continuous emission monitoring system is provisionally certified. A summary chart showing the frequency with which a relative accuracy test audit must be performed, depending on the accuracy achieved, is located at the end of this appendix in Figure 2.

2.3.1 Relative Accuracy Test Audit

Perform relative accuracy test audits semiannually and, to the extent practicable, no less than 4 months apart for each SO_2 or CO_2 pollutant concentration monitor, flow monitor, NO_X continuous emission monitoring system, or SO_2-diluent continuous emission monitoring systems used by units with a Phase I qualifying technology for the period during which the units are required to monitor SO_2 emission removal efficiency, from January 1, 1997 through December 31, 1999, except as provided for monitors or continuous

emission monitoring systems on peaking units or bypass stacks or ducts. For monitors on bypass stacks/ducts, perform relative accuracy test audits no less than once every two successive bypass operating quarters, or once every two calendar years, whichever occurs first, in accordance with the procedures in section 6.5 of Appendix A of this part. For monitors on peaking units, perform relative accuracy test audits no less than once every two successive unit operating quarters, or once every two calendar years, whichever occurs first. Audits required under this section shall be performed no less than 4 months apart, to the extent practicable. The audit frequency may be reduced, as specified below for monitors or monitoring systems which qualify for less frequent testing.

For flow monitors, one-level and three-level relative accuracy test audits shall be performed alternately (when a flow RATA is conducted semiannually), such that the three-level relative accuracy test audit is performed at least once annually. The three-level audit shall be performed at the three different operating or load levels specified in appendix A, section 6.5.2 of this part, and the one-level audit shall be performed at the normal operating or load level. Notwithstanding that requirement, relative accuracy test audits need only be performed at the normal operating or load level for monitors and continuous emission monitoring systems on peaking units and bypass stacks/ducts.

Relative accuracy test audits may be performed on an annual basis rather than on a semiannual basis (or for monitors on peaking units and bypass ducts or bypass stacks, no less than (1) once every four successive unit or bypass operating quarters, or (2) every two calendar years, whichever occurs first) under any of the following conditions: (1) The relative accuracy during the previous audit for an SO_2 or CO_2 pollutant concentration monitor (including an O_2 pollutant monitor used to measure CO_2 using the procedures in appendix F of this part), or for a NO_X or SO_2-diluent continuous emissions monitoring system is 7.5 percent or less; (2) prior to January 1, 2000, the relative accuracy during the previous audit for a flow monitor is 10.0 percent or less at each operating level tested; (3) on and after January 1, 2000, the relative accuracy during the previous audit for a flow monitor is 7.5 percent or less at each operating level tested; (4) on low flow (≤10.0 fps) stacks/ducts, when the monitor mean, calculated using Equation A–7 in appendix A of this part is within ±1.5 fps of the reference method mean or achieves a relative accuracy of 7.5 percent (10 percent if prior to January 1, 2000) or less during the previous audit; (5) on low SO_2 emitting units (SO_2 concentrations ≤250.0 ppm, or equivalent lb/mmBtu value for SO_2-diluent continuous emission monitoring systems), when the monitor mean is within ±8.0 ppm (or equivalent in lb/mmBtu for SO_2-diluent continuous emission monitoring systems) of the reference method mean or achieves a relative accuracy of 7.5 percent or less during the previous audit; or (6) on low NO_X emitting units (NO_X emission rate ≤0.20 lb/mmBtu), when the NO_X continuous emission monitoring system achieves a relative accuracy of 7.5 percent or less or when the monitoring system mean, calculated using Equation A–7 in appendix A of this part is within ±0.01 lb/mmBtu of the reference method mean.

A maximum of two relative accuracy test audit trials may be performed for the purpose of achieving the results required to qualify for less frequent relative accuracy test audits. Whenever two trials are performed, the results of the second (later) trial must be used in calculating both the relative accuracy and bias.

2.3.2 Out-of-Control Period

An out-of-control period occurs under any of the following conditions: (1) The relative accuracy of an SO_2, CO_2, or O_2 pollutant concentration monitor or a NO_X or SO_2-diluent continuous emission monitoring system exceeds 10.0 percent; (2) prior to January 1, 2000, the relative accuracy of a flow monitor exceeds 15.0 percent; (3) on and after January 1, 2000, the relative accuracy of a flow monitor exceeds 10.0 percent; (4) for low flow situations (≤10.0 fps), the flow monitor mean value (if applicable) exceeds ±2.0 fps of the reference method mean whenever the relative accuracy is greater than 15.0 percent for Phase I or 10 percent for Phase II; (5) for low SO_2 emitter situations, the monitor mean values exceeds ±15.0 ppm (or ± 0.03 lb/mmBtu for SO_2-diluent continuous emission monitoring systems from January 1, 1997 through December 31, 1999) of the reference method mean whenever the relative accuracy is greater than 10.0 percent; or (6) for low NO_X emitting units (NO_X emission rate ≤0.2 lb/mmBtu), the NO_X continuous emission monitoring system mean values exceed ±0.02 lb/mmBtu of the reference method mean whenever the relative accuracy is greater than 10.0 percent. For SO_2, CO_2, O_2, NO_X emission rate, and flow relative accuracy test audits performed at only one level, the out-of-control period begins with the hour of completion of the failed relative accuracy test audit and ends with the hour of completion of a satisfactory relative accuracy test audit. For a flow relative accuracy test audit at 3 operating levels, the out-of-control period begins with the hour of completion of the first failed relative accuracy test audit at any of the three operating levels, and ends with the hour of completion of a satisfactory three-level relative accuracy test audit.

Failure of the bias test does not result in the system or monitor being out-of-control.

* * * * *

FIGURE 2.—RELATIVE ACCURACY TEST FREQUENCY INCENTIVE SYSTEM

RATA	Semiannually[1] (percent)	Annual[1]
SO_2	RA ≤ 10	RA ≤ 7.5% or ±8.0 ppm.[2]
NO_X	RA ≤ 10	RA ≤ 7.5% or ±0.01 lb/mmBtu.[2]
Flow (Phase I)[3]	RA ≤ 15	RA ≤ 10% or ± 1.5 fps.[2]
Flow (Phase II)[3]	RA ≤ 10	RA ≤ 7.5% or ± 1.5 fps.[2]
CO_2/O_2	RA ≤ 10	RA ≤ 7.5%.

[1] For monitors on bypass stack/duct, bypass operating quarters, not to exceed two calendar years. For monitors on peaking units, unit operating quarters, not to exceed two calendar years.
[2] The difference between monitor and reference method mean values; low emitters or low flow, only.
[3] Conduct 3-load RATAs annually, if requirements to qualify for less frequent testing are met.

Appendix C to Part 75—Missing Data Estimation Procedures

60. Appendix C to part 75, section 1 is amended by revising the section heading and the first paragraph of section 1.2 and by revising the first paragraph of section 1.3 to read as follows:

1. Parametric Monitoring Procedure for Missing SO_2 Concentration or NO_X Emission Rate Data

* * * * *

1.2 Petition Requirements

Continuously monitor, determine, and record hourly averages of the estimated SO_2 or NO_X removal efficiency and of the parameters specified below, at a minimum. The affected facility shall supply additional parametric information where appropriate. Measure the SO_2 concentration or NO_X emission rate, removal efficiency of the add-on emission controls, and the parameters for at least 2160 unit operating hours. Provide information for all expected operating conditions and removal efficiencies. At least 4 evenly spaced data points are required for a valid hourly average, except during periods of calibration, maintenance, or quality assurance activities, during which 2 data points per hour are sufficient. The

Administrator will review all applications on a case-by-case basis.

* * * * *

1.3 Correlation of Emissions With Parameters

Establish a method for correlating hourly averages of the parameters identified above with the percent removal efficiency of the SO_2 or post-combustion NO_X emission controls under varying unit operating loads. Equations 1–7 in § 75.15 may be used to estimate the percent removal efficiency of the SO_2 emission controls on an hourly basis.

* * * * *

61. Appendix C to part 75, section 2 is amended by revising section 2.2.1, Table C–1, and sections 2.2.3, 2.2.3.1, 2.2.3.5, and 2.2.5 to read as follows:

* * * * *

2. Procedure

2.2.1 For a single unit, establish 10 operating load ranges defined in terms of percent of the maximum hourly gross load of the unit, in gross megawatts (MWge), as shown in Table C–1. For units sharing a common stack monitored with a single flow monitor, the load ranges for flow (but not for NO_X) may be broken down into 20 equally-sized operating load ranges in increments of 5 percent of the combined maximum hourly gross load of all units utilizing the common stack. For a cogenerating unit or other unit at which some portion of the heat input is not used to produce electricity or for a unit for which hourly gross load in MWge is not recorded separately, use the hourly gross steam load of the unit, in pounds of steam per hour at the measured temperature (°F) and pressure (psia) instead of MWge. Indicate a change in the number of load ranges or the units of loads to be used in the precertification section of the monitoring plan.

TABLE C–1.—DEFINITION OF OPERATING LOAD RANGES FOR LOAD-BASED SUBSTITUTION DATA PROCEDURES

Operating load range	Percent of maximum hourly gross load (%)
1	0–10
2	10–20
3	20–30
4	30–40
5	40–50
6	50–60
7	60–70
8	70–80
9	80–90
10	90–100

2.2.2 * * *

2.2.3 Beginning with the first hour of unit operation after installation and certification of the flow monitor or the NO_X continuous emission monitoring system and continuing thereafter, the data acquisition and handling system must be capable of calculating and recording the following information for each unit operating hour of missing flow or NO_X data within each identified load range during the shorter of: (1) the previous 2,160 quality assured monitor operating hours (on a rolling basis), or (2) all previous quality assured monitor operating hours.

2.2.3.1 Average of the hourly flow rates reported by a flow monitor, in scfh.

2.2.3.2 * * *

2.2.3.3 * * *

2.2.3.4 * * *

2.2.3.5 Average of the hourly NO_X emission rate, in lb/mmBtu, reported by a NO_X continuous emission monitoring system.

2.2.3.6 * * *

2.2.3.7 * * *

2.2.3.8 * * *

2.2.4 * * *

2.2.5 When a bias adjustment is necessary for the flow monitor and/or the NO_X continuous emission monitoring system, apply the adjustment factor to all monitor or continuous emission monitoring system data values placed in the load ranges.

2.2.6 * * *

Appendix D to Part 75—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units

62. Appendix D to part 75, section 1 is amended by revising section 1.1; by removing section 1.2 and revising and redesignating section 1.3 as section 1.2; and by removing section 1.4 to read as follows:

1. Applicability

1.1 This protocol may be used in lieu of continuous SO_2 pollutant concentration and flow monitors for the purpose of determining hourly SO_2 emissions and heat input from: (1) gas-fired units as defined in § 72.2 of this chapter; or (2) oil-fired units as defined in § 72.2 of this chapter. This optional SO_2 emissions data protocol contains procedures for conducting oil sampling and analysis in section 2.2 of this appendix; the procedures for flow proportional oil sampling and the procedures for manual daily oil sampling may be used for any gas-fired unit or oil-fired unit. In addition, this optional SO_2 emissions data protocol contains two procedures for determining SO_2 emissions due to the combustion of gaseous fuels; these two procedures may be used for any gas-fired unit or oil-fired unit.

1.2 Pursuant to the procedures in § 75.20, complete all testing requirements to certify use of this protocol in lieu of a flow monitor and an SO_2 continuous emission monitoring system. Complete all testing requirements no later than the applicable deadline specified in § 75.4. Apply to the Administrator for initial certification to use this protocol no later than 45 days after the completion of all certification tests. Whenever the monitoring method is to be changed, reapply to the Administrator for recertification of the new monitoring method.

63. Appendix D to part 75, section 2 is revised to read as follows:

2. Procedure

2.1 Flowmeter Measurements

For each hour when the unit is combusting fuel, measure and record the flow of fuel combusted by the unit, except as provided for gas in section 2.1.4 of this appendix. Measure the flow of fuel with an in-line fuel flowmeter and automatically record the data with a data acquisition and handling system, except as provided in section 2.1.4 of this appendix.

2.1.1 Measure the flow of each fuel entering and being combusted by the unit. If a portion of the flow is diverted from the unit without being burned, and that diversion occurs downstream of the fuel flowmeter, an additional in-line fuel flowmeter is required to account for the unburned fuel. Record the flow of each fuel combusted by the unit as the difference between the flow measured in the pipe leading to the unit and the flow in the pipe diverting fuel away from the unit.

2.1.2 Install and use fuel flowmeters meeting the requirements of this appendix in a pipe going to each unit, or install and use a fuel flowmeter in a common pipe header (i.e., a pipe carrying fuel for multiple units). If the flowmeter is installed in a common pipe header, do one of the following:

2.1.2.1 Measure the fuel flow in the common pipe and combine SO_2 mass emissions for the affected units for recordkeeping and compliance purposes; or

2.1.2.2 Provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions and heat input to each of the affected units demonstrating that the method ensures complete and accurate accounting of all emissions regulated under this part. The information shall be provided to the Administrator through a petition submitted by the designated representative under § 75.66. Satisfactory information includes apportionment using fuel flow measurements, the ratio of load (in MWe) in each unit to the total load for all units receiving fuel from the common pipe header, or the ratio of steam flow (in 1000 lb/hr) at each unit to the total steam flow for all units receiving fuel from the common pipe header.

2.1.3 For a gas-fired unit or an oil-fired unit that continuously or frequently combusts a supplemental fuel for flame stabilization or safety purposes, measure the flow of the supplemental fuel with a fuel flowmeter meeting the requirements of this appendix.

2.1.4 For an oil-fired unit that uses gas solely for start-up or burner ignition or a gas-fired unit that uses oil solely for start-up or burner ignition a flowmeter for the start-up fuel is not required. Estimate the volume of oil combusted for each start-up or ignition, either by using a fuel flowmeter or by using the dimensions of the storage container and measuring the depth of the fuel in the storage container before and after each start-up or ignition. A fuel flowmeter used solely for start-up or ignition fuel is not subject to the calibration requirements of section 2.1.5 and 2.1.6 of this appendix. Gas combusted solely for start-up or burner ignition does not need to be measured separately.

2.1.5 Each fuel flowmeter used to meet the requirements of this protocol shall meet

a flowmeter accuracy of ±2.0 percent of the upper range value (i.e, maximum calibrated fuel flow rate), either by design or as calibrated and as measured under laboratory conditions by the manufacturer, by an independent laboratory, or by the owner or operator. The flowmeter accuracy must include all error from all parts of the fuel flowmeter being calibrated based upon the contribution to the error in the flowrate.

2.1.5.1 Use the procedures in the following standards for flowmeter calibration or flowmeter design, as appropriate to the type of flowmeter: ASME MFC–3M–1989 with September 1990 Errata ("Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi"), ASME MFC–4M–1986 (Reaffirmed 1990), "Measurement of Gas Flow by Turbine Meters," American Gas Association Report No. 3, "Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids Part 1: General Equations and Uncertainty Guidelines" (October 1990 Edition), Part 2: "Specification and Installation Requirements" (February 1991 Edition) and Part 3: "Natural Gas Applications" (August 1992 edition), (excluding the modified flow-calculation method in Part 3) ASME MFC–5M–1985 ("Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters"), ASME MFC–6M–1987 with June 1987 Errata ("Measurement of Fluid Flow in Pipes Using Vortex Flow Meters"), ASME MFC–7M–1987 (Reaffirmed 1992), "Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles," ISO 8316: 1987(E) "Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank," or MFC–9M–1988 with December 1989 Errata ("Measurement of Liquid Flow in Closed Conduits by Weighing Method") for all other flow meter types (incorporated by reference under § 75.6 of this part). The Administrator may also approve other procedures that use equipment traceable to National Institute of Standards and Technology (NIST) standards. Document other procedures, the equipment used, and the accuracy of the procedures in the monitoring plan for the unit and a petition submitted by the designated representative under § 75.66(c). If the flowmeter accuracy exceeds ±2.0 percent of the upper range value, the flowmeter does not qualify for use under this part.

2.1.5.2 Alternatively, a fuel flowmeter used for the purposes of this part may be calibrated or recalibrated at least annually (or, for fuel flowmeters measuring emergency fuel, bypass fuel or fuel usage of peaking units, every four calendar quarters when the unit combusts the fuel measured by the fuel flowmeter) by comparing the measured flow of a flowmeter to the measured flow from another flowmeter which has been calibrated or recalibrated during the previous 365 days using a standard listed in section 2.1.5 of this appendix or other procedure approved by the Administrator under § 75.66. Any secondary elements, such as pressure and temperature transmitters, must be calibrated immediately prior to the comparison. Perform the comparison over a period of no more than seven consecutive unit operating days. Compare the average of three fuel flow readings for each meter at each of three different flow levels, corresponding to (1) normal full operating load, (2) normal minimum operating load, and (3) a load point approximately equally spaced between the full and minimum operating loads. Calculate the flowmeter accuracy at each of the three flow levels using the following equation:

$$ACC = \frac{|R-A|}{URV} \times 100 \qquad \text{(Eq. D–1)}$$

Where:

ACC=Flow meter accuracy as a percentage of the upper range value, including all error from all parts of both flowmeters.

R=Average of the three flow measurements of the reference flow meter.

A=Average of the three measurements of the flow meter being tested.

URV=Upper range value of fuel flow meter being tested (i.e. maximum measurable flow).

If the flow meter accuracy exceeds ±2.0 percent of the upper range value at any of the three flow levels, either recalibrate the flow meter until the accuracy is within the performance specification, or replace the flow meter with another one that is within the performance specification. Notwithstanding the requirement for annual calibration of the reference flowmeter, if a reference flowmeter and the flowmeter being tested are within ±1.0 percent of the flowrate of each other during all in-place calibrations in a calendar year, then the reference flowmeter does not need to be calibrated before the next in-place calibration. This exception to calibration requirements for the reference flowmeter may be extended for periods up to five calendar years.

2.1.6 Quality Assurance

2.1.6.1 Recalibrate each fuel flowmeter to a flowmeter accuracy of ±2.0 percent of the upper range value prior to use under this part at least annually (or, for fuel flowmeters measuring emergency fuel, bypass fuel or fuel usage of peaking units, every four calendar quarters when the unit combusts the fuel measured by the fuel flowmeter), or more frequently if required by manufacturer specifications. Perform the recalibration using the procedures in section 2.1.5 of this appendix. For orifice-, nozzle-, and venturi-type flowmeters, also recalibrate the flowmeter the following calendar quarter using the procedures in section 2.1.6.2 of this appendix, whenever the fuel flowmeter accuracy during a calibration or test is greater than ±1.0 percent of the upper range value, or whenever a visual inspection of the orifice, nozzle, or venturi identifies corrosion since the previous visual inspection.

2.1.6.2 For orifice-, nozzle-, and venturi-type flowmeters that are designed according to the standards in section 2.1.5 of this appendix, satisfy the calibration requirements of this appendix by calibrating the differential pressure transmitter or transducer, static pressure transmitter or transducer, and temperature transmitter or transducer, as applicable, using equipment that has a current certificate of traceability to NIST standards. In addition, conduct a visual inspection of the orifice, nozzle, or venturi at least annually.

2.2 Oil Sampling and Analysis

Perform sampling and analysis of as-fired oil to determine the percentage of sulfur by weight in the oil.

2.2.1 When combusting diesel fuel, sample the diesel fuel either (1) every day the unit combusts diesel fuel, or (2) upon receipt of a shipment of diesel fuel.

2.2.1.1 If the diesel fuel is sampled every day, use either the flow proportional method described in section 2.2.3 of this appendix or the daily manual method described in section 2.2.4 of this appendix.

2.2.1.2 If the diesel fuel is sampled upon delivery, calculate SO_2 emissions using the highest sulfur content of any oil supply combusted in the previous 30 days that the unit combusted oil. Diesel fuel sampling and analysis may be performed either by the owner or operator of an affected unit, an outside laboratory, or a fuel supplier, provided that sampling is performed according to ASTM D4057–88, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products" (incorporated by reference under § 75.6 of this part).

2.2.2 Perform oil sampling every day the unit is combusting oil except as provided for diesel fuel. Use either the flow proportional method described in section 2.2.3 of this appendix or the daily manual method described in section 2.2.4 of this appendix.

2.2.3 Conduct flow proportional oil sampling or continuous drip oil sampling in accordance with ASTM D4177–82 (Reapproved 1990), "Standard Practice for Automatic Sampling of Petroleum and Petroleum Products" (incorporated by reference under § 75.6), every day the unit is combusting oil. Extract oil at least once every hour and blend into a daily composite sample. The sample composite period may not exceed 24 hr.

2.2.4 Representative as-fired oil samples may be taken manually every day that the unit combusts oil according to ASTM D4057–88, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products" (incorporated by reference under § 75.6), provided that the highest fuel sulfur content recorded at that unit from the most recent 30 daily samples is used for the purposes of calculating SO_2 emissions under section 3 of this appendix. Use the gross calorific value measured from that day's sample to calculate heat input. If oil supplies with different sulfur contents are combusted on the same day, sample the highest sulfur fuel combusted that day.

Note: For units with pressurized fuel flow lines such as some diesel and dual-fuel reciprocating internal combustion engine units, a manual sample may be taken from the point closest to the unit where it is safe to take a sample (including back to the oil tank), rather than just prior to entry to the boiler or combustion chamber. As-delivered manual samples of diesel fuel need not be as-fired.

2.2.5 Split and label each oil sample. Maintain a portion (at least 200 cc) of each sample throughout the calendar year and in all cases for not less than 90 calendar days

after the end of the calendar year allowance accounting period. Analyze oil samples for percent sulfur content by weight in accordance with ASTM D129–91, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," ASTM D1552–90, "Standard Test Method for Sulfur in Petroleum Products (High Temperature Method)," ASTM D2622–92, "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry," or ASTM D4294–90, "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy" (incorporated by reference under § 75.6).

2.2.6 Where the flowmeter records volumetric flow rather than mass flow, analyze oil samples to determine the density or specific gravity of the oil. Determine the density or specific gravity of the oil sample in accordance with ASTM D287–82 (Reapproved 1991), "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)," ASTM D941–88, "Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Lipkin Bicapillary Pycnometer," ASTM D1217–91, "Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Bingham Pycnometer," ASTM D1481–91, "Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Lipkin Bicapillary," ASTM D1480–91, "Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Bingham Pycnometer," ASTM D1298–85 (Reapproved 1990), "Standard Practice for Density, Relative Density (Specific Gravity) or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method," or ASTM D4052–91, "Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter" (incorporated by reference under § 75.6).

2.2.7 Analyze oil samples to determine the heat content of the fuel. Determine oil heat content in accordance with ASTM D240–87 (Reapproved 1991), "Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter," ASTM D2382–88, "Standard Test Method for Heat or Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)", or ASTM D2015–91, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter" (incorporated by reference under § 75.6) or any other procedures listed in section 5.5 of appendix F of this part.

2.2.8 Results from the oil sample analysis must be available no later than thirty calendar days after the sample is composited or taken. However, during an audit, the Administrator may require that the results of the analysis be available within 5 business days, or sooner if practicable.

2.3 SO_2 Emissions from Combustion of Gaseous Fuels

Account for the hourly SO_2 mass emissions due to combustion of gaseous fuels for each day when gaseous fuels are combusted by the unit using the procedures in either section 2.3.1 or 2.3.2.

2.3.1 Sample the gaseous fuel daily.

2.3.1.1 Analyze the sulfur content of the gaseous fuel in grain/100 scf using ASTM D1072–90, "Standard Test Method for Total Sulfur in Fuel Gases", ASTM D4468–85 (Reapproved 1989) "Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry," ASTM D5504–94 "Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence," or ASTM D3246–81 (Reapproved 1987) "Standard Test Method for Sulfur in Petroleum Gas By Oxidative Microcoulometry" (incorporated by reference under § 75.6). The test may be performed by the owner or operator, an outside laboratory, or the gas supplier.

2.3.1.2 Results from the analysis must be available on-site no later than thirty calendar days after the sample is taken.

2.3.1.3 Determine the heat content or gross calorific value for at least one sample each month and use the procedures of section 5.5 of appendix F of this part to determine the heat input for each hour the unit combusted gaseous fuel.

2.3.1.4 Multiply the sulfur content by the hourly metered volume of gas combusted in 100 scf, using Equation D–4 of this appendix.

2.3.2 If the fuel is pipeline natural gas, calculate SO_2 emissions using a default SO_2 emission rate of 0.0006 lb/mmBtu.

2.3.2.1 Use the default SO_2 emission rate of 0.0006 lb/mmBtu and the hourly heat input from pipeline natural gas in mmBtu/hr, as determined using the procedures in section 5.5 of appendix F of this part. Calculate SO_2 emissions using Equation D–5 of this appendix.

2.3.2.2 Provide information on the contractual sulfur content from the pipeline gas supplier in the monitoring plan for the unit, demonstrating that the gas has a hydrogen sulfide content of 1 grain/100 scf or less, and a total sulfur content of 20 grain/100 scf or less.

2.4 Missing Data Procedures.

When data from the procedures of this part are not available, provide substitute data using the following procedures.

2.4.1 When sulfur content or oil density data from the analysis of an oil sample or when sulfur content data from the analysis of a gaseous fuel sample are missing or invalid, substitute, as applicable, the highest measured sulfur content or oil density (if using a volumetric oil flowmeter) recorded during the previous 30 days when the unit burned that fuel. If no previous sulfur content data are available, substitute the maximum potential sulfur content of that fuel.

2.4.2 When gross calorific value data from the analysis of an oil sample are missing or invalid, substitute the highest measured gross calorific value recorded during the previous 30 days that the unit burned oil. When gross calorific value data from the analysis of a monthly gaseous fuel sample are missing or invalid, substitute the highest measured gross calorific value recorded during the previous three months that the unit burned gaseous fuel.

2.4.3 Whenever data are missing from any fuel flowmeter that is part of an excepted monitoring system under appendix D or E of this part, where the fuel flowmeter data are required to determine the amount of fuel combusted by the unit, use the procedures in either section 2.4.3.1 or sections 2.4.3.2 and 2.4.3.3 prior to January 1, 1996 and use the procedures in sections 2.4.3.2 and 2.4.3.3 but do not use the procedures in section 2.4.3.1 on or after January 1, 1996 to account for the flow rate of fuel combusted at the unit for each hour during the missing data period.

2.4.3.1 When data from the fuel flowmeter are missing, substitute for each hour in the missing data period the average hourly oil flow rate measured and recorded by the fuel flowmeter at the closest unit load (in MWe) greater than the load recorded for the missing data period for which oil flow rate data are available during the previous 720 hours during which the unit combusted oil. If no oil flow rate data are available at a load greater than the load recorded during the missing data period, substitute the maximum flow rate that the flowmeter can measure.

2.4.3.2 For hours where only one fuel is combusted, substitute for each hour in the missing data period the average of the hourly fuel flow rate(s) measured and recorded by the fuel flowmeter (or flowmeters, where fuel is recirculated) at the corresponding operating unit load range recorded for each missing hour during the previous 720 hours during which the unit combusted that same fuel only. Establish load ranges for the unit using the procedures of section 2 in appendix C of this part for missing volumetric flow rate data. If no fuel flow rate data are available at the corresponding load range, use data from the next higher load range where data are available. If no fuel flow rate data are available at either the corresponding load range or a higher load range during any hour of the missing data period for that fuel, substitute the maximum potential fuel flow rate. The maximum potential fuel flow rate is the lesser of the following: (1) the maximum fuel flow rate the unit is capable of combusting or (2) the maximum flow rate that the flowmeter can measure.

2.4.3.3 For hours where two or more fuels are combusted, substitute the maximum hourly fuel flow rate measured and recorded by the flowmeter (or flowmeters, where fuel is recirculated) for the fuel for which data are missing at the corresponding load range recorded for each missing hour during the previous 720 hours when the unit combusted that fuel with any other fuel. For hours where no previous recorded fuel flow rate data are available for that fuel during the missing data period, calculate and substitute the maximum potential flow rate of that fuel for the unit as defined in section 2.4.3.2 of this appendix.

2.4.4. In any case where the missing data provisions of this section require substitution of data measured and recorded more than three years (26,280 clock hours) prior to the date and time of the missing data period, use three years (26,280 clock hours) in place of the prescribed lookback period.

* * * * *

64. Appendix D to part 75, section 3 is amended by revising the introductory paragraph; by revising the section heading of section 3.1; by revising the definition of the variable "M_{SO2}" in Equation D–2 in section 3.1.1; by revising section 3.1.2; by revising the section heading of section 3.2; by revising section 3.2.1; and by adding sections 3.3, 3.3.1, 3.3.2, 3.3.3, and 3.4 to read as follows:

3. Calculations

Use the calculation procedures in section 3.1 of this appendix to calculate SO_2 mass emissions. Where an oil flowmeter records volumetric flow, use the calculation procedures in section 3.2 of this appendix to calculate mass flow of oil. Calculate hourly SO_2 mass emissions from gaseous fuel using the procedures in section 3.3 of this appendix. Calculate hourly heat input for oil and for gaseous fuel using the equations in section 5.5 of Appendix F of this part. Calculate total SO_2 mass emissions and heat input as provided under section 3.4 of this appendix.

3.1 SO_2 Mass Emissions Calculation for Oil

3.1.1 * * *

Where:

M_{SO2}=Hourly mass of SO_2 emitted from combustion of oil, lb/hr.

* * * * *

3.1.2 Record the SO_2 mass emissions from oil for each hour that oil is combusted.

3.2 Mass Flow Calculation for Oil Using Volumetric Flow

3.2.1 Where the oil flowmeter records volumetric flow rather than mass flow, calculate and record the oil mass flow for each hourly period using hourly oil flow measurements and the density or specific gravity of the oil sample.

* * * * *

3.3 SO_2 Mass Emissions Calculation for Gaseous Fuels

3.3.1 Use the following equation to calculate the SO_2 emissions using the gas sampling and analysis procedures in section 2.3.1 of this appendix:

$$M_{SO_2g} = \left(\frac{2.0}{7000}\right) \times Q_g \times S_g \qquad \text{(Eq. D–4)}$$

Where:

M_{SO2g}=Hourly mass of SO_2 emitted due to combustion of gaseous fuel, lb/hr.

Q_g=Hourly metered flow or amount of gaseous fuel combusted, 100 scf/hr.

S_g=Sulfur content of gaseous fuel, in grain/100 scf.

2.0=Ratio of lb SO_2/lb S.

7000=Conversion of grains/100 scf to lb/100 scf.

3.3.2 Use the following equation to calculate the SO_2 emissions using the 0.0006 lb/mmBtu emission rate in section 2.3.2 of this appendix:

$$M_{SO_2g} = ER \times HI_g \qquad \text{(Eq. D–5)}$$

Where:

M_{SO2g}=Hourly mass of SO_2 emissions from combustion of pipeline natural gas, lb/hr.

ER=SO_2 emission rate of 0.0006 lb/mmBtu for pipeline natural gas.

HI_g=Hourly heat input of pipeline natural gas, calculated using procedures in appendix F of this part, in mmBtu/hr.

3.3.3 Record the SO_2 mass emissions for each hour when the unit combusts gaseous fuel.

3.4 Records and Reports

Calculate and record quarterly and cumulative SO_2 mass emissions and heat input for each calendar quarter and for the calendar year by summing the hourly values. Calculate and record SO_2 emissions and heat input data using a data acquisition and handling system. Report these data in a standard electronic format specified by the Administrator.

* * * * *

Appendix E to Part 75—Optional NO_X Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units

65. Appendix E to part 75, section 1 is amended by revising section 1.1; by removing section 1.2, redesignating sections 1.3, 1.3.1 and 1.3.2 as sections 1.2, 1.2.1 and 1.2.2 and revising new sections 1.2, 1.2.1 and 1.2.2 to read as follows:

1. Applicability

1.1 Unit Operation Requirements

This NO_X emissions estimation procedure may be used in lieu of a continuous NO_X emission monitoring system (lb/mmBtu) for determining the average NO_X emission rate and hourly NO_X rate from gas-fired peaking units and oil-fired peaking units as defined in § 72.2 of this chapter. If a unit's operations exceed the levels required to be a peaking unit, install and certify a continuous NO_X emission monitoring system no later than December 31 of the following calendar year. The provisions of § 75.12 apply to excepted monitoring systems under this appendix.

1.2 Certification

1.2.1 Pursuant to the procedures in § 75.20, complete all testing requirements to certify use of this protocol in lieu of a NO_X continuous emission monitoring system no later than the applicable deadline specified in § 75.4. Apply to the Administrator for certification to use this method no later than 45 days after the completion of all certification testing. Whenever the monitoring method is to be changed, reapply to the Administrator for certification of the new monitoring method.

1.2.2 If the owner or operator has already successfully completed certification testing of the unit using the protocol of appendix E of part 75 and submitted a certification application under § 75.20(g) prior to _____ July 17, 1995, the unit's monitoring system does not need to repeat initial certification testing using the revised procedures published _____ May 17, 1995.

* * * * *

66. Appendix E to part 75, section 2 is amended by revising sections 2.1, 2.1.1, 2.1.2, 2.1.2.1, and 2.1.2.2; by removing section 2.1.2.3 and redesignating section 2.1.2.4 as 2.1.2.3; by revising sections 2.1.3, 2.1.3.1, and 2.1.3.2; by revising sections 2.1.4, 2.1.5, 2.1.6, 2.1.6.1, and 2.1.6.2; by revising sections 2.3, 2.3.1 and 2.3.2; by removing sections 2.1.4.1, 2.1.4.2, 2.1.4.3, 2.1.4.4, 2.3.3, 2.3.3.1 and 2.3.3.3; by redesignating section 2.3.3.2 as section 2.3.3 and revising new section 2.3.3; by revising section 2.4.1; by revising section 2.4.2 and adding sections 2.4.3 and 2.4.4; by revising section 2.5 and adding sections 2.5.1, 2.5.2, 2.5.3, 2.5.4, and 2.5.5 to read as follows:

2. Procedure

2.1 Initial Performance Testing

Use the following procedures for: measuring NO_X emission rates at heat input rate levels corresponding to different load levels; measuring heat input rate; and plotting the correlation between heat input rate and NO_X emission rate, in order to determine the emission rate of the unit(s).

2.1.1 Load Selection

Establish at least four approximately equally spaced operating load points, ranging from the maximum operating load to the minimum operating load. Select the maximum and minimum operating load from the operating history of the unit during the most recent two years. (If projections indicate that the unit's maximum or minimum operating load during the next five years will be significantly different from the most recent two years, select the maximum and minimum operating load based on the projected dispatched load of the unit.) For new gas-fired peaking units or new oil-fired peaking units, select the maximum and minimum operating load from the expected maximum and minimum load to be dispatched to the unit in the first five calendar years of operation.

2.1.2 NO_X and O_2 Concentration Measurements

Use the following procedures to measure NO_X and O_2 concentration in order to determine NO_X emission rate.

2.1.2.1 For boilers, select an excess O_2 level for each fuel (and, optionally, for each combination of fuels) to be combusted that is representative for each of the four or more load levels. If a boiler operates using a single, consistent combination of fuels only, the testing may be performed using the combination rather than each fuel. If a fuel is combusted only for the purpose of testing ignition of the burners for a period of five minutes or less per ignition test or for start-up, then the boiler NO_X emission rate does not need to be tested separately for that fuel. Operate the boiler at a normal or conservatively high excess oxygen level in

conjunction with these tests. Measure the NO_X and O_2 at each load point for each fuel or consistent fuel combination (and, optionally, for each combination of fuels) to be combusted. Measure the NO_X and O_2 concentrations according to Method 7E and 3A in appendix A of part 60 of this chapter. Select sampling points as specified in section 5.1, Method 3 in appendix A of part 60 of this chapter. The designated representative for the unit may also petition the Administrator under § 75.66 to use fewer sampling points. Such a petition shall include the proposed alternative sampling procedure and information demonstrating that there is no concentration stratification at the sampling location.

2.1.2.2 For stationary gas turbines, select sampling points and measure the NO_X and O_2 concentrations at each load point for each fuel or consistent combination of fuels (and, optionally, each combination of fuels) according to appendix A, Method 20 of part 60 of this chapter. For diesel or dual fuel reciprocating engines, measure the NO_X and O_2 concentrations according to Method 20, but modify Method 20 by selecting a sampling site to be as close as practical to the exhaust of the engine.

2.1.2.3 Allow the unit to stabilize for a minimum of 15 minutes (or longer if needed for the NO_X and O_2 readings to stabilize) prior to commencing NOx, O_2, and heat input measurements. Determine the average measurement system response time according to section 5.5 of Method 20 in appendix A, part 60 of this chapter. When inserting the probe into the flue gas for the first sampling point in each traverse, sample for at least one minute plus twice the average measurement system response time (or longer, if necessary to obtain a stable reading). For all other sampling points in each traverse, sample for at least one minute plus the average measurement response time (or longer, if necessary to obtain a stable reading). Perform three test runs at each load condition and obtain an arithmetic average of the runs for each load condition. During each test run on a boiler, record the boiler excess oxygen level at 5 minute intervals.

2.1.3 Heat Input

Measure the total heat input (mmBtu) and heat input rate during testing (mmBtu/hr) as follows:

2.1.3.1 When the unit is combusting fuel, measure and record the flow of fuel consumed. Measure the flow of fuel with an in-line flowmeter(s) and automatically record the data. If a portion of the flow is diverted from the unit without being burned, and that diversion occurs downstream of the fuel flowmeter, an in-line flowmeter is required to account for the unburned fuel. Install and calibrate in-line flow meters using the procedures and specifications contained in sections 2.1.2, 2.1.3, 2.1.4, and 2.1.5 of appendix D of this part. Correct any gaseous fuel flow rate measured at actual temperature and pressure to standard conditions of 68°F and 29.92 inches of mercury.

2.1.3.2 For liquid fuels, analyze fuel samples taken according to the requirements of section 2.2 of appendix D of this part to determine the heat content of the fuel. Determine heat content of liquid or gaseous fuel in accordance with the procedures in appendix F of this part. Calculate the heat input rate during testing (mmBtu/hr) associated with each load condition in accordance with Equations F–19 or F–20 in appendix F of this part and total heat input using Equation E–1 of this appendix. Record the heat input rate at each heat input/load point.

2.1.4 Emergency Fuel

The designated representative of a unit that is restricted by its Federal, State or local permit to combusting a particular fuel only during emergencies where the primary fuel is not available may petition the Administrator pursuant to the procedures in § 75.66 for an exemption from the requirements of this appendix for testing the NO_X emission rate during combustion of the emergency fuel. The designated representative shall include in the petition a procedure for determining the NO_X emission rate for the unit when the emergency fuel is combusted, and a demonstration that the permit restricts use of the fuel to emergencies only. The designated representative shall also provide notice under § 75.61(a) for each period when the emergency fuel is combusted.

2.1.5 Tabulation of Results

Tabulate the results of each baseline correlation test for each fuel or, as applicable, combination of fuels, listing: time of test, duration, operating loads, heat input rate (mmBtu/hr), F-factors, excess oxygen levels, and NO_X concentrations (ppm) on a dry basis (at actual excess oxygen level). Convert the NO_X concentrations (ppm) to NO_X emission rates (to the nearest 0.01 lb/mm/Btu) according to Equation F–5 of appendix F of this part or 19–3 in Method 19 of appendix A of part 60 of this chapter, as appropriate. Calculate the NO_X emission rate in lb/mmBtu for each sampling point and determine the arithmetic average NO_X emission rate of each test run. Calculate the arithmetic average of the boiler excess oxygen readings for each test run. Record the arithmetic average of the three test runs as the NO_X emission rate and the boiler excess oxygen level for the heat input/load condition.

2.1.6 Plotting of Results

Plot the tabulated results as an x–y graph for each fuel and (as applicable) combination of fuels combusted according to the following procedures.

2.1.6.1 Plot the heat input rate (mmBtu/hr) as the independent (or x) variable and the NO_X emission rates (lb/mmBtu) as the dependent (or y) variable for each load point. Construct the graph by drawing straight line segments between each load point. Draw a horizontal line to the y-axis from the minimum heat input (load) point.

2.1.6.2 Units that co-fire gas and oil may be tested while firing gas only and oil only instead of testing with each combination of fuels. In this case, construct a graph for each fuel.

2.2 * * *

2.3 Other Quality Assurance/Quality Control-Related NOx Emission Rate Testing

When the operating levels of certain parameters exceed the limits specified below, or where the Administrator issues a notice requesting retesting because the NO_X emission rate data availability for when the unit operates within all quality assurance/quality control parameters in this section since the last test is less than 90.0 percent, as calculated by the Administrator, complete retesting of the NO_X emission rate by the earlier of: (1) 10 unit operating days (as defined in section 2.1 of appendix B of this part) or (2) 180 calendar days after exceeding the limits or after the date of issuance of a notice from the Administrator to re-verify the unit's NO_X emission rate. Submit test results in accordance with § 75.60(a) within 45 days of completing the retesting.

2.3.1 For a stationary gas turbine, obtain a list of at least four operating parameters indicative of the turbine's NO_X formation characteristics, and the recommended ranges for these parameters at each tested load-heat input point, from the gas turbine manufacturer. If the gas turbine uses water or steam injection for NO_X control, the water/fuel or steam/fuel ratio shall be one of these parameters. During the NOx-heat input correlation tests, record the average value of each parameter for each load-heat input to ensure that the parameters are within the manufacturer's recommended range. Redetermine the NO_X emission rate-heat input correlation for each fuel and (optional) combination of fuels after continuously exceeding the manufacturer's recommended range of any of these parameters for one or more successive operating periods totaling more than 16 unit operating hours.

2.3.2 For a diesel or dual-fuel reciprocating engine, obtain a list of at least four operating parameters indicative of the engine's NO_X formation characteristics, and the recommended ranges for these parameters at each tested load-heat input point, from the engine manufacturer. Any operating parameter critical for NO_X control shall be included. During the NO_X heat-input correlation tests, record the average value of each parameter for each load-heat input to ensure that the parameters are within the manufacturer's recommended range. Redetermine the NO_X emission rate-heat input correlation for each fuel and (optional) combination or fuels after continuously exceeding the manufacturer's recommended range of any of these parameters for one or more successive operating periods totaling more than 16 unit operating hours.

2.3.3 For boilers using the procedures in this appendix, the NO_X emission rate heat input correlation for each fuel and (optional) combination of fuels shall be redetermined if the excess oxygen level at any heat input rate (or unit operating load) continuously exceeds by more than 2 percentage points O_2 from the boiler excess oxygen level recorded at the same operating heat input rate during the previous NO_X emission rate test for one or more successive operating periods totaling more than 16 unit operating hours.

2.4 Procedures for Determining Hourly NO_X Emission Rate

2.4.1 Record the time (hr. and min.), load (MWge or steam load in 1000 lb/hr), fuel flow rate and heat input rate (using the procedures in section 2.1.3 of this appendix) for each

hour during which the unit combusts fuel. Calculate the total hourly heat input using Equation E–1 of this appendix. Record the heat input rate for each fuel to the nearest 0.1 mmBtu/hr. During partial unit operating hours or during hours where more than one fuel is combusted, heat input must be represented as an hourly rate in mmBtu/hr, as if the fuel were combusted for the entire hour at that rate (and not as the actual, total heat input during that partial hour or hour) in order to ensure proper correlation with the NO_X emission rate graph.

2.4.2 Use the graph of the baseline correlation results (appropriate for the fuel or fuel combination) to determine the NO_X emissions rate (lb/mmBtu) corresponding to the heat input rate (mmBtu/hr). Input this correlation into the data acquisition and handling system for the unit. Linearly interpolate to 0.1 mmBtu/hr heat input rate and 0.01 lb/mmBtu NO_X.

2.4.3 To determine the NO_X emission rate for a unit co-firing fuels that has not been tested for that combination of fuels, interpolate between the NO_X emission rate for each fuel as follows. Determine the heat input rate for the hour (in mmBtu/hr) for each fuel and select the corresponding NO_X emission rate for each fuel on the appropriate graph. (When a fuel is combusted for a partial hour, determine the fuel usage time for each fuel and determine the heat input rate from each fuel as if that fuel were combusted at that rate for the entire hour in order to select the corresponding NO_X emission rate.) Calculate the total heat input to the unit in mmBtu for the hour from all fuel combusted using Equation E–1. Calculate a Btu-weighted average of the emission rates for all fuels using Equation E–2 of this appendix.

2.4.4 For each hour, record the critical quality assurance parameters, as identified in the monitoring plan, and as required by section 2.3 of this appendix.

2.5 Missing Data Procedures

Provide substitute data for each unit electing to use this alternative procedure whenever a valid quality-assured hour of NO_X emission rate data has not been obtained according to the procedures and specifications of this appendix.

2.5.1 Use the procedures of this section whenever any of the quality assurance/quality control parameters exceeds the limits in section 2.3 of this appendix or whenever any of the quality assurance/quality control parameters are not available.

2.5.2 Substitute missing NO_X emission rate data using the highest NO_X emission rate tabulated during the most recent set of baseline correlation tests for the same fuel or, if applicable, combination of fuels.

2.5.3 Maintain a record indicating which data are substitute data and the reasons for the failure to provide a valid quality-assured hour of NO_X emission rate data according to the procedures and specifications of this appendix.

2.5.4 Substitute missing data from a fuel flowmeter using the procedures in section 2.4.3 of appendix D of this part.

2.5.5 Substitute missing data for gross calorific value of fuel using the procedures in section 2.4.2 of appendix D of this part.

* * * * *

67. Appendix E to part 75, section 3 is amended by revising section 3.1; by removing section 3.2, redesignating section 3.3 as 3.2, and revising new section 3.2; by redesignating sections 3.4, 3.4.1, 3.4.2, 3.4.3 as 3.3, 3.3.1, 3.3.2, and 3.3.3; and by removing sections 3.4.4 and 3.5 and adding section 3.3.4 to read as follows:

3. Calculations

3.1 Heat Input

Calculate the total heat input by summing the product of heat input rate and fuel usage time of each fuel, as in the following equation:

$$H_T = HI_{fuel1}\, t_1 + HI_{fuel2}\, t_2 + HI_{fuel3}\, t_3 + \ldots + HI_{lastfuel}\, t_{last} \quad \text{(Eq. E–1)}$$

Where:

H_T = Total heat input of fuel flow or a combination of fuel flows to a unit, mmBtu;

$HI_{fuel\ 1,2,3,\ldots last}$ = Heat input rate from each fuel during fuel usage time, in mmBtu/hr, as determined using equation F–19 or F–20 in section 5.5 of appendix F of this part, mmBtu/hr;

$t_{1,2,3,\ldots last}$ = Fuel usage time for each fuel, rounded up to the nearest .25 hours.

Note: For hours where a fuel is combusted for only part of the hour, use the fuel flow rate or mass flow rate during the fuel usage time, instead of the total fuel flow during the hour, when calculating heat input rate using Equation F–19 or F–20.

3.2 F-factors

Determine the F-factors for each fuel or combination of fuels to be combusted according to section 3.3 of appendix F of this part.

3.3 NO_X Emission Rate

3.3.1 Conversion from Concentration to Emission Rate [Amended]

Convert the NO_X concentrations (ppm) and O_2 concentrations to NO_X emission rates (to the nearest 0.01 lb/mmBtu) according to the appropriate one of the following equations: F–5 in appendix F of this part for dry basis concentration measurements, or 19–3 in Method 19 of appendix A of part 60 of this chapter for wet basis concentration measurements.

3.3.2 Quarterly Average NO_X Emission Rate

Report the quarterly average emission rate (lb/mmBtu) as required in subpart G of this part. Calculate the quarterly average NO_X emission rate according to Equation F–9 in Appendix F of this part.

3.3.3 Annual Average NO_X Emission Rate

Report the average emission rate (lb/mmBtu) for the calendar year as required in subpart G of this part. Calculate the average NO_X emission rate according to equation F–10 in appendix F of this part.

3.3.4 Average NO_X Emission Rate During Co-firing of Fuels [Amended] (Eq. E–2)

Where:

$$E_h = \frac{\sum_{f=1}^{\text{all fuels}} \left(E_f \times HI_f\, t_f\right)}{H_T}$$

E_h = NO_X emission rate for the unit for the hour, lb/mmBtu;

E_f = NO_X emission rate for the unit for a given fuel at heat input rate HI_f, lb/mmBtu;

HI_f = Heat input rate for a given fuel during the fuel usage time, as determined using equation F–19 or F–20 in section 5.5 of appendix F of this part, mmBtu/hr;

H_T = Total heat input for all fuels for the hour from Equation E–1;

t_f = Fuel usage time for each fuel, rounded to the nearest .25 hour.

Note: For hours where a fuel is combusted for only part of the hour, use the fuel flow rate or mass flow rate during the fuel usage time, instead of the total fuel flow or mass flow during the hour, when calculating heat input rate using Equation F–19 or F–20.

* * * * *

68. Appendix E to part 75, section 4 is amended by revising the introductory paragraph and section 4.1 to read as follows:

4. Quality Assurance/Quality Control Plan

Include a section on the NO_X emission rate determination as part of the monitoring quality assurance/quality control plan required under § 75.21 and appendix B of this part for each gas-fired peaking unit and each oil-fired peaking unit. In this section present information including, but not limited to, the following: (1) a copy of all data and results from the initial NO_X emission rate testing, including the values of quality assurance parameters specified in Section 2.3 of this appendix; (2) a copy of all data and results from the most recent NO_X emission rate load correlation testing; (3) a copy of the unit manufacturer's recommended range of quality assurance- and quality control-related operating parameters.

4.1 Submit a copy of the unit manufacturer's recommended range of operating parameter values, and the range of operating parameter values recorded during the previous NO_X emission rate test that determined the unit's NO_X emission rate, along with the unit's revised monitoring plan submitted with the certification application.

* * * * *

Appendix F to Part 75—Conversion Procedures

69. Appendix F to part 75, section 2 is amended by revising section 2.4 to read as follows:

* * * * *

2. Procedures for SO_2 Emissions

* * * * *

2.4 Round all SO_2 mass emissions to the number of decimal places identified in § 75.50(c) or § 75.54(c) of this part (in lb/hr).

* * * * *

70. Appendix F to part 75, section 3 is amended by revising the equation in section 3.2, by adding a sentence to the end of 3.3.4. and by revising sections 3.3.6.1, 3.3.6.2, and 3.4 to read as follows:

3. Procedures for NO_X Emission Rate

* * * * *

3.2 When the NO_X continuous emission monitoring system uses CO_2 as the diluent, use the following conversion procedure:

$$E = K C_h F_c \frac{100}{\%CO_2} \qquad \text{(Eq. F–6)}$$

where:

K, E, Ch, Fc, and $\%CO_2$ are defined in section 3.3 of this appendix.

Where CO_2 and NO_X measurements are performed on a different moisture basis, use the equations in Method 19 in Appendix A of part 60 of this chapter.

* * * * *

3.3.4 * * * A minimum concentration of 5.0 percent CO_2 and a maximum concentration of 14.0 percent O_2 may be substituted for measured diluent gas concentration values during unit start-up.

3.3.5 * * *

3.3.6 * * *

3.3.6.1 H, C, S, N, and O are content by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as the gross calorific value (GCV) by ultimate analysis of the fuel combusted using ASTM D3176–89, "Standard Practice for Ultimate Analysis of Coal and Coke" (solid fuels), ASTM D5291–92, "Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants" (liquid fuels) or computed from results using ASTM D1945–91, "Standard Test Method for Analysis of Natural Gas by Gas Chromatography" or ASTM D1946–90, "Standard Practice for Analysis of Reformed Gas by Gas Chromatography" (gaseous fuels) as applicable. (These methods are incorporated by reference under § 75.6 of this part.)

3.3.6.2 GCV is the gross calorific value (Btu/lb) of the fuel combusted determined by ASTM D2015–91, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter", ASTM D1989–92 "Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Isoperibol Calorimeters," or ASTM D3286–91a "Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter" for solid and liquid fuels, and ASTM D240–87 (Reapproved 1991) "Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter", or ASTM D2382–88 "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)" for oil; and ASTM D3588–91 "Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density (Specific Gravity) of Gaseous Fuels," ASTM D4891–89 "Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion," GPA Standard 2172 86 "Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis," GPA Standard 2261–90 "Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography," or ASTM D1826–88, "Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter" for gaseous fuels, as applicable. (These methods are incorporated by reference under § 75.6).

3.3.6.3 * * *

3.3.6.4 * * *

3.4 Use the following equations to calculate the average NO_X emission rate for each calendar quarter (Eq. F–9) and the average emission rate for the calendar year (Eq. F–10) in lb/mmBtu.

$$E_q = \sum_{i=1}^{n} \frac{E_i}{n} \qquad \text{(Eq. F–9)}$$

where:

Eq=Quarterly average NO_X emission rate, lb/mmBtu.

Ei=Hourly average Nox emission rate, lb/mmBtu.

n=Number of hourly rates during calendar quarter.

$$E_a = \sum_{i=1}^{n} \frac{E_i}{m} \qquad \text{(Eq. F–10)}$$

where:

E_a=Average NO_X emission rate for the calendar year, lb/mmBtu.

E_i=Hourly average NO_X emission rate, lb/mmBtu.

m=Number of hours for which E_i is available in the calendar year.

3.5 * * *

* * * * *

71. Appendix F to part 75, section 4 is amended by revising the introductory paragraph, by revising the definition of the variable "C_h" in Equation F–11 in section 4.1, by revising sections 4.4.1 and 4.4.2. and by adding two sentences to the beginning of sections 4.3.1, 4.3.2, 4.3.3, and 4.4.3 to read as follows:

4. Procedures for CO_2 Mass Emissions

Use the following procedures to convert continuous emission monitoring system measurements of CO_2 concentration (percentage) and volumetric flow rate (scfh) into CO_2 mass emissions (in tons/day) when the owner or operator uses a CO_2 continuous emission monitoring system (consisting of a CO_2 or O_2 pollutant monitor) and a flow monitoring system to monitor CO_2 emissions from an affected unit.

4.1 * * *

(Eq. F–11)

Where:

* * * * *

C_h=Hourly average CO_2 concentration, stack moisture basis, $\%CO_2$. A minimum concentration of 5.0 percent CO_2 may be substituted for the measured concentration during unit start-up.

* * * * *

4.2 * * *

4.3 * * *

4.3.1 On or after January 1, 1996, use the missing data provisions of § 75.35 and do not use the provisions of this section. Prior to January 1, 1996, use either the provisions of this section or the provisions of § 75.35. * * *

4.3.2 On or after January 1, 1996, use the missing data provisions of § 75.35 and do not use the provisions of this section. Prior to January 1, 1996, use either the provisions of this section or the provisions of § 75.35. * * *

4.3.3 On or after January 1, 1996, use the missing data provisions of § 75.35 and do not use the provisions of this section. Prior to January 1, 1996, use either the provisions of this section or the provisions of § 75.35. * * *

4.4 For an affected unit, when the owner or operator is continuously monitoring O_2 concentration (in percent by volume) of flue gases using an O_2 monitor, use the equations and procedures in section 4.4.1 through 4.4.3 of this appendix to determine hourly CO_2 mass emissions (in tons).

4.4.1 Use appropriate F and F_c factors from section 3.3.5 of this appendix in the following equation to determine hourly average CO_2 concentration of flue gases (in percent by volume).

$$CO_{2d} = 100 \frac{F_c}{F} \frac{20.9 - O_{2d}}{20.9} \quad \text{(Eq. F–14a)}$$

(Eq. F–14a)
Where:
CO_{2d}=Hourly average CO_2 concentration, percent by volume, dry basis.
F, F_c=F-factor or carbon-based Fc-factor from section 3.3.5 of this appendix.
20.9=Percentage of O_2 in ambient air.
O_{2d}=Hourly average O_2 concentration, percent by volume, dry basis. A maximum concentration of 14.0 percent O2 may be substituted for the measured concentration during unit start-up.
or
(Eq. F–14b)
Where:
CO_{2w}=Hourly average CO_2 concentration, percent by volume, wet basis.
O_{2w}=Hourly average O_2 concentration, percent by volume, wet basis. A maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration during unit start-up.
F, F_c=F-factor or carbon-based F_c-factor from section 3.3.5 of this appendix.
20.9=Percentage of O_2 in ambient air.
$\%H_2O$=Moisture content of gas in the stack, percent.

4.4.2 Determine CO_2 mass emissions (in tons) from hourly average CO_2 concentration (percent by volume) using Equation F–11 and the procedure in section 4.1, where O_2 measurements are on a wet basis, or using the procedures in section 4.2 of this appendix, where O_2 measurements are on a dry basis.

4.4.3 On or after January 1, 1996, use the missing data provisions of § 75.35 and do not use the provisions of this section. Prior to January 1, 1996, either use the provisions of § 75.35 or use the provisions of this section. * * *

* * * * *

72. Appendix F to part 75, section 5 is amended by revising section 5.1 and by revising the definition of the variable "$\%CO_{2w}$" in Equation F–15 in section 5.2.1, by revising the definition of the variable "$\%CO_{2d}$" in Equation F–16 in section 5.2.2, by revising the definition of the variable "$\%O_{2w}$" in Equation F–17 in section 5.2.3, and by revising the definition of the variable "$\%O_{2d}$" in Equation F–18 in section 5.2.4, by revising seciton 5.5.1, by adding two sentences to the beginning of sections 5.3, and 5.4; by revising section 5.5; by revising section 5.5.2; by revising section 5.5.3.1; by revising section 5.5.3.2;by revising section 5.5.3.3; and by adding new sections 5.5.4, 5.5.5, 5.5.6, and 5.5.7 to read as follows:

5. Procedures for Heat Input

* * * * *

5.1 Calculate and record heat input to an affected unit on an hourly basis, except as provided below. The owner or operator may choose to use the provisions specified in § 75.16(e) or in section 2.1.2 of appendix D of this part in conjunction with the procedures provided below to apportion heat input among each unit using the common stack or common pipe header.

5.2 * * *

5.2.1 * * *

(Eq. F–15)
Where:
$\%CO_{2w}$=Hourly concentration of CO_2, percent CO_2 wet basis. A minimum concentration of 5.0 percent CO_2 may be substituted for the measured concentration during unit startup.

5.2.2 * * *

(Eq. F–16)
Where:
$\%CO_{2d}$=Hourly concentration of CO_2, percent CO_2 dry basis. A minimum concentration of 5.0 percent CO_2 may be substituted for the measured concentration during unit startup.

* * * * *

5.2.3 * * *

(Eq. F–17)
Where:
$\%O_{2w}$=Hourly concentration of O_2, percent O_2 wet basis. A maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration during unit startup.

* * * * *

5.2.4 * * *

(Eq. F–18)
Where:
$\%O_{2d}$=Hourly concentration of O_2, percent O_2 dry basis. A maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration during unit startup.

* * * * *

5.3 On or after January 1, 1996, use the missing data provisions of § 75.36 and do not use the provisions of this section. Prior to January 1, 1996, use either the missing data provisions of this section or the provisions of § 75.36. * * *

5.4 On or after January 1, 1996, use the missing data provisions of § 75.36 and do not use the provisions of this section. Prior to January 1, 1996, use either the missing data provisions of this section or the provisions of § 75.36. * * *

5.5 For a gas-fired or oil-fired unit that does not have a flow monitor and is using the procedures specified in appendix D to this part to monitor SO_2 emissions or for any affected unit using a common stack for which the owner or operator chooses to determine heat input by fuel sampling and analysis, use the following procedures to calculate hourly heat input in mmBtu/hr.

5.5.1 When the unit is combusting oil, use the following equation to calculate hourly heat input.

(Eq. F–19)

$$HI_o = M_o \frac{GCV_o}{10^6} \quad \text{(Eq. F–19)}$$

Where:
HIo=Hourly heat input from oil, mmBtu/hr.
Mo=Mass of oil consumed per hour, as determined using procedures in appendix D of this part, in lb, tons, or kg.
GCVo=Gross calorific value of oil, as measured daily by ASTM D240–87 (Reapproved 1991), ASTM D2015–91, or ASTM D2382–88, Btu/unit mass (incorporated by reference under § 75.6 of this part).
106=Conversion of Btu to mmBtu.

When performing oil sampling and analysis solely for the purpose of the missing data procedures in § 75.36, oil samples for measuring GCV may be taken weekly and the procedures specified in appendix D of this part for determining the mass of oil consumed per hour are optional.

5.5.2 When the unit is combusting gaseous fuels, use the following equation to calculate heat input from gaseous fuels for each hour.

(Eq. F–20)

$$HI_g = \frac{Q_g \times GCV_g}{10{,}000} \quad \text{(Eq. F–20)}$$

Where:
HI_g=Hourly heat input from gaseous fuel, mmBtu/hour.
Q_g=Metered flow or amount of gaseous fuel combusted during the hour, hundred cubic feet.
GCV_g=Gross calorific value of gaseous fuel, as determined by sampling at least every month the gaseous fuel is combusted, or as verified by the contractual supplier at least once every month the gaseous fuel is combusted using ASTM D1826–88, ASTM D3588–91, ASTM D4891–89, GPA Standard 2172–86 "Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis," or GPA Standard 2261–90 "Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography," Btu/cubic foot (incorporated by reference under § 75.6 of this part).
10,000=Conversion factor, (Btu-100 scf)/(mmBtu-scf).

5.5.3 * * *

5.5.3.1 Perform coal sampling daily according to section 5.3.2.2 in Method 19 in appendix A to part 60 of this chapter and use

ASTM Method D2234–89, "Standard Test Methods for Collection of a Gross Sample of Coal," (incorporated by reference under § 75.6) Type I, Conditions A, B, or C and systematic spacing for sampling. (When performing coal sampling solely for the purposes of the missing data procedures in § 75.36, use of ASTM D2234–89 is optional, and coal samples may be taken weekly.)

5.5.3.2 Use ASTM D2013–86, "Standard Method of Preparing Coal Samples for Analysis," for preparation of a daily coal sample and analyze each daily coal sample for gross calorific value using ASTM D2015–91, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter", ASTM 1989–92 "Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Isoperibol Calorimeters," or ASTM 3286–91a "Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter." (All ASTM methods are incorporated by reference under § 75.6 of this part.)

On-line coal analysis may also be used if the on-line analytical instrument has been demonstrated to be equivalent to the applicable ASTM methods under §§ 75.23 and 75.66.

5.5.3.3 Calculate the heat input from coal using the following equation:

$$HI_c = M_c \frac{GCV_c}{500} \qquad \text{(Eq. F–21)}$$

(Eq. F–21)

Where:

HIc=Daily heat input from coal, mmBtu/day.

Mc=Mass of coal consumed per day, as measured and recorded in company records, tons.

GCV_c=Gross calorific value of coal sample, as measured by ASTM D3176–89, D1989–92, D3286–91a, or D2015–91, Btu/lb.

500=Conversion of Btu/lb to mmBtu/ton.

5.5.4 For units obtaining heat input values daily instead of hourly, apportion the daily heat input using the fraction of the daily steam load or daily unit operating load used each hour in order to obtain HI_i for use in the above equations. Alternatively, use the hourly mass of coal consumed in equation F–21.

5.5.5 If a daily fuel sampling value for gross calorific value is not available, substitute the maximum gross calorific value measured from the previous 30 daily samples. If a monthly fuel sampling value for gross calorific value is not available, substitute the maximum gross calorific value measured from the previous 3 monthly samples.

5.5.6 If a fuel flow value is not available, use the fuel flowmeter missing data procedures in section 2.4 of appendix D of this part. If a daily coal consumption value is not available, substitute the maximum fuel feed rate during the previous thirty days when the unit burned coal.

5.5.7 Results for samples must be available no later than thirty calendar days after the sample is composited or taken. However, during an audit, the Administrator may require that the results be available in five business days, or sooner if practicable.

* * * * *

73. Appendix F to part 75, section 6 is amended by revising the definitions for Equation F–22 to read as follows:

6. Procedure for Converting Volumetric Flow to STP

* * * * *

(Eq. F–22)

Where:

$$W_{CO_2} = \frac{\left(MW_C + MW_{O_2}\right) \times W_C}{2{,}000\, MW_C} \text{(Eq. G–1)}$$

F_{STP}=Flue gas volumetric flow rate at standard temperature and pressure, scfh.

F_{Actual}=Flue gas volumetric flow rate at actual temperature and pressure, acfh.

T_{Std}=Standard temperature=528 °R.

T_{Stack}=Flue gas temperature at flow monitor location, °R, where °R=460+°F.

P_{Stack}=The absolute flue gas pressure=barometric pressure at the flow monitor location + flue gas static pressure, inches of mercury.

P_{Std}=Standard pressure=29.92 inches of mercury.

74. Appendix F to part 75 is amended by reserving section 7:

7. [Reserved]

* * * * *

Appendix G to Part 75—Determination of CO_2 Emissions

75. Appendix G to part 75, section 2 is amended by revising sections 2.1, 2.2 and 2.3 to read as follows:

* * * * *

2. Procedures for Estimating CO_2 Emissions From Combustion

* * * * *

2.1 Use the following equation to calculate daily CO_2 mass emissions (in tons/day) from the combustion of fossil fuels. Where fuel flow is measured in a common pipe header (i.e., a pipe carrying fuel for multiple units), the owner or operator may use the procedures in section 2.1.2 of appendix D of this part for combining or apportioning emissions, except that the term "SO_2 mass emissions" is replaced with the term "CO_2 mass emissions."

Where:

W_{co2}=CO_2 emitted from combustion, tons/day.

MW_c=Molecular weight of carbon (12.0).

MW_{o2}=Molecular weight of oxygen (32.0)

W_C=Carbon burned, lb/day, determined using fuel sampling and analysis and fuel feed rates. Collect at least one fuel sample during each week that the unit combusts coal or oil, one sample per each shipment for diesel fuel, and one fuel sample each month the unit combusts gaseous fuels. Collect coal samples from a location in the fuel handling system that provides a sample representative of the fuel bunkered or consumed during the week. Determine the carbon content of each fuel sampling using one of the following methods: ASTM D3178–89 for coal; ASTM D5291–92 "Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants," ultimate analysis of oil, or computations based upon ASTM D3238–90 and either ASTM D2502–87 or ASTM D2503–82 (Reapproved 1987) for oil; and computations based on ASTM D1945–91 or ASTM D1946–90 for gas. Use daily fuel feed rates from company records for all fuels and the carbon content of the most recent fuel sample under this section to determine tons of carbon per day from combustion of each fuel. (All ASTM methods are incorporated by reference under § 75.6). Where more than one fuel is combusted during a calendar day, calculate total tons of carbon for the day from all fuels.

$$W_{CO_2} = \left(\frac{F_C \times H \times U_f \times MW_{CO_2}}{2000} \right) \qquad \text{(Eq. G–4)}$$

(Eq.G–4)

Where:

WCO_2=CO_2 emitted from combustion, tons/hr.

Fc=Carbon-based F-factor, 1,040 scf/mmBtu for natural gas; 1,420 scf/mm/btu for crude, residual. or distillate oil.

H = Hourly heat input in mmBtu, as calculated using the procedures in section 5 of appendix F of this part.

Uf=1/385 scf CO2/lb-mole at 14.7 psia and 68 °F.

* * * * *

76. Appendix G to part 75, section 3 is amended by revising the introductory paragraph; by revising section 3.1.2 before the equation and the definition of the variable "W_{SO2}"; and by adding Equation G–7 and definitions to section 3.1.2 to read as follows:

3. Procedures for Estimating CO_2 Emissions From Sorbent

When the affected unit has a wet flue gas desulfurization system, is a fluidized bed boiler, or uses other emission controls with sorbent injection, use either a CO_2 continuous emission monitoring system or an O_2 monitor and a flow monitor, or use the procedures, methods, and equations in sections 3.1 through 3.2 of this appendix to determine daily CO_2 mass emissions from the sorbent (in tons).

3.1 * * *

3.1.1 * * *

3.1.2 In lieu of using Equation G–5, any owner or operator who operates and maintains a certified SO_2-diluent continuous emission monitoring system (consisting of an SO_2 pollutant concentration monitor and an O_2 or CO_2 diluent gas monitor), for measuring and recording SO_2 emission rate (in lb/mmBtu) at the outlet to the emission controls and who uses the applicable procedures, methods, and equations in § 75.15 of this part to estimate the SO_2 emissions removal efficiency of the emission controls, may use the following equations to estimate daily CO_2 mass emissions from sorbent (in tons).

(Eq. G–6)

where:

* * * * *

W_{SO2}=Sulfur dioxide removed, lb/day, as calculated below using Eq. G–7.

* * * * *

and

$$W_{SO_2} = SO_{2o} \frac{\%R}{(100 - \%R)} \qquad \text{(Eq. G–7)}$$

(Eq. G–7)

where:

WSO_2=Weight of sulfur dioxide removed, lb/day.

SO_{2o}=SO_2 mass emissions monitored at the outlet, lb/day, as calculated using the equations and procedures in section 2 of appendix F of this part.

%R=Overall percentage SO_2 emissions removal efficiency, calculated using Equations 1 through 7 in § 75.15 using daily instead of annual average emission rates.

* * * * *

2.2 For an affected coal-fired unit, the estimate of daily CO_2 mass emissions given by Equation G–1 may be adjusted to account for carbon retained in the ash using the procedures in either section 2.2.1 through 2.2.3 or section 2.2.4 of this appendix.

* * * * *

2.3 In lieu of using the procedures, methods, and equations in section 2.1 of this appendix, the owner or operator of an affected gas-fired unit as defined under § 72.2 of this chapter may use the following equation and records of hourly heat input to estimate hourly CO_2 mass emissions (in tons).

Appendix J to Part 75—Compliance Dates for Revised Recordkeeping Requirements and Missing Data Procedures

77. Appendix J to part 75 is added to read as follows:

1. *Recordkeeping Requirements*

The owner or operator shall meet the recordkeeping requirements of subpart F of this part by following either §§ 75.50, 75.51 and 75.52 or §§ 75.54, 75.55 and 75.56, from July 17, 1995 through December 31, 1995. On or after January 1, 1996, the owner or operator shall meet the recordkeeping requirements of subpart F of this part by

meeting the requirements of §§ 75.54, 75.55, and 75.56.

2. *Missing Data Substitution Procedures*

The owner or operator shall meet the missing data substitution requirements for carbon dioxide (CO_2) and heat input by following either §§ 75.35 and 75.36 or sections 4.3.1 through 4.3.3, section 4.4.3 and sections 5.3 through 5.4 of appendix F of this part from July 17, 1995 through December 31, 1995. The owner or operator shall meet the missing data substitution requirements for fuel flowmeters in appendix D of this part by following either section 2.4.3.1 or sections 2.4.3.2 and 2.4.3.3 of appendix D of this part from July 17, 1995 through December 31, 1995. On or after January 1, 1996, the owner or operator shall meet the missing data substitution requirements for CO_2 concentration, that input and fuel flowmeters by meeting the requirements of §§ 75.35 and 75.36 and sections 2.4.3.2 through 2.4.3.3 of appendix D of this part.

[FR Doc. 95–11498 Filed 5–10–95; 3:40 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[FRL–5203–8]

Acid Rain Program: Permits Regulation and Continuous Emission Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to amend the Continuous Emission Monitoring (CEM) provisions and the Permits Regulation General Provisions of the Acid Rain Program for the purpose of making the implementation of the program more efficient. Elsewhere in this issue of the **Federal Register**, EPA is amending the CEM and General provisions as a direct final rule without prior proposal because the Agency views these revisions as noncontroversial and anticipates no significant adverse comments. A detailed list of the revisions is set forth in the direct final rule. If no significant adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. The EPA believes that these revisions are noncontroversial because these are technical corrections and other amendments that address various implementation issues without major changes in policy. Elsewhere in this issue of the **Federal Register**, EPA has published an interim final rule addressing additional Acid Rain monitoring issues that may be controversial.

DATES: Comments on this proposed rule must be received on or before June 16, 1995.

ADDRESSES: Any written comments on this proposed rule (companion to the direct final rule) must be identified with the Docket No. A–94–16, must be identified as comments on this proposed rule (companion to the direct final rule), and must be submitted in duplicate to: EPA Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone number (202) 233–9180.

SUPPLEMENTARY INFORMATION: The EPA believes that these revisions are noncontroversial; however, if EPA does receive significant adverse comments, EPA will publish a document in the **Federal Register** withdrawing the portions of the direct final rule receiving significant adverse comment. All significant adverse comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: April 28, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–11496 Filed 5–10–95; 3:41 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL–5203–2]

Acid Rain Program: Continuous Emission Monitoring Rule Technical Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule and request for comments.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic deposition and its serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On April 17, 1995, the EPA and the parties signed a settlement agreement addressing continuous emission monitoring (CEM) issues.

In this interim final rule, EPA is amending certain provisions of the CEM regulations to allow industry to be in compliance in situations that were not contemplated in the original rulemaking. The interim final rule allows industry additional flexibility to implement new provisions immediately that address these unforeseen situations, reduces the possibility of underestimating emissions, and also allows the public to comment upon these new provisions.

DATES: *Effective Dates.* This interim final rule shall become effective on July 17, 1995. The provisions of §§ 75.11(a), 75.21(a), and 75.32(a)(3); sections 6.3.1, 6.3.2 and 6.4 of appendix A of part 75; and section 2.1 of appendix B of part 75 are suspended temporarily from July 17, 1995 through December 31, 1996. Sections 75.11 (e) and (g), 75.21(f), 75.30 (d) and (e), 75.32(a)(4), 75.55(e), and 75.56(a)(6); Figure 5 and sections 6.3.3, 6.3.4 and 6.4.1 of appendix A of part 75; section 2.1.7 of appendix B of part 75; and section 7 of appendix F of part 75 are temporarily added and are effective from July 17, 1995 through December 31, 1996.

Comment Date. Comments on this interim final rule must be received on or before June 16, 1995.

ADDRESSES: Any written comments on these interim final rule revisions must be identified with the Docket No. A–94–16, must be identified as comments on the interim final rule, and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone number (202) 233–9180.

SUPPLEMENTARY INFORMATION: All public comments received on the interim final rule will be addressed in a subsequent final rulemaking notice. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this interim final rule should do so at this time.

For additional information about further revisions to the Acid Rain monitoring provisions, see the direct final rule published elsewhere in this **Federal Register.**

The EPA intends to publish a final rulemaking document as a follow-up to this interim final rule prior to January 1, 1997 that will incorporate provisions based upon public comments. At that time, the sections that are added temporarily by this interim final rule would be permanently added by the follow-up final rule. Provisions that are suspended temporarily in this interim final rule would be removed in the follow-up final rule. If EPA were not to publish a follow-up final rule prior to January 1, 1997, the sections temporarily added by the interim final rule would expire and the sections suspended temporarily by the interim final rule would be effective January 1, 1997.

I. Background

Title IV of the Clean Air Act (CAA or the Act), as amended November 15, 1990, requires the Environmental Protection Agency (EPA or Agency) to establish an Acid Rain Program to reduce the adverse effects of acidic deposition. On January 11, 1993, the Agency promulgated final rules implementing the program, including the General Provisions of the Permits Regulation and the CEM rule (58 FR 3590–3766). Technical corrections were published on June 23, 1993 (58 FR 34126) and July 30, 1993 (58 FR 40746–40752). This notice of interim final rulemaking, like the notice of direct final rulemaking published elsewhere in this issue of the **Federal Register,** contains additional technical corrections and other amendments to address various implementation issues that have come to light since the final rule was published on January 11, 1993. The effective date of these interim final amendments will be July 17, 1995.

The EPA has been engaged in settlement discussions with several parties who challenged certain provisions of the Acid Rain CEM rules promulgated on January 11, 1993. [See *Environmental Defense Fund v. Browner,* No. 93–1203 and consolidated cases, "Complex" (D.C. Cir., filed March 12, 1993.] Although the parties have been able to reach agreement on a number of issues, which are addressed in the direct final rule, some additional issues remain outstanding. These outstanding issues, unlike the noncontroversial and routine technical corrections addressed by the direct final rule, may not be considered noncontroversial and therefore are being addressed separately in this interim final rule. The issues addressed by this interim final rule are: (1) A requirement that units with SO_2 CEMS burning gaseous fuels only must use heat input and a default SO_2 emission rate or appendix D methods to determine SO_2 emissions instead of an SO_2 CEMS and a flow monitor [§ 75.11(e)], (2) the procedure for assigning proportional flow rates for emissions through multiple stacks or bypass stacks for purposes of substituting missing data [§ 75.30(e)], (3) the procedure for determining proper operation of units with add-on controls for purposes of substituting missing data (§ 75.34), (4) clarification of provisions in the January 11, 1993 rule that the unit must be operating while performing certain quality assurance procedures (appendix A, sections 6.3.1 and 6.3.2; appendix B, section 2.1 Introductory Text), and (5) the procedures for performing cycle time tests (appendix A, section 6.4).

In order to allow for necessary changes to the data acquisition and handling systems (DAHS) required by the revisions to §§ 75.11(e) and 75.30(e), owners or operators may choose to delay compliance with the revised provisions regarding use of heat input and a default SO_2 emission rate or appendix D methods for units with SO_2 CEMS when burning only gaseous fuels [§ 75.11(e)] or with the procedure for assigning proportional flow rates for emissions through multiple stacks or bypass stacks for purposes of missing data substitution [§ 75.30(e)] until January 1, 1997. The EPA believes that this will give utilities time to comment

on these issues and EPA time to respond to these issues in a final rulemaking before the provisions become required. Furthermore, EPA believes an optional delayed compliance date for these revised provisions is warranted because utilities may need time to incorporate these changes into their DAHS, emissions will be monitored under the current regulations until the changeover, and emissions affected by these provisions will be small.

II. EPA Action

Under CAA Section 412(c), not later than January 1, 1995, owners and operators of Acid Rain affected units must install and operate CEMS, quality assure the data, and keep records and reports in accordance with the Acid Rain regulations. Because EPA believes the revisions published in this rule will improve and enhance the implementation of the Acid Rain monitoring program, EPA believes it is necessary that the revisions become effective as soon as possible. Many of the monitoring provisions in part 75 are interrelated and would be difficult to separate from other, related provisions and therefore these technical revisions to the monitoring provisions must be considered as a whole. For these reasons, EPA is publishing the noncontroversial revisions through a direct final rulemaking and is also publishing provisions that may be controversial and on which it may receive comment through this interim final rulemaking. Both the direct final rule and the interim final rule will become effective on the same date. Even though comments may be submitted on these interim final provisions, EPA believes that it is necessary to include the interim final revisions in the revised CEM regulation in order to assure an overall consistent and implementable Acid Rain monitoring program. Therefore, EPA is issuing these amendments to the CEM regulation effective at the same time as the direct final amendments and will take comment on both sets of revisions. Comments on the interim final provisions must be submitted to Air Docket A–94–16, which is also the docket for the direct final rulemaking published elsewhere in this issue of the **Federal Register**, and must be identified as comments on the interim final rule to distinguish them from comments on the direct final provisions. Because the provisions of the direct final rule and interim final rule are interrelated, the docket contains supporting material and relevant information for both rulemakings.

As described in the notice of direct final rulemaking, if EPA receives significant adverse comments on the direct final rule, EPA will withdraw those portions of the direct final rule upon which comments are submitted, address the comments, and subsequently issue a final rule that addresses the withdrawn portions of the direct final rule. Except for certain specified subsections which will cease to be in effect as of January 1, 1997, the interim final rule will remain in effect until EPA publishes a subsequent final rule, following consideration of comments received in response to the notice of proposed rulemaking corresponding to this interim final rule. At the time of that future rulemaking, sections that are temporarily added in today's interim final rule would be permanently added and would replace provisions in the current rule that are temporarily suspended.

The EPA has been addressing many technical issues during early implementation of the Acid Rain monitoring program through issuance of policy statements interpreting the monitoring provisions of the January 11, 1993 rule, as well as by issuance of technical guidance. Many of the clarifying policy statements and technical guidance, which are to a large extent reflected in the direct final rule and interim final rule, are now being used by utilities for implementation guidance. Therefore, EPA believes it would be contrary to the public interest to delay the effectiveness of these monitoring provisions and believes these technical revisions should be effective immediately. Because EPA believes it is necessary to issue the technical corrections to the CEMS regulation as soon as possible and because the revised portions of the monitoring provisions are integrally interrelated, EPA believes it necessary for the full complement of revisions to take effect at the same time. The EPA is therefore invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this interim final rule takes effect.[1] [*See* 5 U.S.C. 553(b)(B); see also 42 U.S.C. 7607(d)(1).] Under CAA Section 307(d)(1), subsection 307(d) does not apply in the case of a rule for which the agency invokes the good cause exception of 5 U.S.C. 553(b)(B). Therefore, CAA Section 307(d) does not apply to this interim final rule. The EPA believes that notice-and-comment rulemaking prior to the effective date of the interim final rule would be impracticable and contrary to the public interest because of the complex and interrelated nature of the monitoring provisions that make it necessary to revise all of the CEM provisions in a consistent and integrated way in order to avoid inconsistency in monitoring requirements and because of the need to make the technical corrections and amendments available for use by utilities as soon as possible.

[1] As previously noted however, EPA is providing the public with an opportunity to comment on EPA's direct final rule and will withdraw any portions of the direct final rule upon which significant adverse comments are submitted.

III. Rationale

A. SO_2 Monitoring During Combustion of Gas for Units With SO_2 CEMS

Some coal-fired units and oil-fired units also combust pipeline natural gas. Natural gas has a very low sulfur content and will produce extremely low SO_2 concentrations when combusted alone. In order to monitor these low concentrations accurately, a utility would need to use an SO_2 monitor with a range of a few parts per million (ppm). At this range, there are no Protocol 1 gases available for calibrations. Furthermore, it is unlikely that the CEMS would be able to pass the relative accuracy test at such low levels because it is difficult to measure extremely small concentrations precisely with either the reference method or a CEMS. The EPA had concerns about the accuracy of the SO_2 concentration data when measuring natural gas alone, because of the extremely low concentrations and because of the difficulty in performing appropriate quality assurance testing. The EPA decided that it was inappropriate for units to use an SO_2 CEMS to measure emissions from natural gas only. However, a coal-fired, oil-fired, or gas-fired unit could still use an SO_2 CEMS for measuring SO_2 when combusting fuels other than natural gas (or other gaseous fuel with a sulfur content no greater than natural gas) or when combusting a combination of fuels.

In order to address this situation, some industry representatives requested to use the provisions of appendix D of part 75 for determination of SO_2 emissions from natural gas instead of use of an SO_2 CEMS. (See Docket Item II–D–29, Letter from B. Machaver to S. Jewett, November 30, 1993; Docket Item II–D–30, Log of telephone conversation on Questions Concerning 40 CFR Part 75 Regulations for Oil/Gas Fired Title IV Affected Units (Questions provided in November 30, 1993 Memorandum to Susan Jewett), December 7, 1993.) After consideration, EPA agreed that this

would be an acceptable alternative to using the SO_2 CEMS during combustion of low sulfur gaseous fuel, so long as the utility certifies an excepted monitoring system under appendix D of part 75 for the measuring of gas. This requires accuracy testing of a gas flowmeter and testing of the DAHS. Furthermore, the utility must perform the procedures under appendix D, with the same fuel sampling, analysis, and fuel flowmeter quality assurance/quality control (QA/QC) requirements.

Another variant suggested by a utility was to use the default SO_2 emission rate factor of 0.0006 pound per million British thermal units (lb/mmBtu) for pipeline natural gas that EPA previously discussed in a policy statement regarding the "NADB emission rate" in appendix D and the heat input calculated by a flow monitor and a diluent monitor. (See Docket Item II–D–54, Acid Rain CEM (Part 75) Policy Manual; Docket Item II–D–59, Letter from R. LaBorde, Central Louisiana Electric Company to J. Winkler, EPA Region VI Re: Requestion for Clarification, Rodemacher Power Station Unit-1, Rapides Parish, LA, August 3, 1994). After further consideration, EPA agreed that this also is acceptable. (See Docket Item II–D–67, Response to R. LaBorde, CLECO, from J. Hepola, EPA, August 25, 1994.) The owner or operator must certify the system using the flow monitoring system, the diluent monitor, and the DAHS as a system for monitoring SO_2 emissions. These monitors must be tested following the QA/QC requirements of appendix B of part 75. Both of these methods allow utilities to use provisions that are allowed for estimating the low SO_2 emissions due to combustion of gaseous fuels with a low sulfur content under appendix D of part 75. The EPA believes that these methods will allow SO_2 accounting with sufficient accuracy for the low emission rate from combustion of natural gas. These methods are not sufficiently accurate for combustion of oil or coal because of their higher sulfur content. Similarly, during periods of co-firing of oil, coal or other high sulfur fuels, the owner or operator must use the certified SO_2 CEMS.

B. Missing Data Substitution Provisions

1. Missing Data Procedures for Units With Add-On Emission Controls

Many utilities were uncertain of the requirements for substituting and reporting missing data for units with add-on emission controls. For instance, the regulation was not clear as to whether or not parametric data needed to be reported and recorded for these units. Industry also commented that the possible options for substituting missing data were unclear for these units. (See Docket Item II–D–3, Discussion Issues for TU Electric and EPA; Docket Item II–D–4, Draft Meeting Notes for EPA-Texas Utilities Teleconference, December 7, 1992). In response to these concerns, EPA prepared a policy statement to clarify missing data substitution procedures for units with add-on emission controls. (See Docket Item II–D–54, Acid Rain CEM (Part 75) Policy Manual). The EPA has amended part 75 in part to incorporate these interpretations.

The amendments to part 75 allow four ways of substituting for missing data. The default option is to substitute the maximum potential concentration of SO_2 or the maximum potential NO_X emission rate when no information on the emission controls is available. A unit with SO_2 add-on emission controls with an inlet monitor may instead use the maximum SO_2 concentration at the scrubber inlet during the previous 720 quality-assured monitor operating hours. This option may always be used by a source.

Another option is to develop a site-specific correlation to determine the removal efficiency of the control equipment. The designated representative for a unit will petition the Administrator for use of this correlation instead of following standard missing data substitution procedures. The requirements for using this correlation as a missing data substitution method are located in appendix C of part 75. The correlation involves monitoring emission control parameters and electronically reporting this data for each missing data period to EPA each quarter. This correlation method may only be used if the availability or the CEMS at the outlet of the emission controls is 90.0 percent or greater.

A third option is to use the standard missing data procedures and to keep information on the emission controls at the site. The parameters listed in appendix C are a guideline of the types of information that are to be used to verify the add-on emission controls are operating properly. The EPA considers "proper operation" of the control equipment to require that the removal efficiency is equal to or greater than that when monitor data is available, such as during the hours before and after the missing data period. It is not enough to show that the control device simply is operating. The information that a utility should keep relates to site-specific equipment. Part 75 does not require that every single one of those parameters must be kept, nor does it prohibit the use of other information to verify proper operation of the emission controls. Also, these records do not have to be kept electronically. However, the designated representative must report in the monitoring plan for the unit the range of each parameter that indicates proper operation of the add-on emission controls. The EPA or a State air pollution control agency could request to look at the parametric records or to have them reported at any time to verify that the add-on emission controls are maintaining emission reductions and are operating properly, by comparing the data with the range of each parameter reported in the monitoring plan. In addition, a designated representative for a source must certify that the emission controls are properly operating and that the missing data procedures are not systematically underestimating emissions during the quarter where the utility uses the standard missing data procedures. This additional certification is to be reported as part of the designated representative's certification with each quarterly report.

The fourth and final option for supplying missing data is to use the standard missing data procedures as in the third option, and then to petition the Administrator for use of a value more representative of actual emissions than the maximum SO_2 concentration in the previous 720 hours or the maximum NO_X emission rate at the corresponding load range. As in the existing rule, this is only an option when monitor data availability is below 90.0 percent, where the most conservative missing data substitution procedures are required. A designated representative may petition to substitute with a more representative value that does not underestimate emissions if sufficient data exist to demonstrate that the maximum value is an extreme overestimate, based upon periods of improper operation or non-operation of the emission controls. This demonstration requires information such as: CEM data from periods when the add-on emission controls are operating; unit operating load data; parametric data indicating proper operation of the add-on emission controls during the missing data period; and fuel sulfur content. The EPA expects a "representative value" to be no less than the maximum hourly value from when the emission controls were operating during the same lookback period normally used for an SO_2 or NO_X CEMS.

The EPA has also made minor changes to indicate that petitions are submitted by the designated

representative, rather than the owner or operator. This is consistent with the designated representative's role as the official contact person for EPA for all submissions.

2. SO_2 Concentration Missing Data During Gas Combustion

A utility noted that for a unit that combusts either natural gas and some oil or natural gas and some coal, SO_2 emissions due to gas combustion are several orders of magnitude smaller than emissions during combustion of either coal or oil (See II–D–16, Letter from David Rengert, Niagara Mohawk Power Corporation to Ann Zownir, EPA, May 21, 1993). Therefore, if an SO_2 CEMS was not providing quality-assured data when the unit was combusting only natural gas, the standard missing data procedures might substitute vastly overestimate SO_2 concentration values from combustion of coal or oil. In addition, if the unit combusts primarily natural gas, these low SO_2 concentration values could potentially underestimate emissions when combusting oil or coal if the 90th percentile and 95th percentile (and possibly even the maximum value) during the previous 720 quality-assured monitor operating hours were substituted using all data collected from all fuels. To address this concern, EPA revised the missing data procedures to separate SO_2 emissions due to combustion of natural gas and other gaseous fuels with a sulfur content no greater than that of natural gas. SO_2 concentration values measured by an SO_2 monitoring system during combustion of natural gas only are not kept as part of the historical data that is used to substitute SO_2 concentration data. These values are not used to provide the average of the hour before and the hour after a missing data period and are not included in percentile calculations. As a result, substituted missing data will reflect the fuel being used during the missing data period.

As was discussed under Section A above, as of January 1, 1997, SO_2 CEMS will no longer be allowed for measuring SO_2 during combustion of natural gas or other gaseous fuels with a sulfur content no greater than that of natural gas because of the difficulty of accurately measuring and quality assurance testing at such low concentrations.

During those times, a utility will either use the heat input from the flow monitor and diluent monitor and the default SO_2 emission rate for pipeline natural gas of 0.0006 lb/mmBtu according to appendix F of part 75, or the fuel flow and daily sulfur content of the gaseous fuel according to appendix D of part 75. The utility should use the following to fill in missing data if a fuel flowmeter, a flow monitor or a diluent monitor is not providing quality-assured data. For units combusting pipeline natural gas using a flow monitor, a diluent monitor and the default SO_2 emission rate, the owner or operator should follow the missing data procedures for heat input found in § 75.36 of subpart D of part 75. For other units using gas sampling and analysis and fuel flowmeters, the owner or operator should substitute using the missing data procedures for sulfur content or fuel flow found in appendix D of part 75.

Note that these revised procedures are not needed if a unit is co-firing a high sulfur fuel along with natural gas or other gaseous fuels with a sulfur content no greater than that of natural gas. In this case, the concentration will come predominantly from the higher-sulfur fuel, generally oil or coal. Thus, during periods of co-firing, the owner or operator should be using the SO_2 CEMS or the missing data procedures in §§ 75.31 or 75.33 for an SO_2 CEMS.

3. Missing Data for Multiple Stacks and Bypass Stacks

The EPA has added a provision to account for missing data substitution of flow data in the case of multiple stacks or bypass stacks in § 75.30(e) of today's interim final rule. First, this revision accounts for the fact that emissions may not flow through a particular stack during an hour when the unit combusts fuel. To account for this, EPA has added a provision to the missing data procedures such that only hours when emissions pass by the monitors on the stack are included as unit operating hours and as quality-assured monitor operating hours in calculations of availability and substitute values.

A second provision accounts for the fact that some units may be able to shift flow between ducts or stacks. If flow from a unit can shift from one stack to another, such as when flue dampers are moved, then the correlation between load for the entire unit and flow rate measured on one stack is no longer accurate. It would be possible to underestimate flow rate and SO_2 mass emissions during use of the missing data procedures for flow, contrary to EPA's intent for these missing data procedures. In order to avoid this situation, EPA has added a provision in today's rule that requires using a substitute value of the maximum flow rate recorded by the flow monitoring system at the corresponding load range during the previous 2,160 hours of quality-assured monitor data when emissions passed through the stack *if* the proportion of flow between stacks has changed during that time. This will avoid potential underestimation that might occur when using an average flow rate in the corresponding load range. As discussed above in this notice, owners or operators may choose to delay compliance with this requirement until January 1, 1997 in order to make changes to their DAHS and to await implementation of these provisions until after EPA has addressed all comments on the interim final rule. In addition, EPA notes that if a utility never changes the flue dampers so that the proportion of flow is constant, then no changes to the standard missing data procedures or to their DAHS are necessary.

C. Certification and Quality Assurance Testing

1. Calibration Error Test

The EPA discovered that some CEMS testers were incorrectly performing the 7-day calibration error test. In the incorrect use of the procedure, the tester checked the calibration error at the zero calibration gas level, made automatic adjustments to the monitor data at that point, checked the calibration error at the high calibration gas level, and then again made adjustments to the data. The EPA clarified that a tester should check the calibration error both at the zero level and the high level before making any adjustments. Both in the preamble to part 75 (January 11, 1993) and in a public issue paper on the 7-day calibration error test, EPA stated that this second interpretation is the correct one. (See Docket Item II–D–27, Issue Paper on Part 75 Calibration Error Testing for Certification, October 8, 1993; Letter from J. White to D. McNeal, and Response to J. White from S. Saile, EPA). The EPA has adopted this interpretation of testing both instrument levels together because instrument errors at the zero and high levels are not always independent of each other. These interim amendments to part 75 clarify this provision.

Another related issue associated with the 7-day calibration error test concerned the kinds of adjustments that could be made. Requirements of the calibration error tests in 40 CFR part 75 and 40 CFR part 60 could be interpreted as requiring either 7 successive daily tests or one cumulative 7-day test. The following statements in the January 11, 1993 rule imply that the 7-day test is cumulative:

> Do not make manual adjustments to the monitor setting during the 7-day test. If automatic adjustments are made, conduct the calibration error test in a way that the

magnitude of the adjustments can be determined and recorded. (section 6.3.1 of appendix A.)

However, EPA stated in Section V.G(4)(a) of its January 11, 1993 preamble to part 75 that "the 7-day calibration error test performed during certification is the same 2-point drift test as the daily calibration error test" and referred to 40 CFR part 60, appendix B in Section V.G(4)(b) (58 FR 3641). Industry generally interprets the calibration drift test in 40 CFR part 60 to require 7 separate daily tests, rather than a cumulative test over 7 days. (See Docket Item I–C–3, Jahnke, James A., Excerpt from *Continuous Emission Monitoring*, Van Nostrand Reinhold, New York.) The EPA now clarifies part 75 to state its original intention that the 7-day calibration error test is a series of 7 daily calibration error tests. On each day of the test, the monitor must meet the performance specification of a calibration error no greater than 2.5 percent of span. Because this is a series of tests, a tester may not adjust the monitor or monitor data, either manually or automatically, until the test has been completed at both levels on any given day. However, the tester may make adjustments between daily tests, once the previous day's test results have been recorded.

2. Quality Assurance of Data Following Daily Calibration Error Test

During early implementation EPA began developing a series of policies in order to assist in its evaluation of the acceptability of data received in quarterly reports. Among these policies concerned the acceptability of data when a required daily test is not performed. The Agency initially decided that the absence of information on a test during a calendar day means that emissions data for that day are not considered quality-assured. Section 2.1 of appendix B requires daily assessments, such as calibration error tests and interference checks, to be performed on each calendar day. Based on this requirement, EPA initially interpreted data as invalid for a calendar day from midnight to the time of the next successful daily calibration error test if no test results were reported. (See Docket Items II–D–56, ETS User Bulletin #2 and II–D–50, Electronic Data Reporting Supplementary Instructions, June 29, 1994.)

Some utilities expressed concern that a unit might stop operating during the middle of a day before the regularly scheduled time for performing an automated calibration. (See Docket Item II–D–60, Letter from Gary R. Cline, Pennsylvania Electric Co., to Margaret Sheppard, EPA, August 1, 1994.) Because the testing procedures require the unit to operate during all measurements, the utility would be unable to perform this test and its data would be invalidated beginning at midnight. Some suggestions from utilities included: allowing performance of the test while the unit is off-line, treating the data as quality assured until the time of the next test, and treating the data as quality-assured prospectively for 24 hours from the previous test.

The EPA decided that the approach consistent with the regulatory language that would result in the greatest amount of quality-assured data while still preserving the requirement for a daily test is to retain the calendar day requirement for performing each daily test. However, if a unit stops operating during a calendar day, then data is still considered quality-assured for 24 clock hours from the previous day's test. For example, a unit with monitors that are normally calibrated at 8 a.m. performs the calibration error test at 8 a.m. on January 11. All 24 hours of data from the monitor for January 11 are quality-assured. If the unit suddenly "trips" and stops operating at 6 a.m. on January 12, the data from midnight until 6 a.m. are also considered quality-assured. If the unit starts up again at 3 p.m. but the monitors are not tested between 3 p.m. and midnight, then that block of data is invalidated. As in the January 11, 1993 rule, today's rule still requires a calibration error test to be performed with the unit operating. This is because the readings from the CEMS are affected by temperature and pressure conditions. (See Docket Item II–D–39, Log of telephone conversation between Jon Konings, WEPCo, and M. Sheppard, EPA, on EPA's policy on conducting calibration error test, April 13, 1994.) In order to ensure accurate CEMS measurements for the entire system and to ensure that this test is performed under controlled conditions, EPA requires the daily calibration error tests to be performed while the unit is operating for purposes of quality-assuring the data and testing the CEMS. (See Docket Item II–D–54, Acid Rain CEM (Part 75) Policy Manual.)

3. Unit Operation During Testing

This issue is related to provisions of section 6 of appendix A of part 75 and to the tests performed under appendix B of part 75. Under the January 11, 1993 rule, section 6.1 of appendix A requires that a unit be operated during periods when measurements are made for certification testing. Similarly, section 6.2 indicates that when performing a linearity check, testers are to conduct each test by operating the monitor at its normal (unit) operating temperature and conditions. In this interim rule, EPA further clarifies provisions in the January 11, 1993 rule, providing that the unit must be operating, by adding language to sections 6.3.1, 6.3.2, and 6.4 for the calibration error test and for the cycle time test. These sections are later cited in appendix B. This language addition clarifies EPA's intent that a unit must be operating during all monitor testing, both for initial certification testing and for QA/QC testing.

During the public comment period for the proposed part 75 regulation, some commenters raised this issue. (See Docket A–90–51, Docket Item IV–D–303, Letter from Nicolson, Rober J., Vice President, Fossil & Hydro Operations, Consumers Power Company, Comments on Clean Air Act Amendments—Title IV Part 75 Continuous Emission Monitoring Rule and Docket A–91–69, Item IV–D–66, Letter from Sullivan, J.J., Executive Director, Environmental Programs, PSI Energy, Inc., Comments on the Proposed Acid Rain Program Rule: 40 CFR Part 72, 73, 75 and 77.) Under the new source performance standard for subpart Da of 40 CFR part 60 and under the performance specifications in appendix B of 40 part 60, EPA required a unit to operate for 168 hours in a row in order to perform the 7-day calibration error test for monitors. In part 75, EPA modified this to allow units to operate only during the periods when measurements were performed and by allowing operation on nonconsecutive days. This change was made to account for peaking units, which normally would not operate for every hour of every day. However, EPA still required the unit to be operating during testing so that the test will be performed under the same temperature and pressure conditions as when monitor readings are taken during the program. (See Docket A–90–69, Docket Items V–C–1 and V–C–2, Response to Comment Document.)

The test procedures for linearity checks and for calibration error tests require the entire monitoring system to be tested, rather than just the analyzer. For example, sections 6.2 and 6.3.1 of appendix A requires introducing calibration gas through the gas injection port, which for most systems will be at the probe. The calibration gas must go through as much of the system as possible, including the probe, filters, scrubbers, conditioners, and other monitor components for extractive type monitoring systems, or including all active electronic and optical components for in situ type monitors.

Monitor responses must come from the DAHS. Thus, the test is a test of the complete continuous emission monitoring system. (See Docket Item II–D–68, Memorandum from B. Warren-Hicks, The Cadmus Group to M. Sheppard, EPA, September 6, 1994). In order to make the linearity check and calibration error test a true test of the entire monitoring system, the tests must be performed under the same unit operating conditions that prevail when the monitor reads emissions to include in certification test results and in quarterly emissions reports. The EPA has already stated this policy in question Number 12.17 of its policy guidance manual. (See Docket Item II–D–54, Acid Rain CEM (Part 75) Policy Manual.) Utilities have also commented on the significant effects of temperature and pressure conditions upon monitor readings. (See Docket Items II–D–39, Conversation between J. Konings, WEPCo and M. Sheppard, EPA:ARD, on EPA's policy on conducting calibration error test, April 13, 1994; II–D–40, Meeting Notes from EPA Meeting with J. West of Metropolitan Edison and J. Jahnke of Source Technology Associates, April 18, 1994.).

The procedures of the relative accuracy test and the cycle time test require continuous emission monitoring systems and flow monitors to measure the actual emissions at the stack. Therefore, these tests can only be performed while the unit is operating.

The EPA does not consider test results to be valid if the test is performed while the unit is not operating.

Thus, in this interim rule, EPA clarifies that a unit must be operating when a test is performed in order to provide acceptable results to meet requirements for certification testing or QA/QC testing. This is also consistent in a new provision in section 2.1 of appendix B of part 75. This provision allows data to be considered valid for 24 hours following the last passed calibration error test if a unit stops operating on a calendar day before the utility has performed a calibration error test on that day. However, if a daily calibration error test were failed or if the daily calibration error test were performed while the unit is not operating, the data after that test would not be considered valid.

4. Cycle Time Test

Part 75 included a cycle time/response time test to determine if a CEMS was capable of drawing down and analyzing a sample frequently enough to provide an update at least four times an hour. A tester was required to perform this test on the SO_2 pollutant concentration monitor, the NO_X CEMS (in lb/mmBtu), and the CO_2 pollutant concentration monitor. Some testers found the regulatory procedures unclear as to when a source tester samples stack gas. In addition, EPA staff realized that some CEMS cannot perform the cycle time/response time test simultaneously on the NO_X and diluent gas components of the NO_X CEMS, because NO_X and O_2 cannot be kept in the same bottle for reasons of stability.

As a result of these issues raised during implementation, EPA has revised the cycle time/response time test to be a cycle time test patterned after the response time test in Method 20 of appendix A of 40 CFR part 60. A cycle time test is a test to determine the length of time it takes for a CEM system to draw down a sample of gas, analyze the sample, achieve a stable reading, and record the new concentration. More specifically, the cycle time test determines 95 percent of the length of time for the monitor to go from reading a known concentration of calibration gas to reading actual stack emissions. (The 95-percent margin allows for small amounts of error that will prevent a monitor from reading the labelled value of a calibration gas, even when the monitor reading is stable.) A tester starts by introducing calibration gas until the monitor reading is stable. Next, the tester switches the monitor to reading stack gas emissions. When the monitor response is stable, the tester notes the time. The DAHS records each value that the monitor reads and the time of the reading. Once the DAHS has recorded this stable value, the tester introduces the other calibration gas. The procedure is repeated, so that the monitor returns to a stable reading of stack gas and records it. This revised procedure will allow more time-share monitoring systems to pass the cycle time test than the earlier cycle time/response time test, because the revised test eliminates the time it takes for gas to travel from the calibration gas cylinder to the probe.

Stability is considered to be achieved when the monitor reading changes by less than 5 percent from the average concentration over a 5-minute period, or less than 1 percent of the monitor span over 30 seconds. These values were adapted from the response time test found in Method 20 of appendix A, 40 CFR part 60 for testing of stationary gas turbines. The EPA made the definition of stability more flexible by lengthening the time period for averaging concentration from 2 minutes to 5 minutes, in order to apply to coal-fired boilers, which may experience less stable loads than stationary gas turbines. Based upon results from certification tests at Phase I units, EPA believes that coal-fired units can reliably achieve this definition of stability. (See Docket Item II–D–75, Analysis of Cycle Time/Response Time Data, October 3, 1994.)

The longer of the two times going from calibration gas to stack gas is the cycle time of the component monitor. For a NO_X or SO_2-diluent monitoring system, the cycle time is the longer of the two cycle times for the NO_X or SO_2 pollutant concentration monitor and the diluent monitor. Originally, testers were required to test both component monitors at the same time, which requires injecting both gases simultaneously. Testing the two component monitors separately simplifies performing the cycle time test, since calibration gases do not need to be injected simultaneously. This also resolves the issues raised during certification testing for Phase I units. In addition, the revision provides consistency with existing EPA regulations under 40 CFR part 60.

The EPA has included recordkeeping provisions for this certification test in § 75.56. Furthermore, the rule amendments contain an additional figure at the end of appendix A, to complement the figures for test data and results for other certification tests for CEMS.

IV. Impact Analyses

The impact analyses required by Executive Orders 12866 and 12875 and by the Regulatory Flexibility Act, the Unfunded Mandates Act and the Paperwork Reduction Act are found under the notice of direct final rulemaking in today's **Federal Register**.

The control numbers assigned to collections of information in certain EPA regulations by the OMB have been consolidated under 40 CFR part 9. The EPA finds there is "good cause" under Sections 553(b)(B) and 553(d)(3) of the APA to amend the applicable table in 40 CFR part 9 to display the OMB control number for this rule without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For additional information, see 58 FR 18014, April 7, 1993, and 58 FR 27472, May 10, 1993.

List of Subjects in 40 CFR Parts 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 75 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 75—CONTINUOUS EMISSION MONITORING

1.–3. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651k.

4. Section 75.11 is amended by adding a sentence to the end of paragraph (a) and by adding paragraphs (e) and (g) to read as follows:

§ 75.11 Specific provisions for monitoring SO_2 emissions (SO_2 and flow monitors).

(a) * * * The provisions in this paragraph are suspended from July 17, 1995 through December 31, 1996.

* * * * *

(e) *Units with SO_2 continuous emission monitoring systems during the combustion of gaseous fuel.* On or after January 1, 1997, the owner or operator of a unit with an SO_2 continuous emission monitoring system shall, during any hours in which the unit combusts only pipeline natural gas or gaseous fuel with a sulfur content no greater than natural gas, calculate SO_2 emissions in accordance with the following procedures. Prior to January 1, 1997, the owner or operator of such a unit may calculate SO_2 emissions in accordance with the following procedures.

(1) The owner or operator of a unit with an SO_2 continuous emission monitoring system shall, during any hours in which the unit combusts only pipeline natural gas, calculate SO_2 emissions using one of the following two methods in lieu of operating and recording data from the SO_2 continuous emission monitoring system:

(i) By using the heat input calculated using a certified flow monitoring system and a certified diluent monitor, the default SO_2 emission rate for pipeline natural gas from appendix D of this part, and Equation F–23 in appendix F of this part and by certifying this as a system for monitoring SO_2 mass emissions by identification in the monitoring plan, by tests for the data acquisition and handling system under § 75.20(c), and by meeting all quality control and quality assurance requirements in appendix B of this part for a flow monitor and a diluent monitor; or

(ii) By certifying an excepted monitoring system under appendix D of this part under § 75.20, by following the procedures for determining SO_2 emissions from combustion of gaseous fuels under appendix D of this part, by meeting the recordkeeping requirements of § 75.55, and by meeting all quality control and quality assurance requirements for fuel flowmeters in appendix D of this part.

(2) During any hours in which the unit combusts only gaseous fuel with a sulfur content no greater than natural gas other than pipeline natural gas, the owner or operator shall calculate SO_2 mass emissions by certifying an excepted monitoring system under appendix D of this part under § 75.20, by using the gas sampling and analysis and fuel flow procedures of appendix D of this part, by meeting the recordkeeping requirements of § 75.55, and by meeting all quality control and quality assurance requirements for fuel flowmeters in appendix D of this part.

* * * * *

(g) *Coal-fired units.* The owner or operator shall meet the general operating requirements in § 75.10 for an SO_2 continuous emission monitoring system and a flow monitoring system for each affected coal-fired unit while the unit is combusting coal or any fuel other than natural gas or a gaseous fuel with a sulfur content no greater than natural gas, except as provided in § 75.16 and in subpart E of this part.

5. Section 75.21 is amended by adding a sentence to the end of paragraph (a) and by adding paragraph (f) to read as follows:

§ 75.21 Quality assurance and quality control requirements.

(a) * * * The provisions in this paragraph are suspended from July 17, 1995 through December 31, 1996.

* * * * *

(f) *Continuous emission monitoring systems.* The owner or operator of an affected unit shall operate, calibrate, and maintain each primary and redundant backup continuous emission monitoring system used under the Acid Rain Program according to the quality assurance and quality control procedures in appendix B of this part. The owner or operator of an affected unit shall ensure that each non-redundant backup continuous emission monitoring system used under the Acid Rain Program complies with the daily and quarterly quality assurance and quality control procedures in appendix B of this part for each day and quarter that the system is used to report data. The owner or operator shall perform quality assurance upon a reference method backup monitoring system according to the requirements of Method 2, 6C, 7E, or 3A in appendix A of part 60 of this chapter, instead of the procedures specified in appendix B of this part. Notwithstanding the provisions of appendix B of this part, the owner or operator of a unit with an SO_2 continuous emission monitoring system is not required to perform daily or quarterly assessments under appendix B of this part on any day or in any calendar quarter during which the unit combusts only natural gas or a gaseous fuel with a sulfur content no greater than natural gas. In addition, any calendar quarter during which the unit combusts only natural gas or a gaseous fuel with a sulfur content no greater than natural gas shall be excluded in determining the calendar quarter, bypass operating quarter, or unit operating quarter when the next relative accuracy test audit must be performed for the SO_2 continuous emission monitoring system, provided that a relative accuracy test audit is performed on that system at least once every two calendar years. The owner or operator of a unit using a certified flow monitor and a certified diluent monitor and Equation F–23 to calculate SO_2 emissions shall meet all quality control and quality assurance requirements in appendix B of this part for the flow monitor and the diluent monitor.

6. Section 75.30 is amended by adding paragraphs (d) and (e) to read as follows:

§ 75.30 General provisions.

* * * * *

(d) On or after January 1, 1997, the owner or operator shall comply with the provisions of this paragraph. Prior to January 1, 1997, the owner or operator may comply with the provisions of this paragraph (d) if also complying with the provisions of § 75.11(e).

(1) Whenever a unit with an SO_2 continuous emission monitoring system combusts only pipeline natural gas and the owner or operator is using the procedures in section 7 of appendix F of this part to determine SO_2 mass emissions pursuant to § 75.11(e), the owner or operator shall substitute for missing data from a flow monitoring system, CO_2 diluent monitor or O_2 diluent monitor using the missing data substitution procedures in § 75.36.

(2) Whenever a unit with an SO_2 continuous emission monitoring system combusts gas with a sulfur content no greater than natural gas or pipeline natural gas and the owner or operator is using the gas sampling and analysis and fuel flow procedures in appendix D of this part, to determine SO_2 mass emissions pursuant to § 75.11(e), the owner or operator shall substitute for

missing data using the missing data procedures in appendix D of this part.

(3) The owner or operator shall not use historical data from an SO_2 pollutant concentration monitor to account for SO_2 emissions due to combustion of gas during missing data periods. In addition, the owner or operator shall not include hours when the unit combusts only natural gas (or a gaseous fuel with sulfur content no greater than that of natural gas) in the availability calculations in § 75.32, nor in the calculations of substitute data using the procedures of either § 75.31 or § 75.33. For the purpose of the missing data and availability procedures for SO_2 pollutant concentration monitors in §§ 75.31 through 75.33 only, all hours during which the unit combusts only natural gas, or a gaseous fuel with a sulfur content no greater than natural gas, shall be excluded from the definition of "monitor operating hour," "quality-assured monitor operating hour," "unit operating hour," and "unit operating day."

(e) On or after January 1, 1997, the owner or operator shall comply with the provisions of this paragraph. Prior to January 1, 1997, the owner or operator may comply with the provisions of this paragraph.

(1) For monitoring of emissions at a unit with multiple stacks or a bypass stack, include only those hours when emissions are passing through the stack or duct in the definitions of "unit operating hour" and "quality-assured monitor operating hour" for purposes of applying the missing data and availability procedures in §§ 75.31 through 75.36 to the monitoring system on that stack or duct.

(2) If the proportion of flow going to each stack from a unit with multiple stacks or the proportion of flow going to a bypass stack has changed during the previous 2,160 hours when emissions passed through that stack, then record the maximum flow rate recorded by the flow monitoring system at the corresponding load range during the previous 2,160 hours of quality-assured monitor data when emissions passed through that stack, instead of the value calculated using the missing data substitution procedures in § 75.31 or § 75.33.

7. Section 75.32 is amended by adding a sentence to the end of paragraph (a)(3) and adding paragraph (a)(4) to read as follows:

§ 75.32 Determination of monitoring data availability for standard missing data procedure.

(a) * * *

(3) * * * The provisions in this paragraph (a)(3) are suspended from July 17, 1995 through December 31, 1996.

(4) The owner or operator shall include all unit operating hours, and all monitor operating hours for which quality-assured data were recorded by a certified primary monitor, a certified redundant or non-redundant backup monitor, a reference method for that unit, and from an approved alternative monitoring system under subpart E of this part when calculating percent monitor data availability using Equation 8 or 9. The owner or operator shall exclude hours when a unit combusted only natural gas (or gaseous fuel with the same sulfur content as natural gas) from calculations of percent monitor data availability for SO_2 pollutant concentration monitors, as provided in § 75.30(d). No hours from more than three years (26,280 clock hours) earlier shall be used in Equation 8 or 9. When three years from certification have elapsed, replace the words "since certification" or "during previous 8,760 unit operating hours" with "in the previous three years" and replace "8,760" with "total unit operating hours in the previous three years."

* * * * *

8. Section 75.34 is revised to read as follows:

§ 75.34 Units with add-on emission controls.

(a) The owner or operator of an affected unit equipped with add-on SO_2 and/or NO_X emission controls shall use at least one of the following options:

(1) The owner or operator may use the missing data substitution procedures as specified for all affected units in §§ 75.31 through 75.33 for substituting data for each hour where the add-on emission controls are operating within the proper operation range specified in the monitoring plan for the unit. The designated representative shall report the range of add-on emission control operating parameters that indicate proper operation in the unit's monitoring plan and the owner or operator shall record data to verify the proper operation of the SO_2 or NO_X add-on emission controls during each hour, as described in paragraph (d) of this section. In addition, under § 75.64(c) the designated representative shall submit a certified verification of the proper operation of the SO_2 or NO_X add-on emission control for each missing data period at the end of each quarter.

(2) In addition, the designated representative may petition the Administrator under § 75.66 to replace the maximum recorded value in the last 720 quality-assured monitor operating hours with a value corresponding to the maximum controlled emission rate (an emission rate recorded when the add-on emission controls were operating) recorded during the last 720 quality-assured monitor operating hours. For such a petition, the designated representative must demonstrate that the following conditions are met: the monitor data availability, calculated in accordance with § 75.32, for the affected unit is below 90.0 percent and parametric data establish that the add-on emission controls were operating properly (i.e., within the range of operating parameters provided in the monitoring plan) during the time period under petition.

(3) The designated representative may petition the Administrator under § 75.66 for approval of site-specific parametric monitoring procedure(s) for calculating substitute data for missing SO_2 pollutant concentration and NO_X emission rate data in accordance with the requirements of paragraphs (b) and (c) of this section, and appendix C of this part. The owner or operator shall record the data required in appendix C of this part, pursuant to § 75.51(b) until January 1, 1996, or pursuant to § 75.55(b).

(b) For an affected unit equipped with add-on SO_2 emission controls, the designated representative may petition the Administrator to approve a parametric monitoring procedure, as described in appendix C of this part, for calculating substitute SO_2 concentration data for missing data periods. The owner or operator shall use the procedures in § 75.31, § 75.33, or § 75.34(a) for providing substitute data for missing SO_2 concentration data unless a parametric monitoring procedure has been approved by the Administrator.

(1) Where the monitoring data availability is 90.0 percent or more for an outlet SO_2 pollutant concentration monitor, the owner or operator may calculate substitute data using an approved parametric monitoring procedure.

(2) Where the monitor data availability for an outlet SO_2 pollutant concentration monitor is less than 90.0 percent, the owner or operator shall calculate substitute data using the procedures in § 75.34(a) (1) or (2), even if the Administrator has approved a parametric monitoring procedure.

(c) For an affected unit with NO_X add-on emission controls, the designated representative may petition the Administrator to approve a parametric monitoring procedure, as described in appendix C of this part, in order to calculate substitute NO_X emission rate

data for missing data periods. The owner or operator shall use the procedures in § 75.31 or § 75.33 for providing substitute data for missing NO_X emission rate data prior to receiving the Administrator's approval for a parametric monitoring procedure.

(1) Where monitor data availability for a NO_X continuous emission monitoring system is 90.0 percent or more, the owner or operator may calculate substitute data using an approved parametric monitoring procedure.

(2) Where monitor data availability for a NO_X continuous emission monitoring system is less than 90.0 percent, the owner or operator shall calculate substitute data using the procedure in § 75.34(a) (1) or (2), even if the Administrator has approved a parametric monitoring procedure.

(d) The owner or operator shall keep records of information as described in subpart F of this part to verify the proper operation of the SO_2 or NO_X emission controls during all periods of missing data. The owner or operator shall provide these records to the Administrator or to the EPA Regional Office upon request. Whenever such records are not provided or such records do not demonstrate that proper operation of the SO_2 or NO_X add-on emission controls has been maintained in accordance with the range of add-on emission control operating parameters reported in the monitoring plan for the unit, the owner or operator shall substitute the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, to report the NO_X emission rate, and either the maximum hourly SO_2 concentration recorded by the inlet monitor during the previous 720 quality assured monitor operating hours, if available, or the maximum potential concentration for SO_2, as defined by section 2.1.1.1 of appendix A of this part, to report SO_2 concentration for each hour of missing data until information demonstrating proper operation of the SO_2 or NO_X emission controls is available.

9. Section 75.53 is amended by revising paragraph (d) introductory text and by adding paragraph (d)(4) to read as follows:

§ 75.53 Monitoring plan.

* * * * *

(d) *Contents of monitoring plan for specific situations.* The following additional information shall be included in the monitoring plan for gas-fired or oil-fired units or for units with add-on emission controls:

* * * * *

(4) For each unit with add-on emission controls:

(i) A list of operating parameters for the add-on emission controls, including parameters from the list in § 75.55 appropriate to the particular installation; and

(ii) The range of each operating parameter in the list that indicates the add-on emission controls are properly operating.

* * * * *

10. Section 75.55 is amended by adding paragraphs (b) and (e) to read as follows:

§ 75.55 General recordkeeping provisions for specific situations.

(a) * * *

(b) *Specific parametric data record provisions for calculating substitute emissions data for units with add-on emission controls.* In accordance with § 75.34, the owner or operator of an affected unit with add-on emission controls shall either record the applicable information in paragraph (b)(3) of this section for each hour of missing SO_2 concentration data or NO_X emission rate (in addition to other information), or shall record the information in paragraph (b)(1) of this section for SO_2 or paragraph (b)(2) of this section for NO_X through an automated data acquisition and handling system, as appropriate to the type of add-on emission controls:

(1) For units with add-on SO_2 emission controls petitioning to use or using the optional parametric monitoring procedures in appendix C of this part, for each hour of missing SO_2 concentration or volumetric flow data:

(i) The information required in § 75.54(b) for SO_2 concentration and volumetric flow if either one of these monitors is still operating;

(ii) Date and hour;

(iii) Number of operating scrubber modules;

(iv) Total feedrate of slurry to each operating scrubber module (gal/min);

(v) Pressure differential across each operating scrubber module (inches of water column);

(vi) For a unit with a wet flue gas desulfurization system, an inline measure of absorber pH for each operating scrubber module;

(vii) For a unit with a dry flue gas desulfurization system, the inlet and outlet temperatures across each operating scrubber module;

(viii) For a unit with a wet flue gas desulfurization system, the percent solids in slurry for each scrubber module.

(ix) For a unit with a dry flue gas desulfurization system, the slurry feed rate (gal/min) to the atomizer nozzle;

(x) For a unit with SO_2 add-on emission controls other than wet or dry limestone, corresponding parameters approved by the Administrator;

(xi) Method of determination of SO_2 concentration and volumetric flow, using Codes 1–15 in Table 3 of § 75.54; and

(xii) Inlet and outlet SO_2 concentration values recorded by an SO_2 continuous emission monitoring system and the removal efficiency of the add-on emission controls.

(2) For units with add-on NO_X emission controls petitioning to use or using the optional parametric monitoring procedures in appendix C of this part, for each hour of missing NO_X emission rate data:

(i) Date and hour;

(ii) Inlet air flow rate (acfh, rounded to the nearest thousand);

(iii) Excess O_2 concentration of flue gas at stack outlet (percent, rounded to nearest tenth of a percent);

(iv) Carbon monoxide concentration of flue gas at stack outlet (ppm, rounded to the nearest tenth);

(v) Temperature of flue gas at furnace exit or economizer outlet duct (°F); and

(vi) Other parameters specific to NO_X emission controls (e.g., average hourly reagent feedrate);

(vii) Method of determination of NO_X emission rate using Codes 1–15 in Table 3 of § 75.54; and

(viii) Inlet and outlet NO_X emission rate values recorded by a NO_X continuous emission monitoring system and the removal efficiency of the add-on emission controls.

(3) For units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a) (1) or (2), for each hour of missing data record:

(i) Parametric data which demonstrate the proper operation of the add-on emission controls, as described in the monitoring plan for the unit (to be maintained on site, and to be submitted upon request from the Administrator or by an EPA Regional office);

(ii) A flag indicating that the add-on emission controls are operating with all parameters within the ranges specified in the monitoring plan or that the add-on emission controls are not operating properly;

(iii) For units petitioning under § 75.66 for substituting a representative SO_2 concentration during missing data periods, any available inlet and outlet SO_2 concentration values recorded by an SO_2 continuous emission monitoring system; and

(iv) For units petitioning under § 75.66 for substituting a representative NO_X emission rate during missing data periods, any available inlet and outlet NO_X emission rate values recorded by a

NO_X continuous emission monitoring system.

* * * * *

(e) *Specific SO_2* emission record provisions during the combustion of gaseous fuel. In accordance with the provisions in § 75.11(e), the owner or operator of a unit with an SO_2 continuous emission monitoring system may record the information in paragraph (c)(3) of this section in lieu of the information in §§ 75.54(c)(1) and 75.54(c)(3), for those hours when only pipeline natural gas or a gaseous fuel with a sulfur content no greater than natural gas is combusted.

* * * * *

11. Section 75.56 is amended by adding paragraph (a)(6) to read as follows:

§ 75.56 Certification, quality assurance and quality control record provisions.

(a) * * *

(6) For each SO_2, NO_X, CO_2, or O_2 pollutant concentration monitor, NOx-diluent continuous emission monitoring system, or SO_2-diluent continuous emission monitoring system, the owner or operator shall record the following information for the cycle time test:

(i) Component/system identification code;

(ii) Date;

(iii) Start and end times;

(iv) Upscale and downscale cycle times for each component;

(v) Stable start monitor value;

(vi) Stable end monitor value;

(vii) Reference value of calibration gas(es);

(viii) Calibration gas level; and

(ix) Cycle time result for the entire system.

* * * * *

12. Section 75.64 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 75.64 Quarterly reports.

(a) * * *

(1) The information and hourly data required in §§ 75.50 through 75.52 (or §§ 75.54 through 75.56), no later than the quarterly report due April 30, 1996), excluding:

(i) Descriptions of adjustments, corrective action, and maintenance;

(ii) Information which is incompatible with electronic reporting (e.g., field data sheets, lab analyses, quality control plan);

(iii) Opacity data listed in § 75.50(f) or § 75.54(f);

(iv) For units with SO_2 or NO_X add-on emission controls that do not elect to use the approved site-specific parametric monitoring procedures for calculation of substitute data, the information in § 75.55(b)(3); and

(v) The information recorded under § 75.56(a)(7) for the period prior to January 1, 1996.

* * * * *

(c) *Compliance certification.* The designated representative shall submit a certification in support of each quarterly emissions monitoring report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall indicate whether the monitoring data submitted were recorded in accordance with the applicable requirements of this part including the quality control and quality assurance procedures and specifications of this part and its appendices, and any such requirements, procedures and specifications of an applicable excepted or approved alternative monitoring method. In the event of any missing data periods, the certification must describe the measures taken to cure the causes for the missing data periods. For a unit with add-on emission controls, the designated representative shall also include a certification for all hours where data are substituted following the provisions of § 75.34(a)(1), that the add-on emission controls were operating within the range of parameters listed in the monitoring plan, and that the substitute values recorded during the quarter do not systematically underestimate SO_2 or NO_X emissions, pursuant to § 75.34.

* * * * *

13. Section 75.66 is amended by revising paragraphs (e) and (f) to read as follows:

§ 75.66 Petitions to the Administrator.

* * * * *

(e) *Parametric monitoring procedure petitions.* The designated representative for an affected unit may submit a petition to the Administrator, where each petition shall contain the information specified in § 75.51(b) (or § 75.55(b), no later than January 1, 1996) for use of a parametric monitoring method. The Administrator will either:

(1) Publish a notice in the **Federal Register** indicating receipt of a parametric monitoring procedure petition;, or

(2) Notify interested parties of receipt of a parametric monitoring petition.

(f) *Missing data petitions for units with add-on emission controls.* The designated representative for an affected unit may submit a petition to the Administrator for the use of the maximum controlled emission rate, which the Administrator will approve if the petition adequately demonstrates that all the requirements in § 75.34(a)(2) are satisfied. Each petition shall contain the information listed below for the time period (or data gap) during which the affected unit experienced the monitor outage that would otherwise result in the substitution of an uncontrolled maximum value under the standard missing data procedures contained in subpart D of this part:

(1) Data demonstrating that the affected unit's monitor data availability for the time period under petition was less than 90.0 percent;

(2) Data demonstrating that the add-on emission controls were operating properly during the time period under petition (i.e., within the range of operating parameters for the add-on emission controls in the monitoring plan for the unit);

(3) A list of the average hourly values for the previous 720 quality-assured monitor operating hours, highlighting both the maximum recorded value and the value corresponding to the maximum controlled emission rate; and

(4) An explanation and information on operation of the add-on emission controls demonstrating that the selected historical SO_2 concentration or NO_X emission rate does not underestimate the SO_2 concentration or NO_X emission rate during the missing data period.

* * * * *

14. Appendix A to Part 75, Section 6.3 is amended by adding a sentence to the last paragraph of sections 6.3.1 and 6.3.2 and by adding section 6.3.3 to read as follows:

Appendix A—Specifications and Test Procedures

* * * * *

6. Certification Tests and Procedures

* * * * *

6.3.1 * * * The provisions in this section are suspended from July 17, 1995 through December 31, 1996.

6.3.2 * * * The provisions in this section are suspended from July 17, 1995 through December 31, 1996.

6.3.3 Pollutant Concentration Monitor and CO_2 or O_2 Monitor 7-day Calibration Error Test

Measure the calibration error of each pollutant concentration monitor and CO_2 or O_2 monitor while the unit is operating once each day for 7 consecutive operating days according to the following procedures. (In the event that extended unit outages occur after the commencement of the test, the 7 consecutive unit operating days need not be 7 consecutive calendar days.) Units using dual span monitors must perform the calibration error test on both high- and low-scales of the pollutant concentration monitor.

Do not make manual adjustments to the monitor settings until after taking measurements at both zero and high

concentration levels for that day during the 7-day test. If automatic adjustments are made, conduct the calibration error test in a way that the magnitude of the adjustments can be determined and recorded. Record and report test results for each day using the unadjusted concentration or flow rate measured in the calibration error test prior to making any manual adjustment or resetting the calibration.

The calibration error tests should be approximately 24 hours apart (unless the 7-day test is performed over non-consecutive days). Perform calibration error tests at two concentrations: (1) Zero-level and (2) high-level, as specified in section 5.2 of this appendix. In addition, repeat the procedure for SO_2 and NO_X pollutant concentration monitors using the low-scale for units equipped with emission controls or other units with dual span monitors. Use only NIST traceable reference material, standard reference material, NIST/EPA-approved certified reference material, research gas material, Protocol 1 calibration gases certified by the vendor to be within 2 percent of the label value or zero air material for the zero level only.

Introduce the calibration gas at the gas injection port, as specified in section 2.2.1 of this appendix. Operate each monitor in its normal sampling mode. For extractive and dilution type monitors, pass the audit gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and through as much of the sampling probe as is practical. For in situ type monitors, perform calibration checking all active electronic and optical components, including the transmitter, receiver, and analyzer. Challenge the pollutant concentration monitors and CO_2 or O_2 monitors once with each gas. Record the monitor response from the data acquisition and handling system. Using Equation A–5 of this appendix, determine the calibration error at each concentration once each day (at 24-hour intervals) for 7 consecutive days according to the procedures given in this section.

Calibration error tests are acceptable for monitor or monitoring system certification if none of these daily calibration error test results exceed the applicable performance specifications in section 3.1 of this appendix.

* * * * *

15. Appendix A to part 75, section 6.3.4 is added to read as follows:

Appendix A—Specifications and Test Procedures

6. Certification Tests and Procedures

* * * * *

6.3.4 Flow Monitor 7-day Calibration Error Test

Measure the calibration error of each flow monitor according to the following procedures.

Introduce the reference signal corresponding to the values specified in section 2.2.2.1 of this appendix to the probe tip (or equivalent), or to the transducer. During the 7-day certification test period, conduct the calibration error test while the unit is operating once each unit operating day (as close to 24-hour intervals as practicable). In the event that extended unit outages occur after the commencement of the test, the 7 consecutive operating days need not be 7 consecutive calendar days. Record the flow monitor responses by means of the data acquisition and handling system. Calculate the calibration error using Equation A–6 of this appendix.

Do not perform any corrective maintenance, repair, or replacement upon the flow monitor during the 7-day certification test period other than that required in the quality assurance/quality control (QA/QC) plan required by appendix B of this part. Do not make adjustments between the zero and high reference level measurements on any day during the 7-day test. If the flow monitor operates within the calibration error performance specification (i.e., less than or equal to 3 percent error each day and requiring no corrective maintenance, repair, or replacement during the 7-day test period) the flow monitor passes the calibration error test portion of the certification test. Record all maintenance activities and the magnitude of any adjustments. Record output readings from the data acquisition and handling system before and after all adjustments. Record and report all calibration error test results using the unadjusted flow rate measured in the calibration error test prior to resetting the calibration. Record all adjustments made during the seven day period at the time the adjustment is made and report them in the certification application.

* * * * *

16. Appendix A to part 75, is amended by adding a sentence to the end of section 6.4 and by adding section 6.4.1 to read as follows:

6. Certification Tests and Procedures

* * * * *

6.4 * * * The provisions in this section 6.4 are suspended from July 17, 1995 through December 31, 1996.

6.4.1 Cycle Time Test

Perform cycle time tests for each pollutant concentration monitor, and continuous emission monitoring system while the unit is operating according to the following procedures.

Use a zero-level and a high-level calibration gas (as defined in section 5.2 of this appendix) alternately. To determine the upscale elapsed time, inject a zero-level concentration calibration gas into the probe tip (or injection port leading to the calibration cell, for in situ systems with no probe). Record the stable starting monitor value and start time. Next, allow the monitor to measure the concentration of flue gas emissions until the response stabilizes. Determine the upscale elapsed time as the time at which 95.0 percent of the step change is achieved between the stable starting gas value and the stable ending monitor value. Record the stable ending monitor value, the end time, and the upscale elapsed time for the monitor using data acquisition and handling system output. Then repeat the procedure, starting by injecting the high-level gas concentration to determine the downscale elapsed time, which is the time at which 95.0 percent of the step change is achieved between the stable starting gas value and the stable ending monitor value. End the downscale test by measuring the concentration of flue gas emissions. Record the stable starting and ending monitor values, the start and end times, and the downscale elapsed time for the monitor using data acquisition and handling system output. A stable value is equivalent to a reading with a change of less than 1 percent of the span value for 30 seconds, or a reading with a change of less than 5 percent from the measured average concentration over 5 minutes.

For monitors or monitoring systems that perform a series of operations (such as purge, sample, and analyze), time the injections of the calibration gases so they will produce the longest possible cycle time. Record the span, the zero and high gas concentrations, the start and end times, the stable starting and ending monitor values, and the upscale and downscale elapsed times. Report the slower of the two elapsed times as the cycle time for the analyzer. (See Figure 5 at the end of this appendix.) For the NO_X continuous emission monitoring system test and SO_2-diluent continuous emission monitoring system test, record and report the longer cycle time of the two component analyzers as the system cycle time.

For time-shared systems, this procedure must be done for all probe locations that will be polled within the same 15-minute period during monitoring system operations. For cycle time results for a time-shared system, add together the longest cycle time obtained from each location. Report the sum of the cycle time at each location plus the time required for all purge cycles (as determined by the CEMS manufacturer) for each location as the cycle time for each and all of those systems. For monitors with dual ranges, perform the test on the range giving the longest cycle time.

Cycle time test results are acceptable for monitor or monitoring system certification if none of the cycle times exceed 15 minutes.

* * * * *

17. Appendix A to part 75 is amended by adding Figure 5 at the end of the appendix to read as follows:

* * * * *

Figure 5—Cycle Time

Date of test _____
Component/system ID#: _____
Analyzer type _____
Serial Number _____
High level gas concentration: _____ ppm/% (circle one)
Zero level gas concentration: _____ ppm/% (circle one)
Analyzer span setting: _____ ppm/% (circle one)
Upscale:
  Stable starting monitor value: _____ ppm/% (circle one)
  Stable ending monitor reading: _____ ppm/% (circle one)
  Elapsed time: _____ seconds
Downscale:
  Stable starting monitor value: _____ ppm/% (circle one)

Stable ending monitor value: _____ ppm/% (circle one)
Elapsed time: _____ seconds
Component cycle time= _____ seconds
System cycle time= _____ seconds
* * * * *

18. Appendix B to part 75 is amended by adding a sentence to the end of section 2.1 and by adding section 2.1.7 to read as follows:

Appendix B—Quality Assurance and Quality Control Procedures

* * * * *

2. Frequency of Testing

2.1 * * * The provisions in this section 2.1 are suspended from July 17, 1995 through December 31, 1996.

* * * * *

2.1.7 Daily Assessments

For each monitor or continuous emission monitoring system, perform the following assessments during each day in which the unit combusts any fuel (hereafter referred to as a "unit operating day"), or for a monitor on a bypass stack/duct, during each day that emissions pass through the by-pass stack or duct. If the unit discontinues operation or if use of the by-pass stack or duct is discontinued prior to performance of the calibration error test, data from the monitor or continuous emission monitoring system may be considered quality assured prospectively for 24 consecutive clock hours from the time of successful completion of the previous daily test performed while the unit is operating. These requirements are effective as of the date when the monitor or continuous emission monitoring system completes certification testing.

* * * * *

Appendix F to Part 75—Conversion Procedures

19. Appendix F is amended by adding section 7 to read as follows:

* * * * *

7. Procedures for SO_2 Mass Emissions at Units With SO_2 Continuous Emission Monitoring Systems During the Combustion of Gaseous Fuel

Use the following equation to calculate hourly SO_2 mass emissions as allowed for units with SO_2 continuous emission monitoring systems during the combustion of pipeline natural gas under § 75.11(e). These procedures are optional prior to January 1, 1997 and are required on or after January 1, 1997.

$E_h=(0.0006)\ HI$ (Eq. F–23)

where,

E_h=Hourly SO_2 mass emissions, lb/hr.
0.0006=Default SO_2 emission rate for pipeline natural gas, lb/mmBtu.
HI=Hourly heat input, as determined using the procedures of section 5.2 of this appendix.

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May 17, 1995

Part IV

Department of Labor

Employment and Training Administration

20 CFR Part 641
29 CFR Part 89
Senior Community Service Employment Program; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 641

Office of the Secretary

29 CFR Part 89

RIN 1205–AA29

Senior Community Service Employment Program

AGENCY: Employment and Training Administration and Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is amending the regulations for the Senior Community Service Employment Program (SCSEP) to implement the Older American Act Amendments of 1984, 1987, and 1992 and to make clarifying changes. This regulation provides administrative and programmatic guidance and requirements for the implementation of the SCSEP.

EFFECTIVE DATE: June 30, 1995

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Atkinson, Chief, Division of Older Worker Programs. Telephone: (202) 219–4778 (this is not a toll-free number). Copies of this final rule are available in the following formats: electronic file on computer disk and audio tape. They may be obtained at the above office.

SUPPLEMENTARY INFORMATION:

A. Background

As authorized by title V of the Older Americans Act (OAA), as amended (42 U.S.C. 3056, *et seq.*), the Senior Community Service Employment Program (SCSEP) fosters and promotes useful part-time opportunities in community service activities for persons with low incomes who are fifty-five years old or older. The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) administers the program by means of grant agreements with eligible organizations, such as governmental entities and certain public and private non-profit agencies and organizations. Pursuant to the OAA, the Department in 1973 established the SCSEP.

The SCSEP regulations were last revised in 1976: 29 CFR part 89, 41 FR 9006 (March 2, 1976). The SCSEP legislation has been amended by the following laws since the last revision of the regulation: Pub. L. 95–478, section 105 (October 18, 1978); Pub. L. 97–115, section 12 (December 29, 1981); Pub. L. 98–459, sections 501–05 (October 9, 1984); Pub. L. 100–175, sections 161–66 (December 7, 1987); and Pub. L. 102–375, sections 502–11 (September 30, 1992) and Pub. L. 103–171 (December 2, 1993). On April 26, 1994, the Department published a notice of proposed rule making governing the SCSEP in the **Federal Register** (59 FR 21875) for the purpose of soliciting public comments. The comments made in response to the April 26, 1994, **Federal Register** proposed rule have been considered in drafting this final rule. Also implemented are the 1987 and 1992 amendments contained in Pub. L. 100–175 (December 7, 1987) and Pub. L. 102–375 (September 30, 1992). This document issues the final rule to conform to the OAA and to make technical changes based on the Department's experience in administering the SCSEP.

B. Procedural Matters

This final rule is not classified as a "major rule" under Executive Order 12866 concerning Federal regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, no regulatory impact analysis is required.

The Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), the final rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed on such entities by the final rule.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, information collection requirements which must be imposed as a result of the final rule are being submitted separately to the Office of Management and Budget.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.235 "Senior Community Service Employment Program."

List of Subjects in 20 CFR Part 641

Allotment, Allocation, Coordination, Dual eligibility, Cooperative relationships, Assessment, Eligibility, Individual development plan, Over-enrollment, Training, and Administrative requirements.

Format of Final Rule

29 CFR part 89 is redesignated as 20 CFR part 641.

Major Changes

A total of twenty-eight comments were received in response to the proposed rule. Sources of comments received by the close of the comment period were as follows: National SCSEP grantees (5); State units on aging (9); area agencies on aging (4); community-based organizations (3); public interest group (1); Federal agencies (2),; and State Job Service (2). In addition, two responses were received after the comment period from county officials, which were also considered.

Based on the comments the Department has received, the majority reflect approval of the regulations; however, one public interest group was displeased with the Department's policy regarding unsubsidized employment. The comments addressed thirty different sections of the regulations with the bulk of the comments addressing nine sections. A number of the comments extended beyond the regulations to pose operational questions. Each of the comments and the respective regulatory sections are addressed below.

§ 641.101 Scope and purpose.

Consistent with changes made in response to comments on § 641.301 of this part regarding the purpose of the program, this section has been reworded to acknowledge that SCSEP provides community service and promotes transition to unsubsidized employment.

§ 641.102 Definitions.

There were a total of fifteen comments that dealt with ten definitions.

There were three identical comments on "authorized position". The thrust of the comments was to request that the regulation include a required annual adjustment by the Department concerning the value of each position. Because Congressional action controls the appropriations levels which, in turn, determine the amount of funds available for authorized positions, this unit cost concern will continue to be dealt with on an administrative basis. Therefore,

no change is made to this regulatory provision.

There were two similar comments on the "dual eligibility" definition which requested the Department update the proposed regulations by including Section 204(d) of the Job Training Partnership Act (JTPA) so that the regulations will reflect the JTPA amendment to the OAA. The language at § 641.102 is amended to reflect coverage of both sections 203 and 204(d) by adding a citation to Title II–A.

One commenter requested that the Department alter the terminology throughout to use the term "grantee or subgrantee" rather than "recipient or subrecipient". As a result of this comment, the definitions for "recipient and subrecipient" are replaced by the term "grantee or subgrantee" and these terms are used throughout the regulations.

Three commenters requested the Department to revise the definition of "enrollee" in order to: acknowledge the services provided by grantees, overcome potential misunderstandings vis-a-vis JTPA, and address the employee aspect of the enrollee. The Department acknowledges the need to incorporate additional information regarding grantee-performed services so a more accurate picture of the services will be provided. However, the Department does not think that changing the definition will accomplish this objective. Therefore, the goal of more accurately reflecting the services will be addressed administratively via reporting changes, if there is sufficient demand to do so. Suggestions for reporting changes that would more accurately reflect what is being accomplished at the project level are welcomed. The Department has clarified the enrollee/trainee relationship with JTPA through the issuance of an administrative directive. Furthermore, the JTPA regulations now clarify this relationship.

The status of an enrollee as an employee is a complex concern that cannot be addressed easily. While the authorizing legislation is silent on this matter, for the last two years Congressional intent regarding the enrollee role has clearly been expressed in the following appropriations report language: "they [enrollees] are not employees of the U.S. Department of Labor, or State or national sponsors administering the Senior Community Service Program." It is likely that the report language will continue to be used and grantees and subgrantees can cite the reports when corresponding with other Federal and State agencies. However, since the appropriations language applies only to the period of the appropriations, since report language is not binding and since these regulations apply solely to the OAA, the report language cannot bind non-Department of Labor regulatory agencies. No useful propose would be served by incorporating the report language in the regulations. Consistent with the comments received on § 641.310 which recommended the deletion of the word "employment" from the term "community service employment assignment", this word is deleted in the definition of the term "enrollee" to avoid misunderstandings between enrollees and staff.

There was one comment that requested the definition of "host agency" be altered to add the word "exclusively" after the word "used" and before the phrase "as a place for sectarian religious instruction; and substitute the word "training" for "work" site. Neither suggestion is incorporated into the definition since the suggested changes may create further problems of interpretation rather than clarify the definition. The addition of the word "exclusively" as it applies to sectarian religious instruction would extend the definition beyond its present intent and the use of the word "training" instead of "job" site would establish an emphasis beyond community service.

Two commenters requested relief from the requirement to calculate an applicant's income using either the preceding six-month or twelve-month period as it applies to the definition of "low income" because they believe elimination of this requirement would permit the grantee or subgrantee to deal with homeless persons or other emergencies more expediently. The Department believes that such a change would be inconsistent with eligibility determinations for other employment and training programs and create additional linkage problems; therefore, this change is not incorporated. However, as a result of reviewing this definition, it was noted that there was no reference to the family's income. This shortcoming is corrected by adding the phrase "of the family" after the word "income".

There were three comments on the definition of "poor employment prospects" which addressed various aspects of this term. Two of the commenters wanted additional language that would include individuals living in rural and urban areas. Since the proposed definition permitted additional categories to be identified and persons living in isolated areas have special problems in finding employment, this term is amended by adding the phrase, "or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.". The remaining comment pointed out the health problems of older Americans which may prevent them from performing many jobs. It is true that some older Americans do have health problems which would prevent them from being employed, but the objective of the program is to obtain employment for all individuals who are enrolled; therefore, no change is made to establish any limitations.

There was a proposal to add a new definition of "similar public occupations" to address possible misunderstandings on enrollee wages. The addition of such a term may create confusion with the "maintenance of effort" requirements found in § 641.325, rather than solving a possible misunderstanding on enrollee wages. No position should be established which in any way would indicate maintenance of effort violations. Positions established under SCSEP should be designed specifically for the enrollee and not represent ongoing duties that have previously been performed by staff of the host agency.

Finally, there was a recommendation to expand the definition of "residence" to include the word, "address" so as to be able to work with homeless individuals more easily. Although the present definition does not preclude working with the homeless, the phrase "or address" is added to overcome possible limiting interpretations.

§ 641.201 Allocation of funds.

There were two comments regarding language changes to paragraph (c) of this section, which were: (1) To drop the phrase, "and the amount allotted to each project"; and (2) to add the phrase, "or a project sponsor designated by the Department". As a result of these requests, both changes are made. The suggested deletion more correctly states the current practice of not requiring the amount allotted to be identified. The suggestion to add the language on the project sponsor acknowledges the option available to Governors to relinquish the State share of the allocations to national grants.

§ 641.205 Responsibility review.

There were three comments on this section. Two of the comments sought relief from the 90-day requirement for the submission of the final closeout documents in paragraph (c)(5). This requirement is part of the administrative requirements for closeouts applicable to all DOL programs which are contained

at 29 CFR 95.71 or 29 CFR 97.50, as appropriate; therefore, no change is made to this paragraph. However, if additional time is needed to prepare the closeout documents, waivers can be provided administratively. The third comment suggested strengthening this section by adding several new "responsibility" provisions from the Federal Acquisition Regulation which deal with contracts. This is a grant program, and the present set of provisions contained in this section provide sufficient authority to ensure that grantees are responsible entities. Clarifications are provided for paragraphs (a) and (c)(9). The phrase "included in (b) and (c) below" is added to ensure the reader understands that the 13 responsibility tests consist of both paragraphs. The word "have" is deleted along with the "ed" from the word "maintained" in paragraph (c)(9) to maintain parallel sentence structure.

§ 641.207 Negotiation.

The phrase "planned occupational categories of SCSEP" is removed and the phrase "community service" is substituted to overcome any misunderstandings in paragraph (b)(1) about the intent of this paragraph.

§ 641.301 Grant operations.

There was one comment relating to the purpose of the program. The comment recommended expanding the task of the grantees to include the development of appropriate training, as well as work assignments. Since the grantees already explore the training needs of the individual as part of the assessment, this expanded language is unnecessary. The legislatively-mandated purpose of the program is community service. This suggested addition may confuse project operators rather than clarify; therefore, it is not adopted. The word "dual" is substituted for the word "primary" in paragraph (b) to acknowledge that there is more than one program purpose and the phrase, "and to provide useful community service" is deleted since "community service" is already used in the same sentence. As noted in the comments addressed in § 641.310 and acknowledged in the definition of enrollee, the word "employment" is deleted in paragraph (b) to prevent confusion between the enrollees and the staff about whether the enrollee is assigned to a community service position or a job. The phrase "and will promote unsubsidized employment opportunities" is added the last sentence in paragraph (b) consistent with the change to the word "dual" above.

§ 641.302 Grantee responsibilities.

There were a total of eight comments which addressed three separate areas of this section. Four of the comments questioned the need to provide documentation on an individual's eligibility for the program. While this concern is valid, the need to ensure that only eligible persons are served outweighs this concern. The operating guidance on documentation will be widely circulated for comment prior to the implementation of this provision. The remaining four comments sought language clarifications. The commenters asked the DOL to clarify that wages are to be paid for community service. As a result of the request, the word "remit" in the opening paragraph is substituted for the word "provide" and the phrase "for community service assignments and provide" is added while the phrase "skill acquisition or" is deleted. One commenter suggested the regulations directly quote the OAA rather than paraphrasing it in paragraph (a)(3) to clearly state the legislative intent of whom is to be served. For consistency, a portion of the language from section 502(b)(1)(M) of the OAA is quoted rather than paraphrased. Lastly, a commenter suggested that a specific number of monitoring trips be inserted in paragraph (b). Rather than establish a regulatory numerical requirement for monitoring visits for grantees, that concern will continue to be dealt with administratively.

§ 641.303 Cooperative relationships.

In order to avoid any potential confusion regarding local consultations, the specific wording from 502(d)(1) of the OAA is inserted in paragraph (b)(5).

§ 641.304 Recruitment and selection of enrollees.

There were five comments on this section. Three of the commenters asked that the requirement for listing vacancies with the Job Service be altered to a requirement to notify the Job Service of vacancies so there is no confusion about the intent. Another commenter wanted all private sector jobs listed with the Job Service. The remaining commenter did not want to be hindered by having to notify the Job Service. The language is altered by omitting the phrase "listing of vacancies with" and inserting in its place the term, "notifying" and adding the phrase "when vacancies occur" in the first paragraph of this section. This is to notify the Job Service of SCSEP vacancies only when they occur since SCSEP grantees cannot control internal State employment security agencies' procedures to list positions.

§ 641.305 Enrollment eligibility.

There were a total of eleven comments on this section. In addition, in order to clarify eligibility, a change is made to paragraph (a)(2) to clarify that re-enrollment is appropriate when an enrollee leaves the SCSEP or unsubsidized employment through no fault of the enrollee, for example, if the enrollee becomes ill. Two commenters asked that section 204(d)(2)(A) of the JTPA be cited to reflect consistency with the technical amendments to the OAA. As a result of the 1994 technical amendments to the OAA which impact on the JTPA, paragraph (d)(2) of this section is altered to broaden the reference to include a citation to Title II-A of the JTPA so it is clear that it applies to both section 203 and 204(d). Two commenters asked that the regulations acknowledge that the enrollment eligibility requirements could be changed by other Federal laws. Paragraph (c) of this section is altered by adding the phrase "unless required by Federal law". In paragraph (b)(2), one commenter identified an incorrect citation to § 641.103 which is corrected to read § 641.102. Also in paragraph (b)(2), a second sentence is added to permit disabled persons to be considered as a family of one for income eligibility purposes. Two commenters asked that the twelve-month recertification requirement be dropped. It is the Department's intent that re-certifications be conducted every twelve months if an enrollee continues in the program; therefore, the requirement is retained. One commenter expressed concern about the eligibility documentation requirement previously addressed under § 641.302(c), Grantee responsibility, above. As previously indicated, specific administrative requirements will be widely circulated for comment in order to limit, to the extent possible, burdens being placed on grantees. One commenter asked for a clarification on the meaning of the term "permanent address". To overcome any limiting reference, the word "permanent" is removed from the definition for residence, as previously noted.

§ 641.306 Enrollment priorities.

There were five comments relating to this section. Two commenters indicated support for the changes. One commenter pointed out a grammatical error in paragraph (a)(3) which is amended to read "seek" rather than "seeks". There were two requests for clarification of paragraph (a)(3) regarding who may return to the program. In response, individuals may potentially return to the program if they are not at fault in

losing their unsubsidized job or if they have become ill and are forced to leave their unsubsidized employment. Paragraph (a)(3) is amended to reflect this clarification with the addition of the phrase, "through no fault of their own". The provision on vacant positions in paragraph (c) is clarified by adding the sentence "[T]he priorities do not apply to the experimental private sector projects." to prevent any misunderstanding about the non-application of enrollment priorities to the experimental project positions that are authorized in § 641.326. Also, the phrase "community service" is added before the word "position" to be consistent with the addition of the new sentence. Also, in this paragraph, the word "and" replaces the word "but" to more clearly state the intent.

§ 641.308 Orientation.

Paragraph (a) of this section is amended by adding language to acknowledge that orientation cannot always be conducted prior to the commencement of a community service assignment. The word "for" replaces the word "to" in paragraph (a) to improve readability. Paragraph (b) is amended by substituting the word "an" for the word "the", and adding the phrase, "similar to the one", for clarity. Paragraph (c) is amended to read "[T]he grantee or subgrantee shall ensure that host agencies provide adequate supervision and adequate orientation and instruction regarding, among, other things, job duties and safe working procedures".

§ 641.309 Assessment and reassessment.

There were six comments on this section requesting clarifications of paragraphs (a), (b), (d), (e), and (g). Paragraph (a) is revised by inserting the phrase, "and community service objectives" in addition to "employment" and "training" to ensure that the community service aspect of the program is highlighted. The phrase "for each individual" is shifted to the end of the sentence so it is clear that it applies to both the assignment and objectives. A new paragraph (b) is added to address the assessment of physical capabilities and the remaining paragraphs are renumbered (c)–(h). An assessment of physical ability is a pre-employment medical inquiry and, therefore, must conform to the prescriptions of Section 504 of the Rehabilitation Act of 1973, as amended (section 504), the Americans with Disabilities Act of 1990 (ADA) and their respective implementing regulations. See, *e.g.*, 29 CFR 32.15, the section of the Department's section 504 regulations that addresses pre-employment inquiries. Prior to the offer of a particular community service assignment, disability-related inquiries may not be made. Generally, the assessment of physical ability is limited to an inquiry as to whether the enrollee is capable, with or without a reasonable accommodation, of performing the functions of the job (essential and/or marginal). Enrollees may also be asked to describe or demonstrate how they would perform these functions. Once a bona fide community service assignment offer has been made, medical inquiries, including medical examinations, may be made. However, these inquiries are subject to section 504 of the Rehabilitation Act, the ADA, and their implementing regulations. For example, with respect to medical examinations, 29 CFR 32.15 provides that the examination must be a routine part of the host agency's selection process for the job in question and must be performed by a physician qualified to make functional assessments. If a particular medical test is a prerequisite to placement into a community service assignment, including a medical test that is required by a local ordinance or State law, it is recommended that it be conducted at the same time as the physical examination described in paragraph (b)(4) of this section.

The former paragraph (b) (now paragraph (c)) is not altered to incorporate suggested language on other appropriate employment and training opportunities since this is a community service program. In the new paragraph (e) (formerly paragraph (d)), the acronym "IDP" replaces the phrase, "service strategy", in order to avoid confusion with the term, "individual service strategy", used under JTPA. Also the phrase "program year" is deleted from the new paragraph (e) and replaced by the phrase "a 12-month period" to overcome situations where an enrollee may be in the program for only brief periods. In the new paragraph (f), (formerly paragraph (e)) the phrase "upon completion of the review" is deleted to ensure that grantees understand that alternative assignments may be permitted at any point while working with an enrollee. The new paragraph (h) (formerly paragraph (g)) is amended by adding language to clarify that the phrase, "recent assessment" means an assessment done within the last year.

§ 641.310 Community service assignments.

There were five comments on this section. Two commenters requested the deletion of the word "employment" from the title, the text of this section and elsewhere in the final rule. The word "employment" is removed from the title and this section, as well as elsewhere in the final rule, to emphasize that the community service assignment does not constitute an enrollee's job. The term "community service assignment" is used throughout the regulation. In a similar manner, the word "placed" is substituted for the word "employed" in paragraph (a)(1) in order to ensure parallel construction. One commenter requested that the phrase "as soon as possible" in § 641.310(a) be deleted since it is not always possible to refer an enrollee to a community service assignment. This provision is retained since this is consistent with the Department's intent that there be no lengthy delays in enrollment after receipt of orientation. Two commenters requested clarifying the provision in § 641.310(a)(1) by stating that project sponsors may provide enrollees with opportunities to assist in the administration of the SCSEP. This change is incorporated into paragraph (a)(1) in lieu of the last two sentences of the paragraph since the revised sentence more accurately communicates Departmental policy. The phrase, "if appropriate according to the IDP" is added to ensure consistency with § 641.308. The last two sentences of paragraph (a)(1) are deleted. The 1300 hour provision in paragraph (b) is also retained. The second sentence in paragraph (b)(2) is moved to become the second sentence in paragraph (b)(3) since both paragraphs refer to periods of less than 20 hours. There were two comments on § 641.310(d). There was one suggestion to permit the use of SCSEP funds for reasonable accommodations. This suggestion is incorporated into § 641.403 since that section deals with allowable costs, but it is recognized that due to limited availability of administrative funds, it may not be practical to do this except in limited situations. There also was a suggestion that § 641.310(d) be amended by inserting a sentence on work place conditions to address ergonomically sound conditions to prevent repetitive motion injuries such as carpal tunnel syndrome. This suggestion is not adopted since the comment is limited primarily to office occupations and the work place is much broader for the title V program. However, a bulletin will be issued on the broader issue of workplace safety and sound ergonomic design concerns as suggested by the commenter.

§ 641.311 Enrollee wages and fringe benefits.

There were eleven comments on this section. Five addressed concerns regarding the use of physical examinations given in order to assess an enrollee's physical ability and need for any supportive service(s). The *assessment* of an enrollee's physical ability and the *physical examination* provided to enrollees as a program benefit are two separate activities. As a result, assessment of an enrollee's physical ability is moved to § 641.309 in order to group all activities on assessment in a single section. Since physical examinations are a fringe benefit, they are addressed in this section. Therefore, paragraph (b)(3) is amended to reflect this change and it is numbered as (i) for the examination and (ii) for the waiver.

Paragraph (b)(3) of this section addresses the physical examination that is provided to enrollees as a fringe benefit. The physical examination must be offered within 60 working days after commencement of the community service assignment instead of before the first day of compensated participation. It is not an eligibility criterion, nor should the results of the examination be taken into consideration when determining a community service assignment. The physician who conducts the examination should only give a copy directly to the enrollee rather than to program staff. An enrollee should not have to request a copy, as suggested by one commenter. One commenter indicated that the impact of the physical examinations upon the administrative budget category needs to be considered. Since the regulation is changed to authorize charging the cost of the physical examination to the enrollee wages and fringe cost category, the regulations provide additional flexibility, rather than limiting flexibility, and no further change is made. Another commenter suggested SCSEP funds could be used to insure reasonable accommodation for participants at the host agency. As indicated above, such expenditures will be deemed allowable, within funding limitations.

The Department was also asked to consider additional regulatory changes that would exempt the SCSEP program from payment of unemployment compensation taxes to States. In addition, the Department was asked to substitute the phrase "host work site" for the word "employer" at § 641.311 (a)(3) and include a new definition at § 641.102 for similar public occupations. Neither of these suggestions are implemented for two reasons. First, with regard to unemployment compensation, these regulations cannot alter the federal or State unemployment compensation laws that regulate this area of concern since such determinations must be made individually by State employment security agencies. (Since the issuance of a directive on the SCSEP by the Unemployment Insurance Service, the underlying question of unemployment compensation legislation has been virtually eliminated). Second, as indicated in response to the comments on definitions, community service assignments for enrollees must be free from any potential charges of non-maintenance of effort which could be inferred by limiting the application of prevailing rates of pay to a single work site of the host work site.

Finally, a typographical error on the word "waiver" is corrected in paragraph (b)(2).

§ 641.312 Enrollee supportive services.

There were ten comments received that dealt with the need to clarify the unallowability of enrollee transportation costs. Two of these expressed a concern, that the unallowability of such costs would be a hardship for host agencies. Another commenter wanted the option to pay transportation costs eliminated since it could serve as a disincentive to enrollees seeking unsubsidized employment. The remaining seven commenters requested a clarification of the regulations to make it clear that SCSEP funds can be used to pay for enrollee travel when they are working in a SCSEP administrative capacity. Since section 502(b)(1)(L) of the OAA only authorizes the payment of necessary transportation costs of eligible individuals which may be incurred in the employment in any project funded under this title, the Department amends § 641.312(5)(ii) to read "[G]rant funds may not be expended to support the transportation costs of host agencies or programs funded other than under title V of the OAA, except where provided by federal law". Because federal appropriations law prevents funds from one grant being used to defray the expenses incurred under a separate grant, this provision clarifies that SCSEP funds cannot be used for certain host-agency travel costs which are to be met under another federal grant or local program. However, enrollee travel to and from the work site, in selected cases, is necessary in isolated settings where no transportation is available and that option is retained. There was one comment received that suggested the regulations should require grantees and subgrantees to make reasonable accommodations for enrollees with disabilities at host agencies. The Department fully supports efforts to accommodate individuals with disabilities. However, in order to protect the limited funds available for this program, the regulation requires that the expenditure be made with "administrative" funds to the extent that funding permits.

§ 641.313 Training.

There were a total of ten comments on this section. As suggested by two commenters, the "prior to and in preparation for actual community service assignment" phrase in paragraph (a) is removed since training before commencement of a community service assignment is not always practical or possible. In addition, paragraph (a) is amended by adding language that states a grantee is to provide "or arrange for training that is specific to an enrollee's community service assignment". Three of the commenters requested an increase in training hours. Paragraph (b) is amended to now provide up to 500 hours of training for enrollees "per grant year" and the word "orientation" is deleted to overcome potential confusion with § 641.308, Orientation. Also, as suggested by a commenter, the original paragraph (c) is deleted since it is a duplication of paragraph (a) and the remaining paragraphs are renumbered to (c)–(h). The new paragraph (f) (formerly paragraph (g)) is prefaced by deleting the phrase, "at no cost to the project" and adding the phrase, "whenever possible" to acknowledge it is not always possible. In addition this paragraph is amended by deleting the phrase, "at no cost to title V" to more clearly state the intent of the OAA. There were two comments dealing with training costs under SCSEP. Since it is not encouraged for grantees and subgrantees to use SCSEP funds for training, due to the limited funding available, paragraph (f) is amended to read that grantees and subgrantees shall seek training "whenever possible at reduced or no costs to title V". Paragraph (g) is amended to remove the "al" from the word "self-development" to improve the readability. Two commenters suggested rewording paragraph (h) to more positively state this provision. The Department agrees with the suggestion and paragraph (h) is amended to read: "Joint programming, including co-enrollment, when appropriate, between title V programs and programs authorized under the Job Training Partnership Act, the Community Services Block Grant Act, or the Carl D. Perkins Act is strongly encouraged".

§ 641.314 Placement into unsubsidized employment.

There were three comments on this section. Two of those comments dealt with an unsubsidized employment goal of the program. The first commenter raised a question about whether the increased emphasis on the unsubsidized employment goal would detract from the original intention of the SCSEP being a community service program. The second commenter suggested that individual goals be established for each grantee depending upon specific local situations. Since the unsubsidized employment goal remains unchanged and continues as a goal, rather than a firm requirement, it is retained as a single measure. The other comment sought a change on enrollee placement "follow-up", set forth in paragraph (d), that would reduce the follow-up time frame to one month from the current 90 days as a means to reinforce successful placement of the former enrollee. This suggestion is an excellent operational procedure and would assist grantees in working with employers by identifying enrollee employment-related problems, as well as areas where the grantee can better assist the employer. Nevertheless, the Department is not including such a numerical requirement in the regulations since a one-month follow-up requirement may not be possible in all instances. Paragraph (b) is revised to insert the word "project's" before the word "annual" to clarify that the goal applies to the total grant period as opposed to a monthly or quarterly requirement. Also, the phrase, "within the project year" is deleted from paragraph (b) to prevent a misinterpretation.

§ 641.315 Maximum duration of enrollment.

There were nine comments on this section with seven supporting this provision. However, one commenter requested that this section be omitted since, in the commenter's opinion, it is contrary to the original goals of the program. The Department thinks that since this section will provide grantees with additional flexibility, it is in the best interest of the program to retain this provision. To prevent misinterpretation, another commenter suggested the following language be added to this section: "Time limits on enrollment shall be reasonable and IDP's shall provide for transition to unsubsidized employment or other assistance before the maximum enrollment duration has expired." This change is incorporated since it is the intent of the regulations to retain a customer focus which should be consistent with the enrollee's IDP.

§ 641.316 Individual development plan-related terminations.

Eight comments were received on this section with seven supporting the provision. The remaining comment expressed concerns about implementation of the IDP requirement that will have to be addressed once the regulations are effective. This comment deals with issues beyond the scope of the regulations which will be addressed in an administrative issuance. As with the other administrative issuances, the Department plans to widely circulate drafts for comment prior to issuing operational guidance.

§ 641.317 Status of enrollees.

Four commenters requested clarification of the employment status of enrollees when they are working at community service assignments. They suggested that in addition to enrollees not being considered federal employees, they should also not be considered employees of the grantees or their subgrantees. As explained earlier, in the definitions section, the Department would like to clarify this through regulations since it would overcome many misunderstandings and would also eliminate the need for administrative interpretations regarding employee/enrollee status by various governmental units. However, without specific language in the program legislation, regulatory guidance binding on other agencies administering other statutes cannot be issued in these regulations. Also, the language used by the appropriations committee for the past two years in the passage of these appropriations bills has the effect of implementing these suggestions on a year-to-year basis. Of course, subsequent authorizing legislation could statutorily clarify employee/enrollee employment status.

§ 641.318 Over-enrollment.

There was one comment received regarding this section. It suggested substituting the word "temporary" for "short-term" to overcome any misunderstandings on the intent of the term. The Department agrees and this section is amended to reflect this clarification. The citation in paragraph (b)(2) is corrected to read section 502(b)(1)(P) instead of 502(b)(1)(O).

§ 641.321 Political activities.

Paragraph (a)(1) is amended by substituting the phrase "they are" for the phrase "enrollee is" since this provision applies to both enrollees and staff, as stated at the beginning of this provision. Paragraph (b)(1) is amended by substituting "Special Counsel (OSC)" for "Personnel Management (OSC)" to clarify which office has current responsibility for interpreting the Hatch Act; the U.S. Office of the Special Counsel (OSC) is located at 1730 M Street, NW., Suite 300, Washington, DC 20036–4505. Paragraph (b)(2) is amended by substituting the word "have" for the phrase, "be submitted for approval to" to overcome any potential misunderstandings about the need to seek individual approvals of the notice to be displayed and provided to the enrollees.

§ 641.323 Nepotism.

There was one comment requesting the Department extend the waiver provision set forth in paragraph (a) to isolated rural areas. The Department thinks that rural areas are similar enough in population density to Native American reservations to justify extending the provision to rural areas; thus, this provision is added to paragraph (a). Also, paragraph (a) is amended by inserting the phrase, "who works" to clarify the person referenced in this paragraph. The phrase, "the total service population is 2,000 or less and is isolated, or where there is a history of dependence on public assistance" is deleted since these factors do not apply directly to the SCSEP program.

§ 641.324 Enrollee and applicant complaint resolution.

There was one comment questioning whether this section applied to host agencies. This section does not apply to host agencies. Because this is not a consideration requiring regulatory guidance, there is no change to the regulations.

§ 641.326 Experimental private sector training projects.

Paragraph (g) is amended by substituting a citation to title II-A of the JTPA for the old citation to section 204(d). Paragraph (h) is amended by adding the word "national" before the word "grantee" to ensure that it is understood that this provision applies only to national grantees; and by deleting the word "formulas" to eliminate any possible misunderstandings on the distribution of the State allocation for experimental private sector training projects. A new paragraph (i) is added to acknowledge that non-federal matching is not required specifically for projects under this section.

§ 641.402 Administrative requirements.

Paragraph (a) is amended by providing the present citation for the Department's administrative requirements. The former citation was

41 CFR part 29–70 and the present citation is 29 CFR part 95.

§ 641.403 Allowable costs.

There were three comments on this section. Two identified incorrect citations. The paragraph addressing "allowable fringe benefits costs" is incorrectly cited as "(d)(3)". This paragraph is amended to reflect that the proper citation is paragraph (e). Under the same paragraph, the term "workers" is substituted for the term "workman's" in order to use the correct term. The remaining comment expresses a concern that listing fringe benefits deemed allowable in paragraph (e) might result in enrollee disincentives to leave the program for unsubsidized employment. The listing does not establish enrollee entitlements. However, it is the Department's judgment that it is more helpful than it is harmful to list the types of allowable fringe benefits; therefore, this listing is retained. Paragraphs (b)(2)(iii) and (4) are amended by deleting the phrase "as not subject to OMB Circular A–122" to eliminate potential misinterpretations of this confusing phrase. A new § 641.403(d)(4) is added to provide that grantee funds may be used to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

§ 641.404 Classification of cost.

There were three comments on this section. One commenter questioned permitting enrollees to perform administrative functions, since these are not reflected in the administrative costs. The Department is retaining the provision permitting the use of enrollees to perform administrative functions. It has been a longstanding practice for grantees to maximize the number of enrollees by exposing them to administrative functions. This has been a win-win practice for both the grantee and the enrollees. To acknowledge existing policy, new language is added in § 641.310(a)(1) of the regulations to reflect that the use of enrollees to perform administrative functions is an allowable activity.

Another commenter requested that those training costs incurred to train sub-grantees not be counted against the administrative cost category. Since such expenditures cannot be applied against another cost category, the current provision is retained. The last comment sought inclusion of enrollee training costs as an enrollee wage and fringe benefit. Since the program is focused on community service, enrollee training outside of SCSEP is sought only when appropriate to meet the needs of the enrollee. Paragraph (b) is amended by inserting the phrase, "including hours of" before the word "training" to clarify that this phrase applies to both community service and training. Paragraph (c)(6) is amended to add the phase "such as tuition" to ensure that there is no misunderstanding regarding the use of the word "training", as used under paragraph (b).

§ 641.405 Limitations on federal funds.

The citation in paragraph (a) is corrected to read (b) instead of (6). Also, in this paragraph, the phrase "and periods during which limitation" is deleted since this phrase was intended as transitional language intended to apply to the 1985 draft proposed regulations and does not currently apply. In paragraph (b)(1), the word "grant" is altered to read "project", consistent with the legislative language. The sole comment received was on paragraph (b)(2) of this section. The commenter pointed out that the "75 percent rule" regarding expenditure of funds on enrollee wages and fringe benefits limited the flexibility to utilize resources for the section 502(e) experimental programs. The 75 percent limitation is retained since the basic program objective is to put as much of the funds as possible into the hands of the enrollee rather than divert funds to administrative functions.

§ 641.406 Administrative cost waiver.

The word "and" is substituted for the word "the" in the last sentence of the initial paragraph since there is a series of items. To improve reading of the regulation, the initial three sections are designated as paragraph (a) and the remaining information on waivers is designated as paragraph (b). Therefore, paragraphs (a)-(e) are renumbered as (1)-(5).

§ 641.407 Non-federal share of project costs.

This section is amended to provide the present citation for the calculation of the non-federal share. The regulations now are found at 29 CFR 97.24 or 29 CFR 95.23 instead of 41 CFR 29–70.206 (1984). In addition, this section is revised to assign each item on the list of exceptions to the matching requirement to a separately designated clause. Also the reference to the 502(e) projects is moved to § 641.326(i) so all items on this topic are in a single section.

§ 641.408 Budget changes.

This section is amended to provide the present citation for revision of budget and program plans. The present cite at 29 CFR 95.25, Revision of budget and program plans, is added and the previous cite at *41 CFR 29–70.211 (1984), Modifications and Budget Revisions Procedure*, is deleted.

§ 641.409 Grantee fiscal and performance reporting requirements.

There were two comments on this section. One commenter suggested clarifying language at paragraph (c) in order to acknowledge that several Governors currently provide their State funding to national grantees for operation of the SCSEP program. The Department agrees with this clarification and amends paragraph (c) by adding "or another project sponsor designated by the Department". The second commenter asked if the Cash Transaction Report referred to in paragraph (b)(3) was necessary. Based on a review of other methods for obtaining information for draw downs of funds, the Department thinks that existing reports will suffice. Therefore, this report is discontinued upon the effective date of these regulations. Paragraphs (a) and (b) are amended to provide the new citation for reporting requirements and waivers for late reports are acknowledged, consistent with present practice. The present citations for paragraph (a) can be found at 29 CFR 95.91 and the previous citation of 41 CFR 29–70.209 3 (1984) is deleted. The present citation for paragraph (b) can be found at 29 CFR 95.52 and the previous cites of 41 CFR–29 70.207 2(a) (1984) and 41 CFR 29–70.208 (1984) are deleted.

§ 641.410 Subgrant agreements.

Paragraph (c) is amended to provide the present citation for grantee procurement. The present citation can be found at 29 CFR 95.40 through 95.48 and the previous citation of 41 CFR 29–70.216 (1984) is deleted.

§ 641.411 Program income.

This section is amended to provide the present citation for program income. The present citation can be found at 29 CFR 95.24 and the previous citation of 41 CFR 29–70.205 (1984) is deleted.

§ 641.414 Grant closeout procedures.

This section is amended to provide the present citation for grant closeout procedures. The present citation can be found at 29 CFR 97.50 or 29 CFR 95.71, as appropriate, and the previous citation of CFR part 97 is deleted.

Other

There were other comments that did not fall within any section. They are as follows:

1. Residential Health Positions. It was suggested that priority in the distribution of eligible slots be given to individuals in residential health care facilities. Since there is no legislative basis for providing such a priority, in the interest in local flexibility, we have chosen not to adopt an additional priority.

2. Administrative Costs. It was pointed out by two commenters that the 13.5 percent administrative cost limitation has remained static, while additional administrative responsibilities have been added. Congress recognized the administrative burdens they were creating in the passage of the 1992 amendments. The House report acknowledged that if additional administrative requirements, such as assessment and coordination, forced grantees to seek a waiver from the 13.5 percent level to the 15 percent ceiling, such a request should be accommodated.

3. Paperwork Reduction Act. A question was raised about why the older worker programs cannot use the same administrative forms as other employment and training programs. The regulations mandate the submission of necessary information. However, they do not mandate any particular forms. Since the Department encourages closer cooperation and coordination between programs within a State, such an approach within a State represents a goal the Department supports.

4. Social Security Eligibility. A suggestion was made that SCSEP income should not count in calculating eligibility for Supplemental Security Income under the Social Security program. Since the SCSEP regulations cannot impact on the legislation of other programs, this suggestion is not incorporated into these regulations.

5. Eligibility Criteria. A suggestion was made that the Department's guidelines on the SCSEP program's eligibility criteria need to be updated. The Department concurs with this observation and commits itself to issuing updated guidelines to replace an existing bulletin. Since these criteria are of an administrative nature, they are not incorporated into the regulations.

6. Congressional Intent. One comment was received which questioned the Department's implementation of the 1992 amendments' emphasis on placing individuals in unsubsidized employment. The unsubsidized employment goal of the program has remained the same for the last nine years and these regulations do not alter this goal. Furthermore, the program can only serve a small percentage of all persons who potentially qualify for the program. Without turnover of the enrollees, no additional persons could be served beyond those currently enrolled. On a practical basis, many of those individuals who are served by the program need more than 20 hours a week of employment at the minimum wage to maintain themselves. Therefore, the modest placement goal encouraging projects to seek unsubsidized positions for such participants is retained. This option must be available to serve individuals who require unsubsidized employment.

List of Subjects 20 CFR Part 641

Aged, employment and grant programs—Labor.

20 CFR Part 89

Aged, employment and grant programs—Labor.

Final Rule

Under the Secretary's authority, 5 U.S.C. 301 and Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix, 29 CFR part 89 is redesignated as 20 CFR part 641 and revised to read as follows:

PART 641—SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Authority: 42 U.S.C. 3056(b)(2).

Subpart A—Introductory Provisions

§ 641.101 Scope and purpose.

Part 641 contains the regulations of the Department of Labor for the Senior Community Service Employment Program (SCSEP) under title V of the OAA. The dual purposes of a SCSEP project are to provide useful part-time community service assignments for persons with low incomes who are 55 years old or older while promoting transition to unsubsidized employment. This part, and other pertinent regulations expressly incorporated by reference, set forth all regulations applicable to the SCSEP.

§ 641.102 Definitions.

The following definitions apply to this part:

OAA means the Older Americans Act of 1965, as amended (42 U.S.C. 3001 *et seq.*).

Area agency on aging means an area agency on aging designated under section 305(a)(2)(A) of the OAA or a

State agency performing the functions of an area agency on aging under section 305(b)(5) of the OAA.

Authorized position means an enrollment opportunity during a program year. The number of authorized positions is derived by dividing the total amount of funds appropriated during a program year by the national average unit cost per enrollee for that program year as determined by the Department. The national average unit cost includes all administration costs, other enrollee costs, and enrollee wage and fringe benefit costs. An allotment of the total dollars for the grantee is divided by the national unit cost to determine the total number of authorized positions for each grant agreement.

Community service means social, health, welfare, and educational services (particularly literacy tutoring); legal assistance, and other counseling services, including tax counseling and assistance and financial counseling; library, recreational, day care and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; pollution control and environmental quality efforts; weatherization activities; and includes inter-generational projects; but is not limited to the above. It excludes building and highway construction (except that which normally is performed by the project sponsor) and work which primarily benefits private, profitmaking organizations. [Section 507(2) of the OAA.]

Department and *DOL* mean the United States Department of Labor, including its agencies and organizational units.

Disability means a physical or mental impairment of an individual that substantially limits one or more major life activities; a record of such impairment; or being regarded as having such an impairment. [29 CFR parts 32 and 34.]

Dual eligibility means individuals eligible under title V who are enrolled in a joint program established under a written financial or non-financial agreement to jointly operate programs with JTPA are deemed to satisfy the requirements of all JTPA programs funded under Title II–A of the JTPA.

Eligible individual means a person who is 55 years of age, or older, and who has a low income as defined in this section. [Section 507(1) of the OAA.]

Eligible organization means an organization which is legally capable of receiving and using Federal funds under the OAA and entering into a grant or other agreement with the Department to carry out the provisions of title V of the OAA. [Section 502(b)(1) of the OAA.]

Employment and training program(s) means publicly funded efforts designed to offer employment, training and/or placement services which enhance an individual's employability. The term is used in this part to include, but is not limited to, the JTPA or similar legislation and State or local programs of a similar nature.

Enrollee means an individual who is eligible, receives services, and is paid wages for engaging in community service assignments under a project.

Grantee means an eligible organization which has entered into a grant agreement with the Department under this part.

Greatest economic need means the need resulting from an income level at or below the poverty line based on guidelines provided by the Department.

Greatest social need, as defined at section 102(a)(30) of the OAA, means the need caused by noneconomic factors which include:

(1) Physical and mental disabilities;

(2) Language barriers; and

(3) Cultural, social, or geographical isolation, including isolation caused by racial or ethnic status.

Host agency means a public agency or a private non-profit organization, other than a political party or any facility used or to be used as a place for sectarian religious instruction or worship, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, which provides a work site and supervision for an enrollee.

Individual development plan means a plan for an enrollee which shall include an employment goal, achievement objectives, and appropriate sequence of services for the enrollee based on an assessment conducted by the grantee or subgrantee and jointly agreed upon by the enrollee.

JTPA means the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Low income means an income of the family which, during the preceding six months on an annualized basis or the actual income during the preceding 12 months, whichever is more beneficial to the applicant, is not more than 125 percent of the poverty levels established and periodically updated by the U.S. Department of Health and Human Services. In addition, an individual who receives, or is a member of a family which receives, regular cash welfare payments shall be deemed to have a low income for purposes of this part.

Poor employment prospects means the unlikelihood of an otherwise eligible individual obtaining employment without the assistance of this or other employment and training programs. Persons with poor employment prospects include, but are not limited to, those without a substantial employment history, basic skills, English-language proficiency, or displaced homemakers, school dropouts, disabled veterans, homeless or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

Program year means the one-year period covered by a grant agreement beginning July 1 and ending on June 30.

Project means an undertaking by a grantee or subgrantee, pursuant to a grant agreement between the Department and the grantee, which provides for community service opportunities for eligible individuals and the delivery of associated services.

Reallocation means a redistribution of funds by a grantee.

Reallotment means the redistribution of allotted title V funds by the Department from one State to another State(s) or from one grantee to another grantee.

Residence means an individual's declared dwelling place or address. No requirement pertaining to length of residency prior to enrollment shall be imposed.

SCSEP means the Senior Community Service Employment Program as authorized under title V of the OAA.

State agency on aging means the sole agency designated by the State, in accordance with regulations of the Assistant Secretary on Aging, pursuant to section 305(a)(1) of the OAA.

Subgrantee means the legal entity to which a subgrant is awarded by a grantee and which is accountable to the grantee (or higher tier subgrantee) for the use of the funds provided.

Title V of the OAA means 42 U.S.C. 3056 *et seq.*

Subpart B—Grant Planning and Application Procedures

§ 641.201 Allotment and allocation of title V funds.

(a) *Allotment.* The Secretary shall allot funds for projects in each State in accordance with the distribution requirements contained in section 506(a) of the OAA.

(b) *Within-State apportionment.* The amount allotted for projects within a State shall be apportioned among areas within the State in an equitable manner, taking into consideration:

(1) The proportion which eligible individuals in each such area bears to the total number of such persons, respectively, in that State;

(2) The relative distribution of such individuals residing in rural and urban areas within the State; and

(3) The relative distribution of such individuals who are individuals with the greatest economic need, such individuals who are minority individuals, and such individuals with greatest social need.

(c) *Annual report of funds allocated by state.* The State agency for each State receiving funds or a sponsor designated by the Department shall report at the beginning of each fiscal year on such State's status relative to section 506(c) of the OAA. Each State's report shall include names and geographic locations of all projects receiving title V funds for projects in the State. All grantees and subgrantees operating in a State shall provide information necessary to compile the report. [Section 506(d) of the OAA.]

§ 641.202 Eligibility for title V funds.

Agencies and organizations eligible to receive title V funds shall be those specified in sections 502(b) and 506(a) of the OAA.

§ 641.203 Soliciting applications for title V funds.

The Department may solicit or request organizations to submit applications for funds.

§ 641.204 Grant application requirements.

(a) *Schedules.* The Department shall establish, by administrative directive, schedules for submittal of grant preapplications and applications; the contents of grant applications, including goals and objectives; amounts of grants; and grant budget and narrative formats.

(b) *Intergovernmental reviews.* Grant applicants shall comply with the requirements of the Department's regulation, at 29 CFR part 17, which implements the intergovernmental review of Department programs and activities. A *Preapplication for Federal Assistance* form (SF–424) filed as a result of the intergovernment review system shall contain an attachment which, at a minimum, lists the proposed number of authorized community service positions in each county, or other appropriate jurisdiction within the affected State. Whenever a national organization or other program grantee or subgrantee proposes to conduct projects within a planning and service area in a State, such organization or program grantee is responsible for sharing their applications with area agencies on aging and other SCSEP sponsors in the area prior to the award of the funds in accord with guidelines issued by the Department.

(c) *Subgrants.* A grant applicant planning to award funds by subgrant shall:

(1) Outline the nature and extent of the planned use of such funds; and

(2) Assure that in the event that a subgrant agreement is canceled in whole or in part, the grantee will provide continuity of services to enrollees.

§ 641.205 Responsibility review.

(a) In order to enter into and continue a grant relationship with DOL, an organization (applicant) shall be responsible. To determine responsibility, DOL conducts a preaward review of all grant applicants. As part of this review, DOL applies 13 basic responsibility tests to each applicant, included in paragraphs (b) and (c) of this section.

(b) If a grant applicant fails either of the following two responsibility tests, it shall not be designated as a grantee:

(1) The Department's efforts to recover debts from the applicant (for which three demand letters have been sent) established by final Department action have been unsuccessful, or the applicant has failed to comply with an approved repayment plan.

(2) Fraud or criminal activity has been determined to exist within the organization.

(c) Eleven additional basic responsibility tests are applied to each grant applicant. Failure to meet any one of these tests does not establish that the applicant is not responsible, unless the failure is substantial or persistent. These tests are as follows:

(1) Serious administrative deficiencies have been identified, such as failure to maintain a financial management system as required by Federal regulations.

(2) Willful obstruction of the monitoring process.

(3) Failure to meet performance requirements.

(4) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, *etc.*

(5) Failure to submit correct grant closeout documents within 90 days after expiration of the grant, unless an extension has been requested and granted.

(6) Failure to return outstanding cash advances within 90 days of the expiration date of the grant, unless an extension has been requested and granted, or the funds have been authorized to be retained for use on other grants.

(7) Failure to submit correct required reports by established due dates.

(8) Failure to properly report and dispose of government property as instructed by DOL.

(9) Failure to maintain cost controls resulting in excess cash on hand.

(10) Failure to timely comply with the audit requirements of 29 CFR part 96.

(11) Final disallowed costs in excess of five percent of the grant award.

§ 641.206 Grant application review.

(a) The Department shall review each timely grant application submitted by an eligible organization.

(b) In reviewing and considering an application, the Department shall determine the following:

(1) The availability of funds for the proposed grant;

(2) Whether the application is in accordance with the Department's instructions;

(3) Whether the application complies with the requirements of the OAA and this part;

(4) Whether the application offers the best prospect of serving appropriate geographic areas; and

(5) Whether the application demonstrates the effective use of funds.

§ 641.207 Negotiation.

(a) The Department may negotiate with an eligible organization to arrive at a grant agreement if the application generally meets requirements set forth in this part.

(b) The subjects of negotiation may include, but are not limited to, the following:

(1) Project components, including community service assignments and geographic locations of authorized positions;

(2) Subproject(s), if any;

(3) Funding level, including all budget line items; and

(4) Performance goals.

§ 641.208 Rejection of grant application or project components.

(a) The Department may question any proposed project component if it believes that the component will not serve the purposes of the OAA; if negotiation does not produce a mutually acceptable conclusion, it may reject this grant application.

(b) If the Department rejects an application, as set forth in paragraph (a) of this section, the Department may solicit applications from other eligible organizations in order to arrive at a grant agreement.

(c) When an application is not approved, the Department shall notify the applicant within a reasonable time in writing and state the reason(s) for rejection.

(d) Rejection of a proposal or application is a final Departmental action which is not subject to further administrative review. Rejection will not affect future consideration of the applicant for other projects as long as the organization meets the eligibility criteria.

§ 641.209 Award of funds.

When the applicant is a unit of State government or a public or private non-profit organization, the award of funds to a grantee shall be accomplished through the execution of a grant agreement prepared by the Department. When the applicant is a unit of the Federal Government, other than the Department, the award of funds shall be accomplished through an interagency agreement.

Subpart C—Grant Operations

§ 641.301 General.

(a) This subpart establishes basic grant operation standards and procedures to be followed by all organizations receiving title V funds for the purpose of operating SCSEP grant agreements and projects.

(b) The dual purposes of an SCSEP project are to provide useful part-time community service assignments for persons with low incomes who are 55 years old or older while promoting transition to unsubsidized employment. Grantees and subgrantees shall develop appropriate work assignments for eligible individuals which will result in the provision of community services as defined in sections 502(b) and 507(2) of the OAA, and § 641.102 and will promote unsubsidized employment opportunities.

§ 641.302 Grantee responsibilities.

The grantee shall remit to eligible individuals wages, for community service assignments, and provide skill enhancement opportunities, periodic physical examinations, personal and employment-related counseling, assistance in transition to unsubsidized employment where feasible, and other benefits as approved by the Department.

(a) grantees are responsible for:

(1) Following and enforcing the requirements set forth in the OAA and this part;

(2) Implementing and carrying out projects in accordance with the provisions of the grant agreement; and

(3) Assuring that, to the extent feasible, such projects will serve the needs of minority, limited English-speaking, and Indian eligible individuals, and eligible individuals who have the greatest economic need, at least in proportion to their numbers in the State, and take into consideration their rates of poverty and unemployment based on the best available information.

(b) The grantee periodically shall monitor the performance of grant-supported activities to assure that project goals are being achieved and that the requirements of the OAA and this part are being met.

(c) The grantee or subgrantee shall obtain and record the personal information necessary for a proper determination of eligibility for each individual and maintain documentation supporting the eligibility of enrollees.

(d) Each grantee or subgrantee shall make efforts to provide equitable services among substantial segments of the population eligible for participation in SCSEP. Such efforts shall include, but not be limited to: outreach efforts to broaden the composition of the pool of those considered for participation, to include members of both sexes, various race/ethnic groups and individuals with disabilities.

§ 641.303 Cooperative relationships.

(a) Each grantee or subgrantee shall, to the maximum extent feasible, cooperate with other agencies, including agencies conducting programs under the JTPA, to provide services to elderly persons, to persons with low incomes, and with agencies providing employment and training services.

(b) The cooperation described in paragraph (a) of this section shall include, but not be limited to:

(1) Selection of community service assignment occupational categories, work assignments, and host agencies to provide a variety of community service opportunities for enrollees and to produce a variety of federally funded services which respond to the community's total needs and initiatives.

(2) Establishment of cooperative relations with the State agency on aging designated under section 305(a)(1) of the OAA and with area agencies on aging designated under section 305(a)(2) of the OAA for the purpose of obtaining services as authorized under titles III, IV, and VI of the OAA to increase the likelihood of receipt of unsubsidized employment opportunities and supportive services that are available. Existing services provided under the authority of section 321(a) of the OAA shall be used first by grantee or subgrantee.

(3) Establishment of cooperative relations with other employment and training organizations including the State and local JTPA and the Carl D. Perkins Act programs to insure that project enrollees can benefit from such cooperative activities as dual eligibility, shared assessments, training and referral.

(4) Establishment of cooperative relations with State employment security agencies to insure that enrollees are made aware of services available from these agencies.

(c) Whenever a national organization or other program sponsor conducts a project within a planning and service area in a State, such an organization or program sponsor shall conduct such a project in consultation with the area agency on aging of the planning and service area and shall submit to the State agency and the area agency on aging a description of such project to be conducted in the State including the location of the project, 30 days prior to undertaking the project, for review and comment to assure efficient and effective coordination of programs under this part.

§ 641.304 Recruitment and selection of enrollees.

Grantees and subgrantees shall use methods of recruitment and selection (including notifying the State employment security agency when vacancies occur) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the program. Recruitment efforts shall be designed, to the extent feasible, to assure equitable distribution of services to groups described in § 641.302(e). [Section 502(b)(1)(H) of the OAA.]

§ 641.305 Enrollment eligibility.

(a) *General.* Eligibility criteria set forth in this section apply to all SCSEP applicants and enrollees, including the following individuals:

(1) Each individual seeking initial enrollment;

(2) Each individual seeking reenrollment after termination from the SCSEP because of loss of unsubsidized employment through no fault of their own, including illness; and

(3) Each enrollee seeking recertification for continued enrollment.

(b) *Eligibility criteria.* To be eligible for initial enrollment, each individual shall meet the following criteria for age, income, and place of residence:

(1) *Age.* Each individual shall be no less than 55 years of age. No person whose age is 55 years or more shall be determined ineligible because of age, and no upper age limit shall be imposed for initial or continued enrollment. [Section 502 of the OAA.]

(2) *Income.* The income of the family of which the individual is a member

shall not exceed the low-income standards defined in § 641.102 and issued by the Department. In addition, a disabled person may be treated as a "family of one" for income eligibility purposes.

(3) *Residence.* Each individual, upon initial enrollment, shall reside in the State in which the project is authorized.

(c) *No additional eligibility requirement.* Grantees and subgrantees shall not impose any additional condition or requirement for enrollment eligibility unless required by Federal law.

(d) *Dual Eligibility.* Individuals eligible under title V of the OAA who are enrolled in a joint program established under a written financial or non-financial agreement to jointly operate programs with JTPA shall be deemed to satisfy the requirements of JTPA Title II–A.

(e) *Special responsibilities of the grantees and subgrantee(s) relating to eligibility.*

(1) Each grantee or subgrantee shall recertify the income of each enrollee under its grant or subgrant, respectively, once each project year, according to the schedule set forth in the grant agreement and shall maintain documentation to support the recertification. Enrollees found to be ineligible for continued enrollment because of income shall be given, by the grantee or subgrantee, a written notice of termination and shall be terminated 30 days after the notice. No enrollee shall participate in a community service position for more than 12 months without having his or her income recertified.

(2) If, at any time, the grantee or a subgrantee determines that an enrollee was incorrectly declared eligible as a direct result of false information given by that individual, the individual shall be given a written notice explaining the reason or reasons for the determination and shall be terminated immediately.

(3) If, at any time, the grantee or subgrantee determines that an enrollee was incorrectly declared eligible through no fault of the enrollee, the grantee or subgrantee shall give the enrollee immediate written notice explaining the reason or reasons for termination, and the enrollee shall be terminated 30 days after the notice.

(4) When a grantee or subgrantee makes an unfavorable determination on continued eligibility, it shall explain in writing to the enrollee the reason(s) for the determination and shall provide notice of the right of appeal in accordance with the required procedures set forth in § 641.324.

(5) When a grantee or subgrantee terminates an enrollee for cause, it shall inform the enrollee, in writing, of the reason(s) for termination and of the right of appeal in accordance with the required procedures set forth in § 641.324.

(6) When a grantee or subgrantee makes an unfavorable determination of enrollment eligibility pursuant to paragraph (e) (1) or (3) of this section, it should assure that the individual is given a reason for non-enrollment and, when feasible, should refer the individual to other potential sources of assistance.

§ 641.306 Enrollment priorities.

(a) As set forth in sections 502(b)(1)(M) and 507(1) of the OAA, enrollment priorities for filling all positions shall be as follows:

(1) Eligible individuals with the greatest economic need;

(2) Eligible individuals who are 60 years old or older; and

(3) Eligible individuals who seek re-enrollment following termination of an unsubsidized job through no fault of their own or due to illness, provided that re-enrollment is sought within one year of termination.

(b) Within all enrollment priorities, those persons with poor employment prospects shall be given preference.

(c) Enrollment priorities established in this section shall apply to all vacant community service positions, but shall not be interpreted to require the termination of any eligible enrollee. The priorities do not apply to the experimental private sector projects authorized by section 502(e) of the OAA.

§ 641.307 [Reserved]

§ 641.308 Orientation.

(a) *Enrollee.* The grantee or subgrantee shall provide orientation to eligible individuals who are enrolled as soon as practicable after a determination of eligibility. The orientation shall provide, as appropriate, information related to: project objectives; community service assignments; training; supportive services; responsibilities, rights, and duties of the enrollee; permitted and prohibited political activities; plans for transition to unsubsidized employment and a discussion of safe working conditions at the host agencies.

(b) *Host agency.* The grantee or a subgrantee shall provide to those individuals who will supervise enrollees at the host agencies, an orientation similar to the one described in paragraph (a) of this section. This is to assure that enrollees will receive adequate supervision and opportunities for transitioning to the host agency staff or other unsubsidized employment.

(c) *Supervision.* The grantee or subgrantee shall ensure that host agencies provide adequate supervision, adequate orientation and instruction regarding, among other things, job duties and safe working procedures.

§ 641.309 Assessment and reassessment of enrollees.

(a) *General.* The grantee or subgrantee shall assess each enrollee under the grant or subgrant, respectively, to determine the most suitable community service assignment and to identify appropriate employment, training, and community service objectives for each individual. The assessment shall be made in partnership with the new enrollee and should consider the individual's preference of occupational category, work history, skills, interests, talents, physical capabilities, need for supportive services, aptitudes, potential for performing proposed community service assignment duties, and potential for transition to unsubsidized employment.

(b) *Assessment of physical capabilities.* The assessment of each enrollee shall take into consideration his or her physical capabilities. Assessments of physical ability shall be consistent with section 504 of the Rehabilitation Act of 1973, as amended (section 504), and the Americans with Disabilities Act of 1990 (ADA).

(c) *Assignment.* The grantee or subgrantee shall seek a community service assignment which will permit the most effective use of each enrollee's skills, interests, and aptitudes.

(d) *Individual development plans.* The grantee and subgrantee shall use the assessment or reassessment as a basis for developing or amending an individual development plan (IDP). The IDP shall be developed in partnership with the enrollee to reflect the needs of the enrollee as indicated by the assessment, as well as the expressed interests and desires of the enrollee.

(e) *Review of IDP plan.* The grantee and subgrantee shall review the IDP at least once in a 12 month period for the following purposes: to evaluate the progress of each enrollee in meeting the objectives of the IDP; to determine each enrollee's potential for transition to unsubsidized employment; to determine the appropriateness of each enrollee's current community service assignment; and to review progress made toward meeting their training and employment objectives.

(f) *Alternative assignment.* The sponsor may develop an alternative assignment for an enrollee, when feasible, should there be one of the following determinations:

(1) That a different community service assignment will provide greater opportunity for the use of an enrollee's skills and aptitudes;

(2) That an alternative assignment will provide work experience which will enhance the potential for unsubsidized employment; or

(3) That an alternative assignment will otherwise serve the best interests of the enrollee.

(g) *Minimum requirements.* The assessments and reassessments required by this section shall meet minimum requirements issued by the Department on assessment, and subsequent determinations are to be recorded in the enrollee's IDP, to become a part of each enrollee's permanent record.

(h) *Recent assessments.* Assessments of an enrollee, prepared by another employment or training program (such as a program under the JTPA or the Carl D. Perkins Vocational and Applied Technology Act) may be substituted for one prepared by the grantee or subgrantee if the training program prepared the assessment within the last year prior to applying for SCSEP. [section 502(b)(1)(M) of the OAA.]

§ 641.310 Community service assignments.

(a) *Assignment to community service.* After the completion of an enrollee's orientation and initial training, if any, the grantee or subgrantee shall refer the enrollee, as soon as possible, to a useful part-time community service assignment, if appropriate, according to the IDP.

(1) Each enrollee shall be placed in a community service assignment which contributes to the general welfare of the community and provides services related to publicly-owned and operated facilities and projects, or projects sponsored by organizations other than political parties, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986. Project sponsors may provide enrollees with opportunities to assist in the administration of the SCSEP.

(2) The enrollee shall not be assigned to work involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship, or to work which primarily benefits private, profit-making organizations. [Sections 502(b)(1)(A), (C), and (D) and 507(2) of the OAA.]

(b) *Hours of community service assignments.*

(1) Each enrollee's community service assignment shall not exceed 1,300 hours during a 12-month period specified in the grantee's agreement. The 1,300 hours includes paid hours of orientation, training, sick leave, and vacation and hours of enrollment provided by all grantees and subgrantees. No enrollee shall be paid for more than 1,300 hours in any 12-month period. [Section 508(a)(2) of the OAA.]

(2) The grantee or subgrantee shall not require an enrollee to participate more than 20 hours during one week; however, hours may be extended with the consent of the enrollee.

(3) The grantee or subgrantee shall not offer an enrollee an average of fewer than 20 hours of paid participation per week. Shorter periods may be authorized by the grant agreement, in writing by the Department, or by written agreement between an enrollee and a grantee or subgrantee. [Section 508(a)(2) of the OAA.]

(4) The grantee or subgrantee shall, to the extent possible, ensure that the enrollee works during normal business hours, if the enrollee so desires.

(c) *Location.* The enrollee shall be employed at work sites in or near the community where the enrollee resides. [Section 502(b)(1)(B) of the OAA.]

(d) *Working conditions for enrollees.* Enrollees shall not be permitted to work in a building or surroundings or under conditions which are unsanitary, hazardous, or dangerous to the enrollees' health or safety. The grantee or subgrantee shall make periodic visits to the enrollees' work site(s) to assure that the working conditions and treatment of the enrollee are consistent with the OAA and this part. [Section 502(b)(1)(J) of the OAA.]

§ 641.311 Enrollee wages and fringe benefits.

(a) *Wages.* Upon engaging in part-time community service assignments, including orientation and training in preparation for community service assignments, each enrollee shall receive wages at a rate no less than the highest applicable rate:

(1) The minimum wage which would be applicable to the enrollee under the Fair Labor Standards Act of 1938;

(2) The State or local minimum wage for the most nearly comparable covered employment; or

(3) The prevailing rates of pay for persons employed in similar public occupations by the same employer.

(b) *Fringe benefits.*

(1) The grantee or subgrantee shall ensure that enrollees receive all fringe benefits required by law.

(2) Within a project or subproject, fringe benefits shall be provided uniformly to all enrollees, unless the Department agrees to waive this provision due to a determination that such a waiver is in the best interests of applicants, enrollees, and the project administration.

(3) *Physical examination.*

(i) Each enrollee shall be offered the opportunity to take a physical examination annually. A physical is a fringe benefit, and is not an eligibility criterion. The examining physician shall provide, to the enrollee only, a written report of the results of the examination. The enrollee may, at his or her option, provide the grantee or subgrantee a copy of the report. The results of the physical examination shall not be taken into consideration in determining placement into a community service assignment.

(ii) An enrollee may refuse the physical examination offered. In such a case, the grantee or subgrantee should document this refusal, through a signed waiver or other means, within 60 work days after commencement of the community service assignment. Thereafter, grantees or subgrantees shall document an enrollee's refusal of the annual physical examination.

(c) *Retirement.* Expenditures of grant funds for contributions into a retirement system or plan are prohibited, unless the grantee has documentation on hand showing that:

(1) The costs are allowable under the appropriate cost principles indicated at § 641.403(b); and

(2) Such contributions bear a reasonable relationship to the cost of providing such benefits to enrollees because:

(i) the benefits vest at the time contributions are made on behalf of the enrollees; or

(ii) the charges to SCSEP funds are for contributions on behalf of enrollees to a "defined benefit" type of plan which do not exceed the amounts reasonably necessary to provide the specified benefit to enrollees, as determined under a separate actuarial determination.

(d) *Workers' compensation.* Where an enrollee is not covered by the State workers' compensation law, the grantee or subgrantee shall provide the enrollee with workers' compensation benefits equal to that provided by law for covered employment. [Section 504(b) of the OAA.]

(e) *Unemployment compensation.* The grantee is authorized to pay the cost of unemployment insurance for covered

enrollees, where required by law. [Section 502(b)(1)(O) of the OAA.]

§ 641.312 Enrollee supportive services.

(a) The grantee or subgrantee shall provide supportive services designed to assist the enrollee in participating successfully in community service assignments and, where appropriate, to prepare and assist the enrollee in obtaining unsubsidized employment. To the extent feasible, the grantee or subgrantee shall utilize supportive services available from other titles of the OAA, particularly those administered by area agencies on aging and other funding sources.

(b) Supportive services may include, but need not be limited to, all or some of the following:

(1) Counseling or instruction designed to assist the enrollee to participate successfully in community service assignments or to obtain unsubsidized employment.

(2) Counseling designed to assist the enrollee personally in areas such as health, nutrition, social security benefits, Medicare benefits, and retirement laws.

(3) Incidentals, including, but not limited to: work shoes, badges, uniforms, safety glasses, eyeglasses, and hand tools, may be provided if necessary for successful participation in community service assignments and if not available from other sources.

(4) Periodic meetings on topics of general interest, including matters related to health, job seeking skills, safety, and consumer affairs.

(5) *Enrollee transportation.*

(i) Enrollee transportation may be paid if transportation from other sources at no cost to the project is unavailable and such unavailability is documented. When authorized in the grant agreement, transportation may be provided for enrollees from home to work, to training or to supportive services. [Section 502(b)(1)(L) of the OAA.]

(ii) Grant funds may not be expended to support the transportation costs of host agencies or programs funded by other than title V of the OAA, except where provided by Federal law.

§ 641.313 Training.

(a) The grantee or subgrantee shall provide or arrange for training specific to an enrollee's community service assignment. Training may be provided through lectures, seminars, classroom instruction, individual instruction or other arrangements including, but not limited to, arrangements with employment and training programs. The grantee or the subgrantee is encouraged to obtain such services through locally available resources, including employment and training programs, as defined in § 641.103, and through host agencies, at no cost or reduced cost to the project. [Section 502(b)(1)(I) of the OAA.]

(b) Training shall consist of up to 500 hours per grant year and shall be consistent with the enrollee's IDP. Such training may cover all aspects of training; e.g., skill, job search, etc. Enrollees shall not be enrolled solely for the purpose of receiving job search and job referral services. Waivers for additional hours of training will be considered on an exception basis.

(c) In addition to training in preparation for community service assignments, as described in this section, a grantee or subgrantee is encouraged to arrange for, or directly provide, skills-training opportunities beyond the SCSEP community service training activities which will permit the enrollee to acquire or improve skills, including literacy training, applicable in community service assignment or for unsubsidized employment.

(d) A grantee or subgrantee, to the extent feasible, shall arrange skill-training for the enrollee which is realistic and consistent with his or her IDP. A grantee or subgrantee shall place major emphasis on the training available through on-the-job experience at SCSEP work sites, thereby retaining the community service focus of the SCSEP.

(e) An enrollee engaging in skills-related training, as described in paragraphs (c) and (d) of this section, may be reimbursed for the documented travel costs and room and board necessary to engage in such training. [Section 502(b)(1)(I) of the OAA.]

(f) Whenever possible a grantee or subgrantee shall seek to obtain all training for enrollees reduced or no cost to title V from such sources as the JTPA and the Carl D. Perkins Vocational and Applied Technology Education Act. Where training is not available from other sources, title V funds may be used for training.

(g) Nothing in this section shall be interpreted to prevent or limit an enrollee from engaging in self-development training available from sources other than title V of the OAA during hours other than hours of community service assignment.

(h) Joint programming, including co-enrollment when appropriate, between title V programs and programs authorized by the Job Training Partnership Act, the Community Services Block Grant Act, or the Carl D. Perkins Act is strongly encouraged.

§ 641.314 Placement into unsubsidized employment.

(a) In order to ensure that the maximum number of eligible individuals have an opportunity to participate in community service assignments, the grantee or subgrantee shall employ reasonable means to place each enrollee into unsubsidized employment.

(b) To encourage the placement of the enrollee into an unsubsidized job, the Department has established a goal of placing into unsubsidized employment the number of enrollees which equals at least 20 percent of the project's annual authorized positions. Whenever this goal is not achieved, the grantee shall develop and submit a plan of action for addressing this shortfall.

(c) The grantee or subgrantee may contact private and public employers directly or through the State employment security agencies to develop or identify suitable unsubsidized employment opportunities; and should encourage host agencies to employ enrollees in their regular work forces.

(d) The grantee or subgrantee shall follow-up on each enrollee who is placed into unsubsidized employment and shall document such follow-up at least once within 3 months of unsubsidized placement.

§ 641.315 Maximum duration of enrollment.

A maximum duration of enrollment may be established by the grantee in the grant agreement, when authorized by the Department. Time limits on enrollment shall be reasonable and IDPs shall provide for transition to unsubsidized employment or other assistance before the maximum enrollment duration has expired.

§ 641.316 Individual development plan-related terminations.

When an enrollee refuses to accept a reasonable number of referrals or job offers to unsubsidized employment consistent with his or her IDP and there are no extenuating circumstances, the enrollee may be terminated from the SCSEP. Such a termination shall be consistent with administrative guidelines issued by the Department and the termination shall be subject to the applicable appeal rights and procedures described in § 641.324.

§ 641.317 Status of enrollees.

Enrollees who are employed in any project funded under the OAA are not deemed to be Federal employees as a result of such employment. [Section 504(a) of the OAA.]

§ 641.318 Over-enrollment.

Should attrition or funding adjustments prevent a portion of project funds from being fully utilized, the grantee may use those funds during the period of the agreement to over-enroll additional eligible individuals. The number over-enrolled may not exceed 20 percent of the total number of authorized positions established under the grant agreement without the written approval of the Department. Payments to or on behalf of enrollees in such positions shall not exceed the amount of the unused funds available. Each individual enrolled in such a position shall be informed in writing that the assignment is temporary in nature and may be terminated. The grantee shall first seek to maintain full enrollment in authorized positions and shall seek to schedule all enrollments and terminations to avoid excessive terminations at the end of the grant period.

§ 6541.319 [Reserved]

§ 641.320 Political patronage.

(a) No grantee may select, reject, promote, or terminate an individual based on that individual's political affiliations or beliefs. The selection or advancement of enrollees as a reward for political services, or as a form of political patronage, is prohibited.

(b) There shall be no selection of subgrantees or host agencies based on political affiliation.

§ 641.321 Political activities.

(a) *General.* No project under title V of the OAA or this part may involve political activities.

(1) No enrollee or staff person may be permitted to engage in partisan or nonpartisan political activities during hours for which they are paid with SCSEP funds.

(2) No enrollee or staff person, at any time, may be permitted to engage in partisan political activities in which such enrollee or staff person represents himself or herself as a spokesperson of the SCSEP program.

(3) No enrollee may be employed or out-stationed in the office of a Member of Congress, a State or local legislator, or on any staff of a legislative committee.

(4) No enrollee may be employed or out-stationed in the immediate office of any elected chief executive officer(s) of a State or unit of general government, except that:

(i) Units of local government may serve as host-agencies for enrollees in such positions, provided that such assignments are nonpolitical; and

(ii) Where assignments are technically in such offices, such assignments actually are program activities not in any way involved in political functions.

(5) No enrollee may be assigned to perform political activities in the offices of other elected officials. However, placement of enrollees in such nonpolitical assignments within the offices of such elected officials is permissible, provided that grantees develop safeguards to ensure that enrollees placed in these assignments are not involved in political activities. These safeguards shall be described in the grant agreement and shall be subject to review and monitoring by the grantee and the Department.

(b) *Hatch Act.*

(1) State and local employees governed by 5 U.S.C. chapter 15 shall comply with the Hatch Act provisions as interpreted and applied by the Office of the Special Counsel.

(2) Each project subject to 5 U.S.C. chapter 15 shall display a notice and shall make available to each person associated with such project a written explanation, clarifying the law with respect to allowable and unallowable political activities under 5 U.S.C. chapter 15 which are applicable to the project and each category of individuals associated with such project. This notice, which shall have the approval of the Department, shall contain the telephone number and address of the DOL Inspector General. [Section 502(b)(1)(P) of the OAA.] Enforcement of the Hatch Act shall be as provided at 5 U.S.C. chapter 15.

§ 641.322 Unionization.

No funds provided under title V of the OAA or this part may be used in any way to assist, promote, or deter union organizing.

§ 641.323 Nepotism.

(a) No grantee or subgrantee may hire, and no host agency may be a work site for a person who works in an administrative capacity, staff position, or community service position funded under title V of the OAA or this part if a member of that person's immediate family is engaged in a decision-making capacity (whether compensated or not) for that project, subproject, grantee, subgrantee or host agency. This provision may be waived by the Department at work sites on Native American reservations and rural areas provided that adequate justification can be documented, such as that no other persons are eligible for participation.

(b) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, that requirement shall be followed.

(c) For purposes of this section:

(1) *Immediate family* means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, and grandchild.

(2) *Engaged in an administrative capacity* includes those persons who, in the administration of projects, or host agencies, have responsibility for, or authority over those with responsibility for, the selection of enrollees from among eligible applicants.

§ 641.324 Enrollee and applicant complaint resolution.

(a) Each grantee shall establish and describe in the grant agreement procedures for resolving complaints, other than those described by paragraph (c) of this section, arising between the grantee and an enrollee.

(b) Allegations of violations of federal law, other than those described in paragraph (c) of this section, which cannot be resolved within 60 days as a result of the grantee's procedures, may be filed with the Chief, Division of Older Worker Programs, Employment and Training Administration, U.S. Department of Labor, Washington, DC 20210.

(c) Grantees that do not receive any funds under the JTPA shall process complaints of discrimination in accordance with 29 CFR parts 31 and 32. Grantees that receive any funds under JTPA shall process complaints of discrimination in accordance with 29 CFR part 34.

(d) Except for complaints described in paragraphs (b) and (c) of this section, the Department shall limit its review to determining whether the grantee's appeal procedures were followed.

§ 641.325 Maintenance of effort.

(a) Employment of an enrollee funded under title V of the OAA or this part shall be only in addition to budgeted employment which would otherwise be funded by the grantee, subgrantee and the host agency(ies) without assistance under the OAA. [Section 502(b)(1)(F) of the OAA.]

(b) Each project funded under title V of the OAA or this part:

(1) Should result in an increase in employment opportunities in addition to those which would otherwise be available;

(2) Shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-

overtime work, wages, or employment benefits;

(3) Shall not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed;

(4) Shall not substitute project jobs for existing federally-assisted jobs; and

(5) Shall not employ or continue to employ any enrollee to perform work which is the same or substantially the same as that performed by any other person who is on layoff. [Section 502(b)(1)(G) of the OAA.]

§ 641.326 Experimental private sector training projects.

(a) The Department may authorize a grantee to develop an experimental job training project(s) designed to provide second career training and the placement of eligible individuals in employment opportunities with private business concerns. [Section 502(e) of the OAA.]

(b) Experimental project agreements for training may be with States, public agencies, non-profit private organizations, and private business concerns.

(c) The geographic location of these projects shall be determined by the Department to insure an equitable distribution of such projects.

(d) To the extent feasible, experimental projects shall emphasize second-career training, and innovative work modes, including those with reduced physical exertion, and placement into growth industries and jobs reflecting new technologies.

(e) The Department shall establish by administrative guidelines the application schedule, content, format, allocation levels and reporting requirements for experimental projects.

(f) Current title V eligibility standards shall be used for experimental projects unless the Department permits, in writing, the use of another approved income index.

(g) Projects funded under section 502(e) of the OAA shall seek to be coordinated with projects carried out under title II–A of the JTPA to the extent feasible.

(h) National grantees shall distribute funds for experimental projects in accordance with the State allocation in their title V grant.

(i) A grantee may exclude a project, permitted under section 502(e) of the OAA, from meeting the non-federal share requirement set forth in § 641.407; however, this exclusion does not relieve the grantee from the matching requirement, under § 641.407, which applies to the entire grant.

Subpart D—Administrative Standards and Procedures for Grantees and Limitations on Federal Funds

§ 641.401 General.

This subpart establishes limitations on title V funds to be used for community service activities and describes, or incorporates by reference, requirements for the administration of grants by the SCSEP grantee.

§ 641.402 Administrative requirements.

(a) Except as otherwise provided in this part, title V funds shall be administered in accordance with, and subject to, the Department's regulations at 29 CFR parts 31, 32, 34, 93, 96, and 98. In addition, projects and activities administered by State, local or Indian tribal governments are also subject to the Department's administrative requirements regulations at 29 CFR part 97; projects and activities administered by institutions of higher education, hospitals, or other non-profit organizations are subject to the Department's administrative requirements regulations at 29 CFR part 95. Grantees of title V funds shall be subject to any revisions of any implementing regulations cited in this paragraph (a) on the effective date of such revisions.

(b) The administration of interagency agreements set forth in subpart E of this part is not subject to paragraph (a) of this section.

§ 641.403 Allowable costs.

(a) *General.* The allowability of costs shall be determined in accordance with the cost principles indicated in paragraph (b) of this section, except as otherwise provided in this part.

(b) *Applicable Cost Principles.*

(1) The cost principles set forth in paragraphs (b)(1) through (4) of this section apply to the organization incurring the costs:

(i) OMB Circular A–87—State, local or Indian tribal government;

(ii) OMB Circular A–122—Private, non-profit organization other than:

(A) Institutions of higher education;

(B) Hospitals; or

(C) Other organizations named in OMB Circular A–122 (see sections 4.a. (Definitions) and 5 (Exclusions) of OMB Circular A–122);

(iii) OMB Circular A–21—Educational institution; or

(iv) 48 CFR part 31, subpart 31.2—Commercial organization (for-profit organization, other than a hospital or other organizations named in OMB Circular A–122).

(2) The OMB Circulars are available by writing to the Office of Management and Budget, Office of Administration, Publications Unit, Room G–236, New Executive Office Building, Washington, DC 20503, or by calling 202–395–7332.

(c) *Lobbying costs.* In addition to the prohibition contained in 29 CFR part 93 and in accordance with limitations on the use of appropriated funds in Department of Labor Appropriation Acts, title V funds shall not be used to pay any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States.

(d) *Building repairs and acquisition costs.* No federal grant funds provided to a grantee or subgrantee under title V of the OAA or this part may be expended directly or indirectly for the purchase, erection, or repair of any building except for the labor involved in:

(1) Minor remodeling of a public building necessary to make it suitable for use by project administrators;

(2) Minor repair and rehabilitation of publicly used facilities for the general benefit of the community; and

(3) Minor repair and rehabilitation by enrollees of housing occupied by persons with low incomes who are declared eligible for such services by authorized local agencies.

(4) *Accessibility and Reasonable Accommodation.* Funds may be used to meet a grantee or subgrantee's obligations to provide physical and programmatic accessibility and reasonable accommodation as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

(e) *Allowable fringe benefit costs.* The cost of the following fringe benefits are allowable: initial and annual physical assessments, annual leave, sick leave, holidays, health insurance, social security, worker's compensation and any other fringe benefits approved in the grant agreement and permitted by the appropriate Federal cost principles found in OMB Circulars A–87 and A–122, except as limited for retirement costs by § 641.311(c).

§ 641.404 Classification of costs.

All costs must be charged to one of the following three cost categories:

(a) *Administration.* The cost category of Administration shall include, but need not be limited to, the direct and indirect costs of providing:

(1) Administration, management, and direction of a program or project;

(2) Reports on evaluation, management, community benefits, and other aspects of project activity;

(3) Assistance of an advisory council, if any;

(4) Accounting and management information systems;

(5) Training and technical assistance for grantee or subgrantee staff;

(6) Bonding; and

(7) Audits.

(b) *Enrollee wages and fringe benefits.* The cost category of Enrollee Wages and Fringe Benefits shall include wages paid to enrollees for hours of community service assignments, as described in § 641.311, including hours of training related to a community service assignment, and the costs of fringe benefits provided in accordance with § 641.311.

(c) *Other enrollee costs.* The cost category of Other enrollee costs shall include all costs of functions, services, and benefits not categorized as administration or enrollee wages and fringe benefits. Other enrollee costs shall include, but shall not be limited to, the direct and indirect costs of providing:

(1) Recruitment and selection of eligible enrollees as provided in §§ 641.304 and 641.305;

(2) Orientation of enrollees and host agencies as provided in § 641.308;

(3) Assessment of enrollees for participation in community service assignments and evaluation of enrollees for continued participation or transition to unsubsidized employment as provided in § 641.309;

(4) Development of appropriate community service assignments as provided in § 641.310;

(5) Supportive services for enrollees, including transportation, as provided in § 641.312;

(6) Training for enrollees, including tuition; and

(7) Development of unsubsidized employment opportunities for enrollees as provided in § 641.314.

(d) *Cost reductions.* Grantees may lower administration costs or other enrollee costs by assigning enrollees to activities which normally would be charged to either of these cost categories. In such instances, the costs of enrollees' wages and fringe benefits shall be charged to the cost category of enrollee wages and fringe benefits. [Section 502(b)(1)(A) of the OAA.]

§ 641.405 Limitations on federal funds.

(a) The limitations on federal funds set forth in this section shall apply to SCSEP funds allotted to grantees for community service activities. Cost categories, limitations, and periods during which different limitations shall apply are set forth in paragraph (b) of this section.

(b) The cost categories and the limitations which apply to them shall be:

(1) *Administration.* The amount of federal funds expended for the cost of administration during the program year shall be no more than 13.5 percent of the grant. The Department may increase the amount available for the cost of administration to no more than 15 percent of the project in accordance with section 502(c)(3) of the OAA.

(2) *Enrollee wages and fringe benefits.* The amount of federal funds budgeted for enrollee wages and fringe benefits shall be no less than 75 percent of the grant.

§ 641.406 Administrative cost waiver.

(a) Based upon information submitted by a public or private nonprofit agency or organization with which the Department has or proposes to have an agreement, as set forth under section 502(b) of the OAA, the Department may waive § 641.405(b)(1) and increase the amount available for paying the costs of administration to an amount not to exceed 15 percent of the proposed federal costs of the grant. Each waiver shall be in writing. The Department shall administer this section in accordance with section 502(c)(3) (A) and (B) of the OAA.

(b) The waiver may be provided to grantees that demonstrate and document reasonable and necessary:

(1) Major administrative cost increases;

(2) Operational requirements imposed by the Department;

(3) Increased costs associated with unsubsidized placement;

(4) Increased costs of providing specialized services to minority groups; and

(5) The minimum amount necessary to administer the grant relative to the available funds.

§ 641.407 Non-federal share of project costs.

The non-federal share of costs may be in cash or in-kind, or a combination of the two, and shall be calculated in accordance with 29 CFR 97.24 or 29 CFR 95.23, as appropriate. The Department shall pay not more than 90 percent of the cost of any project which is the subject of an agreement entered into under the OAA, except that the Department is authorized to pay all of the costs of any such project which is:

(a) An emergency or disaster project;

(b) A project located in an economically depressed area as determined by the Secretary of Labor in consultation with the Secretary of Commerce and the Director of the Office of Community Services of the Department of Health and Human Services;

(c) A project which is exempted by law; or

(d) A project serving an Indian reservation that can demonstrate it cannot provide adequate non-federal resources. [Sections 502(c) and 502(e) of the OAA.]

§ 641.408 Budget changes.

As an exception to 29 CFR 97.30(c)(1), Budget changes, 29 CFR 95.25, Revision of budget and program plans, the movement of Enrollee wages and fringe benefits to any other budget category shall not be permitted without prior written approval of the awarding agency. The Department shall not approve any budget change which would result in non-compliance with § 641.405(b)(2).

§ 641.409 Grantee fiscal and performance reporting requirements.

(a) In accordance with 29 CFR 97.40 or 29 CFR 95.51, as appropriate, each grantee shall submit a Senior Community Service Employment Program *Quarterly Progress Report* (QPR). This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period unless a waiver is provided. If the grant period ends on a date other than the last day of a federal fiscal year quarter, the last quarterly report covering the entire grant period shall be submitted no later than 30 days after the ending date unless a waiver is provided. The Department shall provide instructions for the preparation of this report.

(b) In accordance with 29 CFR 97.41 or 29 CFR 95.52, as appropriate, the following financial reporting requirements apply to title V grants:

(1) An SF–269, *Financial Status Report* (FSR), shall be submitted to the Department within 30 days after the ending of each quarter of the program year unless a waiver is provided. A final FSR shall be submitted within 90 days after the end of the grant unless a waiver is provided.

(2) All FSR's shall be prepared on an accrual basis.

(c) In accordance with Departmental instructions, an equitable distribution report of SCSEP positions by all grantees in each State shall be submitted annually by the State agency receiving title V funds or another project sponsor designated by the Department. (Approved under the Office of Management and Budget Control No. 1205–0040)

§ 641.410 Subgrant agreements.

(a) The grantee is responsible for the performance of all activities implemented under subgrant agreements and for compliance by the subgrantee with the OAA and this part.

(b) No subgrant or other subagreement may provide for any expenditure of funds beyond the ending date of the grant agreement.

(c) For purposes of this part, procurement, as described in 29 CFR part 97 and 29 CFR 95.40 through 95.48, does not include the award or administration of subgrant agreements.

§ 641.411 Program income accountability.

Any of the methods described at 29 CFR 97.25 or 29 CFR 95.24, as appropriate, may be used to account for program income.

§ 641.412 Equipment.

Equipment purchased by a State, grantee with title V funds prior to July 1, 1989, shall be subject to 29 CFR 97.32.

§ 641.413 Audits.

Each grantee is responsible for complying with the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and 29 CFR part 96, the Department of Labor regulation which implements Office of Management and Budget Circular A–128, "Audits of State and Local Governments"; or OMB Circular 133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions", as appropriate.

§ 641.414 Grant closeout procedures.

Grantees shall follow the grant closeout procedures at 29 CFR 97.50 or 29 CFR 95.71, as appropriate. As necessary, the Department shall issue supplementary closeout instructions for all title V grantees.

§ 641.415 Department of Labor appeals procedures for grantees.

(a) This section sets forth the procedures by which the grantee may appeal a SCSEP final determination by the Department relating to costs, payments, notices of suspension, and notices of termination other than those resulting from an audit. Appeals of suspensions and terminations for discrimination shall be processed under 29 CFR part 31, 32, or 34, as appropriate.

(b) Appeals from a final disallowance of cost as a result of an audit shall be made pursuant to 29 CFR part 96, subpart 96.6.

(c) Upon a grantee's receipt of the Department's final determination relating to costs (except final disallowance of cost as a result of an audit), payments, suspension or termination, the grantee may appeal the final determination to the Department's Office of Administrative Law Judges, as follows:

(1) Within 21 days of receipt of the Department's final determination, the grantee may transmit by certified mail, return receipt requested, a request for a hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., room 400 N, Washington, DC 20001 with a copy to the Department official who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(2) The request for hearing shall be accompanied by a copy of the final determination, if issued, and shall state specifically those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested, shall be considered resolved and not subject to further review.

(3) *The Rules of Practice and Procedures for Administrative Hearings Before the Office of Administrative Law Judges*, set forth at 29 CFR part 18, shall govern the conduct of hearings under this section, except that:

(i) The appeal shall not be considered a complaint; and

(ii) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of 29 CFR part 18, shall not apply to any hearing conducted pursuant to this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the administrative law judge conducting the hearing. The certified copy of the administrative file transmitted to the administrative law judge by the official issuing the final determination shall be part of the evidentiary record of the case and need not be moved into evidence.

(4) The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(5) The decision of the administrative law judge shall constitute final action by the Secretary of Labor unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision, or any part thereof, has filed exceptions with the Secretary of Labor specifically identifying the procedures, fact, law, or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary unless the Secretary of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(6) Any case accepted for review by the Secretary of Labor shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary of Labor.

Subpart E—Interagency Agreements

§ 641.501 Administration.

(a) Federal establishments other than the Department of Labor which receive and use funds under title V of the OAA or this part shall submit to DOL project fiscal and progress reports as described in § 641.409.

(b) Non-DOL federal establishments which receive and use funds under title V shall maintain the standard records on individual enrollees and enrollee activities, in accordance with this part.

(c) The Department may provide title V funds to another federal agency by a non-expenditure transfer authorization or by payments on an advance or reimbursement basis.

(d) In aspects of project administration other than those described in paragraphs (a) and (b) of this section, federal establishments which receive and use funds under title V of the OAA may use their normal administrative procedures.

Subpart F—Assessment and Evaluation

§ 641.601 General.

The Department shall assess each grantee and subgrantee to determine whether it is carrying out the purposes and provisions of title V of the OAA and this part in accordance with the OAA, this part and the grant or other agreements. The Department also shall evaluate the overall program conducted under title V of the OAA or this part to aid in the administration of the SCSEP. The Department and individuals designated by the Department may make site visits and conduct such other monitoring activities as determined by SCSEP needs.

§ 641.602 Limitation.

In arranging for the assessment of a grantee, or the evaluation of a subgrantee, or the evaluation of the overall program under title V of the OAA or this part, the Department shall not use any individual, institution, or

organization associated with any project under title V of the OAA.

Signed at Washington, DC, this 5th day of May, 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–11949 Filed 5–16–95; 8:45 am]

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Federal Register

Wednesday
May 17, 1995

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of the Charlotte Class B Airspace Area; NC; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–AWA–6]

RIN 2120–AF02

Alteration of the Charlotte Class B Airspace Area; North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Charlotte, NC, Class B airspace area. The designated lateral and vertical limits of the Charlotte Class B airspace area will continue as they currently exist—a 30-mile radius of Charlotte/Douglas International Airport from the surface or higher to and including 10,000 feet mean sea level (MSL). Some lower vertical limits will change. Several of the subareas in the Class B airspace area are altered and redefined to improve the flow of aviation traffic and enhance safety in the Charlotte area while accommodating the concerns of airspace users.

EFFECTIVE DATE: 0701 UTC July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, 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) 267–9255.

SUPPLEMENTARY INFORMATION:

Background

Airspace reclassification, effective September 16, 1993, discontinued the use of the term "Terminal Control Area" (TCA) and replaced it with the designation "Class B Airspace." This change in terminology is reflected in this rule. On May 21, 1970, the FAA published Amendment No. 91–78 to part 91 of Title 14 Code of Federal Regulations (CFR) that provided for the establishment of Class B airspace areas (35 FR 7782).

The Class B airspace area program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements. The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). The establishment of Class B airspace areas provides a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace afford the greatest protection for the greatest number of people by providing Air Traffic Control (ATC) with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft. To date, the FAA has established a total of 29 Class B airspace areas.

On June 21, 1988, the FAA published a final rule which required aircraft to have Mode C equipment when operating within 30 nautical miles of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL, excluding those aircraft not certificated with an engine-driven electrical system, balloons, or gliders (53 FR 23356).

User Group Participation

The alterations adopted by this rule are based on the FAA's analysis of the airspace, a review of the written comments submitted to the docket, and oral comments made by members of the aviation community in public hearings. The proposed changes to the Charlotte Class B airspace area were published in a Notice of Proposed Rulemaking (NPRM) on March 2, 1994 (59 FR 10040).

Discussions of Comments

The FAA received 10 written comments regarding the proposed alteration of the Charlotte Class B airspace area. The FAA has determined that alterations to the Charlotte Class B airspace area, as contained herein, will promote the safe and efficient use of airspace and will meet users concerns. Some of the comments addressed subject areas that were not relevant to this rulemaking; therefore, these comments will not be discussed.

Summarization of Comments By Subject Matter

(1) One commenter, a private/business pilot, wrote concerning the incremental cost for transient aircraft circumnavigating the Charlotte Class B airspace area. The pilot suggested that the FAA was not realistic in estimating the cost imposed on the flying public when proposing to expand the area.

This alteration involves minimal expansion of the existing Charlotte Class B airspace area, and the cost to the flying public is expected to be negligible. To further address the concerns of pilots utilizing the Charlotte Class B airspace area, the FAA coordinated with the local airspace users to develop the Charlotte Visual Flight Rules (VFR) Flyway Planning Chart. The initial edition of the Charlotte VFR Flyway Planning Chart will be published coincidental with this rule action.

(2) The FAA received comments and recommendations from the Aircraft Owners and Pilots Association (AOPA), Air Transport Association (ATA), Experimental Aircraft Association (EAA), Soaring Society of America, Inc. (SSA), JAARS Inc., and other aviation-related businesses and pilots as summarized below:

Commenters suggested that the ceiling of the Charlotte Class B airspace area be lowered to 8,000 feet MSL in lieu of the existing 10,000 feet MSL. EAA wrote, that contrary to FAA's response in NPRM, lowering the ceiling would not cause VFR aircraft to conflict with IFR aircraft transitioning on Victor airway 37. Furthermore, EAA stated that separation standards could be achieved because VFR aircraft would be 500 feet MSL above or below the IFR aircraft. AOPA alleged that the FAA's decision to maintain the ceiling at 10,000 feet MSL is "blatantly discriminatory towards GA." In AOPA's opinion, VFR GA aircraft can not get clearances into the Class B airspace area; rather, they are routed on airways around this airspace increasing both the cost and time of the flight. AOPA further states, that it is also apparent that the FAA's decision to retain the 10,000 foot ceiling did not consider the Traffic Alert and Collision Avoidance System (TCAS) requirements for airlines or the transponder/Mode C requirement for GA. One commenter suggested that there was no rational basis for a ceiling of 10,000 MSL for the airspace.

The FAA can not adopt this recommendation to lower the ceiling of the Charlotte Class B airspace area. The impact of lowering the ceiling of the Charlotte Class B airspace area to 8,000 feet MSL would be to reduce safety in the area between 8,000 feet MSL and 10,000 feet MSL. Within a 20-mile radius of the Charlotte/Douglas International Airport the airspace between 7,000 feet MSL and 10,000 feet MSL is frequently utilized by large numbers of high performance turbojet and turboprop aircraft. Arrivals and

departures of these aircraft average 100+ per hour and must be combined with an increasing number of overflights. During the 12-month period, June 25, 1993, to June 24, 1994, the FAA recorded 30,000 IFR and 31,000 VFR overflights with monthly highs of 3,000 and 2,800, respectively, operating in the airspace between 7,000 and 10,000 feet MSL.

During the preliminary phase of this rulemaking the FAA explored several options before considering an alteration to the Charlotte Class B airspace area. The FAA concluded that the existing airspace area is not sufficient to manage the peak volumes of IFR operations experienced in today or in the future. Without this alteration, changes to the existing procedures and significant limitations on the volume of air traffic facilities would be required to support all aircraft. The alternatives to modifying the airspace would have a negative impact on the air traffic system by forcing other facilities to routinely hold aircraft on the ground. Disrupted schedules and additional financial burdens would then be placed on the airspace users. Consequently, the FAA has determined to alter the Charlotte Class B airspace area as provided in this document to improve the flow of aviation traffic and enhance safety.

(3) Comments objecting to the lowering of the floor of Area C to 3,600 and Area D to 4,600 feet MSL from 6,000 feet MSL between 20- to 25-miles north and south of the airport were received. AOPA and EAA stated that it was practical for ATC to keep commercial jets higher then 3,600 feet MSL during descent 25 miles from the airport.

The FAA does not concur with this option. ATC procedures at the airport routinely require that aircraft be sequenced on the final approach courses at and beyond 20 miles. Lowering the Charlotte Class B airspace floor permits turn-on for the simultaneous instrument landing system (ILS) and/or visual approach at 3,600 feet MSL and 4,600 feet MSL between 20 and 25 miles. The FAA has determined that the requirement to intercept a precision approach at or below the glideslope cannot be met without lowering the floor of Areas C and D. Ensuring separation within the 20- to 25-mile arc area of the Charlotte/Douglas International Airport at 3,600 feet MSL and 4,600 feet MSL enhances the safety of flight operating in this area regardless of weather conditions.

(4) One commenter objected to lowering the floor in Area E from 8,000 feet MSL to 6,000 feet MSL between 25 to 30 nautical miles from the airport. Aircraft executing approaches and transitioning through Areas C and D, at 3,600 and 4,600 feet MSL respectively, must utilize Area E. Retaining the floor Area E at 8,000 feet MSL causes aircraft to fly a circuitous route to the final approach course or descend below the floor of the Class B airspace area. The FAA has determined that lowering the floor to 6,000 feet MSL in Area E enhances safety.

(5) One commenter wrote with objections to the proposed design alteration of the Charlotte Class B airspace area. In this pilot's opinion, the present airspace "dart board" design and navigation is simple and straight forward. Currently, the Charlotte Class B airspace area has very high frequency omnidirectional range and distance measuring equipment (VOR/DME) that is easy to identify and consistent with the arrival corridors outlined in the Charlotte/Douglas International Airport standard terminal arrival routes. The commenter said that the new design could only serve to confuse pilots operating in that area.

The FAA made an effort to modify the Charlotte Class B airspace area to accommodate all airspace users. This site-specific design was developed by a working group, consisting of local pilots and airport operators. The FAA has determined that this rule will best accommodate the concerns of airspace users and enhance safety.

(6) Comments were received from EAA and the SSA (on behalf of the members of the Chester Soaring Association). The commenters opposed lowering the floor in the southern half of the area between 20- to 25-miles in the vicinity of the Chester, SC, airport, lowering the floor of the southwest arrival/departure corridors to 6,000 feet MSL, and adding certain triangular shaped areas to the Class B airspace area adjacent to the arrival and departure corridors on the southwest and southeast. These commenters suggested that the Class B airspace area not be amended until actual air traffic growth warrants further change.

The FAA accommodates the glider operations, through a letter of agreement (LOA), as air traffic conditions permit. The FAA has determined that this rule will accommodate the concerns of glider users in a safe and efficient manner. The FAA has found that Charlotte/Douglas International Airport and the associated Class B airspace area has experienced an average of 3½ per cent increase in operations during the past 5 years. The FAA has determined that the growth in air traffic operations coupled with the changing needs of the airspace users warrant the modifications to the Class B airspace area set out in this rule.

(7) ATA and ALPA submitted comments in support of the alteration to the Charlotte Class B airspace area as proposed.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class B airspace area around Charlotte/Douglass International Airport. The upper limits of the Charlotte Class B Airspace area remain at 10,000 feet MSL, however, the subareas within the area are modified. The surface area, Area A, is reduced to a 7-nautical mile radius from an 11-nautical mile radius of the Charlotte/Douglas International Airport. Modifying Area A enhances the utilization of the airspace for east-west VFR traffic while providing maximum separation between IFR and VFR traffic. Area B is established between the 7 to 11-nautical mile radius of the airport, to include that airspace from 1,800 feet MSL to but not including 10,000 feet MSL. Area C and Area D are altered extending north and south of the airport, between the 11 to 25-nautical mile radius, and including that airspace from 3,600 and 4,600 feet MSL to but not including 10,000 feet MSL. Areas C and D are designated to accurately reflect the needs of ATC, to support operations for simultaneous ILS and/or visual approach, and to meet the requirement to intercept the precision approach at or below the glideslope. Both Areas E, between the 25 to 30-nautical mile radius, are modified to lower their floors from 8,000 feet MSL to 6,000 feet MSL, to align aircraft on the final approach course and contain aircraft operations within the Class B airspace area. The alteration of the Charlotte Class B airspace area is depicted in the attached chart.

Class B airspace designations are published in Paragraph 3000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this airspace alteration will be published subsequently in the Order. The coordinates for this airspace docket are based on North American Datum 83.

Regulatory Evaluation

This section summarizes the regulatory evaluation prepared by the FAA on the proposed amendments to 14 CFR part 71—to alter the Charlotte Class B Airspace. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, and Federal, State, and local governments as well as anticipated benefits.

The FAA has determined that this rulemaking is not "a significant rulemaking action", as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this final rule are summarized below (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this final rule.).

Operational requirements require that the Class B Airspace area be lowered at 20 and 25 nautical miles from the Charlotte/Douglas International Airport (CLT) to more easily accommodate large turbine-powered aircraft operating in the Class B Airspace area.

The modifications to the Charlotte Class B Airspace area are the result of a study conducted by the FAA. The airspace design reflects user feedback and information obtained during Informal Airspace Meetings held June 17 and 18, 1992, at the North Carolina Air National Guard Facility at Charlotte Douglas International Airport.

Cost Analysis

The final rule will impose little or no administrative costs to the FAA. Additional personnel and equipment are not needed to implement this rule. The FAA's controller workforce will be trained in the aspects and procedures of the Class B Airspace area during regularly scheduled briefing sessions at no additional costs to the FAA.

The Charlotte Terminal Area Chart will require revision to incorporate the addition of a VFR Flyway Planning Chart that facilitates entry into and flight around the Class B Airspace. The FAA will publish the initial Charlotte VFR Flyway Planning Chart coincidental with this rulemaking action, and will continue to incorporate these changes as the terminal area chart is routinely updated. These changes are considered part of the ordinary cost of chart revision, and therefore, the FAA will incur no additional costs. Because pilots should use current charts, they will not incur any additional costs either; as the charts become obsolete, pilots will replace them with charts that depict the modified Class B Airspace.

The final rule will impose little costs to VFR users for several reasons. The FAA expects that Lincolnton, Jaars/Townsend, and Lake Norman airports will be the only public airports affected by the lower floor. To the north of Charlotte, the Class B Airspace area floor will change from 6,000 feet MSL to 4,600 feet MSL (over Lincolnton) and will create a 6,000 foot MSL floor over Lake Norman. To the south of Charlotte, the Jaars/Townsend airport will be affected by the floor of the Class B Airspace area changing from 6,000 feet MSL to 3,600 feet MSL. Pilots currently using this affected airspace may choose to avoid or remain outside of Class B Airspace area by flying below the area floors or circumnavigating the Class B Airspace area. Alternatively, they may choose to participate in the Charlotte Class B Airspace area. Those choosing to avoid the Class B Airspace area by circumnavigation will incur circumnavigation costs, but the added time and cost to circumnavigate is expected to be minimal. Those pilots who continue to operate in this airspace by participating in the Charlotte Class B Airspace area will be required to contact ATC and follow the operational rules requirements of a Class B Airspace area.

Those aircraft operators who wish to avoid the Class B Airspace area face potential circumnavigation costs in those areas where the floor will be lowered north and south of the airport. However, this impact is expected to be offset by those general aviation aircraft that will benefit by the reduced surface area of the Class B Airspace area and the raised floor of the Class B Airspace area east and west of the airport. Therefore, the net total cost impact is expected to be negligible.

Finally, glider operations will continue to be accommodated by the LOA as air traffic conditions permit. These procedures will accommodate the concerns of all airspace users in a safe and efficient manner.

Benefit Analysis

This rule is expected to enhance safety by reducing the risk of midair collisions by increasing the area of Class B airspace around Charlotte, North Carolina.

Due to the proactive nature of these changes, the potential safety benefits are difficult to quantify in monetary terms. Aircraft operations within the present configuration of the Charlotte Class B Airspace area have increased since the initial Class B Airspace area was established. A greater number and mix of high performance aircraft and other aircraft of varying performance characteristics now utilize this airspace. Additionally, the number of these aircraft and those operations are expected to increase in the future.

Fortunately, there have been no midair collisions within the Charlotte Class B Airspace. Without the experience of an actual midair collision, estimating the probability of a potential occurrence in the absence of this rule cannot be reliably determined. Due to the project increase in air traffic, there is a potential safety problem. Without this rule, aviation safety in the Charlotte area will be adversely affected.

Comparison of Costs and Benefits

The precise reduction in the risk of a midair collision avoided by this rule and its monetary values cannot be estimated at the present time. However, system efficiency will be improved and safety enhanced. In view of the negligible costs of the final rule, coupled with benefits in the form of enhanced safety and system efficiency to all aircraft operators, the FAA has determined this rule will be cost-beneficial. As noted above, a regulatory evaluation of this rule, including a Regulatory Flexibility Determination, has been placed in the docket.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that the final rule could potentially affect are unscheduled operators of aircraft for hire owning nine or fewer aircraft. These unscheduled air taxi operators will be affected only when they are not operating under VFR. Since these operators fly regularly into airports with established radar approach control services, the FAA believes that unscheduled air taxi operators are already equipped to fly IFR. Because they will fly IFR instead of VFR, the proposed rule will not have a significant economic impact on any of them.

International Trade Impact Assessment

The final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule will neither impose costs on aircraft operators nor on U.S. or foreign aircraft manufactures.

Federalism Implications

Thr regulations proposed 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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Practices to the maximum extent practicable. The FAA has determined that this rule will not conflict with any international agreements of the United States.

Paperwork Reduction Act

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. This rule is cost effective as evidenced by the cost/benefits review statement, included in this Final Rule.

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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASO NC B Charlotte, NC [Revised]

Charlotte/Douglas International Airport
(Primary Airport)
(Lat. 35°12'52" N., long. 80°56'36" W.).
Charlotte/Douglas VOR/DME
(Lat. 35°11'25" N., long. 80°56'06" W.).
Gastonia Airport
(Lat. 35°12'01" N., long. 81°09'00" W.).

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Charlotte VOR/DME.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL between the 7- and 11-mile radius of the Charlotte VOR/DME, excluding that airspace within a 2-mile radius of the Gastonia Airport.

Area C. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL between the 11- and 25-mile radius of the Charlotte VOR/DME, including that airspace within a 2-mile radius of the Gastonia Airport, excluding that airspace within and below Areas D, E, and F hereinafter described.

Area D. That airspace extending upward from 4,600 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius northwest of the Charlotte VOR/DME, bounded on the west by U.S. Highway 321, and bounded on the east by the Marshall Steam Plant Rail Spur; and that airspace between the 20- and 25-mile radius southwest of the Charlotte VOR/DME, bounded on the east by U.S. Highway 21, and bounded on the west by a line due south from the Charlotte VOR/DME 218° radial 20-mile fix to the intersection of the 25-mile arc.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 35°36'30" N., long. 80°57'45" W., extending counterclockwise on the 25-mile arc of the Charlotte VOR/DME to U.S. Highway 321, thence south on U.S. Highway 321 until intercepting the 20-mile arc southwest of the Charlotte VOR/DME, thence counterclockwise on the 20-mile arc to the 218° radial of the Charlotte VOR/DME thence due south to the intersection of the 25-mile arc of the Charlotte VOR/DME, thence due west until intercepting the 218° radial of the Charlotte VOR/DME, thence southwest on the 218° radial to the 30-mile fix, thence clockwise on the 30-mile arc to the 328° radial of the Charlotte VOR/DME, thence direct to the point of beginning, excluding that airspace between the 20- and 30-mile radius of the Charlotte VOR/DME between the 242° radial of the Charlotte VOR/DME clockwise to the 293° radial; and that airspace beginning at lat. 35°36'30" N., long. 80°57'45" W., extending clockwise on the 25-mile arc of the Charlotte VOR/DME to long 80°46'00" W., thence due south to the 20-mile arc northeast of the Charlotte VOR/DME, thence clockwise on the 20-mile arc to the 081° radial of the Charlotte VOR/DME, thence west along the 081° radial of the Charlotte VOR/DME, thence west along the 081° radial to the 11-mile fix from the Charlotte VOR/DME, thence direct to the Charlotte VOR/DME 147° radial 25-mile fix, thence clockwise on the 25-mile arc to the intersection of U.S. Highway 21, thence direct to the Charlotte VOR/DME 147° radial 30-mile fix, thence counterclockwise on the 30-mile arc to the Charlotte VOR/DME 025° radial, thence direct to the point of beginning, excluding that airspace east of U.S. Highway 601 between the Charlotte VOR/DME 062° radial clockwise to the 120° radial.

Area F. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte VOR/DME from the 242° radial clockwise to the 293° radial of the Charlotte VOR/DME; and that airspace between the 20- and 25-mile radius from the Charlotte VOR/DME between the 062° radial of the Charlotte VOR/DME clockwise to the 120° radial and seat of U.S. Highway 601.

* * * * *

Issued in Washington, DC, on May 5, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

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

Appendix _____ Charlotte, North Carolina, Class B Airspace.

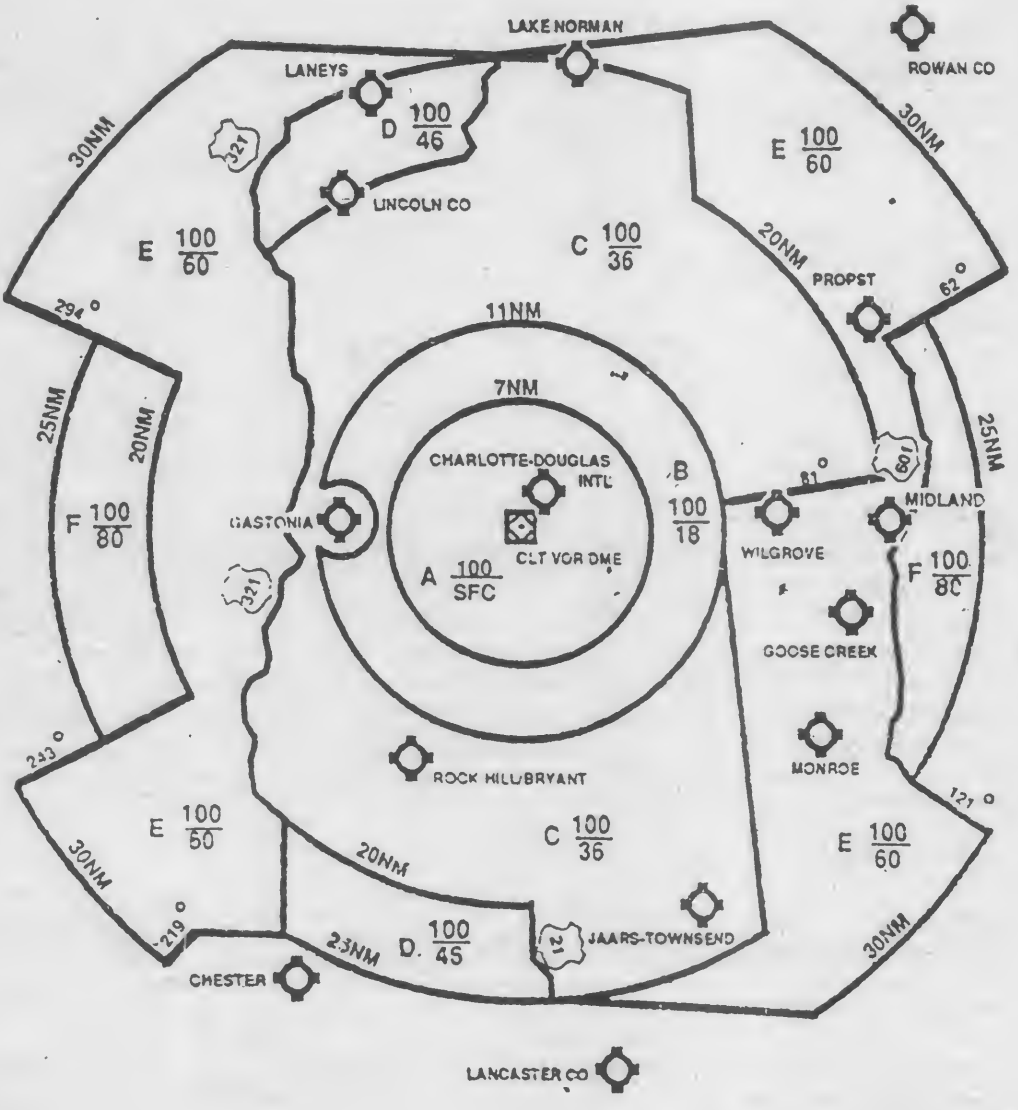
BILLING CODE 4910–13–M

CHARLOTTE, NORTH CAROLINA
CLASS B AIRSPACE AREA

CHARLOTTE/DOUGLAS INTERNATIONAL AIRPORT

FIELD ELEVATION - 749 FEET

(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-230

[FR Doc. 95–11925 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–B–C

federal register

Wednesday
May 17, 1995

Part VI

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Total Kjeldahl Nitrogen; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–5206–8]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Total Kjeldahl Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: This proposed amendment would approve the use of three additional test procedures at Part 136 for the determination of Total Kjeldahl Nitrogen (TKN) in wastewater. Use of approved test procedures is required whenever the waste constituent specified is required to be measured for: an NPDES permit application; discharge monitoring reports; state certification; and other requests from the permitting authority for quantitative or qualitative effluent data. Use of approved test procedures is also required for the expression of pollutant amounts, characteristics, or properties in effluent limitations guidelines and standards of performance and pretreatment standards, unless otherwise specifically noted or defined.

DATES: Comments on this proposal will be accepted until June 16, 1995.

ADDRESSES: Send comments to: James E. Longbottom, Environmental Monitoring Systems Laboratory-Cincinnati, U.S. Environmental Protection Agency, Cincinnati, OH 45268–0525. The comments should be labeled as "Guidelines Establishing Test Procedures for the Analyses of Pollutants Under the Clean Water Act—Total Kjeldahl Nitrogen.

The record and all supporting information on this proposal is available to the public for inspection or copying during normal business hours at the Cincinnati Laboratory. The public should contact James E. Longbottom at (513–569–7308) for access. A complete copy of the record and supporting information is also available to the public for inspection and copying at the Water Docket, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For access to Water Docket materials, call (202) 260–3027 between 9 am and 3:30 pm for an appointment. For information about materials in the docket see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. James E. Longbottom, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569–7308.

SUPPLEMENTARY INFORMATION:

Docket Materials

Materials in the public docket include the following:

- Copy of the proposed procedures and performance data.
- Technical reviews of the proposed analytical techniques.
- Statistical reviews of the performance data.
- Recommendations for Nationwide Approval from the Director, Environmental Monitoring Systems Laboratory-Cincinnati.

I. Authority

This proposed regulation is issued under authority of sections 301, 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended) (the "Act"). Section 301 of the Act forbids the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402. Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act". Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act".

II. Regulatory Background

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations. New source discharges must meet new source performance standards based on the best demonstrated technology-based controls. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under Section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that permitted discharges will not cause or contribute to a violation of water quality standards, including designated water uses.

For use in permit applications, discharge monitoring reports, and state certification and to ensure compliance with effluent limitations, standards of performance, and pretreatment standards, EPA has promulgated regulations providing nationally-approved testing procedures at 40 CFR Part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral) and organic chemical, radiological, bacteriological, nutrient, demand, residue, and physical parameters.

Additionally, some particular industries may discharge pollutants for which test procedures have not been proposed and approved under 40 CFR Part 136. Under 40 CFR Part 122.41 permit writers may impose monitoring requirements and establish test methods for pollutants for which no approved Part 136 method exists. 40 CFR 122.41(j)(4). EPA may also approve additional test procedures when establishing industry-wide technology-based effluent limitations guidelines and standards as described at 40 CFR 401.13.

The procedures for approval of alternate test procedures (ATPs) are described at 40 CFR 136.4 and 136.5. Under these procedures the Administrator may approve alternate test procedures for nationwide use which are developed and proposed by any person. 40 CFR 136.4 (a). Under 136.4 (d), dischargers seeking to use such alternate procedures on a limited basis (e.g. for their own discharge) must apply to the State or Regional EPA office in which the discharge occurs. As specified below, today's proposed rule would approve optional nationwide alternate procedures for the determination of TKN in wastewater test samples.

III. The Total Kjeldahl Nitrogen (TKN) Test Procedures

The Perstorp Analytical Corporation, in accordance with the regulations published at 40 CFR 136.5, applied for nationwide approval of three alternate procedures for the determination of TKN in wastewater.

A. Scope of the Procedures

The applicable ranges for the titrimetric method (PAI–DK01) and colorimetric method (PAI–DK02) are 0.4 to 10 mg/L, when analyzing a 100 mL sample. The applicable range for the gas diffusion method (PAI–DK03) is 0.2 to 10 mg/L when analyzing a 200 µL sample. The method detection limit has been determined to be 0.15 mg/L for the titrimetric and the colorimetric methods and 0.02 mg/L for the gas diffusion method. These methods would not be available for use to determine TKN concentrations greater than 10 mg/L

unless one of the following two requirements are met:

a. Dilution of the TKN concentration of a sample to a level less than, or equal to 10 mg/L, before the initiation of the analysis, multiplication of the TKN concentration observed in the digested, diluted sample by the appropriate dilution factor, and demonstration of acceptable accuracy (percent recovery) as required in the Quality Control section of the method.

b. Demonstration of the applicability of a specific scope extension by demonstrating calibration range linearity, laboratory performance, and analyte percent recovery, particularly in fortified samples, as outlined in the Quality Control section.

B. Summary of the Methods

TKN is defined as the sum of free ammonia and organic nitrogen compounds which are converted to ammonium sulfate under the conditions described. The procedures convert nitrogen components of biological origin such as amino acids, proteins and peptides to ammonia but may not convert the nitrogenous compounds of some industrial wastes such as amines, nitro compounds, hydrazones, oximes, semicarbazones and some refractory tertiary amines.

For all three methods, the sample is heated in a block digester with concentrated sulfuric acid, potassium sulfate and copper sulfate and evaporated until the solution becomes colorless or pale yellow. The block-digested sample is cooled and diluted to volume. For the colorimetric and titrimetric methods the cooled, diluted solution is made alkaline with a hydroxide-thiosulfate solution and distilled in an automated distillation system. In the colorimetric method (Method PAI–DK01) the ammonia in the alkaline digestate is measured at 400–425 nm after reaction with Nessler reagent. In Method PAI–DK02, the ammonia is distilled into a boric acid receiving solution and is measured by automated or manual titration with 0.02 N H_2SO_4 to a bromocresol green methyl red indicator endpoint. In the FIA system (Method PAI–DK03), a 200-µL aliquot of the digested and diluted sample is injected into the flow injection manifold. The subsequent addition of NaOH releases the ammonia from the ammonium sulfate originally present in the digested sample. The released ammonia passes through a gas diffusion membrane into an indicator receiving solution which is monitored at 590 nm. The extent of indicator color change is proportional to the concentration of TKN present in the sample.

C. Technical Justification for Proposed Procedures

The recommendations for approval of these procedures are based on the data packages submitted by the applicant, Perstorp Analytical. EPA is proposing to approve the methods based on the method descriptions in EPA's Environmental Monitoring Management Council format, comparative analyses using the proposed and approved procedures, and EPA's technical and statistical reviews of each data package.

Perstorp Analytical provided test data comparing the three proposed procedures with an appropriate approved procedure. All three proposed methods were compared to the approved EPA Ion Selective Electrode Method 351.4; EPA statisticians and chemists conducted independent reviews of the data. The submitted recovery data for both the approved and proposed methods were also compared to the recovery acceptance criteria derived from results for block digester analyses (EPA Method 351.4) in EPA's Performance Evaluation Studies WP 18 through 23.

The Agency has judged the block digester electrode procedure (EPA Method 351.3), utilized as the reference approved method by the applicant to be applicable in the evaluation of the three proposed procedures. EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL-Cincinnati), thoroughly reviewed and evaluated the supporting data submitted by Perstorp. The reviews indicated that the analyses afforded comparable recovery and precision in the recommended concentration ranges for TKN. EPA is proposing approval of the TKN procedures and is seeking public comment on the suitability of these three methods as alternate procedures for use in the determination of TKN. The administrative record is on file at EMSL-Cincinnati, 26 W. Martin Luther King Dr., Cincinnati, Ohio 45268. The record is available for public inspection. Descriptions of the proposed procedures are also available from Perstorp Analytical Company, 1256 Stockton, St. Helena, CA 94574.

Based on EMSL-Cincinnati's review, and pursuant to 40 CFR Section 136.5, EPA proposes to approve the Perstorp titrimetric, colorimetric, and FIA gas diffusion methods for TKN as acceptable alternative test procedures for nationwide use. Specifically, the methods exhibit sufficient precision and recovery to establish (1) their acceptability under Part 136 and (2) their comparability to other approved procedures for analysis of TKN. As approved alternate test procedures, these methods are acceptable for use by any person required to test for TKN.

Public comment is requested concerning the suitability of these methods for the determination of TKN in wastewater.

IV. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. This proposed rule would simply specify alternate analytical methods which may be used by laboratories in measuring concentrations of TKN and, therefore, would have no adverse economic impacts. The Office of Management and Budget (OMB) has waived Executive Order 12866 review of the proposal.

B. Regulatory Flexibility Act

This proposed rulemaking is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. The procedure included in this rule gives all laboratories the flexibility to use these alternate methods or not to use them.

C. Paperwork Reduction Act

This rule contains no requests for information activities and, therefore, no information collection request (ICR) was submitted to OMB for review in compliance with the Paperwork Reduction Act, (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Water pollution control.

Dated: May 8, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 136 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 136—[AMENDED]

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.*

(33 U.S.C. 1251 *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is proposed to be amended as follows:

a. In Table IB in paragraph (a), by revising entry 31 and by adding notes 39 through 41.

b. By adding paragraphs (b)(35) through (b)(37).

The revision and additions read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number of page)				
	EPA [1,35]	Std. Methods 18th ed.	ASTM	USGS [2]	Other
* * * *					
31. Kjeldahl Nitrogen—Total, (as N), mg/L;					
Digestion and distillation followed by:	351.3	4500–NH_3 B or C.	D3590–89(A)		
Titration	351.3	4500–NH_3 E	3590–89(A) .		[3] 973.48
Nesslerization	351.3	4500–NH_3 C	3590–89(A) .		
Electrode	351.3	4500–NH_3 F or G.			
Automated phenate colorimetric	351.1			[8] I–4551–78	
Semi-automated block digester colorimetric	351.2		D3590–89(B)		
Manual or block digester potentiometric	351.4		D3590–89(A)		
Block Digester, followed by:					
Auto distillation and Titration, or					Note 39
Nesslerization					Note 40
Flow injection gas diffusion					Note 41
* * * *					

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes", Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M. J., et al, "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

* * * * *

[8] The approved method is that cited in "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments", USGS TWRI, Book 5, Chapter A1 (1979).

* * * * *

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

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[39] Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, Perstop Analytical.

[40] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, Perstop Analytical.

[41] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/94, Perstop Analytical.

* * * * *

(b) * * *

References, Sources, Costs, and Table Citations:

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[35] "Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection)", revised 12/22/94, Perstop Analytical. Method available from Perstorp Analytical Corporation, 1256 Stockton, St. Helena, CA 94574. Table 1B, Note 39.

[36] "Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection)", revised 12/22/94, Perstop Analytical. Method available from Perstorp Analytical Corporation, 1256 Stockton, St. Helena, CA 94574. Table 1B, Note 40.

[37] "Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion)", revised 12/22/94, Perstop Analytical. Method available from Perstorp Analytical Corporation, 1256 Stockton, St. Helena, CA 94574. Table 1B, Note 41.

* * * * *

[FR Doc. 95–11901 Filed 5–16–95; 8:45 am]

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federal register

Wednesday
May 17, 1995

Part VII

Securities and Exchange Commission

17 CFR Part 202 et al.
Prospectus Delivery; Securities Transactions Settlement; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 228, 229, 230, 232, 239, 240, 270, and 274

[Release No. 33–7168; 34–35705; IC–21061; File No. S7–7–95]

RIN 3235–AG40

Prospectus Delivery; Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting revisions to its rules and forms and a new rule in order to implement two solutions to prospectus delivery issues arising in connection with the change to T+3 securities transaction settlement. These revisions, among other things, include changes that highlight the location of the risk factor disclosure within the prospectus. In addition, the Commission is eliminating an exemption from T+3 settlement for purchases and sales of securities pursuant to a firm commitment offering, providing a T+4 time frame to firm commitment offerings under certain conditions, and adopting a modified procedure whereby participants in firm commitment offerings may agree to an extended settlement time frame.

EFFECTIVE DATE: The new rule and the revisions to rules and forms are effective June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Anita Klein, Joseph Babits or Michael Mitchell (202) 942–2900, Division of Corporation Finance; and, with regard to questions concerning revisions to the T+3 settlement rule, Jerry W, Carpenter or Christine Sibille, (202) 942–4187, Division of Market Regulation; and, with regard to questions concerning Rule 15c2–8 revisions, Alexander Dill, (202) 942–4892, Division of Market Regulation; and, with regard to questions concerning the application to investment companies, Kathleen Clarke, (202) 942–0721, Division of Investment Mangement, U.S. Securities and Exchange Commission, Washington, DC. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On October 6, 1993, the Commission adopted Rule 15c6–1[1] under the Securities Exchange Act of 1934 (the "Exchange Act").[2] That rule is scheduled to become effective on June 7, 1995.[3] Rule 15c6–1 requires that the standard settlement time frame for most broker-dealer trades be three business days after the trade (hereinafter "T + 3"). Rule 15c6–1 provides a limited exemption from T + 3 for the sale or securities for cash pursuant to a firm commitment offering registered under the Securities Act of 1933 (the "Securities Act").[4] Resales of such securities, however, remain within T + 3.

Since the adoption of Rule 15c6–1, members of the brokerage community have suggested that the Commission eliminate this exemption because, among other reasons, the bifurcated settlement cycle created for initial sales and resales of new issues[5] would be disruptive to broker-dealer operations and to the clearance and settlement system.

According to the brokerage community, the primary reason that settlement within T + 3 is not feasible for many new issues is the amount of time it takes to print and deliver prospectuses.[6]

Two proposals to ease prospectus delivery within T + 3 were submitted for Commission consideration. One was submitted by the Securities Industry Association ("SIA") and one was submitted by a group of four investment firms: CS First Boston Corporation, Goldman, Sachs & Co., Lehman Brothers Inc. and Morgan Stanley & Co. Incorporated (the "Four Firms").[7] These proposals recommended markedly different solutions to accomplishing prospectus delivery within T + 3.

On February 21, 1995, the Commission proposed new Rule 434 and amendments to existing rules and forms based upon these two proposals.[8] The Commission sought comment regarding which approach should be implemented, or whether the Commission should implement both approaches and thereby allow market participants a choice as to which to use in any given offering. Twenty-nine comment letters were received in response to the Proposing Release.[9] Most commenters addressing the question of whether to adopt one or both approaches favored the adoption of both of the Commission's approaches.

As described in greater detail below, the Commission is adopting both approaches, largely as proposed, to provide market participants with the flexibility of selecting between alternative methods to expedite prospectus delivery under a T + 3 clearance and settlement system.[10] Because of the concerns expressed by some commenters with respect to the potential for investor confusion, however, the Commission intends to monitor closely disclosure practices that develop under the new rules and will undertake revisions to the rules if necessary to address investor problems.

On February 21, 1995, the Commission also proposed amendments to Rule 15c6–1 to eliminate the current exemption for firm commitment offerings except offerings of asset-backed securities and structured securities, to provide for a T+4 standard settlement period for offerings priced after the close of the markets ("after-market pricings"), and to permit the managing underwriter to establish T+3, T+4, or T+5 as the standard settlement period for an entire offering if certain conditions were met. In general, commenters favored the proposed amendments to Rule 15c6–1. Many

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[1] 17 CFR 240.15c6–1. *See* Exchange Act Release No. 33023 (Oct. 6, 1993) (58 FR 52891).

[2] 15 U.S.C. 78a *et seq.*

[3] *See* Exchange Act Release No. 34952 (Nov. 9, 1994) (59 FR 59137).

[4] 15 U.S.C. 77a *et seq.*

[5] The term "new issues" as used herein refers to both initial public offerings and offerings of additional securities by companies.

[6] Some of these timing difficulties can be expected to be alleviated as markets increasingly rely on non-paper delivery media. In recognition of that development, the staff issued an interpretive letter to facilitate the use of electronic transmission to satisfy prospectus delivery requirements. *Brown & Wood* (Feb. 17, 1995). The Division of Corporation Finance staff, in addition to issuing the *Brown & Wood* letter, is considering generally delivery under the Securities Act of prospectuses through other non-paper media (*e.g.*, audiotapes, videotapes, facsimile, directed electronic mail, and CD ROMs). The staff anticipates submitting to the Commission in the near future recommendations intended both to facilitate compliance with the Securities Act's prospectus delivery requirements and to encourage continued technological developments of non-paper delivery media.

[7] *See* letter from Robin Shelby, CS First Boston Corporation; Goldman, Sachs & Co.; Steven Barkenfield, Lehman Brothers Inc.; and John Ander, Morgan Stanley & Co. Inc. to Anita Klein, Securities and Exchange Commission, dated Jan. 24, 1995 and letter from Goldman, Sachs to Anita Klein, Securities and Exchange Commission, dated Feb. 3, 1995. *See also* letter from Joseph McLaughlin, Brown & Wood, on behalf of the Securities Industry Association, to Anita Klein, Securities and Exchange Commission, dated Feb. 1, 1995. Copies of these proposals are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth St. NW., Washington, DC 20549, File Number S7–7–95.

[8] *See* Securities Act Release No. 7141 (Feb. 21, 1995) (60 FR 10724) (hereinafter, the "Proposing Release").

[9] These letters of comment and a summary thereof are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549, File No. S7–7–95.

[10] As adopted, the approaches will apply specifically to certain investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (hereinafter, the "Investment Company Act") (*i.e.*, closed-end investment companies and unit investment trusts ("UITs")). *See infra* Sections II.A.8. and II.B.3.d.

commenters, however, objected to the requirements and limitations contained in the T+3, T+4, or T+5 proposal. As described below, the Commission is eliminating the blanket exemption from Rule 15c6–1 for firm commitment offerings, is adopting the T+4 standard for after-market pricings, and is adopting a revised provision authorizing exceptions from T+3 settlement for certain firm commitment offerings.[11]

II. Prospectus Delivery Approaches

A. The Four Firms Approach

The Four Firms proposal was premised on the view that the process of preparing and delivering prospectuses in new issues could be accelerated sufficiently to comply with T+3 if six steps were taken by the Commission to facilitate the printing of a significant portion of the final prospectus prior to pricing. Those six steps, noted below, are being adopted substantially as proposed.[12] Except as otherwise noted, these steps are applicable to any offering.

1. Re-ordering of Prospectuses

As was proposed, the Commission is adopting rule revisions enabling the contents of prospectuses to be re-ordered to expedite the printing process.[13] All portions likely to be subject to change at the time of pricing may be placed together in the beginning of the prospectus after the front cover page in a "pricing-related information" section, or may be wrapped around the remainder of the prospectus just inside the front and back cover pages.[14] While summary and risk factors sections must remain in the forepart of the prospectus, those sections may immediately follow the "pricing-related information" section rather than preceding it. To ensure that investors continue to be able to locate the risk factors section in all offerings with ease, however, rule revisions also provide that the currently required cross reference to that section on the cover page of the prospectus now identify with specificity (e.g. by page number) the location of that section within the prospectus.[15] In addition, rule revisions require that the risk factors section be captioned within the prospectus as "Risk Factors" and clarify that the table of contents required on the back cover of the prospectus must include a reference to the risk factors section and specify the page number on which it begins.[16]

Further, rule revisions provide that specific information currently required on the prospectus cover pages may be placed under an appropriate caption elsewhere in the prospectus.[17] Otherwise, the prospectus cover pages must continue to contain information currently specified by Commission rules.[18]

The "pricing-related information" section may include those portions of a prospectus that may change as a result of pricing, such as use of proceeds, capitalization, pro forma financial information, dilution, selling shareholder information and shares eligible for future sale.[19] The pricing information portion itself may be included in the price-related information section. These adopted rule revisions which allow re-ordering of information within a prospectus for convenience in printing do not alter existing requirements with respect to the filing of post-effective amendments or supplements with the Commission when material changes or additions affect information set forth in the prospectus contained in an effective registration statement. However, other rule revisions discussed below do alter existing requirements.

2. Changes in Offering Size and Estimated Price Range

To prevent delays in printing prospectuses that arise when the size of an offering is changed after the effective date of the registration statement, or the pricing of the securities falls outside the estimated range, the Commission under specified conditions is eliminating or streamlining the filings that result. Although originally contemplated only for Rule 430A offerings, the adopted revisions provide the same flexibility for all registered offerings.

a. Registration of Classes of Securities

In order to minimize the instances in which an increase in the offering size would result in the need to file a new registration statement, rule revisions are being adopted to increase registrants' flexibility with respect to the amount of securities being registered in an offering. Under the revised rules, an issuer is permitted to register securities in an offering by specifying only the title of the class of securities to be registered and the proposed maximum aggregate offering price.[20] Except in the case of

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[11] With the help of staff of the Commission's Division of Corporation Finance and Office of General Counsel, the Commission's Advisory Committee on the Capital Formation and Regulatory Processes is examining the relative costs and benefits of the Securities Act's transactional registration scheme, including the prospectus delivery requirements. *See* Commission File No. 265–20.

[12] For a discussion of the application of the Four Firms approach to investment companies, *see infra* Section II.A.8.

[13] Certain Commission rules that specify the location of information in the forepart of the prospectus, or in a specified order within the prospectus, are being revised to eliminate certain requirements regarding location. *See* revisions to Items 503(b) and 503(c) of Regulation S–K, 17 CFR 229.503(b) and 229.503(c); Items 503(b) and 503(c) of Regulation S–B, 17 CFR 228.503(b) and 228.503(c); and Securities Industry Guide 4, 17 CFR 229.801(d). Consistent with the proposal, no revision has been made to order and location rules that relate to specific and limited classes of transactions. *See* Items 903(a) and 904(a) of Regulation S–K, 17 CFR 229.903(a) and 229.904(a) (summary of a roll-up transaction, reasonably detailed description of each material risk and effect of the roll-up transaction); Securities Act Industry Guide 5, 17 CFR 229.801(e), (real estate limited partnerships suitability standards). In addition, issuers of limited partnership interests and other real estate investment vehicles must continue to comply with the disclosure guidance set forth in Securities Act Release No. 6900 (June 17, 1991) (56 FR 28979).

[14] Commenters noted that, if prospectuses are printed in a folio manner, moving pricing-related information to the front of the prospectus may not result in earlier printing of the remainder of the prospectus. Thus, the Commission is providing the flexibility to "wrap" the "pricing-related information" section. Of course, whether the price-related information is set forth in the front or wrapped, the information set forth in the prospectus must be presented in a clear, concise and understandable fashion, as required by Rule 421(b) under the Securities Act, 17 CFR 230.421(b). *See also* Rule 421(a) under the Securities Act, 17 CFR 230.421(a), which requires that information in a prospectus be set forth in a fashion so as not to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading; and Securities Act Release No. 6900 (June 17, 1991) (56 FR 28979).

[15] *See* revisions to Regulation S–K Item 501(c)(4), 17 CFR 229.501(c)(4), and Regulation S–B Item 501(a)(4), 17 CFR 228.501(a)(4). As revised, the rules also require that the cross reference be printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded.

[16] *See* revisions to Item 503(c)(1), 17 CFR 229.503(c)(1) and 17 CFR 228.503(c)(1); Item 502(g), 17 CFR 229.502(g); Item 502(f), 17 CFR 228.502(f).

[17] *See* revisions to Item 502 (a), (b), (c) and (f) of Regulation S–K, 17 CFR 229.502(a), 229.502(b), 229.502(c) and 229.502(f); revisions to Item 502 (a), (b) and (c) of Regulation S–B, 17 CFR 228.502(a), 229.502(b) and 228.502(c); and revisions to the Instruction following Item 502(f) of Regulation S–B, 17 CFR 228.502(f). These revisions relate to disclosure regarding: The availability of Exchange Act information about the registrant, the nature of reports to be given to security holders, undertakings with respect to information incorporated by reference, and the enforceability of civil liabilities against certain foreign persons.

[18] *See* Item 501(c) of Regulation S–K, 17 CFR 229.501(c) (outside front cover page); Item 502 (d), (e) and (g) of Regulation S–K, 17 CFR 229.502(d), 229.502(e), and 229.502(g) (inside front cover page and outside back cover page); Item 501 of Regulation S–B, 17 CFR 228.501 (outside front cover page); and Item 502 (d), (e) and (f) of Regulation S–B, 17 CFR 228.502(d), 228.502(e) and 228.502(f) (inside front cover page and outside back cover page).

[19] *See* Instruction to Item 503(c) of Regulations S–K and S–B, 17 CFR 229.503(c) and 228.503(c).

[20] *See* revisions to Rule 457(o) under the Securities Act, 17 CFR 230.457(o). The amount of securities to be registered and the proposed

Continued

the unallocated shelf procedure available to Form S–3-eligible companies, the aggregate dollar amount associated with each class of securities offered must be disclosed in the "Calculation of Registration Fee" table. Where issuers register a greater amount of securities than needed in the offering, such additional securities may be carried forward to a subsequent registration statement without incurring an additional registration fee.[21]

b. Increases in Offering Size—Registration of Additional Securities

When the pricing terms of an offering are finalized, it is not unusual for changes to be made in the offering size through adjustments to both price and volume.[22] Where this process requires registration of additional securities, the revised rules and forms permit the filing of an abbreviated registration statement to register the additional amount of securities to be offered and sold.[23] Such an abbreviated registration is available to an issuer that is registering additional securities in an amount and at a price that together represent no more than a 20% increase in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the earlier effective registration statement.[24] Such registration would consist of: The facing page, a statement incorporating by reference the contents of the earlier registration statement relating to the offering, all required consents and opinions, and the signature page. While not required by the rule, the registrant also may include in the new registration statement, instead of in a filing under Rule 424, any price-related information with respect to the offering that was omitted from the earlier registration statement pursuant to Rule 430A.[25] The abbreviated registration statement must be filed prior to the time sales are made and confirmations are sent or given, and will become effective automatically upon filing.[26] As adopted, this abbreviated registration format is available regardless of whether the earlier registration statement was prepared in reliance upon Rule 430A.

In addition to providing an abbreviated registration format for such increases in offering size, rule revisions allow such registration statements to be filed promptly even when pricing occurs after the Commission's business hours.[27] Such a registration statement may be filed with the Commission by persons other than mandated electronic filers by transmitting a single copy of it via facsimile to the Commission's principal office from 5:30 p.m. to 10 p.m.[28] Electronic filers may file such a registration statement from 5:30 p.m. to 10 p.m. by transmitting it through EDGAR.[29] Such filings become automatically effective upon receipt by the Commission of the complete facsimile or EDGAR copy and payment of the filing fee.

To accommodate payment of the filing fee after the close of banking hours, rule revisions provide that payment with respect to such registration statements may be made by: (i) Instructing a bank or wire transfer service to transmit a wire transfer to the Commission of the requisite amount as soon as practicable (but in any event no later than the close of the next business day following the date the registration statement is faxed to the Commission); and (ii) providing specific certifications to the Commission with the abbreviated registration statement.[30] Specifically, the registrant must certify to the Commission that: The registrant (or its agent) has so instructed its bank or a wire transfer service to pay the Commission; that it will not revoke such instructions; and that it has sufficient funds in the relevant account to cover the amount of the filing fee. These instructions may be transmitted on the day of filing the registration statement after the close of business of such bank or wire transfer service, provided that the registrant undertakes to confirm receipt of such instructions by the bank of wire transfer service the following business day.

c. Changes in Offering Size; Deviation From Price Range

Currently, a post-effective amendment is not required to be filed where there is a decrease in volume of securities offered or the actual offering price is outside the disclosed estimated price range, unless such decrease or change would change materially the disclosure included in the registration statement at the time of effectiveness.[31] Under the revised rules, a post-effective amendment does not have to be filed in connection with any registered offering if there is a decrease or increase in the offering size (if such an increase would not require additional securities to be registered) and/or the actual price is outside the estimated price range if, in the aggregate, the new size and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of

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maximum offering price per unit are no longer required to be set forth in the "Calculation of Registretion Fee" table. Of course, an issuer may continue to specify such information therein if it so chooses and relies upon Rule 457(e). Regardless of the method chosen for the "Calculation of Registretion Fee" table, however, the registrant continues to be required to specify in the prospectus the emount of securities being offered and, where the registrent is not e reporting compeny, e bona fide estimete of the renge of the maximum offering price. *See* Rule 501(c)(6) of Regulation S–K, 17 CFR 229.501(c)(6) end Rule 501(6) of Regulation S–B, 17 CFR 228.501(6).

[21] *See* revisions to Rule 429, 17 CFR 230.429. Under Rule 429, in e new registration statement filed in the future for enother offering of that class of securities, the registrent would indicate in a footnote to the "Calculation of Registretion Fee" table that part of the registration fee had been paid previously in connection with an earlier registration statement. The footnote must specify the exact dollar amount of the fee being carried over and the releted registration statement file number.

[22] While participants in a registered distribution may only offer the amount of securities registered to be offered, it is possible that indications of interest received in response to such offers may exceed the amount registered to be offered. Sales of securities in excess of the volume initially registered will not result in Section 5 liability if the participants in the distribution did not solicit indications of interest in an amount in excess of that registered and the procedures discussed in this section are followed.

[23] *See* revisions to General instructions of Forms SB–1, SB–2, S–1, S–2, S–3, S–11, F–1, F–2 and F–3.

[24] In the context of an offering from a shelf registration statement, the 20% increase would be meesured based upon the amount of securities on the shelf.

[25] Consistent with offerings where a new registration statement is not requlred to be filed as a result of a change of no more than 20% ln the size of the offering, information necessary to update disclosure contalned in the earlier reglstretion stetement es a result of the increase may be reflected in a form of prospectus filed under Rule 424(b), 17 CFR 230.424(b). *See infra* Section II.A.2.c.

[26] *See* Rule 462(b), 17 CFR 230.462(b). The registration statement is deemed to be a part of the earlier registretion statement relating to the offering. *See, e.g.*, Generel Instruction V. to Form S–1.

[27] *See* revisions to Rule 110, 17 CFR 230.110; Rule 402, 17 CFR 230.402; Rule 455, 17 CFR 230.455; end Rule 472, 17 CFR 230.472; Rule 13, 17 CFR 232.13 and Rule 3a, 17 CFR 202.3a.

[28] Effective June 7. 1995, the telephone number for that facsimile machine is (202) 942–7333 and the telephone number for the staff person that can answer questions regarding such facsimiles between the hours of 5:30 p.m. and 10 p.m. (Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect) is (202) 942–8900. Filings (other than electronic filings through EDGAR) between 5:30 p.m. and 10 p.m. on Forms SB–1 end SB–2 for this purpose must be sent via this facsimile system to the Commission's principal office rather than to the regional or district offices of the Commission.

[29] The new EDGAR form types for purposes of registretion statements under Rule 462 are S–1MEF, S–2MEF, S–3MEF, F–1MEF, F–2MEF, F–3MEF, SB–1MEF and SB–2MEF. A post-effective amendment to eny of these new form types should be designated as form type POS462B. With respect to other aspects of the adopted proposals and electronic filers, *see also infra* Section IV

[30] *See* revisions to Rule 111, 17 CFR 230.111. This payment certification document accompanying an abbreviated registration statement should be transmitted by electronic filers under EDGAR form type CORRESP.

[31] *See* Securities Act Release No. 6964 (Oct. 22, 1992) (57 FR 48970) for a discussion of the materiality standard as it applies to these changes.

Registration Fee" table in the effective registration statement.[32]

3. Manual Signatures and Incorporation by Reference of Opinions and Consents

Under the proposal, rule revisions would have provided that duplicated or facsimile versions of manual signatures could be included on the signature page in place of the manual signatures currently required in a registration statement to increase the size of the offering. In response to comment, the rule revisions being adopted have been expanded to permit duplicated or facsimile versions of manual signatures in any registration statement or post-effective amendment filed under the Securities Act and any reports filed under the Exchange Act.[33] These revisions will provide the same flexibility to all paper filers that is accorded EDGAR filers. In addition, under the revised rules, signatures on required opinions and consents in such filings also may be duplicated or facsimile versions of manual signatures.[34] In all cases where duplicated or facsimile versions of manual signatures are used, the registrant must maintain the manually signed version in its files for five years after the filing of the related document and provide it to the Commission or the staff upon request.

Rule revisions also allow opinions and consents required in abbreviated registration statements registering an additional 20% to be incorporated by reference to the extent that the opinions and consents contained in the earlier effective registration statement were drafted to apply to any subsequent registration statement filed solely to increase the offering up to a 20% threshold.[35] Where opinions and consents cannot be incorporated, duplicated or facsimile versions of manual signatures may be included in the new opinion or consent required to be filed in the abbreviated registration statement.

4. Rule 430A Pricing Period

As was proposed, the Commission is extending the period during which a prospectus supplement containing pricing and other related information omitted from a registration statement may be filed pursuant to Rule 430A under the Securities Act.[36] The "pricing" period is extended from five to fifteen business days after the effective date of the registration statement or any post-effective amendment thereto. Although originally proposed as an extended ten-business-day period, the adopted fifteen-business-day period should provide additional flexibility for purposes of complying with T+3, without defeating the purpose of that limitation.[37]

Where a Rule 430A offering is not priced within the fifteen-day period, a post-effective amendment updated in all respects that either restarts the pricing period or contains the Rule 430A pricing information (*i.e.* similar to a traditional pricing amendment) must be filed and effective prior to sales. While no changes to this requirement are being made, other rule revisions are being adopted to minimize the delay that could result. Such a post-effective amendment, which must be filed prior to the time sales are made and confirmations are sent, will become effective upon filing if the prospectus contained therein contains no material changes from, or additions to, the prospectus previously filed as part of the effective registration statement other than the price-related information omitted from the registration statement in reliance on Rule 430A.[38] A company filing a post-effective amendment that reflects other material prospectus changes or additions (other than the "20% increase in offering size" changes) would follow current procedures under which the post-effective amendment is subject to selective review and is declared effective.

5. Immediate Takedowns From a Shelf Registration

The Four Firms proposal requested that the Commission permit immediate takedowns after a shelf registration statement becomes effective. As indicated in the Proposing Release, immediate offerings from an effective shelf registration statement currently are permitted. At the time of effectiveness, information in the shelf registration statement is required to the extent it is known or reasonably available to the registrant.[39] Accordingly, if an offering of securities is certain at the time the shelf registration statement becomes effective, the relevant information (*e.g.* description of securities, plan of distribution and use of proceeds) must be disclosed with respect to the securities subject to the immediate takedown and the Rule 430A undertakings should be included (if the issuer wants Rule 430A pricing flexibility).

6. Acceleration of Effectiveness

As was proposed, adopted rule revisions allow requests to accelerate effectiveness of registration statements to be transmitted to the Commission by fax transmission. In addition, rule revisions permit oral requests for acceleration to be made,[40] provided that the Commission previously receives a letter indicating that the registrant and the managing underwriter may make oral requests for acceleration and that they are aware of their obligations under the Securities Act.[41]

In order to facilitate the ability of the Commission staff, pursuant to delegated authority, to reach a determination to accelerate effectiveness based on the public availability of information and

[32] *See* revision to Instruction to Paragraph (a) of Rule 430A, 17 CFR 230.430A and revisions to Item 512(a)(1)(ii) of Regulations S–K and S–B, 17 CFR 229.512(a)(1)(ii) and 228.512(a)(1)(ii). This revision pertains to changes in offering size that occur at pricing and does not extend to changes made after that time. While no post-effective amendment is required to be filed, issuers continue to be responsible for evaluating the effect of a volume change or price deviation on the accuracy and completeness of disclosure made to investors. When there is a change in offering size or deviation from the price range beyond the 20% threshold, a post-effective amendment would continue to required only if such change or deviation materially changes the previous disclosure. Of course, if an increase beyond the 20% threshold requires registration of additional securities, a new registration statement updated in all respects must be filed.

[33] *See* revisions to Rule 402, 17 CFR 230.402; Rule 12b–11, 17 CFR 240.12b–11; Rule 14d–1, 17 CFR 240.14d–1; and Rule 16a–3, 17 CFR 240.16a–3.

[34] *See* revisions to Rule 402, 17 CFR 230.402; Rule 439, 17 CFR 230.439; Rule 12b–11, 17 CFR 240.12b–11; Rule 14d–1, 17 CFR 240.14d–1; and Rule 16a–3, 17 CFR 2401.6a–3.

[35] *See* Rule 411(c) under the Securities Act, 17 CFR 230.411(c), new Rule 439(b) under the Securities Act, 17 CFR 230.439(b), and changes to General Instructions of Forms SB–1, SB–2, S–1, S–2, S–3, S–11, F–1, F–2 and F–3. In addition, Items 601(b)(24) of Regulations S–K and S–B, 17 CFR 229.601(b)(24) and 17 CFR 228.601(b)(24), are revised so that a power of attorney included in the earlier registration statement relating to the offering also may relate to the short-form registration statement filed to register the additional securities.

[36] *See* revisions to Rule 430A(a)(3), 17 CFR 230.430A(a)(3).

[37] The principal purpose of the original five-day limitation was to prevent delayed offerings being made under Rule 430A by persons that do not meet the criteria for use of shelf registration. *See* Securities Act Release No. 6714 (May 27, 1987) (52 FR 21252).

[38] *See* Rule 462(c), 17 CFR 230.462(c).

[39] *See* Rule 409, 17 CFR 230.409.

[40] *See* Securities Act Rule 461(a), 17 CFR 230.461(a). Both an authorized representative of the registrant and an authorized representative of the managing underwriter will be required to make such request orally. The rule revisions do not adopt a requirement suggested by some commenters that an oral request be followed by transmission to the Commission of a written request, nor are facsimile or duplicate versions required to be followed by transmission to the Commission of the manually signed versions.

[41] *See* Securities Act Rule 461(a), 17 CFR 230.461(a). The liability of persons who sign the registration statement, the underwriters and others under section 11(a) of the Securities Act, 15 U.S.C. 77k(a), is based upon the registration statement at the time it becomes effective.

other factors set forth in section 8(a) of the Securities Act,[42] persons making oral acceleration requests should be prepared to provide orally the prospectus dissemination information that typically is set forth in a written acceleration request. Such information generally includes: The date of the preliminary prospectus distributed, the approximate dates of distribution, the number of prospectus underwriters and dealers to whom the preliminary prospectus was furnished, the number of prospectuses so distributed, and the number of prospectuses distributed to others, identifying them in general terms.[43] In addition, in the case of non-reporting companies, an affirmative statement from the managing underwriter may be requested with regard to whether it has been informed by participating underwriters and dealers that copies of the preliminary prospectus have been or are being distributed to all persons to whom it is then expected to mail confirmations not less than 48 hours prior to the time it is expected to mail such confirmations.[44]

7. T+4 Settlement for Firm Commitment Offerings Priced After the Close of the Market

As discussed elsewhere in this release, the Commission is eliminating the current exemption contained in Rule 15c6–1 for firm commitment offerings, thus bringing those transactions under a T+3 settlement standard. In response to the Four Firms proposal, the Commission proposed an amendment to Rule 15c6–1 that would establish four business days after the trade date ("T+4") as the standard settlement cycle for firm commitment offerings priced after 4:30 p.m. The vast majority of commenters who addressed this proposal expressed support for settlement on a T+4 basis.[45] Several of these commenters reasoned that it is difficult to print and deliver the final prospectus within a T+3 settlement time frame when the securities are priced late in the day. These commenters also opined that the potential systemic and market risks associated with the T+4 provision should be limited because most of the secondary trading in the subject securities will not begin until the opening of the market on the next business day and, therefore, the primary issuance of securities will be available to settle secondary trading in the security.

The T+4 provision in the Four Firms proposal was intended to provide time to deliver prospectuses by settlement. Establishing T+4 as the standard for this category of offerings also will provide certainty and reduce confusion as to the appropriate settlement cycle. Accordingly, the Commission is adopting the amendment for settlement of specific offerings on a T+4 basis with only minor technical corrections.[46]

8. Investment Companies

The Commission requested comment on whether the Four Firms proposal should apply to investment companies. Commenters did not believe that open-end investment companies would require any special provisions to facilitate T+3 settlement because they are engaged in the continuous offerings of securities with pre-printed prospectuses, but endorsed the application of the Four Firms proposal to closed-end investment companies and unit investment trusts ("UITs"). The revisions to Rule 430A (the extension of the pricing period and changes to offering size and price range), to Rule 461(a) (facsimile or oral accelerations of effective dates), and to Rule 15c6–1 (T+4 settlement for firm commitment offerings priced after 4:30 p.m.) by their terms apply to the registration statements of closed-end investment companies and UITs.[47] The Investment Company Act permits UITs, but not closed-end investment companies, to increase the size of an offering by post-effective amendment.[48] Therefore, the Commission is adopting rule and form revisions that will permit closed-end investment companies to take advantage of the short-form registration statement that permits an increase in offering size.[49] Under the rule and form amendments, as adopted, the Commission is not making any changes to re-order investment company prospectuses because the current prospectus requirements appear to provide sufficient flexibility to accommodate expedited printing of prospectuses.

B. The SIA Approach

The second part of the Commission's proposal was based on the proposal submitted by the SIA. The SIA proposal was predicated on the premise that prospectus delivery could be accomplished much more quickly if issuers could convey the Section 10(a) prospectus information in multiple documents delivered to investors at different times, rather than in a traditional, integrated final prospectus prepared through last-minute mass printing, shipping and mailing.

Rule 434 under the Securities Act,[50] which is based upon the SIA approach, is being adopted largely as proposed. Rule 434 permits participants in registered firm commitment underwritten offerings of securities for cash and specified registered offerings for cash made on an agency basis (hereinafter, "eligible offerings") to convey prospectus information in more than one document and allows such documents to be delivered to investors at separate intervals and in varying manners. Rule 434 does not require that a final, integrated prospectus be delivered to investors. In the aggregate, however, all required information will still be disclosed to investors prior to or at the same time as a confirmation is sent, either through physical delivery or, in the case of short-form registered offerings,[51] through physical delivery and delivery by publication.

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[42] 15 U.S.C. 77h(a).

[43] *See* Rule 418(a)(7), 17 CFR 230.418(a)(7). *See also* Rule 460, 17 CFR 230.460.

[44] *See* Rule 418(a)(7)(vi), 17 CFR 230.418(a)(7)(vi) and Securities Act Release No. 4968 (Apr. 24, 1969) (34 FR 7235). Of course, this information is not applicable to delayed shelf offerings.

[45] One commenter argued that a T+4 standard was unnecessary because the override provision in paragraph (a) of Rule 15c6–1, if broadly interpreted, would provide sufficient flexibility to after-market offerings. *See* letter from John Brandow, Davis Polk & Wardwell to Jonathan Katz, Securities and Exchange Commission, dated April 3, 1995. As discussed elsewhere in this release, the Commission is instead adopting a specific overridge provision for firm commitment offerings.

[46] *See* Rule 15c6–1(c), 17 CFR 15c6–1(c). As proposed, this paragraph provided an exemption for securities sold pursuant to a firm commitment offering. This language has been amandad to clarify that the exemption applies to contracts for tha sala of such securities and that tha exemption only applies to salas from the issuer to tha underwriter and initial salas by broker-dealers participating in tha offering.

[47] As noted previously, tha revised rules permit duplicated or facsimile versions of manual signatures in all reports filed under tha Exchanga Act, as well as registration statements filed under the Securities Act. The Commission is adopting similar ravisions for investment companies. *See* revisions to Rula 8b–11, 17 CFR 270.8b–11.

[48] *See* Section 24(e)(1) of the Investment Company Act, 15 U.S.C. 80a–24(e)(1); *see also* Rule 485(b)(1)(i), 17 CFR 270.485(b)(1)(i), which provides for tha immediate effectiveness of a post-effective amendment filed by a UIT for the purpose of increasing the amount of securities proposed to be offered under Section 24(e)(1).

[49] Modifications to the registration statement form for closed-end investment companies, Form N–2 (17 CFR 274.11a), provida for tha registration of additional securities pursuant to new Rule 462(b). Revisions to (i) paragraph (b) of Rule 483, which sets forth tha exhibit requirements for investment company registration statement forms, provide that a powar of attorney filed for a registration statement form also relates to a related registration statement form filed pursuant to Rule 462(b), and (ii) paragraph (c) of Ruie 483 provide that a consent may be incorporated by reference into a registration statemant form filed pursuant to Rule 462(b) from a related registration statement form.

[50] 17 CFR 230.434.

[51] "Short-form" registration is used herein to refer to registration on Commission Forms S–3 or F–3.

1. Non-Short-Form Registered Offerings

As adopted, in eligible offerings not using short-form registration, persons may comply with their prospectus delivery obligations by delivering a preliminary prospectus,[52] a term sheet, if necessary,[53] and a confirmation.[54] The term sheet is required to include all information material to investors with respect to the offering that is not disclosed in the delivered preliminary prospectus or the confirmation.[55]

Neither the process of filing registration statements and amendments thereto, nor the Commission's registration statement review process, is intended to be altered in connection with the adoption of Rule 434.[56] Rule 434 requires that the preliminary prospectus and the term sheet, taken together, not materially differ from the disclosure included in the effective registration statement.[57] The term sheet must be filed with the Commission within two business days after the earlier of pricing or first use.[58] Thus, term sheets generally will not be reviewed prior to use. Except in the case of delayed shelf offerings, the term sheet is deemed to be a party of the registration statement as of the time such registration statement was declared effective.[59] In the case of such delayed offerings, the term sheet is deemed to be a part of the registration statement as of the time the term sheet is filed with the Commission.[60]

Several commenters on the Proposing Release suggested that the Commission require that a second preliminary prospectus (either an updated version or another copy of the version previously circulated) be circulated to investors either with the term sheet or shortly before the term sheet is delivered.[61] Circulation of a second preliminary prospectus is not required by Rule 434 as adopted, but nothing in the Rule precludes offering participants from doing so.

As adopted, Rule 434 is not limited with respect to the amount of time that could elapse between delivery of the preliminary prospectus and the term sheet. Further, the rule does not contain any limitation on the magnitude of changes from the disclosure set forth in the circulated preliminary prospectus that the term sheet may contain. As noted above, however, the Rule is not available for non-short-form registered offerings if the disclosure in the preliminary prospectus and term sheet materially differ from the disclosure contained in the prospectus filed as a part of the effective registration statement.

2. Short-Form Registered Offerings

In Rule 434 eligible offerings using short-form registration, persons may comply with their prospectus delivery obligations by delivering a preliminary or base prospectus,[62] an abbreviated term sheet[63] and a confirmation. An abbreviated term sheet must contain, unless previously disclosed in the circulated preliminary or base prospectus or in the registrant's Exchange Act filings incorporated by reference into the prospectus: (i) The description of securities required by Item 202 of Regulation S–K, or a fair and accurate summary thereof;[64] and (ii) information regarding material changes required by Item 11 of Form S–3or Form F–3.[65] Under new Rule 434, certain offering-specific disclosure included in a traditional final prospectus[66] will be required only in the prospectus supplement filed with the Commission.[67] This information could include, for example, use of proceeds and syndicate and specific plan of distribution information.

Registrants will be required to indicate on the cover page of their registration statement, by checking a box, that reliance on Rule 434 for prospectus delivery is intended. Persons checking the box, however, would not be required to rely on Rule 434 if they later determined to deliver prospectus information otherwise in connection with the offering.

Any term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 must state on the top center of the front cover page that it is a supplement to a prospectus and identify

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To be eligible to use short-form registretion for e primary offering, an issuer must heve e public floet of $75 million and must heve been reporting with the Commission for one year. *See* General Instructions I.A.3. and I.B.1. to Form S–3 end General Instructions I.A.1. end I.B.1. to Form F–3.

[52] "Preliminary prospectus" is used herein to refer to either a preliminary prospectus used in relience on Rule 430, 17 CFR 230.430, or e prospect omitting information in relience on Rule 430A(a), 17 CFR 230.430A(a).

[53] In order to reflect industry nomenclature, "term sheet" is used in this release to refer to the document celled a "supplementing memorandum" in the Proposing Release. In addition, "abbreviated term sheet" is now used in place of "abbreviated supplementing memorendum." Regardless of the nomencleture used, these documents constitute supplements to prospectuses subject to completion.

[54] The preliminery prospectus, the term sheet and the confirmation may be delivered together or separately under Rule 434, provided that the former two are sent or given prior to or with the confirmation. *See* Rule 434(b)(1), 17 CFR 230.434(b)(1). *See also* Rule 434(c)(1), 17 CFR 230.434(c)(1) with respect to the preliminary or base prospectus, the abbreviated term sheet and the confirmetion. Note that the prospectus delivery obligations pursuent to Rule 15c2–8 under the Exchange Act are independent of those discussed in this section. A term sheet or abbrevieted term sheet generelly mey not be sent or given prior to the preliminary or base prospectus given the limitations set by section 5(b)(1) of the Securities Act end the definition of "prospectus" set forth in section 2(10) of the Securities Act. The Commission will reise no objection where e preliminary or base prospectus being delivered seperetely is sent or given in e manner reasonably celculated to arrive prior to or et the same time with the term sheet or ebbreviated term sheet but the term sheet or abbrevieted term sheet nevertheless precedes the preliminary or base prospectus.

[55] *See* Rule 434(b)(3), 17 CFR 230.434(b)(3).

[56] As under current practice, the staff will continue to consider whether recirculetion of e prospectus is needed when there are meteriel changes in disclosure arising after the prospectus subject to completion has been given to investors. *See* Rules 460 end 461(b), 17 CFR 230.460 and 230.461(b).

[57] *See* Rule 434(b)(2), 17 CFR 230.434(b)(2). The disclosure in the preliminary prospectus end term sheet would be measured against the disclosure set forth in the registretion statement es of its effectlve dete, including omitted Rule 430A price-releted information deemed a part thereof by virtue of Rule 430A(b), 17 CFR 230.430A(b).

[58] *See* Rule 424(b)(7), 17 CFR 230.424(b)(7). Each filed copy of a term sheet or abbrevieted terms sheet, like other filings under Rule 424, must contain in the upper right corner of its cover page a reference to the part of Rule 424 under which the filing is made (i.e. Rule 424(b)(7)) end the file number of the registration statement to which the prospectus relates. *See* Rule 424(e), 17 CFR 230.424(e).

[59] *See* Rule 434(d), 17 CFR 230.434(d).

[60] *Id.*

[61] *See, e.g.*, letter from John Olson *et al.*, American Bar Association to Jonathen Katz, Securities end Exchange Commission, dated April 14, 1995; letter from Edward Adams, Fredrikson & Byron to Jonethan Katz, Securities end Exchange Commission, dated March 31, 1995; end letter from Steven Machov, Merrill Corporation to Jonethan Katz, Securities end Exchange Commission, deted April 3, 1995.

[62] "Base propectus" is used herein to refer to á prospectus contained in a registration statement et the time of effectiveness (or es subsequently revised) thet omits information that is not yet known concerning en offering pursuant to Ruie 415, 17 CFR 230.415.

[63] The ebbreviated term sheet is filed with the Commission in accordence with Rule 424(b)(7), 17 CFR 230.424(b)(7). *See* Rule 434(d), 17 CFR 230.434(d), with respect to ebbreviated term sheets being deemed e part of the registration statement.

[64] 17 CFR 229.202.

[65] *See* Rule 434(c)(3), 17 CFR 230.434(c)(3).

[66] Offering-specific information required to be filed but permitted not to be delivered physically under Rule 434 short-form registered offerings is set forth in Items 501–510 of Regulation S–K, 17 CFR 229.502.229.510. In eddition, e summarized version of the description of securities set forth in Item 202 of Regulation S–K, 17 CFR 229.202, may be delivered physically rather than the full description filed with the Commission.

[67] *See* Rule 434(c)(2), 17 CFR 230.434(c)(2). For example, the final prospectus traditionally delivered to investors in shelf offerings hes included information set forth in both the base prospectus end e prospectus supplement. In shelf offerings relying on Rule 434, information in the prospectus supplement will not be delivered physically to investors, except to the extent it is disclosed pursuant to the ebbrevieted term sheet. The prospectus supplement in such offerings, however, must be filed with the Commission by the time any confirmation is sent or given to investors. *See* Rule 434(c)(2)(ii), 17 CFR 230.434(c)(2)(ii).

that prospectus by issuer name and date. The term sheet or abbreviated term sheet also, in that location, must clearly identify that it is a term sheet or abbreviated term sheet used in reliance on Rule 434, must clearly identify the documents that, when taken together, constitute the section 10(a) prospectus, and must be dated as of the approximate date of its first use.[68]

3. Scope of the Proposed Rule

a. Underwritten Offerings for Cash

Rule 434, as adopted, extends only to offerings where the sole consideration given in exchange for securities is cash. Offerings such as exchange offers and business combinations are not included. As noted in the Proposing Release, in those offerings, the final prospectus is traditionally used to begin the process of soliciting votes or consents to a transaction. Thus, the logistical difficulties of prospectus delivery are not associated with those offerings.

The adopted Rule also does not extend to offerings that are made other than on a firm commitment basis with underwriters, except for offerings of investment grade debt made in connection with a medium-term note ("MTN") program registered with the Commission on either a continuous or delayed shelf basis.[69] Concern has been expressed that exclusion of these MTN securities from the Rule would unnecessarily push such transactions out of the T+3 settlement cycle.[70] Further, while these MTN securities typically are sold through an underwriter on an agency rather than a firm commitment basis, assurance has been given that, once an agreement has been reached between the investor and the MTN program agent, the preparation and delivery of a prospectus occurs in a manner identical to that in a principal transaction.[71]

b. Offerings of Asset-Backed Securities

As adopted, Rule 434 excludes offerings of asset-backed securities ("ABS").[72] Settlement in connection with ABS offerings currently takes place outside of the T+3 time frame, on approximately a T+10 cycle, and is likely to continue to do so. As noted in the Proposing Release, the existing settlement schedule is the result primarily of factors unique to these offerings, which are the same factors that result in such offerings not lending themselves to use of incremental disclosure. Those factors include: (i) The distinctive structuring process for most ABS offerings, which typically extends almost to the time when the security is priced, whereby a variety of structures may be considered as the sponsor attempts to meet investors' needs' (ii) the time needed for identification of the specific pool of collateral which will support the ABS; and (iii) the necessity of creating shortly before sale of the ABS a prospectus supplement of significant length and complexity that details the characteristics of specific pool assets and the transaction's structure, the summarization of which would not serve as an adequate substitute for the complete description in the prospectus supplement.

c. Offerings of Structured Securities

As adopted, Rule 434 also excludes offerings of structured securities.[73] "Structured securities," for purposes of Rule 434, are defined to mean securities whose cash flow characteristics depend upon one or more indices or that have imbedded forwards or options or securities where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.[74] This definition was proposed to be included in Rule 15c6–1 but is set forth in Rule 434 instead Rule 15c6–1 as adopted makes no reference to such securities. As noted in the Proposing Release, these securities usually have terms that are highly complex, with many employing one or more indices as a basis for determining the issuer's payment obligations (e.g., coupon, principal, redemption payments). A structured security's value is derived not only from the creditworthiness of its issuer, but also from any underlying assets, indices, interest rates or cash flow upon which the security is predicated. Because of the complexities associated with these securities, investors may not fully understand the investment risks when purchasing structured securities, especially those with complicated structures. A complete description of offering-specific information therefore is of particular importance to investors in making an investment decision, given the market risks resulting from the structure of these securities. Otherwise, as noted in the Proposing Release, the incremental distribution of information under the Rule, when combined with the complex nature of these securities, could result in material disclosure not being readily accessible to investors.

d. Investment Companies

As proposed, Rule 434 would have provided that it would not apply to the offering of any security of any company registered under the Investment Company Act. The Commission requested comment on whether the prospectus delivery modifications in the SIA proposal also should apply to closed-end investment companies and UITs. Commenters endorsed the proposed prospectus delivery method for closed-end investment companies and UITs, and the Commission is adopting revisions that apply new Rule 434 to these investment companies.[75]

4. Conforming Amendments to Rule 14c2–8

a. Rule 15c2–8 Amendments

The Commission is adopting the amendments to Rule 15c2–8[76] as proposed. The amendments expand the use of the terms "preliminary prospectus" and "final prospectus," as currently used in the Rule, to include the terms "prospectus subject to completion" and "Section 10(a) prospectus," respectively, the reflect the terminology of Rule 434. Additionally, the term "sending" is substituted for the term "mailing" to accommodate prospectus delivery by means other than traditional mailing.

Six commenters addressed Rule 15c2–8. None of these commenters objected to the proposed changes, although several of them raised other issues regarding Rule 15c2–8, which are discussed below. The Commission may propose further amendments to Rule 15c2–8 based on its experience with Rule 434, or more generally, to reflect market developments and staff interpretations

[68] *See* Rule 434(e), 17 CFR 230.434(e).

[69] *See* Rule 434(a), 17 CFR 230.434(a). These MTN offerings rely on Rule 415(a)(1) (ix) or (x), respectively.

[70] *See* letter from Kevin Moynihan, Merrill Lynch to Jonathan Katz, Securities and Exchange Commission, dated April 7, 1995.

[71] *Id.*

[72] "Asset-backed security" is defined for purposes of Rule 434 the same way it is defined in General Instruction I.B.5. of Form S–3: a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders. *See* Rule 434(f), 17 CFR 230.434(f).

[73] *See* Rule 434(a), 17 CFR 230.434(a).

[74] *See* Rule 434(h), 17 CFR 230.434(h).

[75] *See* revisions to Rule 497, 17 CFR 230.497, which sets forth fund prospectus filing requirements with the Commission, that require, parallel to the changes to the general prospectus filing requirements in Rule 424, 17 CFR 230.424(b), the filing of prospectuses allowed under Rule 434 on or prior to the date a confirmation is sent or given to an investor.

[76] 17 CFR 240.15c2–8.

that have occurred since the Rule was last amended.[77]

b. Rule 15c2–8 Issues Raised by Commenters

In the case of an offering of securities of an issuer that previously has not been required to file reports under section 13(a) and 15(d) of the Exchange Act, Rule 15c2–8(b)[78] requires that a preliminary prospectus be delivered to any person who is expected to receive a confirmation of sale at least 48 hours prior to sending such confirmation.[79] Two commenters noted that because preliminary prospectuses generally are not used in offerings of asset-backed securities, some broker-dealers have adopted the practice of delivering the final prospectus to purchasers at least 48 hours prior to mailing the confirmation of an asset-backed security. These commenters urged the Commission either to modify Rule 15c2–8 to acknowledge this industry practice or to except asset-backed securities from Rule 15c2–8(b). In the Commission's view, delivery of the final prospect is at least 48 hours prior to sending the confirmation will satisfy the requirement of Rule 15c2–8(b) in the case of offerings of asset-backed securities where no preliminary prospectus is used.[80]

With respect to the obligations of a managing underwriter to provide copies of the prospectus to participating broker-dealers, two commenters sought interpretive guidance with respect to the terms "sufficient copies" and "reasonable quantities," as used in Rule 15c2–8 (g) and (h),[81] respectively, in light of the recently issued *Brown & Wood* letter,[82] which permits electronic delivery of prospectuses in certain circumstances.[83] The *Brown & Wood* letter was not intended to modify any obligation that a managing underwriter currently has pursuant to paragraphs (g) or (g) of Rule 15c2–8 to produce, reproduce, or deliver, in such quantities as requested, a preliminary, amended, or final prospectus to broker-dealers participating in the offering. Accordingly, a managing underwriter may discharge its obligations pursuant to Rule 15c2–8 (g) or (h) by delivering a prospectus (or any portion thereof) electronically to a participating broker-dealer, if the recipient broker-dealer expressly consents to delivery in such form.

One commenter suggested revising Rule 15c2–8(b) to require delivery of the preliminary prospectus at least 48 hours, but not more than 60 days, prior to sending the confirmation. Another commenter suggested that the Commission require the managing underwriter to deliver the final prospectus to offering participants by the close of business on T + 2, so that such participants may send the prospectus to investors no later than T + 3. Consistent with the adoption of both the SIA proposal and the Four Firms proposal, the Commission believes that offering participants should have as much flexibility as possible to determine how to comply with their prospectus delivery obligations within T + 3, without the burden of additional restrictions, and therefore has determined not to amend the Rule as suggested at this time. As noted, however, the Commission may propose additional amendments to Rule 15c2–8 based on its experience with Rule 434.

III. Revision of the Rule 15c6–1 Exemption

In the Proposing Release, the Commission proposed to establish A + 3 as the presumptive settlement date for firm commitment offerings by eliminating the exemption from T + 3 settlement for sales for cash in connection with firm commitment offerings.[84] However the Commission proposed to allow managing underwriters flexibility to choose T + 3, T + 4, or T + 5 settlement under specific conditions, including written notice to prospective purchasers and the exchanges prior to pricing.[85] The Commission also proposed exemptions from T + 3 settlement for firm commitment offerings of asset-backed and structured securities. These amendments were proposed to reduce the confusion caused by different settlement cycles for new issue and secondary market trades, while also providing flexibility to settle certain firm commitment offerings beyond T + 3 when the standard settlement cycle cannot be met.

Most commenters supported elimination of the general exclusion for firm commitment offerings. As one commenter noted, establishing a T + 3 settlement standard for these transactions will reduce risk, provide certainty in the form of a written standard, and avoid bifurcation of the settlement cycle.[86] Several commenters cited specific categories of securities requiring settlement cycles longer than T + 3.[87] Most commenters, however, preferred to resolve difficulties in settling offerings through a general override provision rather than specific exemptions of classes of securities.

The majority of comments that addressed the merits of the proposed override provisions expressed support for a specific override provision for firm commitment offerings but objected to the terms of Rule 15c6–1(e) as proposed. Several commenters asserted that the T + 5 maximum settlement period did not provide adequate flexibility for settlement of certain firm commitment offerings. Furthermore, many of the commenters argued that the requirement of written notice to all perspective purchasers on or before pricing was burdensome and should be eliminated.[88] Commenters disagreed

[77] Rule 15c2–8(d) was last amended in Exchange Act Release No. 25546 (Apr. 4, 1988) (53 FR 11841).

[78] 17 CFR 240.15c2–8(b).

[79] This requirement is satisfied by delivering a preliminary prospectus that is current at the time of its delivery.

[80] This interpretation of paragraph (b) is consistent with the longstanding staff position that delivery of a final prospectus at least 48 hours prior to sending the confirmation is required in cases where no preliminary prospectus is circulated and the offering is sold solely on the basis of a final prospectus.

[81] 17 CFR 240. 15c2–8 (g) and (h). Paragraph (g) requires a managing underwriter to take reasonable steps to ensure that all broker-dealers participating in an offering are promptly furnished with "sufficient copies, as requested by them" of each preliminary, amended, or final prospectus to enable such participating brokers-dealers to comply with their obligations under Rule 15c2–8 (b), (c), (d), and (e). Similarly, paragraph (h) requires a managing underwriter to take reasonable steps to ensure that any broker-dealer participating in an offering or trading in the registered security is furnished "reasonable quantities of the final prospectus * * * as requested by him" in order to enable to broker-dealer to comply with sections 5(b) (1) and (2) of the Securities Act.

[82] *See supra* footnote 6.

[83] These commenters inquired whether Rule 15c2–8 (g) and (h) would permit a managing underwriter to deliver the pre-printed portion of the prospectus by traditional methods, followed by the remainder (or "wrap" portion), containing only the pricing and other "last minute" disclosure, by electronic transmission. These commenters advised that the recipient broker-dealers would be expected to duplicate the remainder (or "wrap" portion) and assemble the two parts for delivery to investors.

[84] *See* 17 CFR 240.15c6–1(b)(2).

[85] Rule 15c6–1(a) contains a general override provision that permits the parties to a contract to specify an alternate settlement cycle if the agreement is made at the time of the trade. Complying with this provision in the context of a firm commitment offering may be difficult because of the need to obtain the express agreement of all parties participating in the offering.

[86] *See* letter from Brent Taylor, J.P. Morgan Securities, Inc. to Jonathan Katz, Securities and Exchange Commission , dated March 20, 1995.

[87] In addition to asset-backed securities and structured securities, commenters raised settlement concerns in connection with medium term note programs registered under short-form shelf registration, capital market debt transactions, securities exempt from registration under section 3(a)(4) or 3(a)(11) of the Securities Act, and certain transactions involving swaps.

[88] Specifically, several commenters asserted that the settlement period may not be known sufficiently in advance of pricing to provide written

Continued

over the manner in which an alternate settlement date should be established, though most commenters concurred that such authority should not be granted solely to the managing underwriter.

To address the various issues raised by the commenters in connection with the proposed modifications of the exemption for firm commitment offerings, the Commission is amending Rule 15c6–1 to eliminate the exemption for firm commitment offerings and to include a specific override provision[89] which will permit the establishment of an alternate settlement date for the sale of all securities subject to a firm commitment offering upon agreement by the managing underwriter and the issuer of the securities. This override provision does not contain the notice requirements in the proposed override position and does not limit the settlement period to a maximum of T + 5. The Commission has decided not to adopt a provision exempting offerings of particular classes of securities. Instead, the Commission believes that an alternate settlement cycle can be established for these offerings through the override provision for firm commitment offerings.

In adopting the proposed amendments to Rule 15c6–1, the Commission seeks to provide flexibility for settlement beyond T + 3 for certain firm commitment offerings that require such treatment in light of the special characteristics of the subject securities. The Commission is mindful of the concert that lack of certainty in settlement standards may create confusion in the marketplace. Accordingly, the Commission stresses that the override position is not intended to dilute the presumption in favor of application of the T + 3 settlement cycle in connection with firm commitment offerings. Instead, the override provision is intended to be used only in those circumstances when T + 3 settlement is not feasible.

Furthermore, the Commission recognizes that it is important that the registered clearing agencies, through which settlement of firm commitment offerings and secondary market trades will occur, receive notice of non-standard settlement dates. The Commission encourages issuers and underwriters to notify promptly the registered clearing agencies of the settlement period of an offering. It may be appropriate for the clearing agencies as self-regulatory organizations under the Exchange Act to modify their rules to require such notice at such times and in such manners as the clearing agencies need to make provision for non-standard settlement cycles. The Commission will monitor the use of the override provision on an ongoing basis.

notice and that such notice is duplicative of the information provided orally and in the confirmation.

[89] *See* Rule 15c6–1(d), 17 CFR 15c6–1(d). This specific override provision would not extend to offerings of investigation grade debt made in connection with a medium-term note program sold through an underwriter on an agency basis. Such transportation may, however, be accomplished in accordance with the general override provision set forth in Rule 15c6–1(a), 17 CFR 240.15c6–1(a).

IV. EDGAR Usage

After the effective date of these proposals and until the necessary form types are available through the EDGAR system, registrants that are mandated electronic filers should file in paper format those documents relating to the proposals being adopted other than the abbreviated registration form filed pursuant to Rule 462(b).[90] All other documents unrelated to the proposals being adopted must continue to be filed electronically by mandated electronic filers. The necessary form types are expected to be available with the release of a new version of the EDGARLink software in Autumn 1995. Notice will be provided in the SEC Digest, the **Federal Register** and on the EDGAR Bulletin Board when the new EDGAR form types are available.

V. Cost-Benefit Analysis

Five commenters responded to the Commission's request for comments regarding the costs and benefits of the proposed rules. Four of the five commenters expected the cost of printing and shipping of prospectuses to decline as a result of the proposed rules.[91] The other commenter stated that the increased administrative burdens and costs that may be imposed on dealers as a result of multiple or duplicate mailings of various documents could negate the intended benefit of the SIA approach.[92] One commenter, a financial printer, provided empirical data on the proposals. The printer concluded that, in three basic scenarios regarding the printing and delivery of a Form S–1, a reduction in costs ranging from 8% to 88% would be obtainable as a result of the new delivery alternatives available under the proposed. rules.[93] The Commission believes the new rule and amendments provide market participants with additional flexibility that should result in lower transaction costs, while not diminishing investor protection.

[90] Only those documents that are filed pursuant to Rule 424(b)(7), Rule 462(c) and Rule 497(h)(2) may be filed in paper format. *See supra* footnotes 29 and 30 and accompanying text.

[91] *See* letter from Karl Barnickol, American Society of Corporate Secretaries to Jonathan Katz, Securities and Exchange Commission, dated April 10, 1995; Joel Brenner, Storch & Brenner (on behalf of R.R. Donnelley Financial), to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 31, 1995; W. Scott Jardine, Niké Securities L.P., to Jonathan Katz, Securities and Exchange Commission, dated March 31, 1995; Larry W. Martin, John Nuveen & Co. Incorporated, to Jonathan Katz, Securities and Exchange Commission, dated March 30, 1995.

[92] *See* Letter from George Miller, Public Securities Association to Jonathan Katz, Securities and Exchange Commission, dated April 10, 1995.

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[94] regarding the rule and amendments to existing regulations being adopted. The FRFA notes that the new rule and amendments will provide entities with greater flexibility and efficiency with respect to the timing of printing and delivery of prospectus information, thereby facilitating compliance with Rule 15c6–1 under the Exchange Act and access to the public securities markets. As discussed more fully in the analysis, the new rule and amendments to Securities Act regulations should decrease costs associated with fulfilling entities' prospectus delivery obligations under the Securities Act. The amendments to Exchange Act rules and forms are not anticipated to have any significant economic impact on entities. The new rule may impose minimal additional reporting, recordkeeping or compliance requirements, while the amendments do not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the new rule and amendments consistent with their objectives and the Commission's statutory mandate were found.

The overall effect of the new rule and amendments is to provide entities increased efficiency in raising capital from the public securities markets. The aspects that provide for the incremental delivery of prospectus information will apply to any entity engaged in a public distribution with respect to an eligible offering. The amendments to Securities Act regulations should streamline the registration process and thereby facilitate compliance with prospectus delivery within T+3. The new rule and amendments to Securities Act regulations also will apply to certain

[93] *See* letter from Joel Brenner, Storch & Brenner (on behalf of R.R. Donnelley Financial), to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 31, 1995.

[94] 5 U.S.C. 604 (1988).

investment companies registered under the investment Company Act, i.e. closed-end investment companies and unit investment trusts. The amendments to regulations under section 15(c) of the Exchange Act will reflect the availability of expedited delivery of prospectus information provided by the new rule and amendments to the Securities act regulations.

A copy of the FRFA may be obtained from Michael Mitchell, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–3, Washington, DC 20549, (202) 942–2900.

VII. Effective Date

The new rule and the revisions to rules and forms are effective June 7, 1995, in accordance with the Administrative Procedures Act, which allows for effectiveness in less than 30 days after publication, *inter alia*, for "a substantive rule which grants or recognizes an exemption or relieves a restriction" and "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553 (d)(1) and (d)(3). The adopted rule and revisions primarily lessen restrictions of existing rules in that they either provide a more efficient way for offering participants to accomplish prospectus delivery or they streamline the registration and prospectus preparation and printing processes. In addition, the Commission finds there is good cause for the adopted rule and revisions to become effective on June 7, 1995 since they are designed to allow market participants to accomplish prospectus delivery in eligible offerings in a T+3 settlement cycle. Since the T+3 settlement cycle will become effective on June 7, 1995, the adoption of the rule and revisions on that date will ensure that potential market disruption relating to prospectus delivery prior to settlement of such offerings would be avoided. The exemption from Rule 15c6–1 for certain firm commitment offerings also is being eliminated in this time frame because of its potential for market disruption if allowed to go into effect. Any possible negative effect of eliminating that exemption is offset by the adoption of an expanded provision allowing such offerings to settle outside of the Rule 15c6–1 mandated time frame if the participants in the offering so elect.

VIII. Statutory Bases

The new rule and the amendments to the Commission's rules and forms under the Securities Act and amendments to the Commission's rules under the Exchange Act are being adopted pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act and sections 3, 4, 10, 12, 13, 14, 15, 16 and 23 of the Exchange Act. The revisions to the Commission's rules and forms under the Investment Company Act are being adopted pursuant to sections 8(b) and 38(a) under the Investment Company Act, as amended.

List of Subjects in 17 CFR Parts 202, 228, 229, 230, 232, 239, 240, 270 and 274

Administrative practice and procedure, Brokers, Investment companies, Reporting and recordkeeping requirements, Securities, Small businesses.

Text of Amendments

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 202—[AMENDED]

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

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

2. By revising the seventh sentence of the introductory text of § 202.3a to read as follows:

§ 202.3a Instructions for filing fees.

* * * Filing fees paid pursuant to Section 6(b) of the Securities Act of 1933 or pursuant to Section 307(b) of the Trust Indenture Act of 1939 should be designated as "restricted," except that filing fees paid with respect to registration statements filed pursuant to Rule 462(b) (§ 230.462(b) of this chapter) should be designated as "unrestricted." * * *

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

3. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

4. By revising paragraph (a)(4) of § 228.501 to read as follows:

§ 228.501 (Item 501) Front of registration statement and outside front cover of prospectus.

* * * * *

(a) * * *

(4) Cross reference to, and identify the location within the prospectus of (e.g., by page number or other specific location), the risk factors section of the prospectus, printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded;

* * * * *

5. By amending § 228.502 by revising the introductory text, removing the heading from paragraph (a)(1) and replacing the "." at the end of paragraph (a)(1) with a ";", adding a heading and introductory text to paragraph (a), adding a sentence at the end of paragraph (b), adding a sentence at the end of paragraph (c), revising paragraph (f) and including the introduction paragraph to read as follows:

§ 228.502 (Item 502) Inside front and outside back cover pages of prospectus.

On the inside front cover page of the prospectus, except as otherwise specified and except that the outside back cover page may be used for paragraphs (e) and (f), disclose the following:

(a) *Available information.* On the inside front cover page of the prospectus or under an appropriate caption elsewhere in the prospectus:

* * * * *

(b) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

(c) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

* * * * *

(f) *Table of contents.* Include a detailed table of contents showing the various sections or subdivisions of the prospectus, including any risk factors section set forth in the prospectus pursuant to Item 503(c) (§ 228.503(c)), and the page number on which each such section or subdivision begins.

Instruction to Item 502

Canadian issuers should, in addition to the disclosure required by this Item, provide the information required by Item 502(f) of Regulation S–K. Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

6. By revising paragraph (b) and paragraph (c) of § 228.503 to read as follows:

§ 228.503 (Item 503) Summary information and risk factors.

* * * * *

(b) *Address and telephone number.* Include in the prospectus the complete

mailing address and telephone number of the small business issuer's principal executive offices.

(c) *Risk factors.* (1) Discuss under the caption "Risk Factors" any factors that make the offering speculative or risky. These factors may include no operating history, no recent profit from operations, poor financial position, the kind of business in which the small business issuer is engaged or proposes to engage, or no market for the small business issuer's securities.

(2) The risk factor discussion should immediately follow the summary section. If no summary section is necessary, the risk factor discussion should immediately follow the cover page of the prospectus or, if included, a pricing information section that immediately follows the cover page.

Instruction to Item 503(c). "Pricing information" as used in paragraph (c) of this section shall mean price and price-related information of the type that may be omitted from the prospectus in an effective registration statement in reliance on Rule 430A(a) (§ 230.430A(a) of this chapter) and information disclosed in a prospectus but subject to change as a result of pricing.

7. By adding one sentence to the end of paragraph (a)(1)(ii) of § 228.512 to read as follows:

§ 228.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(1) * * *

(ii) * * * Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

* * * * *

8. By amending § 228.601 to revise the third sentence of paragraph (b)(24) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(24) *Power of attorney.* * * * A power of attorney that is filed with the Commission must relate to a specific filing or an amendment, provided, however, that a power of attorney relating to a registration statement under the Securities Act or an amendment thereto also may relate to any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter.* * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

9. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77i, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

10. The authority citation following § 229.503 is removed.

11. By revising paragraph (c)(4) of § 229.501 to read as follows:

§ 229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.

* * * * *

(c) * * *

(4) Cross reference to and identify the location within the prospectus of (e.g., by page number or other specific location), where applicable, the discussion in the prospectus prescribed by Item 503 of Regulation S–K (§ 229.503) of material risks in connection with the purchase of the securities, printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded;

* * * * *

12. By amending § 229.502 by revising the introductory text, revising the introductory text of paragraph (a), adding a sentence at the end of paragraph (b), adding a sentence at the end of paragraph (c), revising the last sentence of the introductory text of paragraph (f), and revising paragraph (g) to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

The following information, to the extent applicable, shall appear on the inside front cover page of the prospectus, except as otherwise specified and except that the information required by paragraphs (e) and (g) of this Item may be set forth on the outside back cover page.

(a) *Available information.* Registrants subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of the registration statement shall, on the inside front cover page of the prospectus or under an appropriate caption elsewhere in the prospectus:

* * * * *

(b) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

(c) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

* * * * *

(f) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

* * * * *

(g) *Table of contents.* Include a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus, including any risk factors section set forth in the prospectus pursuant to Item 503(c) (§ 229.503(c)). and the page number on which each such section or subdivision begins.

13. By revising paragraph (b) and paragraph (c) of § 229.503 to read as follows:

§ 229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.

* * * * *

(b) *Address and telephone number.* Registrants shall include in the prospectus the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(c) *Risk factors.* (1) Registrants, where appropriate, shall set forth under the caption "Risk Factors" a discussion of the principal factors that make the offering speculative or one of high risk; these factors may be due, among other things, to such matters as an absence of an operating history of the registrant, an absence of profitable operations in recent periods, the financial position of the registrant, the nature of the business in which the registrant is engaged or proposes to engage, or, if common equity or securities convertible into or exercisable for common equity are being offered, the absence of a previous market for the registrant's common equity.

(2) The risk factor discussion should immediately follow the summary section. If no summary section is

necessary, the risk factor discussion should immediately follow the cover page of the prospectus or, if included a pricing information section that immediately follows the cover page.

Instruction to Item 503(c). "Pricing information" as used in paragraph (c) of this section shall mean price and price-related information of the type that may be omitted from the prospectus in an effective registration statement in reliance on Rule 430A(a) (§ 230.430A(a) of this chapter) and information disclosed in a prospectus but subject to change as a result of pricing.

* * * * *

14. By revising paragraph (a)(1)(ii) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(1) * * *

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

* * * * *

15. By amending § 229.601 to revise the fourth sentence of paragraph (b)(24) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(24) *Power of attorney.* * * * A power of attorney that is filed with the Commission shall relate to a specific filing or an amendment thereto, provided, however, that a power of attorney relating to a registration statement under the Securities Act or an amendment thereto also may relate to any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter). * * *

* * * * *

16. Guide 4 (referenced in § 229.801(d)) is amended by removing the first sentence of the Guide.

Note: The text of Guide 4 does not and the amendments will not appear in the Code of Federal Regulations.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

17. The authority citation for part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 78t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

18. The authority citations following §§ 230.429, 230.439 and 230.461 are removed.

19. By amending paragraph (a) of § 230.110 by revising the phrase "paragraphs (b) and (c)" to read "paragraphs (b), (c) and (d)" and adding paragraph (d) to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(d) *Filings by facsimile.* Registration statements and post-effective amendments thereto filed by facsimile transmission pursuant to Rule 462(b) (§ 230.462(b)) and Rule 455 (§ 230.455) may be filed with the Commission each day, except Saturdays, Sundays and federal holidays, from 5:30 p.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect.

20. By amending § 230.111 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.111 Payment of fees.

* * * * *

(b) Notwithstanding paragraph (a) of this section, for registration statements filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)), payment of filing fees for the purposes of this section may be made by:

(1) The registrant or its agent instructing its bank or a wire transfer service to transmit to the Commission the applicable filing fee by a wire transfer of such amount from the issuer's account or its agent's account to the Commission's account at Mellon Bank as soon as practicable but no later than the close of the next business day following the filing of the registration statement; and

(2) The registrant submitting with the registration statement at the time of filing a certification that:

(i) The registrant or its agent has so instructed its bank or a wire transfer service;

(ii) The registrant or its agent will not revoke such instructions; and

(iii) The registrant or its agent has sufficient funds in such account to cover the amount of such filing fee.

Note to paragraph (b): Such instructions may be sent on the date of filing the registration statement after the close of business of such bank or wire transfer service, provided that the registrant undertakes in the certification sent to the Commission with the registration statement that it will confirm receipt of such instructions by the bank or wire transfer service during regular business hours on the following business day.

21. By amending § 230.402 to add paragraphs (d) and (e) to read as follows:

§ 230.402 Number of copies; binding; signatures.

* * * * *

(d) Notwithstanding any other provision of this section, if a registration statement is filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)), one copy of the complete registration statement, including exhibits and all other papers and documents filed as a part thereof shall be filed with the Commission. Such copy should not be bound and may contain facsimile versions of manual signatures in accordance with paragraph (e) of this section.

(e) Duplicated or facsimile versions of manual signatures of persons required to sign any document filed or submitted to the Commission under the Act, shall be considered manual signatures for purposes of the Act and rules and regulations thereunder, provided that, the original manually signed document is retained by the filer for a period of five years and upon request the filer furnishes to the Commission or the staff the original manually signed document.

22. By amending § 230.424 by adding paragraph (b)(7) before the Instruction, by revising the heading "Instruction:" to read "Instruction 1:", and adding Instruction 2 to read as follows:

§ 230.424 Filing of prospectuses; number of copies.

* * * * *

(b) * * *

(7) Ten copies of a term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 under the Act (§ 230.434) shall be filed with the Commission pursuant to this paragraph no later than the second business day following the earlier of the date of determination of the offering price, or the date it is first used after effectiveness in connection with a

public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date. In addition to the information required by paragraph (e) of this section, each copy of such term sheet or abbreviated term sheet shall include the information required by Rule 434(e) (§ 230.434(e)).

Instruction 1: * * *

Instruction 2: Notwithstanding paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) of this section, a form of prospectus sent or given in reliance on Rule 434(c) (§ 230.434(c)) with respect to securities registered on Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), other than an abbreviated term sheet filed pursuant to paragraph (b)(7) of this section, shall be filed with the Commission on or prior to the date on which a confirmation is sent or given.

* * * * *

23. By adding a sentence at the end of paragraph (b) to § 230.429 to read as follows:

§ 230.429 Prospectus relating to several registration statements.

* * * * *

(b) * * * Where a combined prospectus is being used pursuant to paragraph (a) of this section, a note should be added to the "Calculation of Registration Fee" table in the latest registration statement or any amendment thereto, stating the number or amount of securities being carried forward and the amount of the filing fee associated with such securities that was previously paid with the earlier registration statement(s).

24. By amending § 230.430A by removing the word "five" and adding, in each place it appears, the word "fifteen" in paragraph (a)(3) and by adding a sentence at the end of Instruction to paragraph (a) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

Instruction to paragraph (a): * * * Notwithstanding the foregoing, any increase or decrease in volume (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b)(1) (§ 230.424(b)(1)) or Rule 497(h) (§ 230.497(h)) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

* * * * *

25. By adding § 230.434 to read as follows:

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

(a) Where securities are offered for cash in a firm commitment underwritten offering or investment grade debt securities are offered for cash on an agency basis under a medium term note program, and such securities are neither asset-backed securities nor structured securities, and the conditions described in paragraph (b) or paragraph (c) of this section are satisfied, then:

(1) The prospectus subject to completion and the term sheet described in paragraph (b) of this section, taken together, and the prospectus subject to completion and the abbreviated term sheet described in paragraph (c) of this section, taken together, shall constitute prospectuses that meet the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) for purposes of section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)) and section 2(10(a) of the Act (15 U.S.C. 77b(10)(a)); and

(2) The section 10(a) prospectus described in paragraph (a)(1) of this section shall have:

(i) Been sent or given prior to or at the same time that a confirmation is sent or given for purposes of section 2(10)(a) of the Act; and

(ii) Accompanied or preceded the transmission of the securities for purpose of sale or for delivery after sale for purposes of Section 5(b)(2) of the Act.

(b) With respect to offerings of securities that are registered on a form other than Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), and with respect to offerings of securities by only those investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that register their securities on Form N–2 (§ 274.11a–1 of this chapter) or Form S–6 (§ 239.16 of this chapter), the following conditions are satisfied:

(1) A prospectus subject to completion and any term sheet described in paragraph (b)(3) of this section, together or separately, are sent or given prior to or at the same time with the confirmation;

(2) Such prospectus subject to completion and term sheet, together, are not materially different from the prospectus in the registration statement at the time of its effectiveness or an effective post-effective amendment thereto (including, in both, instances, information deemed to be a part of the registration statement at the time of effectiveness pursuant to Rule 430A(b) (§ 230.430A(b)); and

(3) A term sheet under this paragraph (b) shall set forth all information material to investors with respect to the offering that is not disclosed in the prospectus subject to completion or the confirmation.

(c) With respect to offerings of securities registered on Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), the following conditions are satisfied.

(1) A prospectus subject to completion and the abbreviated term sheet described in paragraph (c)(3) of this section, together or separately, are sent or given prior to or at the same time with the confirmation;

(2) A form of prospectus that:

(i) Discloses information previously omitted from the prospectus filed as part of an effective registration statement in reliance upon Rule 430A (§ 230.430A), to the extend not set forth in the abbreviated term sheet (as described in paragraph (c)(3) of this section), shall be filed pursuant to Rule 424(b) (§ 230.424(b)) on or prior to the date on which a confirmation is sent or given; or

(ii) Discloses the public offering price, description of securities, to the extent not set forth in the abbreviated term sheet (as described in paragraph (c)(3) of this section), and specific method of distribution or similar matters shall be filed pursuant to Rule 424(b) (§ 230.424(b)) on or prior to the date on which a conformation is sent or given; and

(3) The abbreviated term sheet under this paragraph (c) shall set forth, if not previously disclosed in the prospectus subject to completion or the registrant's Exchange Act filings incorporated by reference into the prospectus:

(i) The description of securities required by Item 202 of Regulation S–K (§ 229.202 of this chapter), or a fair and accurate summary thereof; and

(ii) All material changes to the registrant's affairs required to be disclosed pursuant to Item 11 of Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), as applicable.

(d) Except in the case of offerings pursuant to Rule 415(a)(1)(x), (§ 230.415(a)(1)(x), the information contained in any term sheet or abbreviated term sheet described under this section shall be deemed to be a part of the registration statement as of the time such registration statement was declared effective. In the case of offerings pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)), the information contained in any term sheet or abbreviated term sheet described under this section shall be deemed to be a part of the registration statement as of the

time such information is filed with the Commission.

Instruction: With respect to the obligation to file any form of prospectus, term sheet, or abbreviated term sheet used in reliance on this section, see Rule 424(b) (§ 230.424(b)) or Rule 497(h) (§ 230.497(h)).

(e) Any term sheet or abbreviated term sheet described under this section shall, in the top center of the cover page thereof, state that such document is a supplement to a prospectus and identify that prospectus by issuer name and date; clearly identify that such document is a term sheet or abbreviated term sheet used in reliance on Rule 434; set forth the approximate date of first use of such document; and clearly identify the documents that, when taken together, constitute the Section 10(a) prospectus.

(f) For purposes of this section, *asset-backed securities* shall mean asset-backed securities as defined in General Instruction 1.B.5. of Form S–3 (§ 239.13 of this chapter).

(g) For purposes of this section, *prospectus subject to completion* shall mean any prospectus that is either a preliminary prospectus used in reliance on Rule 430 (§ 230.430), a prospectus omitting information in reliance upon Rule 430A (§ 230.430A), or a prospectus omitting information that is not yet known concerning a delayed offering pursuant to Rule 415(a)(i)(x) (§ 230.415(a)(1)(x)) that is contained in a registration statement at the time of effectiveness or as subsequently revised.

(h) For purposes of this section, *structured securities* shall mean securities whose cash flow characteristics depend upon one or more indices or that have embedded forwards or options or securities where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.

(i) For purposes of this section, *investment grade securities* shall mean investment grade securities as defined in General Instruction I.B.2. of Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter).

(j) For the purposes of this section, a firm commitment underwritten offering shall include a firm commitment underwritten offering of securities by a closed-end company or by a unit investment trust registered under the Investment Company Act of 1940.

26. By designating the existing text as paragraph (a) and adding paragraph (b) to § 230.439 to read as follows:

§ 230.439 Consent to use of material incorporated by reference.

(a) * * *

(b) Notwithstanding paragraph (a) of this section, any required consent may be incorporated by reference into a registration statement filed pursuant to Rule 462(b) under the Act (§ 230.462(b)) from a previously filed registration statement relating to that offering, provided that, the consent contained in the previously filed registration statement expressly provides for such incorporation.

27. By revising the second and third sentences of § 230.455 to read as follows:

§ 230.455 Place of filing.

* * * Registration statements on Form SB–1 or SB–2 may be filed with the Commission either at its principal office or at the Commission's regional or district offices as specified in General Instruction A to each of those forms, except that registration statements and post-effective amendments thereto on such forms that are filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) shall be filed at the Commission's principal office. Such material may be filed by delivery to the Commission through the mails or otherwise; provided, however, that only registration statements and post-effective amendments thereto filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) may be filed by means of facsimile transmission.

28. By amending § 230.457 to revise paragraph (o) read as follows:

§ 230.457 Computation of fee.

* * * * *

(o) Where an issuer is offering securities, the registration fee may be calculated on the basis of the maximum aggregate offering price of all the securities listed in the "Calculation of Registration Fee" Table. The number of shares or units of securities need not be included in the "Calculation of Registration Fee" Table. If the maximum aggregate offering price increases prior to the effective date of the registration statement, a pre-effective amendment must be filed to increase the maximum dollar value being registered and the additional filing fee shall be paid.

29. By revising the first sentence of paragraph (a) and adding two new sentences immediately after the first sentence of paragraph (a) to § 230.461 to read as follows:

§ 230.461 Acceleration of effective date.

(a) Requests for acceleration of the effective date of a registration statement shall be made by the registrant and the managing underwriters of the proposed issue, or, if there are no managing underwriters, by the principal underwriters of the proposed issue, and shall state the date upon which it is desired that the registration statement shall become effective. Such requests may be made in writing or orally, provided that, if an oral request is to be made, a letter indicating that fact and stating that the registrant and the managing or principal underwriters are aware of their obligations under the Act must accompany the registration statement for a pre-effective amendment thereto) at the time of filing with the Commission. Written requests may be sent to the Commission by facsimile transmission. * * *

* * * * *

30. By revising the section heading, designating the existing text as paragraph (a), and adding paragraphs (b) and (c) to § 230.462 to read as follows:

§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments.

(a) * * *

(b) A registration statement and any post-effective amendment thereto shall become effective upon filing with the Commission if:

(1) The registration statement is for registering additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective by the Commission;

(2) The new registration statement is filed prior to the time confirmations are sent or given; and

(3) The new registration statement registers additional securities in an amount and at a price that together represent no more than 20% of the maximum aggregate offering price set forth for each class of securities in the "Calculation of Registration Fee" table contained in such earlier registration statement.

(c) If the prospectus contained in a post-effective amendment filed prior to the time confirmations are sent or given contains no substantive changes from or additions to the prospectus previously filed as part of the effective registration statement, other than price-related information omitted from the registration statement in reliance on Rule 430A of the Act (§ 230.430A), such post-effective amendment shall become effective upon filing with the Commission.

31. By amending § 230.472 to add paragraph (e) to read as follows:

§ 230.472 Filing of amendments; number of copies.

* * * * *

(e) Notwithstanding any other provision of this section, if a post-effective amendment is filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)), one copy of the complete post-effective amendment, including exhibits and all other papers and documents filed as a part thereof shall be filed with the Commission. Such copy should not be bound and may contain facsimile versions of manual signatures in accordance with Rule 402(e) (§ 230.402(e)).

32. By amending § 230.483 to add a sentence at the end of paragraph (b) and to designate the existing text of paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2) to read as follows:

§ 230.483 Exhibits for certain registration statements, financial data schedule.

* * * * *

(b) * * * A power of attorney that is filed with the Commission shall relate to a specific filing, an amendment thereto, or a related registration statement that is to be effective upon filing pursuant to Rule 462(b) (§ 230.462(b)) under the Act.

(c)(1) * * *

(2) In a registration statement filed pursuant to Rule 462(b) (§ 230.462(b)) by a closed-end company, any required consent may be incorporated by reference into the registration statement from a previously filed registration statement related to the offering, provided that the consent contained in the previously filed registration statement expressly provides for such incorporation. Any consent filed in a Rule 462(b) (§ 230.462(b)) registration statement may contain duplicated or facsimile versions of required signatures, and such signatures shall be considered manually filed for the purposes of the Act and the rules thereunder.

33. By amending § 230.497 to designate the existing text of paragraph (h) as paragraph (h)(1) and adding paragraph (h)(2) to read as follows:

230.497 Filing of investment company prospectuses—number of copies.

(h) * * *

(2) Ten copies of each term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 (§ 230.434) shall be filed with the Commission no later than the second business day following the earlier of the date of determination of the offering price, or the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILERS

34. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

35. By adding paragraph (a)(3) before the Note to § 232.13 to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) * * *

(3) Notwithstanding paragraph (a)(2) of this section, any registration statement or any post-effective amendment thereto filed pursuant to Rule 462(b) (§ 230.462(b) of this chapter) by direct transmission commending on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

36. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

§ 239.9 [Amended]

* * * * *

37. By amending Form SB–1 (referenced in § 239.9) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding a Note to appear immediately after the Calculation of Registration Fee table, and by adding paragraph H to General Instructions to read as follows:

Note: The text of Form SB–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB–1–Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.[ ]

* * * * *

Calculation of Registration Fee

Note: If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

H. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * * *

§ 239.10 [Amended]

38. By amending Form SB–2 (referenced in § 239.10) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph C to General Instructions to read as follows:

Note: The text of Form SB–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB–2—Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

C. Registration of additional securities. With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

§ 239.11 [Amended]

39. By amending Form S–1 (referenced in § 239.11) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," and by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph V. to General Instructions to read as follows:

Note: The text of Form S–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–1—Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information ommitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to rule 462(b). *See* Rule 411(c) and rule 439(b) under the Securities Act.

* * * * *

§ 239.12 [Amended]

40. By amending Form S–2 (referenced in § 239.12) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph III. to General Instructions to read as follows:

Note: The text of Form S–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–2—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offering and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

III. Registration of Additional Securities. With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information

ommitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

§ 239.13 [Amended]

41. By amending Form S–3 (referenced in § 239.13) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding three sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV. to General Instructions to read as follows:

Note: The text of Form S–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–3—Registration Statement Under the Securities Act of 1933

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]_____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

_____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.[ ].

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the "Calculation of Registration FEE" Table ("Fee Table"). Where two or more classes of securities are being registered pursuant to General Instruction II.D, however, the Fee Table need only specify the maximum aggregate offering price for all classes; the Fee Table need not specify by each class the proposed maximum aggregate offering price (See General Instruction II.D). Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

§ 239.18 [Amended]

42. By amending Form S–11 (referenced in § 239.18) by adding paragraph G. to General Instructions, by adding three check boxes to the cover page immediately before "Calculation of Registration Fee" and by adding two sentences to the end of the Note following the Calculation of Registration Fee table to read as follows:

Note: The text of Form S–11 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–11—For Registration Under the Securities Act of 1933 of Securities of Certain Real Estate Companies

General Instructions

* * * * *

G. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and rule 439(b) under the Securities Act.

* * * * *

Form S–11—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

_____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee needed to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

§ 239.31 [Amended]

43. By amending Form F–1 (referenced in § 239.31) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph V. to General Instructions to read as follows:

Note: The text of Form F–1 does not and the amendments will not appear in the Code of Federal Regulations

Form F–1—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check

the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed pursuant to rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

44. By amending Form F–2 (referenced in § 239.32) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV. to General Instructions to read as follows:

Note: The text of Form F–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–2—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

45. By amending Form F–3 (referenced in § 239.33) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding three sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV to General Instructions to read as follows:

Note: The text of Form F–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–3—Registration Statement Under the Securities Act of 1933

* * * * *

if this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the "Calculation of Registration Fee" table ("Fee Table"). Where two or more classes of securities are being registered pursuant to General Instruction II.C, however, the Fee Table need only specify the maximum aggregate offering price for all classes; the Fee Table need not specify by each class the proposed maximum aggregate offering price (See General Instruction II.C). Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the

registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

46. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

47. The authority citation following § 15c2–8 is removed.

48. By amending § 240.12b–11 to add paragraph (d) to read as follows:

§ 240.12b–11 Number of copies; signatures; binding.

* * * * *

(d) Duplicated or facsimile versions of manual signatures of persons required to sign any registration statement pursuant to sections 12(b) and 12(g) of the Act (15 U.S.C. 78*l*(b) and 78*l*(g)), any report or schedule filed pursuant to sections 13 and 15(d) of the Act (15 U.S.C. 78m and 78o(d)), or any amendment or exhibit to such registration statement, report or schedule, that are filed or submitted to the Commission under the Act, shall be considered manual signatures for purposes of the Act and rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

49. By amending § 240.14d–1 to add paragraph (d) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(d) Duplicated or facsimile versions of manual signatures of persons required to sign any document pursuant to Regulation 14D and Regulation 14E that is filed or submitted to the Commission under the Act shall be considered manual signatures for purposes of the Act and rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

50. Section 240.15c2–8(b) is amended by revising the word "mailing" to read "sending".

51 Section 240.15c2–8(c) is amended by revising the word "mail" to read "send".

52. Section 240.15c2–8(d) is amended by revising the word "mail" to read "send".

53. Section 240.15c2–8 is amended by adding paragraph (j) to read as follows:

§ 240.15c2–8 Delivery of Prospectus

* * * * *

(j) For purposes of this section, the term *preliminary prospectus* shall include the term *prospectus subject to completion* as used in 17 CFR 230.434(a), and the term *final prospectus* shall include the term *Section 10(a) prospectus* as used in 17 CFR 230.434(a).

54. Amend § 240.15c6–1 by revising the phrase "paragraph (b)" in paragraph (a) to read "paragraphs (b), (c), and (d)"; by revising the phrase "Paragraph (a)" in paragraph (b) to read "Paragraphs (a) and (c)"; by removing paragraph (b)(2); by redesignating paragraph (b)(3) as paragraph (b)(2); and by adding paragraphs (c) and (d) to read as follows:

§ 240.15c6–1 Settlement cycle.

* * * * *

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933 or sold to an initial purchaser by a broker-dealer participating in such offering provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to such date for all securities sold pursuant to such offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

55. By amending § 240.16a–3 to add paragraph (i) to read as follows:

§ 240.16a–3 Reporting transactions and holdings.

* * * * *

(i) Duplicated or facsimile versions of manual signatures of persons required to sign any document pursuant to Section 16 of the Act (15 U.S.C. 78p) that is filed or submitted to the Commission under the Act shall be considered manual signatures for purposes of the Act and rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

56. The authority citation for Part 270 continues to read, in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted.

* * * * *

57. By amending § 270.8b–11 to add paragraph (e) to read as follows:

§ 270.8b–11 Number of copies; signatures; binding.

* * * * *

(e) Duplicated or facsimile versions of manual signatures of persons required to sign any registration statement or report, including all amendments and exhibits to such statements or reports, that are filed or submitted to the Commission under the Act, shall be considered manual signatures for the purposes of the Act and the rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

58. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

§§ 239.14 and 274.11a–1 [Amended]

59. By amending Form N–2 (referenced in §§ 239.14 and 274.11a–1) by adding one check box to the cover page immediately before "Calculation of Registration Fee Under the Securities Act of 1933," and by adding two sentences to the end of the first Instruction following the Calculation of Registration Fee Under the Securities Act of 1933 table and by adding paragraph J. to the General Instructions to read as follows:

Note: The text of Form N–2 does not and these amendments will not appear in the Code of Federal Regulations.

Form N–2—Registration Statement Under the Securities Act of 1933

* * * * *

[ ] This Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act and the Securities Act registration statement number of the earlier effective registration statement for the same offering is _____ .

Calculation of Registration Fee Under the Securities Act of 1933

* * * * *

Instructions

* * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

J. *Registration additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 483(c) under the Securities Act.

* * * * *

Dated: May 11, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12007 Filed 5–16–95; 8:45 am]

BILLING CODE 8010–01–M

federal register

Wednesday
May 17, 1995

Part VIII

Environmental Protection Agency

40 CFR Part 180

Pesticide Tolerances; Revision of Crop Groups; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300269A; FRL-4939-9]

RIN 2070-AB78

Pesticide Tolerances; Revision of Crop Groups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising pesticide tolerance crop-grouping regulations to create new crop subgroups, expand existing crop groups by adding new commodities, and revise the representative crops in some groups. EPA expects these revisions to promote greater use of crop grouping for tolerance-setting purposes and to facilitate availability of pesticides for minor crop uses. EPA initiated these regulations.

EFFECTIVE DATE: This regulation becomes effective May 17, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300269A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch; Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300269A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit VIII. of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The crop grouping regulations currently in 40 CFR 180.34(f) enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group. EPA issued a proposed rule, published in the Federal Register of August 25, 1993 (58 FR 44990), under the provisions of the Federal Food, Drug, and Cosmetic Act (FFDCA), which proposed to revise the crop grouping regulations primarily by adding subgroups to 8 of the 19 existing crop groups. Each subgroup is a smaller and more closely related grouping of the commodities included in the "parent" crop group, and the representative commodities for each subgroup are also a smaller subset of those for the parent group. In addition, EPA proposed to add new commodities to expand some of the existing crop groups, and to revise representative crops for some crop groups to provide petitioners more flexibility in obtaining supporting residue data. EPA also proposed to add an alphabetical listing of commodities with cross-references to the assigned crop groups as an Index to Commodities in the Finding Aids section at the end of title 40 of the Code of Federal Regulations (CFR), parts 150 to 189. This action is intended to promote more extensive use of crop group tolerances as part of the EPA's efforts to improve utilization of existing and new residue data. Written comments were solicited and were received from more than 22 interested parties and groups in response to the proposal. Comments were received from the pesticide industry, State pesticide regulatory authorities, agricultural grower and marketing organizations, and the Interregional Research Project No. 4 (IR-4). All of these comments have been reviewed and are on file with the Agency in the Public Response and Program Resources Branch at the address provided above. All of the comments were supportive of the proposal in concept, but some comments wanted modifications to the proposal. Most comments were substantially satisfied by editorial changes and deletions from or additions to the proposal. Comments of significance and changes to the rule, as previously proposed, are discussed by topic in succeeding units of this preamble.

II. General Revisions

A. Requirements for New Residue Data When There Are Existing Tolerances

A commenter recommended that, where representative crops are removed from some crop groups by this revision, a way should be found to maintain established crop group tolerances without requiring additional residue data. The Agency expects that residue data from the remaining representative commodities should provide sufficient support for the existing crop group tolerances. Also, available data which previously supported the removed representative crop can still be considered in support of the group tolerance, whether or not that commodity is currently included as a representative commodity. However, all existing tolerances will be subject to reassessment as part of the reregistration program.

The crop group most affected by the removal of representative commodities is the previous small fruits and berries crop group which has been amended to become the new berries crop group, with the removal of cranberries, grapes, and strawberries from the group. Cranberries, grapes, and strawberries have been removed from the crop group since their cultural practices and residue chemistry concerns are distinct enough from the other small fruits and berries to have been an impediment to registrants who might have sought a crop group tolerance. Residue data will still be required to support tolerances for any of these three commodities, which have been included in the listing of miscellaneous crops in 40 CFR 180.41(b).

Only one tolerance for the small fruits and berries group has been established since 1983. However, some tolerances were established for a small fruits crop group which existed before the small fruits and berries crop group was established in 1983, and before specific representative commodities were named

in the crop grouping regulations. There are also a substantial number of tolerances for pre-1983 crop groups other than small fruits. All of the existing crop group tolerances will continue in effect until the pesticides undergo the reregistration process or a petition is submitted requesting conversion to a new crop group or subgroup. At that time, consideration will be given to setting individual tolerances for any commodities covered by the old crop group tolerance that are not supportable under the new regulations.

B. Addition of Crops

EPA has accepted several suggestions to add certain commodities to the crop groupings, which were proposed in the **Federal Register** of August 25, 1993. Comments requesting additions to the crop groupings and revisions to the crop group tables, as were previously proposed, are discussed in unit III. of this preamble under specific crop group headings.

Future changes to the crop group tables or other portions of § 180.40 or § 180.41 will be subject to notice-and-comment rulemaking procedures, except for technical amendments to the tables, e.g., to update the scientific nomenclature, or to add a new cultivar of a commodity that is already listed. Minor technical amendments to §§ 180.40 and 180.41 will be made by publication of a final rule.

C. Representative Commodities

There are no changes to the representative commodities, as proposed, with the exception of editorial revisions to several crop groupings to clearly identify the commodities for which residue data are required. Several commenters suggested the deletion or substitution of representative commodities for certain crop groupings. These comments and the editorial revisions to the representative commodities are discussed in unit III of this preamble under specific crop group headings.

D. Regional/Common Names for Commodities

In response to a request that efforts should be made to incorporate additional regional commodity names in the crop groupings, a number of common names have been added to the Index to Commodities, with references to the commodity name as it is listed in the crop group. Additional regional/common names will be added to the Index as warranted with references to the commodity as it is named in the crop group tables. In order not to lengthen the crop group tables unnecessarily, new common names will be added only to the Index.

E. Miscellaneous Commodities

Some suggestions were made to list in the commodity index crops not included in a crop grouping. However, the commodity index is intended to complement the crop group tables, rather than be a comprehensive listing of all commodities with tolerances. Some of the ungrouped crops may be considered for inclusion in a crop grouping at a future date, at which time they will be added to the index. Crops that were intentionally not included in any groups were listed previously in § 180.34(f)(7); such miscellaneous commodities are now listed in § 180.41(b).

III. Specific Revisions to Crop Groups

1. **Crop Group 1.** *Root and tuber vegetables group.* In the crop group listing, the designation edible canna (Queensland arrowroot) replaces purple arrowroot, oriental radish replaces Japanese radish, and yam bean has been expanded to include jicama and manioc pea.

In response to a request, chayote root has been added to the root and tuber vegetables group and to subgroups 1-C (tuberous and corm vegetables) and 1-D (tuberous and corm vegetables, except potato).

Chicory, grown for its roots and leaves, has not been expanded to include witloof chicory (or the common names French endive and Belgian endive) because of the likelihood of confusion due to chicory root being included in crop group 1, chicory leaves being included in crop group 2, and endive being included in crop group 4. Cultural practices associated with witloof chicory production also differ from the production of chicory leaves and endive. Witloof chicory is produced from chicory roots, which are transplanted from the field to indoor growth chambers, where the edible compact head of blanched leaves is "forced" from the root.

2. **Crop Group 2.** *Leaves of root and tuber vegetables (human food or animal feed) group.* In the crop group listing, the designation Japanese radish was changed to oriental radish.

A commenter requested that the common names French endive, Belgian endive, and witloof be added to the chicory entry in the leaves of root and tuber vegetables crop group. For the reasons given for crop group 1 above, these common names have not been added to the crop group or to the Index to Commodities.

3. **Crop Group 3.** *Bulb vegetables (Allium spp.) group.* The representative commodities for the bulb vegetables (*Allium spp.*) group are listed clearly as two separate commodities—onion, green and onion, dry bulb—to clarify that residue data are required for both green and dry bulb onions.

4. **Crop Group 4.** *Leafy vegetables (except Brassica vegetables) group.* The representative commodities for leafy vegetables (except *Brassica* vegetables) group have been editorially modified to clarify that residue data in support of crop group 4 and subgroup 4-A (leafy greens) tolerances are required for both head lettuce and leaf lettuce.

Cardoon (*Cynara cardunculus*) and Chinese celery (*Apium graveolens* var. *secalinum*) have been added to crop group 4 and subgroup 4-B, leaf petioles.

Florence fennel has been expanded to include the name finocchio.

The common or loose-leaf chicory (asparagus chicory, radichetta, or green chicory) was considered but not added to crop group 4 at this time because of the potential confusion with chicory leaves, which are in crop group 2.

5. **Crop Group 5.** *Brassica* (cole) leafy vegetables group. Mizuna and mustard spinach have been added to the crop group and to subgroup 5-B, leafy *Brassica* greens subgroup.

6. **Crop Group 6.** *Legume vegetables (succulent or dried) group.* The representative commodities for subgroup 6-A have been clarified as being succulent cultivars. Adzuki bean, moth bean, mung bean and rice bean have been moved from the bean (*Phaseolus spp.*) listing and are now included with the bean (*Vigna spp.*) to reflect recent taxonomic changes.

Pea (*Pisum spp.*) has been expanded to include sugar snap pea and snow pea. Sugar pea was deleted, since snow pea is the preferred common name.

As requested by a commenter, pigeon pea (*Cajanus* cajan) has been added to subgroup 6-B, succulent shelled pea and bean, of crop group 6, legume vegetables, because it is used extensively in the Caribbean and Central and South American countries as a fresh green pea removed from its pod.

7. **Crop Group 7.** *Foliage of legume vegetables group.* No comments were submitted; no changes have been made.

8. **Crop Group 8.** *Fruiting vegetables (except cucurbits) group.* The representative commodities for fruiting vegetables (except cucurbits) group have been modified to clarify that residue data in support of crop group 8 are required for both bell pepper and a nonbell pepper, as well as for tomatoes. This is not a change in policy; however,

the data requirement was not articulated in the regulation previously.

9. **Crop Group 9.** *Cucurbit vegetables group.* A commenter questioned the listing of cantaloupe, a specific type of muskmelon, as representative commodity for subgroup 9-A; whereas for the parent crop group, any muskmelon is a suitable representative commodity. Muskmelon of any type is considered acceptable for the parent crop group because there are two other representative commodities, a cucumber and a summer squash; to balance out the group. However, as the only representative commodity for the subgroup, cantaloupe would be the best because its finely-ridged rough surface would result in higher surface residues compared to the smooth-skinned melons like the honeydew melon. Therefore, in the final rule, cantaloupe has been retained as the representative commodity for subgroup 9-A.

A commenter requested that EPA reconsider adding a third subgroup "winter squash and pumpkins" under cucurbits or, alternatively, place winter squash and pumpkins with "melons" since they all have inedible rinds. The commenter is concerned that inappropriately high tolerances might be set otherwise, based on residue in summer squash and cucumbers, which could utilize more of the Reference Dose than would be necessary. A review of established tolerances for the proposed subgroup 9-B, squash/cucumber, shows that tolerances for summer squash, cucumber, winter squash, and pumpkins are the same or fall within the 5X limitation for tolerance levels in the same subgroup. Therefore, EPA has retained winter squash and pumpkins in subgroup 9-B.

In response to comments, chayote (*Sechium edule*) fruit has been added to the cucurbit vegetables group and the squash/cucumber subgroup.

10. **Crop Group 10.** *Citrus fruits group.* A commenter recommended that the representative commodities for the citrus fruits group should be reduced to two, to include sweet orange and a choice between lemon and grapefruit rather than both of the latter. An alternative recommendation was to delete grapefruit as a representative commodity on the basis that there is no difference between residues in sweet oranges and those in grapefruit. However, EPA has not reduced the number of representative commodities because of the importance of citrus in the diet; the consumption of combined citrus exceeds that of any commodity in the general population, and for infants the consumption of citrus is second to apples. Therefore, EPA believes it is important to require residue data for three representative commodities (grapefruit, lemon, and sweet orange) in support of tolerances for the citrus fruits group.

11. **Crop Group 11.** *Pome fruits group.* The only change to this group is in the scientific name for apple to reflect current nomenclature.

12. **Crop Group 12.** *Stone fruits group.* A commenter recommended that sweet cherries, rather than sour cherries, should be a representative commodity for the stone fruits group. The commenter explained that, at harvest, sour cherries are always flushed with water while sweet cherries are usually handled dry. Thus, higher pesticide residues would be expected on the sweet cherries, indicating they should be the preferred representative commodity of the two types of cherries. However, EPA prefers to allow the option of either sour or sweet cherries as representative commodity, provided that sour cherries should be analyzed for residues in their unwashed state. In addition, the term "tart cherry" will replace "sour cherry."

A request was made to include pomegranates in the stone fruits group. Since this commodity is not similar to other members of the stone fruits group, it was not included.

Several commenters requested that olives be added to the stone fruits group. A major problem with grouping olives with stone fruits is the need for processing studies to determine the concentration of residues in olive oil. Because residue studies for olives, including processing studies, would be required for a stone fruit group that includes olives, olives would have to be a representative crop, which would reduce the usefulness of the group and negate any benefit to olives from being in the group.

EPA may reevaluate pomegranate and olive as tropical/subtropical fruits, when a tropical/subtropical fruit crop group is researched in the future.

13. **Crop Group 13.** *Berries group.* A commenter requested clarification of the discussion of the bushberry subgroup 13-B in Section III of the proposed rule. The bushberry subgroup includes woody shrubs and bushes that produce fruit in clusters, including the blueberry. Blackberries are included in subgroup 13-A with other caneberries. Youngberry has been added to blackberry since it is a blackberry-raspberry hybrid similar to boysenberry and marionberry, which are included with blackberry.

14. **Crop Group 14.** *Tree nuts group.* Several commenters requested that representative commodities for the tree nuts group should be revised to allow a choice between pecan and English walnut as a representative crop in addition to almond. Previously all three commodities were required representative crops. EPA proposed deletion of English walnuts as a representative commodity to streamline the tree nut crop group data requirements by requesting field residue data for only the minimum number of representative commodities that will enable EPA to adequately evaluate the residue data for establishing a tolerance. Almost all English walnuts are produced in California while pecans, which are the major tree nut crop produced in the U.S., are distributed throughout the U.S., particularly in the southeastern region. Residue data on almonds and pecans are needed to obtain geographically representative residue data for the tree nuts. Almonds and pecans have been retained as the representative crops for this group. However, EPA will be flexibie on using residue data already developed for English walnuts and such data will be useful in establishing tolerances for tree nuts or supporting reregistration actions.

Two commenters requested that pistachios be added to the tree nut group, stating that residue data are now available that demonstrate that pesticide residue levels on pistachios are "at levels similar to, if not lower than other nuts in the grouping." Pistachios have been requested and considered for inclusion in the crop group previously, but not included because pistachio shells split and hence would be expected to permit greater residues on the edible portion of the nut than other nut crops. Since the commenters did not submit any comparative field residue data between pistachios and other tree nuts, EPA has not added pistachios to the tree nuts group.

15. **Crop Group 15.** *Cereal grains group.* No comments were submitted, and no changes have been made.

16. **Crop Group 16.** *Forage, fodder and straw of cereal grains group.* No comments were submitted, and no changes have been made.

17. **Crop Group 17.** *Grass forage, fodder, and hay group.* No comments were submitted, and no changes have been made.

18. **Crop Group 18.** *Non-grass animal feeds (forage, fodder, straw and hay) group.* No comments were submitted, and no changes have been made.

19. **Crop Group 19.** *Herbs and spices group.* In response to various comments, a number of commodities have been added to crop group 19 and its subgroups: star anise, annatto seed,

black caraway, cardamom, chervil (dried), Chinese chive, culantro, grains of paradise, mustard seed, white pepper, and poppy seed. Common fennel and Florence fennel (seed) have replaced Italian and sweet fennel.

The commodities capsicum (peppers), ginger, paprika, peppermint leaves, sesame seed, spearmint leaves, and turmeric were considered, but not added to, crop group 19 because they are members of other crop groups, they have other processed commodities that would require them to be representative commodities, or their cultural practices and pest problems are too dissimilar.

A commenter requested that there be only one representative commodity in the herb subgroup and one in the spice subgroup, only two for the total crop group, contending that the cost of generating residue data on even two commodities for a subgroup would greatly exceed the sales value of the crops themselves. Another commenter requested that additional herbs and spices be included in the crop group, contending that the EPA-proposed list does not include many spices that meet the definitions of spice issued by the U.S. Food and Drug Administration, the U.S. Department of Agriculture, and the American Spice Trade Association.

EPA cannot further reduce the number of representative commodities at this time because of the great diversity in plant classification between the numerous herbs and spices, the wide variation in cultural practices and pest problems between the various commodities, the wide differences in plant parts that are the raw agricultural commodity, and the lack of comparative field residue trial data for many of the commodities. As the field residue database on herbs and spices becomes more extensive, then the possibility exists for further reducing and/or changing some of the representative commodities, or further subdividing the current subgroups, so that the number of representative commodities might be reduced.

IV. Addition of New Crop Groups

Several commenters requested the addition of new crop groups, as follows: Oil seed crops, to include sunflower, rape, canola, crambe, flax, safflower, jojoba, and Lesquerella; tropical fruits to include banana, mango, papaya, passion fruit, etc.; and subtropical fruits to include avocado, kiwifruit, persimmon, cherimoya, guava, mango, and pomegranate. The development of new crop groups for tropical and subtropical fruits and for oil seed crops is beyond the scope of this rulemaking, but may be considered for future rulemaking.

As indicated in the proposed rule, any future recommended changes to the crop groups or subgroups should be presented in a form which includes all necessary background and supporting information, such as a list of all commodities to be included, accompanied by scientific names, naming all representative commodities and providing a rationale for selecting the particular commodities and representative commodities to be included. EPA welcomes an opportunity to evaluate crop group/subgroup proposals, when they are submitted from interested parties, and/or to work with such parties on the types of information and data necessary to evaluate a new crop group.

V. Other Comments

A commenter suggested defining cotton to include kenaf, said to be a related fiber crop also in the family *Malvaceae*. Adding or amending crop definitions in 40 CFR 180.1(h) is beyond the scope of EPA's current efforts to revise the crop groupings. A request to establish a commodity definition in § 180.1(h) may be submitted to EPA for review as a separate amendment. The amendment should include rationale for change, comparative cultural practices including pest problems, application timing, food/feed uses, and geographical distribution for commodity production, as well as processing food items.

At this time EPA has no plans to set tolerances on a crop group or subgroup basis for pesticide residues in processed food or animal feed commodities, even when the parent raw agricultural commodity is a member of a crop group. Generally the processed forms of commodities are very different from their raw forms and, within a crop group, also different from each other's processed forms, including in terms of expected residues. Also, processed commodities may have incurred pesticide residues from direct or indirect application of pesticides to the processed food as well as application to the raw form from which the processed form is derived. This would present a problem of too much variability in expected residues in the various processed commodities. In addition, some chemicals have a tendency to concentrate as a result of processing whereas others may remain constant or dissipate during processing; this lack of consistency in resulting residues would also make it difficult to set a crop group tolerance to cover several dissimilar processed commodities.

VI. Implementation

Petitions pending at the time this final rule is published will continue to be processed based on the previous regulation, except they will be given the benefit of any appropriate revised or reduced residue data requirements if needed. Likewise, residue studies which are currently underway should not be adversely affected by this new rule.

Residue data requirements imposed by these regulations for a crop group tolerance are substantially the same as those that were imposed by § 180.34(f), except that for a number of crop groups, fewer representative commodities are required or a choice of representative commodities is allowed. For the bulb vegetables group, the tree nuts group, and the herbs and spices group, the number of representative commodities is now fewer than before. For the leaves of root and tuber vegetables group, *Brassica* (cole) leafy vegetables group, and herbs and spices group, there is some choice allowed in terms of representative commodities.

Because of a major change to the former small fruits and berries crop group—deletion of cranberries, grapes, and strawberries as group members and as representative commodities, resulting in the new berries crop group—any petition for a tolerance for the small fruits and berries crop group that is currently pending or submitted within 30 days after publication of this rule will be processed as if it were a petition for tolerances for the berries crop group and the individual commodities cranberries, grapes, and strawberries. No additional fee will be imposed because of this action, although any other amendment to such a petition would be subject to the usual fees.

A pending petition for a crop group tolerance which is found deficient in terms of residue data may be reconsidered by EPA as a petition for one or more related crop subgroup tolerances. EPA's response to the petitioner will indicate whether such subgroup tolerances can be supported. Similarly, crop group tolerances being reassessed for reregistration that are determined not to be supported by the available data will be evaluated to determine whether the data might support one or more related crop subgroup tolerances or one or more individual crop tolerances.

A petition for a crop group or crop subgroup tolerance which relies on existing individual tolerances for all or some of the representative crops for the crop group or subgroup will be subject to reassessment of all available data in support of the individual tolerances to

determine if such data are currently considered adequate to support the crop group or subgroup tolerance.

All existing crop group tolerances will continue in effect until the pesticides undergo the reregistration process or a petition is submitted requesting conversion to a new crop group or subgroup. At that time, consideration will be given to setting individual tolerances for any commodities covered by the old crop group tolerance that are not supportable under the new regulations.

Fees imposed by 40 CFR 180.33(h) for petitions for crop group tolerances will apply to petitions for subgroup tolerances as well. For fee purposes, each request for a crop subgroup tolerance will be considered as if it were a request for a single commodity tolerance.

VII. Index to Commodities

This unit contains an alphabetical index to the crops in all the crop groups, giving the Crop Group number. The index will be included in Title 40 of the Code of Federal Regulations as a finding aid after its publication in the **Federal Register.**

Commodities	Crop Group Number
Achiote (see annatto seed)	19
Achira (see canna, edible)	1
Acorn squash (see squash, winter)	9
Adzuki bean (see bean (*Vigna* spp.))	6
Alfalfa (forage, fodder, straw, hay)	18
Allspice	19
Almond	14
Amaranth	4
Angelica	19
Angola bean (see pigeon pea)	6
Anise (anise seed)	19
Annatto seed	19
Annual marjoram (see marjoram)	19
Apple	11
Apple, balsam (see *Momordica* spp.)	9
Apricot	12
Arracacha	1
Arrowroot	1
Arugula	4
Asian pear (see pear, oriental)	11
Asparagus bean (see bean (*Vigna* spp.))	6
Asparagus lettuce (see celtuce)	4
Aubergine (see eggplant)	8
Australian arrowroot (see canna, edible)	1
Austrian winter pea (see pea (*Pisum* spp.) (field pea))	6
Azuki bean (see bean (*Vigna* spp.) (adzuki bean))	6
Balm	19
Balsam apple (see *Momordica* spp.)	9
Balsam pear (see *Momordica* spp.)	9
Barley	15
Barley (forage, fodder, straw)	16
Basil	19
Bay leaf (see sweet bay)	19
Bean	6
Bean (foliage)	7
Bean, velvet (forage, fodder, straw, hay)	18
Bean, yam	1
Beech nut	14
Beet	1
Beet (foliage)	2
Beetroot (see beet, garden)	1
Bell pepper (see pepper (*Capsicum* spp.))	8
Bingleberry (see blackberry)	13
Birdsfoot trefoil (see trefoil)	18
Bitter cassava	1
Bitter cassava (foliage)	2
Bitter gourd (see balsam pear)	9
Bitter melon (see *Momordica* spp.)	9
Bitter orange (see orange, sour)	10
Black caraway	19
Black cumin (see caraway, black)	19
Black pepper	19
Black raspberry	13
Black salsify	1
Black salsify (foliage)	2
Black satin berry (see blackberry)	13
Black walnut	14
Blackberry	13
Blackeyed pea (see bean (*Vigna* spp.))	6
Blero (see amaranth)	4
Blood orange (see orange, sweet)	10
Blueberry	13
Bok choy (see cabbage, Chinese (bok choy))	5
Bok choy sum (see cabbage, Chinese (bok choy))	5
Bor choi (see mustard spinach)	5
Bor tsai (see mustard spinach)	5
Bottle gourd (see gourd, edible (cucuzza))	9
Borage	19
Borecole (see kale)	5
Borekale (see kale)	5
Boy choy sum (see cabbage, Chinese (bok choy))	5
Boysenberry (see blackberry)	13
Brazil nut	14
Broad bean	6
Broad bean (foliage)	7
Broccoflower (see cauliflower)	5
Broccoli	5
Broccoli raab	5
Brussels sprouts	5
Buckwheat	15
Buckwheat (forage, fodder, straw)	16
Bullace plum (see plum, Damson)	12
Bulrush millet (see millet, pearl)	15
Burdock, edible	1
Burdock, edible (foliage)	2
Burnet	19
Bush nut (see macadamia nut)	14
Butter bean (see bean (*Phaseolus* spp.) (lima bean))	6
Butternut	14
Butternut squash (see squash, winter)	9
Cabbage	5
Cajan pea (see pigeon pea)	6
Calabash gourd (see gourd, edible (cucuzzi))	9
Calabaza (see squash, winter)	9
Calaloo (see amaranth)	4
Calamondin	10
Calilu (see amaranth)	4
Camomile	19
Canna, edible	1
Cantaloupe (see muskmelon)	9
Cape gooseberry (see groundcherry)	8
Caper buds	19
Caraway	19
Cardoni (see cardoon)	4
Cardoon	4
Cardamom	19
Carrot	1
Carrot (foliage)	2
Casaba (see muskmelon)	9
Cashew	14
Cassava, bitter and sweet	1
Cassava, bitter and sweet (foliage)	2
Cassia bark	19
Cassia buds	19
Catjang (see bean (*Vigna* spp.))	6
Catmint (see catnip)	19
Catnip	19
Cauliflower	5
Cavalo broccolo	5
Celeriac	1
Celeriac (foliage)	2
Celery	4
Celery cabbage (see cabbage, Chinese (napa))	5
Celery mustard (see cabbage, Chinese (bok choy))	5
Celery root (see celeriac)	1
Celery seed	19
Celtuce	4
Ceylon spinach (see spinach, vine)	4
Chayote (fruit)	9
Chayote (root)	1
Cherokee blackberry (see blackberry)	13
Cherry, sweet	12
Cherry, tart	12
Chervil	4
Chervil (dried)	19
Chervil, turnip-rooted	1
Chervil, turnip-rooted (foliage)	2
Chesterberry (see blackberry)	13
Chestnut	14
Cheyenne blackberry (see blackberry)	13
Chickasaw plum	12
Chickpea	6
Chickpea (foliage)	7
Chicory	1
Chicory (foliage)	2
Chihili cabbage (see cabbage, Chinese (napa))	5

Commodities	Crop Group Number
Chili pepper (see pepper (*Capsicum* spp.))	8
China pea (see pea (*Pisum* spp.) (snow pea))	6
China star anise (see anise, star)	19
Chinese artichoke	1
Chinese broccoli	5
Chinese cabbage (bok choy)	5
Chinese cabbage (napa)	5
Chinese celery	4
Chinese celery cabbage (see cabbage, Chinese (napa))	5
Chinese chive	19
Chinese cucumber (see *Momordica* spp.)	9
Chinese green mustard (see cabbage, Chinese mustard)	5
Chinese green mustard cabbage (see cabbage, Chinese mustard)	5
Chinese kale (see broccoli, Chinese)	5
Chinese lantern plant (see tomatillo)	8
Chinese leek (see chive, Chinese)	19
Chinese longbean (see bean (*Vigna* spp.))	6
Chinese mustard (see mustard greens)	5
Chinese mustard cabbage	5
Chinese okra (see gourd, edible)	9
Chinese parsley (see coriander)	19
Chinese pea (see pea (*Pisum* spp.) (snow pea))	6
Chinese pear (see pear, oriental)	11
Chinese preserving melon (see Chinese waxgourd)	9
Chinese radish (see radish, oriental)	1
Chinese spinach (see amaranth)	4
Chinese squash (see Chinese waxgourd)	9
Chinese turnip (see radish, Oriental)	1
Chinese waxgourd	9
Chinese white cabbage (see cabbage, Chinese (bok choy))	5
Chinquapin	14
Chironja (see citrus hybrids)	10
Chive	19
Choi sum (see cabbage, Chinese (bok choy))	5
Chopsuey greens (see chrysanthemum, edible-leaved)	4
Choy sum (see cabbage, Chinese cabbage (bok choy))	5
Chrysanthemum, edible-leaved	4
Chrysanthemum, garland	4
Chufa	1
Ciboule (see onion, Welsh)	3
Cilantro (see coriander)	19
Cilantro del monte (see culantro)	19
Cinnamon	19
Citrus citron	10
Citron melon	9
Citrus hybrids (*Citrus* spp.)	10
Clary	19
Clove buds	19
Clover (forage, fodder, straw, hay)	18
Cluster bean (see guar)	6
Cocoyam (see tanier)	1
Cocoyam (foliage)	2
Collards	5
Common bean (see bean (*Phaseolus* spp.) (kidney bean))	6
Common millet (see millet, proso)	15
Common vetch (see vetch)	18
Congo pea (see pigeon pea)	6
Cooking pepper (see pepper (*Capsicum* spp.))	8
Coriander (leaf and seed)	19
Corn	15
Corn (forage, fodder)	16
Corn salad	4
Coryberry (see blackberry)	13
Costmary	19
Courgette (see squash, summer)	9
Cowpea (see bean (*Vigna* spp.))	6
Crabapple	11
Crenshaw melon (see muskmelon)	9
Cress	4
Christophine (see chayote)	9
Crookneck squash (see squash, summer)	9
Crowder pea (see bean (*Vigna* spp.))	6
Crown vetch (forage, fodder, straw, hay)	18
Cucumber	9
Cucuzza (see gourd, edible)	9
Cucuzzi (see gourd, edible)	9
Culantro (leaf)	19
Culantro (seed)	19
Cumin	19
Currant	13
Curry leaf	19
Cush cush yam (see yam, true)	1
Custard marrow (see chayote)	9
Daikon (see radish, oriental)	1
Damson plum	12
Dandelion	4
Darrowberry (see blackberry)	13
Dasheen	1
Dasheen (foliage)	2
Dewberry (see blackberry)	13
Dill seed	19
Dillweed	19
Dirksen thornless berry (see blackberry)	13
Dock	4
Dwarf pea (see pea (*Pisum* spp.))	6
Eddoe (see dasheen)	1
Edible burdock	1
Edible burdock (foliage)	2
Edible canna	1
Edible gourd	9
Edible-leaved chrysanthemum	4
Edible-pod pea (see pea (*Pisum* spp.))	6
Eggplant	8
Elderberry	13
Elephant garlic (see garlic, great-headed)	3
Endive	4
English pea (see pea (*Pisum* spp.))	6
English walnut	14
Escarole (see endive)	4
Estragon (see tarragon)	19
European plum (see prune (fresh))	12
Fava bean (see broad bean)	6
Fennel, common	19
Fennel, Florence	4
Fennel, Florence (seed)	19
Fennel flower (see caraway, black)	19
Fenugreek	19
Field bean (see bean (*Phaseolus* spp.))	6
Field pea (see pea (*Pisum* spp.))	6
Filbert	14
Finocchio (see fennel, Florence)	4
Florence fennel	4
Florence fennel (seed)	19
Flowering bok choy (see cabbage, Chinese (bok choy))	5
Flowering leek (see chive, Chinese)	19
Flowering pak choy (see cabbage, Chinese (bok choy))	5
French bean (see bean (*Phaseolus* spp.) (kidney bean))	6
French parsley (see chervil)	4
Gai choy (see cabbage, Chinese mustard)	5
Gai lon (see broccoli, Chinese)	5
Garbanzo bean (see chickpea)	6
Garden beet	1
Garden beet (foliage)	2
Garden clary (see clary)	19
Garden cress	4
Garden pea (see pea (*Pisum* spp.))	6
Garden purslane	4
Garland chrysanthemum	4
Garlic	3
Garlic chive (see chive, Chinese)	19
Gau choi (see chive, Chinese)	19
Gau tsoi (see chive, Chinese)	19
Gherkin	9
Ginger	1
Ginseng	1
Girasole (see artichoke, Jerusalem)	1
Gobo (see burdock, edible)	1
Golden pershaw melon (see muskmelon)	9
Gooseberry	13
Gooseberry, cape (see groundcherry)	8
Gourd, edible	9
Gow choy (see chive, Chinese)	19
Grain lupin (see bean (*Lupinus* spp.))	6
Grains of paradise	19
Grapefruit	10
Grasses (either green or cured)	17
Great-headed garlic	3

Commodities	Crop Group Number
Greater burdock (see burdock, edible)	1
Green bean (see bean (*Phaseolus* spp.) (snap bean))	6
Green cauliflower (see cauliflower)	5
Green onion (see onion)	3
Green pea (see pea (*Pisum* spp.))	6
Groundcherry	8
Guar	6
Guar (foliage)	7
Guinea grains (see grains of paradise)	19
Guinea yam (see yam, true)	1
Hairy vetch (see vetch)	18
Hazelnut (see filbert)	14
Head lettuce (see lettuce)	4
Hechima (see gourd, edible)	9
Hickory nut	14
Himalayaberry (see blackberry)	13
Honey balls (see muskmelon)	9
Honeydew melon (see muskmelon)	9
Horehound	19
Horseradish	1
Hubbard squash (see squash, winter)	9
Huckleberry	13
Hullberry (see blackberry)	13
Husk tomato (see tomatillo)	8
Hyacinth bean (see lablab bean)	6
Hyotan (see gourd, edible)	9
Hyssop	19
Indian mustard (see mustard greens)	5
Indian rice (see wild rice)	15
Indian saffron (see turmeric)	1
Indian spinach (see spinach, vine)	4
Irish potato (see potato)	1
Italian fennel (see fennel, Florence)	4
Italian fennel (seed) (see fennel, Florence (seed))	19
Jackbean	6
Jackbean (foliage)	7
Japanese artichoke (see artichokes, Chinese)	1
Japanese bunching onion (see onion, Welsh)	3
Japanese chrysanthemum (see chrysanthemum, edible-leaved)	4
Japanese greens (see mizuna)	5
Japanese medlar (see loquat)	11
Japanese mustard (see mizuna)	5
Japanese pear (see oriental pear)	11
Japanese plum	12
Japanese radish (see radish, oriental)	1
Japanese squash (see Chinese waxgourd)	9
Jerusalem artichoke	1
Jicama (see yam bean)	1
Juniper berry	19
Kai choy (see cabbage, Chinese mustard)	5
Kai lan (see broccoli, Chinese)	5
Kale	5
Kalonji (see caraway, black)	19
Kidney bean (see bean (*Phaseolus* spp.))	6
Kintsai (see celery, Chinese)	4
Kohlrabi	5
Komatsuna (see mustard spinach)	5
Kudzu (forage, fodder, straw, hay)	18
Kumquat	10
Kunchoi (see celery, Chinese)	4
Kyona (see cabbage, Chinese mustard)	5
Lablab bean	6
Lablab bean (foliage)	7
Lavacaberry (see blackberry)	13
Lavender	19
Leaf lettuce (see lettuce)	4
Leafy amaranth (see amaranth)	4
Leek	3
Leek, flowering (see chive, Chinese)	19
Lemon	10
Lemon balm (see balm)	19
Lemongrass	19
Lentil	6
Lentil (foliage)	7
Leren	1
Lespedeza (forage, fodder, straw, hay)	18
Lesser Asiatic yam (see yam, true)	1
Lettuce	4
Lima bean (see bean (*Phaseolus* spp.))	6
Lime	10
Lipstick plant (see annatto seed)	19
Lobok (see radish, oriental)	1
Lo pak (see radish, oriental)	1
Loganberry	13
Loquat	11
Lovage (leaf and seed)	19
Lowberry (see blackberry)	13
Lucretiaberry (see blackberry)	13
Lupin (foliage)	7
Lupin (forage, fodder, straw, hay)	18
Lupin (grain) (see bean (*Lupinus* spp.))	6
Lupine (see lupin)	6
Macadamia nut	14
Mace	19
Malabar cardamom (see cardamom)	19
Malabar spinach (see spinach, vine)	4
Mammoth blackberry (see blackberry)	13
Mandarin	10
Mango melon (see muskmelon)	9
Mango squash (see chayote)	9
Manioc (see cassava)	1
Manioc pea (see yam bean)	1
Marigold	19
Marionberry (see blackberry)	13
Marjoram (*Origanum* spp.)	19
Marrow (see squash, summer)	9
Marrow, vegetable (see squash, summer)	9
Marrow, custard (see chayote (fruit))	9
Mayhaw	11
Melegueta pepper (see grains of paradise)	19
Melons	9
Mexican husk tomato (see tomatillo)	8
Mexican parsley (see coriander (cilantro) (leaf)	19
Mexican water chestnut (see yam bean)	1
Mibuna (see mizuna)	5
Milk vetch (forage, fodder, straw, hay)	18
Millet	15
Millet (forage, fodder, straw)	16
Milo (see sorghum)	15
Mizuna	5
Mo qua (see Chinese waxgourd)	9
Momordica spp.	9
Moth bean (see bean (*Vigna* spp.))	6
Multiplier onion (see onion, Welsh)	3
Mung bean (see bean (*Vigna* spp.))	6
Muskmelon	9
Mustard cabbage (see cabbage, Chinese mustard)	5
Mustard greens	5
Mustard seed	19
Mustard spinach	5
Mysore cardamom (see cardamom)	19
Napa cabbage (see cabbage, Chinese (napa))	5
Nashi (see pear, oriental)	11
Nasturtium	19
Navy bean (see bean (*Phaseolus* spp.))	6
Nectarberry (see blackberry)	13
Nectarine	12
New Zealand spinach	4
No-eye pea (see pigeon pea)	6
Nutmeg	19
Oat	15
Oat (forage, fodder, straw)	16
Okra, Chinese (see gourd, edible)	9
Olallieberry (see blackberry)	13
Onion	3
Orach	4
Orange, sour	10
Orange, sweet	10
Oregano (see marjoram)	19
Oregon evergreen berry (see blackberry)	13
Oriental garlic (see chive, Chinese)	19
Oriental pear	11
Oriental radish	1
Oriental radish (foliage)	2
Oyster plant (see salsify)	1
Pak choy (see cabbage, Chinese cabbage (bok choy))	5
Pak tsoi sum (see cabbage, Chinese cabbage (bok choy))	5
Parsley	4
Parsley, Chinese (see coriander)	19
Parsley (dried)	19
Parsley, turnip-rooted	1
Parsnip	1

Commodities	Crop Group Number
Parsnip (foliage)	2
Pea (*Pisum* spp.)	6
Pea (foliage)	7
Peach	12
Pear	11
Pear, balsam (see *Momordica* spp.)	9
Pearl millet	15
Pearl millet (forage, fodder, straw)	16
Pecan	14
Peking cabbage (see cabbage, Chinese (napa))	5
Pennyroyal	19
Pepino	8
Pepper (*Capsicum* spp.)	8
Pepper, black	19
Pepper, white	19
Persian melon (see muskmelon)	9
Persian walnut (see walnut, English)	14
Pe-tsai (see cabbage, Chinese (bok choy))	5
Phenomenalberry (see blackberry)	13
Pigeon pea	6
Pigeon pea (foliage)	7
Pimento (see pepper (*Capsicum* spp.))	8
Pineapple melon (see muskmelon)	9
Pinto bean (see bean (*Phaseolus* spp.))	6
Plum	12
Plumcot	12
Pomelo (see pummelo)	10
Popcorn	15
Popcorn (forage, fodder)	16
Poppy seed	19
Pot marjoram (see marjoram)	19
Potato bean (see yam bean)	1
Potherb mustard (see mizuna)	5
Potato	1
Potato bean (see yam bean)	1
Proso millet	15
Proso millet (forage, fodder, straw)	16
Prune (fresh)	12
Prune plum (see prune (fresh))	12
Pummelo	10
Pumpkin	9
Purple arrowroot (see canna, edible)	1
Purslane, garden	4
Purslane, winter	4
Queensland arrowroot (see canna, edible)	1
Queensland nut (see macadamia nut)	14
Quince	11
Radicchio	4
Radish	1
Radish (foliage)	2
Rangeberry (see blackberry)	13
Rape greens	5
Rapini (see broccoli raab)	5
Raspberry, black	13
Raspberry, red	13
Ravenberry (see blackberry)	13
Recao (see culantro)	19
Recaito (see culantro)	19
Red chicory (see radicchio)	4
Red gram (see pigeon pea)	6
Red raspberry	13
Rhubarb	4
Rice	15
Rice (forage, fodder, straw)	16
Rice bean (see bean (*Vigna* spp.))	6
Rocket salad (see arugula)	4
Roquette (see arugula)	4
Rosemary	19
Rossberry (see blackberry)	13
Rucola (see arugula)	4
Rue	19
Runner bean (see bean (*Phaseolus* spp.))	6
Rutabaga	1
Rutabaga (foliage)	2
Rye	15
Rye (forage, fodder, straw)	16
Saffron	19
Sage	19
Sainfoin (forage, fodder, straw, hay)	18
Salsify	1
Salsify, black (foliage)	2
Sandpear (see pear, oriental)	11
Santa Claus melon (see muskmelon)	9
Satsuma mandarin	10
Savory, summer	19
Savory, winter	19
Seville orange (see orange, sour)	10
Scallop squash (see squash, summer)	9
Shaddock (see pummelo)	10
Shallot	3
Shawnee blackberry (see blackberry)	13
Skirret	1
Small cardamom (see cardamom)	19
Snake melon (see muskmelon)	9
Snap bean (see bean (*Phaseolus* spp.))	6
Snow pea (see pea (*Pisum* spp.))	6
Sorghum	15
Sorghum (forage, fodder, straw)	16
Sorrel (see dock)	4
Sour cherry (see tart cherry)	12
Sour orange	10
Southern pea (see bean (*Vigna* spp.))	6
Southernwood (see wormwood)	19
Soybean	6
Soybean (foliage)	7
Soybean (immature seeds) (edible-pod)	6
Spaghetti squash (see squash, winter)	9
Spanish salsify	1
Spinach	4
Spiny coriander (see culantro)	19
Sprouting broccoli (see broccoli)	5
Squash, summer	9
Squash, winter	9
Star anise	19
Stem turnip (see kohlrabi)	5
Straightneck squash (see squash, summer)	9
String bean (see bean (*Phaseolus* spp.) (snap bean))	6
Sugar beet	1
Sugar beet (foliage)	2
Sugar pea (see pea (*Pisum* spp.) (snow pea))	6
Sugar snap pea (see pea *Pisum* spp.)	6
Sunchoke (see Jerusalem artichoke)	1
Summer savory	19
Summer squash	9
Swede (see rutabaga)	1
Sweet Alice (see anise)	19
Sweet anise (see fennel, Florence)	4
Sweet bay	19
Sweet cassava	1
Sweet cassava (foliage)	2
Sweet cherry	12
Sweet clover (see clover)	18
Sweet corn (see corn)	15
Sweet fennel (see fennel, Florence)	4
Sweet fennel (seed) (see fennel, Florence (seed))	19
Sweet lupin (see bean (*Lupinus* spp.))	6
Sweet marjoram (see marjoram)	19
Sweet orange	10
Sweet pepper (see pepper (*Capsicum* spp.))	8
Sweet potato	1
Sweet potato (foliage)	2
Swiss chard	4
Sword bean	6
Sword bean (foliage)	7
Table beet (see beet, garden)	1
Tampala (see amaranth)	4
Tangelo (see citrus hybrids)	10
Tangerine (see mandarin)	10
Tangor (see citrus hybrids)	10
Tanier	1
Tanier (foliage)	2
Tansy	19
Taro (see dasheen)	1
Tarragon	19
Tart cherry	12
Teosinte	15
Teosinte (forage, fodder, straw)	16
Tepary bean (see bean (*Phaseolus* spp.))	6
Thousand-veined mustard (see mizuna)	5
Thyme	19
Tiger nut (see chufa)	1
Tomatillo	8
Tomato	8
Tree melon (see pepino)	8
Trefoil (forage, fodder, straw, hay)	18
Triticale	15
Triticale (forage, fodder, straw)	16
True cantaloupe (see muskmelon)	9
True yam	1
True yam (foliage)	2
Tsai shim (see cabbage, Chinese (bok choy))	5
Tsoi sim (see cabbage, Chinese (bok choy))	5

Commodities	Crop Group Number
Turmeric	1
Turnip	1
Turnip (foliage)	2
Turnip-rooted chervil	1
Turnip-rooted chervil (foliage)	2
Turnip-rooted parsley	1
Ugli (see pummelo)	10
Upland cress	4
Urd bean (see bean (*Vigna* spp.))	6
U-toy (see cabbage, Chinese (bok choy))	5
Vanilla	19
Vegetable marrow (see squash, summer)	9
Vegetable pear (see chayote)	9
Velvet bean (forage, fodder, straw, hay)	18
Vetch (forage, fodder, straw, hay)	18
Vine spinach	4
Walnut	14
Watermelon	9
Wax bean (see bean (*Phaseolus* spp.))	6
Waxgourd, Chinese	9
Welsh onion	3
Wheat	15
Wheat (forage, fodder, straw)	16
White flowering broccoli (see broccoli, Chinese)	5
White lupin (see bean (*Lupinus* spp.))	6
White pepper	19
White sweet lupin (see bean (*Lupinus* spp.))	6
White potato (see potato)	1
Wild marjoram (see marjoram)	19
Wild rice	15
Wild rice (forage, fodder, straw)	16
Winter cress (see cress, upland)	4
Winter melon (see waxgourd, Chinese)	9
Winter purslane	4
Winter radish (see radish, oriental)	1
Winter savory	19
Winter squash	9
Wintergreen	19
Wong bok (see cabbage, Chinese (napa))	5
Woodruff	19
Wormwood	19
Yam, true	1
Yam, true (foliage)	2
Yam bean	1
Yardlong bean (see bean (*Vigna* spp.))	6
Yellow rocket (see cress, upland)	4
Yellow sweet clover (see clover)	18
Yellow yam (see yam, true)	1
Youngberry (see blackberry)	13
Zucchini (see squash, summer)	9

VIII. Electronic Copies of Objections and Hearing Requests

A record has been established for this rulemaking under docket number [OPP-300269A] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [OPP-300269A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

This regulatory action has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act, and EPA has determined that it will not have a significant adverse economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to simplify established policy, it is expected that no adverse economic impact will occur on any small entity.

Accordingly, EPA certifies that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 5, 1995.

Lynn R. Goldman,
Assistant Administrator for Prevention, Pesticides and Toxic Substances

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1, by revising paragraph (g), to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(g) For the purpose of computing fees as required by § 180.33, each group of related crops listed in § 180.34(e) and each crop group or subgroup listed in § 180.41 is counted as a single raw agricultural commodity in a petition or

request for tolerances or exemption from the requirement of a tolerance.

§ 180.34 [Amended]

3. By amending § 180.34 *Tests on the amount of residue remaining* by removing paragraph (f).

4. By adding new § 180.40, to read as follows:

§ 180.40 Tolerances for crop groups.

(a) Group or subgroup tolerances may be established as a result of:

(1) A petition from a person who has submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

(2) On the initiative of the Administrator.

(3) A petition by an interested person.

(b) The tables in § 180.41 are to be used in conjunction with this section for the establishment of crop group tolerances. Each table in § 180.41 lists a group of raw agricultural commodities that are considered to be related for the purposes of this section. Refer also to § 180.1(h) for a listing of commodities for which established tolerances may be applied to certain other related and similar commodities.

(c) When there is an established or proposed tolerance for all of the representative commodities for a specific group or subgroup of related commodities, a tolerance may be established for all commodities in the associated group or subgroup. Tolerances may be established for a crop group or, alternatively, tolerances may be established for one or more of the subgroups of a crop group.

(d) The representative crops are given as an indication of the minimum residue chemistry data base acceptable to the Agency for the purposes of establishing a group tolerance. The Agency may, at its discretion, allow group tolerances when data on suitable substitutes for the representative crops are available (e.g., limes instead of lemons).

(e) Since a group tolerance reflects maximum residues likely to occur on all individual crops within a group, the proposed or registered patterns of use for all crops in the group or subgroup must be similar before a group tolerance is established. The pattern of use consists of the amount of pesticide applied, the number of times applied, the timing of the first application, the interval between applications, and the interval between the last application and harvest. The pattern of use will also include the type of application; for example, soil or foliar application, or application by ground or aerial equipment.

(f) When the crop grouping contains commodities or byproducts that are utilized for animal feed, any needed tolerance or exemption from a tolerance for the pesticide in meat, milk, poultry and/or eggs must be established before a tolerance will be granted for the group as a whole. The representative crops include all crops in the group that could be processed such that residues may concentrate in processed food and/or feed. Processing data will be required prior to establishment of a group tolerance, and food additive tolerances will not be granted on a group basis.

(g) If maximum residues (tolerances) for the representative crops vary by more than a factor of 5 from the maximum value observed for any crop in the group, a group or subgroup tolerance will ordinarily not be established. In this case individual crop tolerances, rather than group tolerances, will normally be established.

(h) Alternatively, a commodity with a residue level significantly higher or lower than the other commodities in a group may be excluded from the group tolerance (e.g., cereal grains, except corn). In this case an individual tolerance at the appropriate level for the unique commodity would be established, if necessary. The alternative approach of excluding a commodity with a significantly higher or lower residue level will not be used to establish a tolerance for a commodity subgroup. Most subgroups have only two representative commodities; to exclude one such commodity and its related residue data would likely provide insufficient residue information to support the remainder of the subgroup. Residue data from crops additional to those representative crops in a grouping may be required for systemic pesticides.

(i) The commodities included in the groups will be updated periodically either at the initiative of the Agency or at the request of an interested party. Persons interested in updating this section should contact the Registration Division of the Office of Pesticide Programs.

(j) Establishment of a tolerance does not substitute for the additional need to register the pesticide under a companion law, the Federal Insecticide, Fungicide, and Rodenticide Act. The Registration Division of the Office of Pesticide Programs should be contacted concerning procedures for registration of new uses of a pesticide.

5. By adding new § 180.41, to read as follows:

§ 180.41 Crop group tables.

(a) The tables in this section are to be used in conjunction with § 180.40 to establish crop group tolerances.

(b) Commodities not listed are not considered as included in the groups for the purposes of this paragraph, and individual tolerances must be established. Miscellaneous commodities intentionally not included in any group include asparagus, avocado, banana, cranberry, fig, globe artichoke, grape, hops, kiwifruit, mango, mushroom, okra, papaya, pawpaw, peanut, persimmon, pineapple, strawberry, water chestnut, and watercress.

(c) Each group is identified by a group name and consists of a list of representative commodities followed by a list of all commodity members for the group. If the group includes subgroups, each subgroup lists the subgroup name, the representative commodity or commodities, and the member commodities for the subgroup. Subgroups, which are a subset of their associated crop group, are established for some but not all crops groups.

(1) *Crop Group 1:* Root and Tuber Vegetables Group.

(i) *Representative commodities.* Carrot, potato, radish, and sugar beet.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 1 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 1: ROOT AND TUBER VEGETABLES

Commodities	Related crop subgroups
Arracacha (*Arracacia xanthorrhiza*)	1-C, 1-D
Arrowroot (*Maranta arundinacea*)	1-C, 1-D
Artichoke, Chinese (*Stachys affinis*)	1-C, 1-D
Artichoke, Jerusalem (*Helianthus tuberosus*)	1-C, 1-D
Beet, garden (*Beta vulgaris*)	1-A, 1-B
Beet, sugar (*Beta vulgaris*)	1-A

TABLE 1—CROP GROUP 1: ROOT AND TUBER VEGETABLES—Continued

Commodities	Related crop subgroups
Burdock, edible (*Arctium lappa*)	1-A, 1-B
Canna, edible (Queensland arrowroot) (*Canna indica*)	1-C, 1-D
Carrot (*Daucus carota*)	1-A, 1-B
Cassava, bitter and sweet (*Manihot esculenta*)	1-C, 1-D
Celeriac (celery root) (*Apium graveolens* var. *rapaceum*)	1-A, 1-B
Chayote (root) (*Sechium edule*)	1-C, 1-D
Chervil, turnip-rooted (*Chaerophyllum bulbosum*)	1-A, 1-B
Chicory (*Cichorium intybus*)	1-A, 1-B
Chufa (*Cyperus esculentus*)	1-C, 1-D
Dasheen (taro) (*Colocasia esculenta*)	1-C, 1-D
Ginger (*Zingiber officinale*)	1-C, 1-D
Ginseng (*Panax quinquefolius*)	1-A, 1-B
Horseradish (*Armoracia rusticana*)	1-A, 1-B
Leren (*Calathea allouia*)	1-C, 1-D
Parsley, turnip-rooted (*Petroselinum crispum* var. *tuberosum*)	1-A, 1-B
Parsnip (*Pastinaca sativa*)	1-A, 1-B
Potato (*Solanum tuberosum*)	1-C
Radish (*Raphanus sativus*)	1-A, 1-B
Radish, oriental (daikon) (*Raphanus sativus* subvar. *longipinnatus*)	1-A, 1-B
Rutabaga (*Brassica campestris* var. *napobrassica*)	1-A, 1-B
Salsify (oyster plant) (*Tragopogon porrifolius*)	1-A, 1-B
Salsify, black (*Scorzonera hispanica*)	1-A, 1-B
Salsify, Spanish (*Scolymus hispanicus*)	1-A, 1-B
Skirret (*Sium sisarum*)	1-A, 1-B
Sweet potato (*Ipomoea batatas*)	1-C, 1-D
Tanier (cocoyam) (*Xanthosoma sagittifolium*)	1-C, 1-D
Turmeric (*Curcuma longa*)	1-C, 1-D
Turnip (*Brassica rapa* var. *rapa*)	1-A, 1-B
Yam bean (jicama, manoic pea) (*Pachyrhizus* spp.)	1-C, 1-D
Yam, true (*Dioscorea* spp.)	1-C, 1-D

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 1, specifies the representative commodity(ies) for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 1 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 1–A. Root vegetables subgroup.	
Carrot, radish, and sugar beet.	Beet, garden; beet, sugar; burdock, edible; carrot; celeriac; chervil, turnip-rooted; chicory; ginseng; horseradish; parsley, turnip–rooted; parsnip; radish; radish, oriental; rutabaga; salsify; salsify, black; salsify, Spanish; skirret; turnip.
Crop Subgroup 1–B. Root vegetables (except sugar beet) subgroup.	
Carrot and radish.	Beet, garden; burdock, edible; carrot; celeriac; chervil, turnip–rooted; chicory; ginseng; horseradish; parsley, turnip–rooted; parsnip; radish; radish, oriental; rutabaga; salsify; salsify, black; salsify, Spanish; skirret; turnip.
Crop Subgroup 1–C. Tuberous and corm vegetables subgroup.	
Potato.	Arracacha; arrowroot; artichoke, Chinese; artichoke, Jerusalem; canna, edible; cassava, bitter and sweet; chayote (root); chufa; dasheen; ginger; leren; potato; sweet potato; tanier; turmeric; yam bean; yam, true.
Crop Subgroup 1–D. Tuberous and corm vegetables (except potato) subgroup.	
Sweet potato.	Arracacha; arrowroot; artichoke, Chinese; artichoke, Jerusalem; canna, edible; cassava, bitter and sweet; chayote (root); chufa; dasheen; ginger; leren; sweet potato; tanier; turmeric; yam bean; yam, true.

(2) *Crop Group 2.* Leaves of Root and Tuber Vegetables (Human Food or Animal Feed) Group (Human Food or Animal Feed) Group.

(i) *Representative commodities.* Turnip and garden beet or sugar beet.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 2:

Crop Group 2: Leaves of Root and Tuber Vegetables (Human Food or Animal Feed) Group—Commodities

Beet, garden (*Beta vulgaris*)
Beet, sugar (*Beta vulgaris*)
Burdock, edible (*Arctium lappa*)
Carrot (*Daucus carota*)
Cassava, bitter and sweet (*Manihot esculenta*)
Celeriac (celery root) (*Apium graveolens* var. *rapaceum*)
Chervil, turnip-rooted (*Chaerophyllum bulbosum*)
Chicory (*Cichorium intybus*)

Dasheen (taro) (*Colocasia esculenta*)
Parsnip (*Pastinaca sativa*)
Radish (*Raphanus sativus*)
Radish, oriental (daikon) (*Raphanus sativus* subvar. *longipinnatus*)
Rutabaga (*Brassica campestris* var. *napobrassica*)
Salsify, black (*Scorzonera hispanica*)
Sweet potato (*Ipomoea batatas*)
Tanier (cocoyam) (*Xanthosoma sagittifolium*)
Turnip (*Brassica rapa* var. *rapa*)
Yam, true (*Dioscorea* spp.)

(3) *Crop Group 3.* Bulb Vegetables (*Allium* spp.) Group.

(i) *Representative commodities.* Onion, green; and onion, dry bulb.

(ii) *Commodities.* The following is a list of all the commodities in Crop Group 3:

Crop Group 3: Bulb Vegetables (Allium spp.) Group —Commodities

Garlic (*Allium sativum*)
Garlic, great-headed (elephant) (*Allium ampeloprasum* var. *ampeloprasum*)
Leek (*Allium ampeloprasum, A. porrum, A. tricoccum*)
Onion, dry bulb and green (*Allium cepa, A. fistulosum*)
Onion, Welch (*Allium fistulosum*)
Shallot (*Allium cepa* var. *cepa*)

(4) *Crop Group 4.* Leafy Vegetables (Except *Brassica* Vegetables) Group.

(i) *Representative commodities.* Celery, head lettuce, leaf lettuce, and spinach (*Spinacia oleracea*).

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 4 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 4: LEAFY VEGETABLES (EXCEPT *BRASSICA* VEGETABLES) GROUP

Commodities	Related crop subgroups
Amaranth (leafy amaranth, Chinese spinach, tampala) (*Amaranthus* spp.)	4-A
Arugula (Roquette) (*Eruca sativa*)	4-A
Cardoon (*Cynara cardunculus*)	4-B
Celery (*Apium graveolens* var. *dulce*)	4-B
Celery, Chinese (*Apium graveolens* var. *secalinum*)	4-B
Celtuce (*Lactuca sativa* var. *angustana*)	4-B
Chervil (*Anthriscus cerefolium*)	4-A
Chrysanthemum, edible-leaved (*Chrysanthemum coronarium* var. *coronarium*)	4-A
Chrysanthemum, garland (*Chrysanthemum coronarium* var. *spatiosum*)	4-A
Corn salad (*Valerianella locusta*)	4-A
Cress, garden (*Lepidium sativum*)	4-A
Cress, upland (yellow rocket, winter cress) (*Barbarea vulgaris*)	4-A
Dandelion (*Taraxacum officinale*)	4-A
Dock (sorrel) (*Rumex* spp.)	4-A
Endive (escarole) (*Cichorium endivia*)	4-A
Fennel, Florence (finochio) (*Foeniculum vulgare* Azoricum Group)	4-B
Lettuce, head and leaf (*Lactuca sativa*)	4-A
Orach (*Atriplex hortensis*)	4-A
Parsley (*Petroselinum crispum*)	4-A
Purslane, garden (*Portulaca oleracea*)	4-A
Purslane, winter (*Montia perfoliata*)	4-A
Radicchio (red chicory) (*Cichorium intybus*)	4-A
Rhubarb (*Rheum rhabarbarum*)	4-B
Spinach (*Spinacia oleracea*)	4-A
Spinach, New Zealand (*Tetragonia tetragonioides, T. expansa*)	4-A
Spinach, vine (Malabar spinach, Indian spinach) (*Basella alba*)	4-A
Swiss chard (*Beta vulgaris* var. *cicla*)	4-B

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 4, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 4 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 4–A. Leafy greens subgroup.	
Head lettuce and leaf lettuce, and spinach (*Spinacia oleracea*).	Amaranth; arugula; chervil; chrysanthemum, edible-leaved; chrysanthemum, garland; corn salad; cress, garden; cress, upland; dandelion; dock; endive; lettuce; orach; parsley; purslane, garden; purslane, winter; radicchio (red chicory); spinach; spinach, New Zealand; spinach, vine.
Crop Subgroup 4–B. Leaf petioles subgroup.	
Celery.	Cardoon; celery; celery, Chinese; celtuce; fennel, Florence; rhubarb; Swiss chard.

(5) *Crop Group 5. Brassica* (Cole) Leafy Vegetables Group.

(i) *Representative commodities.* Broccoli or cauliflower; cabbage; and mustard greens.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 5 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 5: *Brassica* (Cole) Leafy Vegetables

Commodities	Related crop subgroups
Broccoli (*Brassica oleracea* var. *botrytis*)	5-A
Broccoli, Chinese (gai lon) (*Brassica alboglabra*)	5-A
Broccoli raab (rapini) (*Brassica campestris*)	5-B
Brussels sprouts (*Brassica oleracea* var. *gemmifera*)	5-A
Cabbage (*Brassica oleracea*)	5-A
Cabbage, Chinese (bok choy) (*Brassica chinensis*)	5-B
Cabbage, Chinese (napa) (*Brassica pekinensis*)	5-A
Cabbage, Chinese mustard (gai choy) (*Brassica campestris*)	5-A
Cauliflower (*Brassica oleracea* var. *botrytis*)	5-A
Cavalo broccolo (*Brassica oleracea* var. *botrytis*)	5-A
Collards (*Brassica oleracea* var. *acephala*)	5-B
Kale (*Brassica oleracea* var. *acephala*)	5-B
Kohlrabi (*Brassica oleracea* var. *gongylodes*)	5-A
Mizuna (*Brassica rapa* Japonica Group)	5-B
Mustard greens (*Brassica juncea*)	5-B
Mustard spinach (*Brassica rapa* Perviridis Group)	5-B
Rape greens (*Brassica napus*)	5-B

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 5, specifies the representative commodity(ies) for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 5 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 5–A. Head and stem *Brassica* subgroup	
Broccoli or cauliflower; and cabbage	Broccoli; broccoli, Chinese; brussels sprouts; cabbage; cabbage, Chinese (napa); cabbage, Chinese mustard; cauliflower; cavalo broccolo; kohlrabi
Crop Subgroup 5-B. Leafy *Brassica* greens subgroup.	
Mustard greens	Broccoli raab; cabbage, Chinese (bok choy); collards; kale; mizuna; mustard greens; mustard spinach; rape greens

(6) *Crop Group 6.* Legume Vegetables (Succulent or Dried) Group.

(i) *Representative commodities.* Bean (*Phaseolus* spp.; one succulent cultivar and one dried cultivar); pea (*Pisum* spp.; one succulent cultivar and one dried cultivar); and soybean.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 6 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 6: LEGUME VEGETABLES (SUCCULENT OR DRIED)

Commodities	Related crop subgroups
Bean (*Lupinus* spp.) (includes grain lupin, sweet lupin, white lupin, and white sweet lupin)	6-C
Bean (*Phaseolus* spp.) (includes field bean, kidney bean, lima bean, navy bean, pinto bean, runner bean, snap bean, tepary bean, wax bean)	6-A, 6-B, 6-C
Bean (*Vigna* spp.) (includes adzuki bean, asparagus bean, blackeyed pea, catjang, Chinese longbean, cowpea, Crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, yardlong bean)	6-A, 6-B, 6-C
Broad bean (fava bean) (*Vicia faba*)	6-B, 6-C
Chickpea (garbanzo bean) (*Cicer arietinum*)	6-C
Guar (*Cyamopsis tetragonoloba*)	6-C
Jackbean (*Canavalia ensiformis*)	6-A
Lablab bean (hyacinth bean) (*Lablab purpureus*)	6-C
Lentil (*Lens esculenta*)	6-C
Pea (*Pisum* spp.) (includes dwarf pea, edible-pod pea, English pea, field pea, garden pea, green pea, snow pea, sugar snap pea)	6-A, 6-B, 6-C
Pigeon pea (*Cajanus cajan*)	6-A, 6-B, 6-C
Soybean (*Glycine max*)	N/A
Soybean (immature seed) (*Glycine max*)	6-A
Sword bean (*Canavalia gladiata*)	6-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 6, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 6 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 6–A. Edible-podded legume vegetables subgroup.	
Any one succulent cultivar of edible-podded bean (*Phaseolus* spp.) and any one succulent cultivar of edible-podded pea (*Pisum* spp.)..	Bean (*Phaseolus* spp.) (includes runner bean, snap bean, wax bean); bean (*Vigna* spp.) (includes asparagus bean, Chinese longbean, moth bean, yardlong bean); jackbean; pea (*Pisum* spp.) (includes dwarf pea, edible-pod pea, snow pea, sugar snap pea); pigeon pea; soybean (immature seed); sword bean.
Crop Subgroup 6-B. Succulent shelled pea and bean subgroup.	
Any succulent shelled cultivar of bean (*Phaseolus* spp.) and garden pea (*Pisum* spp.)..	Bean (*Phaseolus* spp.) (includes lima bean (green)); broad bean (succulent); bean (*Vigna* spp.) (includes blackeyed pea, cowpea, southern pea); pea (*Pisum* spp.) (includes English pea, garden pea, green pea); pigeon pea.
Crop Subgroup 6-C. Dried shelled pea and bean (except soybean) subgroup	
Any one dried cultivar of bean (*Phaseolus* spp.); and any one dried cultivar of pea (*Pisum* spp.).	Dried cultivars of bean (*Lupinus* spp.) (includes grain lupin, sweet lupin, white lupin, and white sweet lupin); (*Phaseolus* spp.) (includes field bean, kidney bean, lima bean (dry), navy bean, pinto bean; tepary bean; bean (*Vigna* spp.) (includes adzuki bean, blackeyed pea, catjang, cowpea, Crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean); broad bean (dry); chickpea; guar; lablab bean; lentil; pea (*Pisum* spp.) (includes field pea); pigeon pea.

(7) *Crop Group 7.* Foliage of Legume Vegetables Group.

(i) *Representative commodities.* Any cultivar of bean (*Phaseolus* spp.), field pea (*Pisum* spp.), and soybean.

(ii) *Table.* The following Table 1 lists the commodities included in Crop Group 7.

TABLE 1—CROP GROUP 7: FOLIAGE OF LEGUME VEGETABLES GROUP

Representative commodities	Commodities
Any cultivar of bean (*Phaseolus* spp.) and field pea (*Pisum* spp.), and soybean (*Glycine max*).	Plant parts of any legume vegetable included in the legume vegetables that will be used as animal feed.

(iii) *Table.* The following Table 2 identifies the crop subgroup for Crop Group 7 and specifies the representative commodities for the subgroup, and lists all the commodities included in the subgroup.

TABLE 2—CROP GROUP 7 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 7-A. Foliage of legume vegetables (except soybeans) subgroup	
Any cultivar of bean (*Phaseolus* spp.), and field pea (*Pisum* spp.).	Plant parts of any legume vegetable (except soybeans) included in the legume vegetables group that will be used as animal feed.

(8) *Crop Group 8.* Fruiting Vegetables (Except Cucurbits) Group.

(i) *Representative commodities.* Tomato, bell pepper, and one cultivar of non-bell pepper.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 8:

Crop Group 8: Fruiting Vegetables (Except Cucurbits)—Commodities

Eggplant (*Solanum melongena*)
Groundcherry (*Physalis* spp.)
Pepino (*Solanum muricatum*)
Pepper (*Capsicum* spp.) (includes bell pepper, chili pepper, cooking pepper, pimento, sweet pepper)
Tomatillo (*Physalis ixocarpa*)
Tomato (*Lycopersicon esculentum*)

(9) *Crop Group 9.* Cucurbit Vegetables Group.

(i) *Representative commodities.* Cucumber, muskmelon, and summer squash.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 9 and identifies the related subgroups.

TABLE 1—CROP GROUP 9: CUCURBIT VEGETABLES

Commodities	Related crop subgroups
Chayote (fruit) (*Sechium edule)*	9-B
Chinese waxgourd (Chinese preserving melon) (*Benincasa hispida*)	9-B
Citron melon (*Citrullus lanatus* var. *citroides*)	9-A
Cucumber (*Cucumis sativus*)	9-B
Gherkin (*Cucumis anguria*)	9-B
Gourd, edible (*Lagenaria* spp.) (includes hyotan, cucuzza); (*Luffa acutangula, L. cylindrica*) (includes hechima, Chinese okra)	9-B
Momordica spp. (includes balsam apple, balsam pear, bitter melon, Chinese cucumber)	9-B
Muskmelon (hybrids and/or cultivars of *Cucumis melo*) (includes true cantaloupe, cantaloupe, casaba, crenshaw melon, golden pershaw melon, honeydew melon, honey balls, mango melon, Persian melon, pineapple melon, Santa Claus melon, and snake melon)	9-A
Pumpkin (*Cucurbita* spp.)	9-B
Squash, summer (*Cucurbita pepo* var. *melopepo*) (includes crookneck squash, scallop squash, straightneck squash, vegetable marrow, zucchini)	9-B
Squash, winter (*Cucurbita maxima*; *C. moschata*) (includes butternut squash, calabaza, hubbard squash); (*C. mixta*; *C. pepo*) (includes acorn squash, spaghetti squash)	9-B
Watermelon (includes hybrids and/or varieties of *Citrullus lanatus*)	9-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 9, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 9 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 9-A. Melon subgroup	
Cantaloupes	Citron melon; muskmelon; watermelon
Crop Subgroup 9-B. Squash/cucumber subgroup.	
One cultivar of summer squash and cucumber.	Chayote (fruit); Chinese waxgourd; cucumber; gherkin; gourd, edible; *Momordica* spp.; pumpkin; squash, summer; squash, winter.

(10) *Crop Group 10.* Citrus Fruits (*Citrus* spp., *Fortunella* spp.) Group.

(i) *Representative commodities.* Sweet orange; lemon and grapefruit.

(ii) *Commodities.* The following is a list of all the commodities in Crop Group 10:

Crop Group 10: Citrus Fruits (Citrus spp., Fortunella spp.) Group—Commodities

Calamondin (*Citrus mitis* X *Citrofortunella mitis*)
Citrus citron (*Citrus medica*)
Citrus hybrids (*Citrus* spp.) (includes chironja, tangelo, tangor)
Grapefruit (*Citrus paradisi*)
Kumquat (*Fortunella* spp.)
Lemon (*Citrus jambhiri, Citrus limon*)
Lime (*Citrus aurantiifolia*)
Mandarin (tangerine) (*Citrus reticulata*)
Orange, sour (*Citrus aurantium*)
Orange, sweet (*Citrus sinensis*)
Pummelo (*Citrus grandis, Citrus maxima*)
Satsuma mandarin (*Citrus unshiu*)

(11) *Crop Group 11:* Pome Fruits Group.

(i) *Representative commodities.* Apple and pear.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 11:

Crop Group 11: Pome Fruits Group—Commodities

Apple (*Malus domestica*)
Crabapple (*Malus* spp.)
Loquat (*Eriobotrya japonica*)
Mayhaw (*Crataegus aestivalis, C. opaca,* and *C. rufula*)
Pear (*Pyrus communis*)
Pear, oriental (*Pyrus pyrifolia*)
Quince (*Cydonia oblonga*)

(12) *Crop Group 12.* Stone Fruits Group.

(i) *Representative commodities.* Sweet cherry or tart cherry; peach; and plum or fresh prune (*Prunus domestica, Prunus* spp.)

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 12:

Crop Group 12: Stone Fruits Group—Commodities

Apricot (*Prunus armeniaca*)
Cherry, sweet (*Prunus avium*)
Cherry, tart (*Prunus cerasus*)
Nectarine (*Prunus persica*)
Peach (*Prunus persica*)
Plum (*Prunus domestica, Prunus* spp.)
Plum, Chickasaw (*Prunus angustifolia*)
Plum, Damson (*Prunus domestica* spp. *insititia*)
Plum, Japanese (*Prunus salicina*)
Plumcot (*Prunus. armeniaca X P. domestica*)
Prune (fresh) (*Prunus domestica, Prunus* spp.)

(13) *Crop Group 13.* Berries Group.

(i) *Representative commodities.* Any one blackberry or any one raspberry; and blueberry.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 13 and identifies the related subgroups.

TABLE 1—CROP GROUP 13: BERRIES GROUP

Commodities	Related crop subgroups
Blackberry (*Rubus eubatus*) (including bingleberry, black satin berry, boysenberry, Cherokee blackberry, Chesterberry, Cheyenne blackberry, coryberry, darrowberry, dewberry, Dirksen thornless berry, Himalayaberry, hullberry, Lavacaberry, lowberry, Lucretiaberry, mammoth blackberry, marionberry, nectarberry, olallieberry, Oregon evergreen berry, phenomenalberry, rangeberry, ravenberry, rossberry, Shawnee blackberry, youngberry, and varieties and/or hybrids of these)	13-A
Blueberry (*Vaccinium* spp.)	13-B
Currant (*Ribes* spp.)	13-B
Elderberry (*Sambucus* spp.)	13-B
Gooseberry (*Ribes* spp.)	13-B
Huckleberry (*Gaylussacia* spp.)	13-B
Loganberry (*Rubus loganobaccus*)	13-A
Raspberry, black and red (*Rubus occidentalis, Rubus strigosus, Rubus idaeus*)	13-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 13, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 13 SUBGROUPS LISTING

Representative commodities	Commodities
Crop Subgroup 13-A. Caneberry (blackberry and raspberry) subgroup.	
Any one blackberry or any one raspberry.	Blackberry; loganberry; red and black raspberry; cultivars and/or hybrids of these.
Crop Subgroup 13-B. Bushberry subgroup..	
Blueberry, highbush.	Blueberry, highbush and lowbush; currant; elderberry; gooseberry; huckleberry.

(14) *Crop Group 14.* Tree Nuts Group.

(i) *Representative commodities.* Almond and pecan.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 14:

Crop Group 14: Tree Nuts—Commodities

Almond (*Prunus dulcis*)
Beech nut (*Fagus* spp.)
Brazil nut (*Bertholletia excelsa*)
Butternut (*Juglans cinerea*)
Cashew (*Anacardium occidentale*)
Chestnut (*Castanea* spp.)
Chinquapin (*Castanea pumila*)
Filbert (hazelnut) (*Corylus* spp.)
Hickory nut (*Carya* spp.)
Macadamia nut (bush nut) (*Macadamia* spp.)
Pecan (*Carya illinoensis*)
Walnut, black and English (Persian) (*Juglans* spp.)

(15) *Crop Group 15.* Cereal Grains Group.

(i) *Representative commodities.* Corn (fresh sweet corn and dried field corn), rice, sorghum, and wheat.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 15:

Crop Group 15: Cereal Grains—Commodities

Barley (*Hordeum* spp.)
Buckwheat (*Fagopyrum esculentum*)
Corn (*Zea mays*)
Millet, pearl (*Pennisetum glaucum*)
Millet, proso (*Panicum milliaceum*)
Oats (*Avena* spp.)
Popcorn (*Zea mays* var. *everta*)
Rice (*Oryza sativa*)
Rye (*Secale cereale*)
Sorghum (milo) (*Sorghum* spp.)
Teosinte (*Euchlaena mexicana*)
Triticale (*Triticum-Secale* hybrids)
Wheat (*Triticum* spp.)
Wild rice (*Zizania aquatica*)

(16) *Crop Group 16.* Forage, Fodder and Straw of Cereal Grains Group.

(i) *Representative commodities.* Corn, wheat, and any other cereal grain crop.

(ii) *Commodities.* The commodities included in Crop Group 16 are: Forage, fodder, and straw of all commodities included in the group cereal grains group.

(17) *Crop Group 17.* Grass Forage, Fodder, and Hay Group.

(i) *Representative commodities.* Bermuda grass; bluegrass; and bromegrass or fescue.

(ii) *Commodities.* The commodities included in Crop Group 17 are: Any grass, *Gramineae* family (either green or cured) except sugarcane and those included in the cereal grains group, that will be fed to or grazed by livestock, all pasture and range grasses and grasses grown for hay or silage.

(18) *Crop Group 18.* Nongrass Animal Feeds (Forage, Fodder, Straw, and Hay) Group.

(i) *Representative commodities.* Alfalfa and clover (*Trifolium* spp.)

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 18:

Crop Group 18: Nongrass Animal Feeds (Forage, Fodder, Straw, and Hay) Group—Commodities

Alfalfa (*Medicago sativa* subsp. *sativa*)
Bean, velvet (*Mucuna pruriens* var. *utilis*)
Clover (*Trifolium* spp., *Melilotus* spp.)
Kudzu (*Pueraria lobata*)
Lespedeza (*Lespedeza* spp.)
Lupin (*Lupinus* spp.)
Sainfoin (*Onobrychis viciifolia*)
Trefoil (*Lotus* spp.)
Vetch (*Vicia* spp.)
Vetch, crown (*Coronilla varia*)
Vetch, milk (*Astragalus* spp).

(19) *Crop Group 19.* Herbs and Spices Group.

(i) *Representative commodities.* Basil (fresh and dried); black pepper; chive; and celery seed or dill seed.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 19 and identifies the related subgroups.

TABLE 1—CROP GROUP 19: HERBS AND SPICES GROUP

Commodities	Related crop subgroups
Allspice (*Pimenta dioica*)	19-B
Angelica (*Angelica archangelica*)	19-A
Anise (anise seed) (*Pimpinella anisum*)	19-B
Anise, star (*Illicium verum*)	19-B
Annatto (seed)	19-B
Balm (lemon balm) (*Melissa officinalis*)	19-A
Basil (*Ocimum basilicum*)	19-A
Borage (*Borago officinalis*)	19-A
Burnet (*Sanguisorba minor*)	19-A
Camomile (*Anthemis nobilis*)	19-A
Caper buds (*Capparis spinosa*)	19-B
Caraway (*Carum carvi*)	19-B
Caraway, black (*Nigella sativa*)	19-B
Cardamom (*Elettaria cardamomum*)	19-B
Cassia bark (*Cinnamomum aromaticum*)	19-B
Cassia buds (*Cinnamomum aromaticum*)	19-B
Catnip (*Nepeta cataria*)	19-A
Celery seed (*Apicum graveolens*)	19-B
Chervil (dried) (*Anthriscus cerefolium*)	19-A
Chive (*Allium schoenoprasum*)	19-A
Chive, Chinese (*Allium tuberosum*)	19-A
Cinnamon (*Cinnamomum verum*)	19-B
Clary (*Salvia sclarea*)	19-A
Clove buds (*Eugenia caryophyllata*)	19-B
Coriander (cilantro or Chinese parsley) (leaf) (*Coriandrum sativum*)	19-A
Coriander (cilantro) (seed) (*Coriandrum sativum*)	19-B
Costmary (*Chrysanthemum balsamita*)	19-A
Culantro (leaf) (*Eryngium foetidum*)	19-A
Culantro (seed) (*Eryngium foetidum*)	19-B
Cumin (*Cuminum cyminum*)	19-B
Curry (leaf) (*Murraya koenigii*)	19-A
Dill (dillweed) (*Anethum graveolens*)	19-A
Dill (seed) (*Anethum graveolens*)	19-B
Fennel (common) (*Foeniculum vulgare*)	19-B
Fennel, Florence (seed) (*Foeniculum vulgare* Azoricum Group)	19-B
Fenugreek (*Trigonella foenumgraecum*)	19-B
Grains of paradise (*Aframomum melegueta*)	19-B
Horehound (*Marrubium vulgare*)	19-A
Hyssop (*Hyssopus officinalis*)	19-A
Juniper berry (*Juniperus communis*)	19-B
Lavender (*Lavandula officinalis*)	19-A
Lemongrass (*Cymbopogon citratus*)	19-A
Lovage (leaf) (*Levisticum officinale*)	19-A
Lovage (seed) (*Levisticum officinale*)	19-B
Mace (*Myristica fragrans*)	19-B
Marigold (*Calendula officinalis*)	19-A
Marjoram (*Origanum spp.*) (includes sweet or annual marjoram, wild marjoram or oregano, and pot marjoram)	19-A
Mustard (seed) (*Brassica* juncea, *B.* hirta, *B.* nigra)	19-B
Nasturtium (*Tropaeolum majus*)	19-A
Nutmeg (*Myristica fragrans*)	19-B
Parsley (dried) (*Petroselinum crispum*)	19-A
Pennyroyal (*Mentha pulegium*)	19-A
Pepper, black (*Piper nigrum*)	19-B
Pepper, white	19-B
Poppy (seed) (Papaver somniferum)	19-B
Rosemary (*Rosemarinus officinalis*)	19-A
Rue (*Ruta graveolens*)	19-A
Saffron (*Crocus sativus*)	19-B
Sage (*Salvia officinalis*)	19-A
Savory, summer and winter (*Satureja spp.*)	19-A
Sweet bay (bay leaf) (*Laurus nobilis*)	19-A
Tansy (*Tanacetum vulgare*)	19-A
Tarragon (*Artemisia dracunculus*)	19-A
Thyme (*Thymus spp.*)	19-A
Vanilla (*Vanilla planifolia*)	19-B
Wintergreen (*Gaultheria procumbens*)	19-A
Woodruff (*Galium odorata*)	19-A
Wormwood (*Artemisia absinthium*)	19-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 19, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 19 SUBGROUPS

Representative commodities	Commodities
Crop Subgroup 19-A. Herb subgroup.	
Basil (fresh and dried) and chive.	Angelica; balm; basil; borage; burnet; camomile; catnip; chervil (dried); chive; chive, Chinese, clary; coriander (leaf); costmary; culantro (leaf); curry (leaf); dillweed; horehound; hyssop; lavender; lemongrass; lovage (leaf); marigold; marjoram (*Origanum* spp.); nasturtium; parsley (dried); pennyroyal; rosemary; rue; sage; savory, summer and winter; sweet bay; tansy; tarragon; thyme; wintergreen; woodruff; and wormwood.
Crop Subgroup 19-B. Spice subgroup.	
Black pepper; and celery seed or dill seed.	Allspice; anise (seed); anise, star; annatto (seed); caper (buds); caraway; caraway, black; cardamom; cassia (buds); celery (seed); cinnamon; clove (buds); coriander (seed); culantro (seed); cumin; dill (seed); fennel, common; fennel, Florence (seed); fenugreek; grains of paradise; juniper (berry); lovage (seed); mace; mustard (seed); nutmeg; pepper, black; pepper, white; poppy (seed); saffron; and vanilla.

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Part IX

The President

Executive Order 12960—Amendments to the Manual For Courts-Martial, United States, 1984

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Presidential Documents

Title 3—

The President

Executive Order 12960 of May 12, 1995

Amendments to the Manual for Courts-Martial, United States, 1984

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484, Executive Order No. 12550, Executive Order No. 12586, Executive Order No. 12708, Executive Order No. 12767, Executive Order No. 12888, and Executive Order No. 12936, it is hereby ordered as follows:

Section 1. Part I of the Manual for Courts-Martial, United States, 1984, is amended as follows:

Preamble, paragraph 4, is amended to read as follows:

"4. Structure and application of the Manual for Courts-Martial.

The Manual for Courts-Martial shall consist of this Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, and the Nonjudicial Punishment Procedures (Parts I–V). The Manual shall be applied consistent with the purpose of military law.

The Manual shall be identified as "Manual for Courts-Martial, United States (19xx edition)." Any amendments to the Manual made by Executive Order shall be identified as "19xx Amendments to the Manual for Courts-Martial, United States.""

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

a. R.C.M. 810(d) is amended to read as follows:

"(d) *Sentence limitations.*

(1) *In general.* Sentences at rehearings, new trials, or other trials shall be adjudged within the limitations set forth in R.C.M. 1003. Except as otherwise provided in subsection (d)(2) of this rule, offenses on which a rehearing, new trial, or other trial has been ordered shall not be the basis for an approved sentence in excess of or more severe than the sentence ultimately approved by the convening or higher authority following the previous trial or hearing, unless the sentence prescribed for the offense is mandatory. When a rehearing or sentencing is combined with trial on new charges, the maximum punishment that may be approved by the convening authority shall be the maximum punishment under R.C.M. 1003 for the offenses being reheard as limited above, plus the total maximum punishment under R.C.M. 1003 for any new charges of which the accused has been found guilty. In the case of an "other trial" no sentence limitations apply if the original trial was invalid because a summary or special court-martial improperly tried an offense involving a mandatory punishment or one otherwise considered capital.

(2) *Pretrial agreement.* If, after the earlier court-martial, the sentence was approved in accordance with a pretrial agreement and at the rehearing the accused fails to comply with the pretrial agreement, by failing to enter a plea of guilty or otherwise, the approved sentence resulting at a rehearing of the affected charges and specifications may include any otherwise lawful

punishment not in excess of or more serious than lawfully adjudged at the earlier court-martial."

b. R.C.M. 924(a) is amended to read as follows:

"(a) *Time for reconsideration.* Members may reconsider any finding reached by them before such finding is announced in open session."

c. R.C.M. 924(c) is amended to read as follows:

"(c) *Military judge sitting alone.* In a trial by military judge alone, the military judge may reconsider any finding of guilty at any time before announcement of sentence and may reconsider the issue of the finding of guilty of the elements in a finding of not guilty only by reason of lack of mental responsibility at any time before announcement of sentence or authentication of the record of trial in the case of a complete acquittal."

d. R.C.M. 1003(b)(9) and the accompanying discussion are deleted.

e. R.C.M. 1003(b)(10), (11), and (12) are redesignated as subsections (9), (10), and (11), respectively.

f. R.C.M. 1009 is amended to read as follows:

"(a) *Reconsideration.* Subject to this rule, a sentence may be reconsidered at any time before such sentence is announced in open session of the court.

(b) *Exceptions.*

(1) If the sentence announced in open session was less than the mandatory minimum prescribed for an offense of which the accused has been found guilty, the court that announced the sentence may reconsider such sentence after it has been announced, and may increase the sentence upon reconsideration in accordance with subsection (e) of this rule.

(2) If the sentence announced in open session exceeds the maximum permissible punishment for the offense or the jurisdictional limitation of the court-martial, the sentence may be reconsidered after announcement in accordance with subsection (e) of this rule.

(c) *Clarification of sentence.* A sentence may be clarified at any time prior to action of the convening authority on the case.

(1) *Sentence adjudged by the military judge.* When a sentence adjudged by the military judge is ambiguous, the military judge shall call a session for clarification as soon as practical after the ambiguity is discovered.

(2) *Sentence adjudged by members.* When a sentence adjudged by members is ambiguous, the military judge shall bring the matter to the attention of the members if the matter is discovered before the court-martial is adjourned. If the matter is discovered after adjournment, the military judge may call a session for clarification by the members who adjudged the sentence as soon as practical after the ambiguity is discovered.

(d) *Action by the convening authority.* When a sentence adjudged by the court-martial is ambiguous, the convening authority may return the matter to the court-martial for clarification. When a sentence adjudged by the court-martial is apparently illegal, the convening authority may return the matter to the court-martial for reconsideration or may approve a sentence no more severe than the legal, unambiguous portions of the adjudged sentence.

(e) *Reconsideration procedure.* Any member of the court-martial may propose that a sentence reached by the members be reconsidered.

(1) *Instructions.* When a sentence has been reached by members and reconsideration has been initiated, the military judge shall instruct the members on the procedure for reconsideration.

(2) *Voting.* The members shall vote by secret written ballot in closed session whether to reconsider a sentence already reached by them.

(3) *Number of votes required.*

(A) *With a view to increasing.* Subject to subsection (b) of this rule, members may reconsider a sentence with a view of increasing it only if at least a majority of the members vote for reconsideration.

(B) *With a view to decreasing.* Members may reconsider a sentence with a view to decreasing it only if:

(i) In the case of a sentence which includes death, at least one member votes to reconsider;

(ii) In the case of a sentence which includes confinement for life or more than 10 years, more than one-fourth of the members vote to reconsider; or

(iii) In the case of any other sentence, more than one-third of the members vote to reconsider.

(4) *Successful vote.* If a vote to reconsider a sentence succeeds, the procedures in R.C.M. 1006 shall apply."

g. R.C.M. 1103(b)(3)(L) is deleted.

h. R.C.M. 1103(b)(3)(M) and (N) are redesignated as subsections (L) and (M), respectively.

i. R.C.M. 1103(c)(2) is amended to read as follows:

"(2) *Not involving a bad-conduct discharge.* If the special court-martial resulted in findings of guilty but a bad-conduct discharge was not adjudged, the requirements of subsections (b)(1), (b)(2)(D), and (b)(3)(A)—(F) and (I)—(M) of this rule shall apply."

j. R.C.M. 1104(b)(2) is amended to read as follows:

"(2) *Summary courts-martial.* The summary court-martial record of trial shall be disposed of as provided in R.C.M. 1305(d). Subsection (b)(1)(D) of this rule shall apply if classified information is included in the record of trial of a summary court-martial."

k. R.C.M. 1106(d)(3) is amended by adding a new subsection (B) as follows:

"(B) A recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence;"

l. R.C.M. 1106(d)(3)(B)—(E) are redesignated as subsections (C)—(F), respectively.

m. R.C.M. 1107(d) is amended by adding a new subparagraph (3) as follows:

"(3) *Postponing service of a sentence to confinement.*

(A) In a case in which a court-martial sentences an accused referred to in subsection (B), below, to confinement, the convening authority may postpone service of a sentence to confinement by a court-martial, without the consent of the accused, until after the accused has been permanently released to the armed forces by a state or foreign country.

(B) Subsection (A) applies to an accused who, while in custody of a state or foreign country, is temporarily returned by that state or foreign country to the armed forces for trial by court-martial; and after the court-martial, is returned to that state or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(C) As used in subsection (d)(3), the term "state" means a state of the United States, the District of Columbia, a territory, and a possession of the United States."

n. R.C.M. 1107(d)(3) is redesignated as R.C.M. 1107(d)(4).

o. R.C.M. 1107(e)(1)(C)(iii) is amended to read as follows:

"(iii) *Rehearing on sentence only.* A rehearing on sentence only shall not be referred to a different kind of court-martial from that which made the original findings. If the convening authority determines a rehearing on sentence is impracticable, the convening authority may approve a sentence of no punishment without conducting a rehearing."

p. R.C.M. 1107(f)(2) is amended to read as follows:

"(2) *Modification of initial action.* The convening authority may recall and modify any action taken by that convening authority at any time before it has been published or before the accused has been officially notified. The convening authority also may recall and modify any action at any time prior to forwarding the record for review, as long as the modification does not result in action less favorable to the accused than the earlier action. In addition, in any special court-martial, the convening authority may recall and correct an illegal, erroneous, incomplete, or ambiguous action at any time before completion of review under R.C.M. 1112, as long as the correction does not result in action less favorable to the accused than the earlier action. When so directed by a higher reviewing authority or the Judge Advocate General, the convening authority shall modify any incomplete, ambiguous, void, or inaccurate action noted in review of the record of trial under Article 64, 66, 67, or examination of the record of trial under Article 69. The convening authority shall personally sign any supplementary or corrective action."

q. R.C.M. 1108(b) is amended to read as follows:

"(b) *Who may suspend and remit.* The convening authority may, after approving the sentence, suspend the execution of all or any part of the sentence of a court-martial except for a sentence of death. The general court-martial convening authority over the accused at the time of the court-martial may, when taking the action under R.C.M. 1112(f), suspend or remit any part of the sentence, The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President. The commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part or amount of the unexecuted part of any sentence by summary court-martial or of any sentence by special court-martial which does not include a bad-conduct discharge regardless of whether the person acting has previously approved the sentence. The "unexecuted part of any sentence" includes that part which has been approved and ordered executed but which has not actually been carried out."

r. R.C.M. 1113(d)(2)(A) is amended by adding a new subparagraph (iii) as follows:

"(iii) Periods during which the accused is in custody of civilian or foreign authorities after the convening authority, pursuant to Article 57(e), has postponed the service of a sentence to confinement;"

s. R.C.M. 1113(d)(2)(A)(iii)—(iv) are redesignated 1113(d)(A)(iv)—(v), respectively.

t. R.C.M. 1113(d)(5) is deleted.

u. R.C.M. 1113(d)(6) is redesignated as subsection (5).

v. R.C.M. 1201(b)(3)(A) is amended to read as follows:

"(A) *In general.* Notwithstanding R.C.M. 1209, the Judge Advocate General may, sua sponte or, except when the accused has waived or withdrawn the right to appellate review under R.C.M. 1110, upon application of the accused or a person with authority to act for the accused, vacate or modify, in whole or in part, the findings, sentence, or both of a court-martial that has been finally reviewed, but has not been reviewed either by a Court of Military Review or by the Judge Advocate General under subsection (b)(1) of this rule, on the ground of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence."

w. R.C.M. 1305(d) is deleted.

x. R.C.M. 1305(e) is redesignated as subsection (d).

Sec. 3. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. M.R.E. 311(g)(2) is amended to read as follows:

"(2) *False statements.* If the defense makes a substantial preliminary showing that a government agent included a false statement knowingly and intentionally or with reckless disregard for the truth in the information presented to the authorizing officer, and if the allegedly false statement is necessary to the finding of probable cause, the defense, upon request, shall be entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion shall be granted unless the search is otherwise lawful under these rules."

b. M.R.E. 506(e) and (f) are amended to read as follows:

"(e) *Pretrial session.* At any time after referral of charges and prior to arraignment, any party may move for a session under Article 39(a) to consider matters relating to government information that may arise in connection with the trial. Following such motion, or sua sponte, the military judge promptly shall hold a pretrial session under Article 39(a) to establish the timing of requests for discovery, the provision of notice under subsection (h), and the initiation of the procedure under subsection (i). In addition, the military judge may consider any other matters that relate to government information or that may promote a fair and expeditious trial.

(f) *Action after motion for disclosure of information.* After referral of charges, if the defense moves for disclosure of government information for which a claim of privilege has been made under this rule, the matter shall be reported to the convening authority. The convening authority may:

(1) institute action to obtain the information for use by the military judge in making a determination under subdivision (i);

(2) dismiss the charges;

(3) dismiss the charges or specifications or both to which the information relates; or

(4) take other action as may be required in the interests of justice. If, after a reasonable period of time, the information is not provided to the military judge, the military judge shall dismiss the charges or specifications or both to which the information relates."

c. M.R.E. 506(h) is amended to read as follows:

"(h) *Prohibition against disclosure.* The accused may not disclose any information known or believed to be subject to a claim of privilege under this rule unless the military judge authorizes such disclosure."

d. M.R.E. 506(i) is amended to read as follows:

"(i) *In camera proceedings.*

(1) *Definition.* For purposes of this subsection, an "in camera proceeding" is a session under Article 39(a) from which the public is excluded.

(2) *Motion for in camera proceeding.* Within the time specified by the military judge for the filing of a motion under this rule, the Government may move for an in camera proceeding concerning the use at any proceeding of any government information that may be subject to a claim of privilege. Thereafter, either prior to or during trial, the military judge for good cause shown or otherwise upon a claim of privilege may grant the Government leave to move for an in camera proceeding concerning the use of additional government information.

(3) *Demonstration of public interest nature of the information.* In order to obtain an in camera proceeding under this rule, the Government shall demonstrate, through the submission of affidavits and information for examination only by the military judge, that disclosure of the information reasonably could be expected to cause identifiable damage to the public interest.

(4) *In camera proceeding.*

(A) *Finding of identifiable damage.* Upon finding that the disclosure of some or all of the information submitted by the Government under subsection (i)(3) reasonably could be expected to cause identifiable damage to the public interest, the military judge shall conduct an in camera proceeding.

(B) *Disclosure of the information to the defense.* Subject to subsection (F), below, the Government shall disclose government information for which a claim of privilege has been made to the accused, for the limited purpose of litigating, in camera, the admissibility of the information at trial. The military judge shall enter an appropriate protective order to the accused and all other appropriate trial participants concerning the disclosure of the information according to subsection (g), above. The accused shall not disclose any information provided under this subsection unless, and until, such information has been admitted into evidence by the military judge. In the in camera proceeding, both parties shall have the opportunity to brief and argue the admissibility of the government information at trial.

(C) *Standard.* Government information is subject to disclosure at the court-martial proceeding under this subsection if the party making the request demonstrates a specific need for information containing evidence that is relevant to the guilt or innocence or to punishment of the accused, and is otherwise admissible in the court-martial proceeding.

(D) *Ruling.* No information may be disclosed at the court-martial proceeding or otherwise unless the military judge makes a written determination that the information is subject to disclosure under the standard set forth in subsection (C), above. The military judge will specify in writing any information that he or she determines is subject to disclosure. The record of the in camera proceeding shall be sealed and attached to the record of trial as an appellate exhibit. The accused may seek reconsideration of the determination prior to or during trial.

(E) *Alternatives to full disclosure.* If the military judge makes a determination under this subsection that the information is subject to disclosure, or if the Government elects not to contest the relevance, necessity, and admissibility of the government information, the Government may proffer a statement admitting for purposes of the court-martial any relevant facts such information would tend to prove or may submit a portion or summary to be used in lieu of the information. The military judge shall order that such statement, portion, summary, or some other form of information which the military judge finds to be consistent with the interests of justice, be used by the accused in place of the government information, unless the military judge finds that use of the government information itself is necessary to afford the accused a fair trial.

(F) *Sanctions.* Government information may not be disclosed over the Government's objection. If the Government continues to object to disclosure of the information following rulings by the military judge, the military judge shall issue any order that the interests of justice require. Such an order may include:

(i) striking or precluding all or part of the testimony of a witness;

(ii) declaring a mistrial;

(iii) finding against the Government on any issue as to which the evidence is relevant and necessary to the defense;

(iv) dismissing the charges, with or without prejudice; or

(v) dismissing the charges or specifications or both to which the information relates."

e. A new M.R.E. 506(j) is added as follows:

"(j) *Appeals of orders and rulings.* In a court-martial in which a punitive discharge may be adjudged, the Government may appeal an order or ruling

of the military judge that terminates the proceedings with respect to a charge or specification, directs the disclosure of government information, or imposes sanctions for nondisclosure of government information. The Government also may appeal an order or ruling in which the military judge refuses to issue a protective order sought by the United States to prevent the disclosure of government information, or to enforce such an order previously issued by appropriate authority. The Government may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification."

f. M.R.E. 506(j) and (k) are redesignated as (k) and (l), respectively.

Sec. 4. Part IV of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

a. Paragraph 4.c. is amended by adding a new subparagraph (4) as follows:

"(4) *Voluntary abandonment.* It is a defense to an attempt offense that the person voluntarily and completely abandoned the intended crime, solely because of the person's own sense that it was wrong, prior to the completion of the crime. The voluntary abandonment defense is not allowed if the abandonment results, in whole or in part, from other reasons, such as, the person feared detection or apprehension, decided to await a better opportunity for success, was unable to complete the crime, or encountered unanticipated difficulties or unexpected resistance. A person who is entitled to the defense of voluntary abandonment may nonetheless be guilty of a lesser included, completed offense. For example, a person who voluntarily abandoned an attempted armed robbery may nonetheless be guilty of assault with a dangerous weapon."

b. Paragraph 4.c.(4), (5), and (6) are redesignated as subparagraphs (5), (6) and (7), respectively.

c. Paragraph 30a.c(1), is amended to read as follows:

"(1) *Intent.* "Intent or reason to believe" that the information "is to be used to the injury of the United States or to the advantage of a foreign nation" means that the accused acted in bad faith and [delete "or otherwise"] without lawful authority with respect to information that is not lawfully accessible to the public."

d. Paragraph 35 is amended to read as follows:

"35. Article 111—Drunken or reckless operation of a vehicle, aircraft, or vessel

a. *Text.*

"Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (Article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is 0.10 grams of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis, shall be punished as a court-martial may direct."

b. *Elements.*

(1) That the accused was operating or in physical control of a vehicle, aircraft, or vessel; and

(2) That while operating or in physical control of a vehicle, aircraft, or vessel, the accused:

(a) did so in a wanton or reckless manner, or

(b) was drunk or impaired, or

(c) the alcohol concentration in the accused's blood or breath was 0.10 grams of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath, or greater, as shown by chemical analysis.

[Note: If injury resulted add the following element]

(3) That the accused thereby caused the vehicle, aircraft, or vessel to injure a person.

c. *Explanation.*

(1) *Vehicle.* See 1 U.S.C. § 4.

(2) *Vessel. See 1* U.S.C. § 3.

(3) *Aircraft.* Any contrivance used or designed for transportation in the air.

(4) *Operates.* Operating a vehicle, aircraft, or vessel includes not only driving or guiding a vehicle, aircraft, or vessel while it is in motion, either in person or through the agency of another, but also setting of its motive power in action or the manipulation of its controls so as to cause the particular vehicle, aircraft, or vessel to move.

(5) *Physical control and actual physical control.* These terms as used in the statute are synonymous. They describe the present capability and power to dominate, direct, or regulate the vehicle, vessel, or aircraft, either in person or through the agency of another, regardless of whether such vehicle, aircraft, or vessel is operated. For example, the intoxicated person seated behind the steering wheel of a vehicle with the keys of the vehicle in or near the ignition but with the engine not turned on could be deemed in actual physical control of that vehicle. However, the person asleep in the back seat with the keys in his or her pocket would not be deemed in actual physical control. Physical control necessarily encompasses operation.

(6) *Drunk or impaired.* "Drunk" and "impaired" mean any intoxication which is sufficient to impair the rational and full exercise of the mental or physical faculties. The term "drunk" is used in relation to intoxication by alcohol. The term "impaired" is used in relation to intoxication by a substance described in Article 112(a), Uniform Code of Military Justice.

(7) *Reckless.* The operation or physical control of a vehicle, vessel, or aircraft is "reckless" when it exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. Recklessness is not determined solely by reason of the happening of an injury, or the invasion of the rights of another, nor by proof alone of excessive speed or erratic operation, but all these factors may be admissible and relevant as bearing upon the ultimate question: whether, under all the circumstances, the accused's manner of operation or physical control of the vehicle, vessel, or aircraft was of that heedless nature which made it actually or imminently dangerous to the occupants, or to the rights or safety of others. It is operating or physically controlling a vehicle, vessel, or aircraft with such a high degree of negligence that if death were caused, the accused would have committed involuntary manslaughter, at least. The nature of the conditions in which the vehicle, vessel, or aircraft is operated or controlled, the time of day or night, the proximity and number of other vehicles, vessels, or aircraft, and the condition of the vehicle, vessel, or aircraft, are often matters of importance in the proof of an offense charged under this article and, where they are of importance, may properly be alleged.

(8) *Wanton.* "Wanton" includes "reckless", but in describing the operation or physical control of a vehicle, vessel, or aircraft, "wanton" may, in a proper case, connote willfulness, or a disregard of probable consequences, and thus describe a more aggravated offense.

(9) *Causation.* The accused's drunken or reckless driving must be a proximate cause of injury for the accused to be guilty of drunken or reckless driving resulting in personal injury. To be proximate, the accused's actions need not be the sole cause of the injury, nor must they be the immediate cause of the injury; that is, the latest in time and space preceding the injury. A contributing cause is deemed proximate only if it plays a material role in the victim's injury.

(10) *Separate offenses.* While the same course of conduct may constitute violations of both subsections (1) and (2) of the Article, *(e.g.,* both drunken and reckless operation or physical control), this article proscribes the conduct described in both subsections as separate offenses, which may be charged separately. However, as recklessness is a relative matter, evidence of all the surrounding circumstances that made the operation dangerous, whether alleged or not, may be admissible. Thus, on a charge of reckless driving, for example, evidence of drunkenness might be admissible as establishing one aspect of the recklessness, and evidence that the vehicle exceeded a safe speed, at a relevant prior point and time, might be admissible as corroborating other evidence of the specific recklessness charged. Similarly, on a charge of drunken driving, relevant evidence of recklessness might have probative value as corroborating other proof of drunkenness.

d. *Lesser included offense.*

(1) Reckless or wanton or impaired operation or physical control of a vessel. Article 110—improper hazarding of a vessel.

(2) Drunken operation of a vehicle, vessel, or aircraft while drunk or with a blood or breath alcohol concentration in violation of the described per se standard.

(a) Article 110—improper hazarding of a vessel

(b) Article 112—drunk on duty

(c) Article 134—drunk on station

e. *Maximum punishment.*

(1) *Resulting in personal injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(2) *No personal injury involved.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.*

In that ———————— (personal jurisdiction data), did (at/onboard—location) (subject-matter jurisdiction data, if required), on or about ———————— 19————, (in the motor pool area) (near the Officer's Club)(at the intersection of ———————— and ————————) (while in the Gulf of Mexico)(while in flight over North America) physically control [a vehicle, to wit: (a truck)(a passenger car) (————————)] [an aircraft, to wit: (an AH–64 helicopter)(an F–14A fighter) (a KC–135 tanker) (————————)] [a vessel, to wit: (the aircraft carrier USS ————————) (the Coast Guard Cutter ————————) (————————)], [while drunk] [while impaired by ————————] [while the alcohol concentration in his (blood was 0.10 grams of alcohol per 100 milliliters of blood or greater)(breath was 0.10 grams of alcohol per 210 liters of breath or greater) as shown by chemical analysis] [in a (reckless)(wanton) manner by (attempting to pass another vehicle on a sharp curve)(by ordering that the aircraft be flown below the authorized altitude)] [and did thereby cause said (vehicle) (aircraft)(vessel) to (strike and) (injure ————————)]."

e. Paragraph 43.a.(3) is amended to read as follows:

"(3) is engaged in an act that is inherently dangerous to another and evinces a wanton disregard of human life; or"

f. Paragraph 43.b.(3)(c) is amended to read as follows:

"(c) That this act was inherently dangerous to another and showed a wanton disregard for human life;"

g. Paragraph 43.c.(4)(a) is amended to read as follows:

"(a) *Wanton disregard for human life.* Intentionally engaging in an act inherently dangerous to another—although without an intent to cause the death of or great bodily harm to any particular person, or even with a wish that death will not be caused—may also constitute murder if the

act shows wanton disregard of human life. Such disregard is characterized by heedlessness of the probable consequences of the act or omission, or indifference to the likelihood of death or great bodily harm. Examples include throwing a live grenade toward another or others in jest or flying an aircraft very low over one or more persons to cause alarm."

h. Paragraph 45.a.(a) is amended to read as follows:

"(a) Any person subject to this chapter who commits an act of sexual intercourse by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct."

i. Paragraph 45.b.(1) is amended to read as follows:

"(a) That the accused committed an act of sexual intercourse; and

(b) That the act of sexual intercourse was done by force and without consent."

j. Paragraph 45.c.(1)(a) and (b) are amended as follows:

"(a) *Nature of offense.* Rape is sexual intercourse by a person, executed by force and without consent of the victim. It may be committed on a victim of any age. Any penetration, however slight, is sufficient to complete the offense.

(b) *Force and lack of consent.* Force and lack of consent are necessary to the offense. Thus, if the victim consents to the act, it is not rape. The lack of consent required, however, is more than mere lack of acquiescence. If a victim in possession of his or her mental faculties fails to make lack of consent reasonably manifest by taking such measures of resistance as are called for by the circumstances, the inference may be drawn that the victim did consent. Consent, however, may not be inferred if resistance would have been futile, where resistance is overcome by threats of death or great bodily harm, or where the victim is unable to resist because of the lack of mental or physical faculties. In such a case there is no consent and the force involved in penetration will suffice. All the surrounding circumstances are to be considered in determining whether a victim gave consent, or whether he or she failed or ceased to resist only because of a reasonable fear of death or grievous bodily harm. If there is actual consent, although obtained by fraud, the act is not rape, but if to the accused's knowledge the victim is of unsound mind or unconscious to an extent rendering him or her incapable of giving consent, the act is rape. Likewise, the acquiescence of a child of such tender years that he or she is incapable of understanding the nature of the act is not consent."

k. Paragraph 89.c. is amended to read as follows:

"(c) *Explanation.* "Indecent" language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards. See paragraph 87 if the communication was made in the physical presence of a child."

l. The following new paragraph is added after paragraph 103:

"103a. Article 134 (Self-injury without intent to avoid service)

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused intentionally inflicted injury upon himself or herself;

(2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note: If the offense was committed in time of war or in a hostile fire pay zone, add the following element]

(3) That the offense was committed (in time of war) (in a hostile fire pay zone).

c. *Explanation.*

(1) *Nature of offense.* This offense differs from malingering (*see* paragraph 40) in that for this offense, the accused need not have harbored a design to avoid performance of any work, duty, or service which may properly or normally be expected of one in the military service. This offense is characterized by intentional self-injury under such circumstances as prejudice good order and discipline or discredit the armed forces. It is not required that the accused be unable to perform duties, or that the accused actually be absent from his or her place of duty as a result of the injury. For example, the accused may inflict the injury while on leave or pass. The circumstances and extent of injury, however, are relevant to a determination that the accused's conduct was prejudicial to good order and discipline, or service-discrediting.

(2) *How injury inflicted.* The injury may be inflicted by nonviolent as well as by violent means and may be accomplished by any act or omission that produces, prolongs, or aggravates a sickness or disability. Thus, voluntary starvation that results in a debility is a self-inflicted injury. Similarly, the injury may be inflicted by another at the accused's request.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.*

(1) *Intentional self-inflicted injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Intentional self-inflicted injury in time of war or in a hostile fire pay zone.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that ———— (personal jurisdiction data), did, (at/on board—location) (in a hostile fire pay zone) on or about ———— 19——, (a time of war,) intentionally injure himself/herself by ———— (nature and circumstances of injury)."

Sec. 5. These amendments shall take effect on June 10, 1995, subject to the following:

a. Nothing in these amendments shall be construed to make punishable any act done or omitted prior to June 10, 1995.

b. The maximum punishment for an offense committed prior to June 10, 1995, shall not exceed the applicable maximum in effect at the time of the commission of such offense.

c. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to June 10, 1995, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

William J. Clinton

THE WHITE HOUSE,
May 12, 1995.

Billing code 3195–01–P

Changes to the Analysis accompanying the Manual for Courts-Martial, United States, 1984.

1. Changes to Appendix 21, the Analysis accompanying the Rules for Courts-Martial (Part II, MCM, 1984).

a. R.C.M. 203. The Analysis accompanying R.C.M. 203 is amended by inserting the following at the end thereof:

"*1995 Amendment:* The discussion was amended in light of *Solorio v. United States,* 483 U.S. 435 (1987). *O'Callahan v. Parker,* 395 U.S. 258 (1969), held that an offense under the code could not be tried by court-martial unless the offense was "service connected." *Solorio* overruled *O'Callahan.*"

b. R.C.M. 307. The Analysis accompanying R.C.M. 307 is amended by inserting the following at the end thereof:

"*1995 Amendment:* The discussion was amended in conformance with a concurrent change to R.C.M. 203, in light of *Solorio v. United States,* 483 U.S. 435 (1987). *O'Callahan v. Parker,* 395 U.S. 258 (1969), held that an offense under the code could not be tried by court-martial unless the offense was "service connected." *Solorio* overruled *O'Callahan.*"

c. R.C.M. 810. The Analysis accompanying R.C.M. 810 is amended by inserting the following at the end thereof:

"*1995 Amendment:* Subsection (d) was amended in light of the change to Article 63 effected by the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2506 (1992). The amendment reflects that subsection (d) sentencing limitations only affect the sentence that may be approved by the convening or higher authority following the rehearing, new trial or other trial. Subsection (d) does not limit the maximum sentence that may be adjudged at the rehearing, new trial, or other trial."

d. R.C.M. 924. The Analysis accompanying R.C.M. 924 is amended by inserting the following at the end thereof:

"*1995 Amendment:* The amendment limits reconsideration of findings by the members to findings reached in closed session but not yet announced in open court and provides for the military judge, in judge alone cases, to reconsider the "guilty finding" of a not guilty only by reason of lack of mental responsibility finding."

e. R.C.M. 1003(b). The Analysis accompanying R.C.M. 1003(b) is amended by inserting the following:

"*1995 Amendment:* Punishment of confinement on bread and water or diminished rations [R.C.M. 1003(d)(9)], as a punishment imposable by a court-martial, was deleted. Confinement on bread and water or diminished rations was originally intended as an immediate, remedial punishment. While this is still the case with nonjudicial punishment (Article 15), it is not effective as a court-martial punishment. Subsections (d)(10) through (d)(12) were redesignated (d)(9) through (d)(11), respectively."

f. R.C.M. 1009. The Analysis accompanying R.C.M. 1009 is amended by inserting the following at the end thereof:

"*1995 Amendment:* This rule was changed to prevent a sentencing authority from reconsidering a sentence announced in open session. Subsection (b) was amended to allow reconsideration if the sentence was less than the mandatory maximum prescribed for the offense or the sentence exceeds the maximum permissible punishment for the offense or the jurisdictional limitation of the court-martial. Subsection (c) is new and provides for the military judge to clarify an announced sentence that is ambiguous. Subsection (d) provides for the convening authority to exercise discretionary authority to return an ambiguous sentence for clarification, or take action consistent with R.C.M. 1107."

g. R.C.M. 1103. The Analysis accompanying R.C.M. 1103 is amended by inserting the following at the end thereof:

"*1995 Amendment:* Punishment of confinement on bread and water or diminished rations [R.C.M. 1003(d)(9)], as a punishment imposable by a

court-martial, was deleted. Consequently, the requirement to attach a Medical Certificate to the record of trial [R.C.M. 1103(b)(3)(L)] was deleted. Subsections (3)(M) and (3)(N) were redesignated (3)(L) and (3)(M), respectively."

h. R.C.M. 1105(b)(4). The Analysis accompanying R.C.M. 1105(b) is amended to read as follows:

"1995 Amendment: The Discussion accompanying subsection (b)(4) was amended to reflect the new requirement, under R.C.M. 1106(d)(3)(B), that the staff judge advocate or legal advisor inform the convening authority of a recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence."

i. R.C.M. 1106(d)(3). The Analysis accompanying R.C.M. 1106(d) is amended to read as follows:

"1995 Amendment: Subsection (d)(3)(B) is new. It requires that the staff judge advocate's or legal advisor's recommendation inform the convening authority of any clemency recommendation made by the sentencing authority in conjunction with the announced sentence, absent a written request by the defense to the contrary. Prior to this amendment, an accused was responsible for informing the convening authority of any such recommendation. The amendment recognizes that any clemency recommendation is so closely related to the sentence that staff judge advocates and legal advisors should be responsible for informing convening authorities of it. The accused remains responsible for informing the convening authority of other recommendations for clemency, including those made by the military judge in a trial with member sentencing and those made by individual members. *See United States v. Clear,* 34 M.J. 129 (C.M.A. 1992); R.C.M. 1105(b)(4). Subsections (d)(3)(B)—(d)(3)(E) are redesignated as (d)(3)(C)—(d)(3)(F), respectively."

j. R.C.M. 1107(d). The Analysis accompanying R.C.M. 1107(d) is amended to read as follows:

"1995 Amendment: Subsection (d)(3) is new. It is based on the recently enacted Article 57(e). National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2505 (1992). *See generally* Interstate Agreement on Detainers Act, 18 U.S.C. App. III. It permits a military sentence to be served consecutively, rather than concurrently, with a civilian or foreign sentence. The prior subsection (d)(3) is redesignated (d)(4)."

k. R.C.M. 1107(d)(2). The Analysis accompanying R.C.M. 1107(d)(2) is amended to read as follows:

"1995 Amendment: The last sentence in the Discussion accompanying subsection (d)(2) is new. It clarifies that forfeitures adjudged at courts-martial take precedence over all debts owed by the accused. Department of Defense Military Pay and Allowances Entitlement Manual, Volume 7, Part A, paragraph 70507a (12 December 1994)."

l. R.C.M. 1107(e)(1)(C)(iii). The Analysis accompanying R.C.M. 1107(e)(1) is amended to read as follows:

"1995 Amendment: The second sentence in R.C.M. 1107(e)(1)(C)(iii) is new. It expressly recognizes that the convening authority may approve a sentence of no punishment if the convening authority determines that a rehearing on sentence is impracticable. This authority has been recognized by the appellate courts. *See e.g., United States v. Monetesinos,* 28 M.J. 38 (C.M.A. 1989); *United States v. Sala,* 30 M.J. 813 (A.C.M.R. 1990)."

m. R.C.M. 1107(f)(2). The Analysis accompanying R.C.M. 1107(f)(2) is amended by inserting the following at its end:

"1995 Amendment: The amendment allows a convening authority to recall and modify any action after it has been published or after an accused has been officially notified, but before a record has been forwarded for review, as long as the new action is not less favorable to the accused than the prior action. A convening authority is not limited to taking only corrective action, but may also modify the approved findings or sentence provided the modification is not less favorable to the accused than the earlier action."

n. R.C.M. 1113(d)(2)(A). The Analysis accompanying R.C.M. 1113(d)(2)(A) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (d)(2)(A)(iii) is new. It is based on the recently enacted Article 57(e). National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2505 (1992). *See generally* Interstate Agreement on Detainers Act, 18 U.S.C. App. III. It permits a military sentence to be served consecutively, rather than concurrently, with a civilian or foreign sentence. The prior subsections (d)(2)(A)(iii)—(iv) are redesignated (d)(2)(A)(iv)—(v), respectively."

o. R.C.M. 1113(d)(5). The Analysis accompanying R.C.M. 1113(d)(5) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (5) was deleted when the punishment of confinement on bread and water or diminished rations [R.C.M. 1113(d)(9)], as a punishment imposable by a court-martial, was deleted. Subsection (6) was redesignated (5)."

p. R.C.M. 1201(b)(1). The Analysis accompanying R.C.M. 1201(b)(1) is amended to read as follows:

"1995 Amendment: The Discussion accompanying subsection (1) was amended to conform with the language of Article 69(a), as enacted by the Military Justice Amendments of 1989, tit. XIII, sec. 1302(a)(2), National Defense Authorization Act for Fiscal Years 1990 and 1991, Pub. L. No. 101–189, 103 Stat. 1352, 1576 (1989)."

2. Changes to Appendix 21, the Analysis accompanying the Punitive Articles (Part IV, MCM, 1984).

a. Paragraph 4c. The Analysis accompanying paragraph 4c is amended to read as follows:

"1995 Amendment: Subparagraph (4) is new. It recognizes voluntary abandonment as an affirmative defense as established by the case law. *See United States v. Byrd,* 24 M.J. 286 (C.M.A. 1987). *See also United States v. Schoof,* 37 M.J. 96, 103–04 (C.M.A. 1993); *United States v. Rios,* 33 M.J. 436, 440–41 (C.M.A. 1991); *United States v. Miller,* 30 M.J. 999 (N.M.C.M.R. 1990); *United States v. Walther,* 30 M.J. 829, 829–33 (N.M.C.M.R. 1990). The prior subparagraphs (4)—(6) have been redesignated (5)—(7), respectively."

b. Paragraph 30a.c. The Analysis accompanying paragraph 30a.c., is amended as follows:

"1995 Amendment: This subparagraph was amended to clarify that the intent element of espionage is not satisfied merely by proving that the accused acted without lawful authority. Article 106a, Uniform Code of Military Justice. The accused must have acted in bad faith. *United States v. Richardson,* 33 M.J. 127 (C.M.A. 1991); *see Gorin v. United States,* 312 U.S. 19, 21 n.1 (1941)."

c. Paragraph 35. The Analysis accompanying paragraph 35 is amended to read as follows:

"1995 Amendment: This paragraph was amended pursuant to the changes to Article 111 included in the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2506 (1992). New subparagraphs c(2) and (3) were added to include vessels and aircraft, respectively. Paragraph 35 was also amended to make punishable actual physical control of a vehicle, aircraft, or vessel while drunk or impaired, or in a reckless fashion, or while one's blood or breath alcohol concentration is in violation of the described per se standard. A new subparagraph c(5) was added to define the concept of actual physical control. This change allows drunk or impaired individuals who demonstrate the capability and power to operate a vehicle, aircraft, or vessel to be apprehended if in the vehicle, aircraft, or vessel, but not actually operating it at the time.

The amendment also clarifies that culpability extends to the person operating or exercising actual physical control through the agency of another *(e.g.,* the captain of a ship giving orders to a helmsman). The amendment also provides a blood/alcohol blood/breath concentration of 0.10 or greater

as a per se standard for illegal intoxication. The change will not, however, preclude prosecution where no chemical test is taken or even where the results of the chemical tests are below the statutory limits, where other evidence of intoxication is available. *See United States v. Gholson,* 319 F. Supp. 499 (E.D. Va. 1970).

A new paragraph c(9) was added to clarify that in order to show that the accused caused personal injury, the government must prove proximate causation and not merely cause-in-fact. *Accord United States v. Lingenfelter,* 30 M.J. 302 (C.M.A. 1990). The definition of "proximate cause" is based on *United States v. Romero,* 1 M.J. 227, 230 (C.M.A. 1975). Previous subparagraph c(2) is renumbered c(4). Previous subparagraphs c(3)–c(5) are renumbered c(6)–c(8), respectively, and previous subparagraph c(6) is renumbered c(10).

Subparagraphs d(1) and (2) are redesignated d(2)(b) and d(2)(c). The new d(2)(a) adds Article 110 (improper hazarding of a vessel) as a lesser included offense of drunken operation or actual physical control of a vessel. The new d(1) adds Article 110 (improper hazarding of a vessel) as a lesser included offense of reckless or wanton or impaired operation or physical control of a vessel."

d. Paragraph 43. The Analysis accompanying paragraph 43 is amended to read as follows:

"*1995 Amendment:* The word "others" was replaced by the word "another" in Article 118(3) pursuant to the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2506 (1992). This change addresses the limited language previously used in Article 118(3) as identified in *United States v. Berg,* 30 M.J. 195 (C.M.A. 1990)."

e. Paragraph 45. The Analysis accompanying paragraph 45 is amended to read as follows:

"*1995 Amendment:* The offense of rape was made gender neutral and the spousal exception was removed under Article 120(a). National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2506 (1992).

Rape may "be punished by death" only if constitutionally permissible. In *Coker v. Georgia,* 322 U.S. 585 (1977), the Court held that the death penalty is "grossly disproportionate and excessive punishment for the rape of an adult woman," and is "therefore forbidden by the Eighth Amendment as cruel and unusual punishment." Id. at 592 (plurality opinion). *Coker,* however, leaves open the question of whether it is permissible to impose the death penalty for the rape of a minor by an adult. *See Coker,* 433 U.S. at 595. *See Leatherwood v. State,* 548 So.2d 389 (Miss. 1989) (death sentence for rape of minor by an adult is not cruel and unusual punishment prohibited by the Eighth Amendment). *But see Buford v. State,* 403 So.2d 943 (Fla. 1981) (sentence of death is grossly disproportionate for sexual assault of a minor by an adult and consequently is forbidden by Eighth Amendment as cruel and unusual punishment)."

f. Paragraph 89. The Analysis accompanying paragraph 89c is amended to read as follows:

"*1995 Amendment:* The second sentence is new. It incorporates a test for "indecent language" adopted by the Court of Military Appeals in *United States v. French,* 31 M.J. 57, 60 (C.M.A. 1990). The term "tends reasonably" is substituted for the term "calculated to" to avoid the misinterpretation that indecent language is a specific intent offense."

g. Paragraph 103a. Insert the following after the Analysis of paragraph 103:

"103a. Article 134 (Self-injury without intent to avoid service)

c. *Explanation. 1995 Amendment.* This offense is based on paragraph 183a of MCM, U.S. Army, 1949; *United States v. Ramsey,* 35 M.J. 733 (A.C.M.R. 1992), *aff'd,* 40 M.J. 71 (C.M.A. 1994); *United States v. Taylor,* 38 C.M.R. 393 (C.M.A. 1968); *see generally* TJAGSA Practice Note, *Confusion About Malingering and Attempted Suicide,* The Army Lawyer, June 1992, at 38.

e. *Maximum punishment. 1995 Amendment.* The maximum punishment for subsection (1) reflects the serious effect that this offense may have on readiness and morale. The maximum punishment reflects the range of the effects of the injury, both in degree and duration, on the ability of the accused to perform work, duty, or service. The maximum punishment for subsection (1) is equivalent to that for offenses of desertion, missing movement through design, and certain violations of orders. The maximum punishment for subsection (2) is less than the maximum punishment for the offense of malingering under the same circumstances because of the absence of the specific intent to avoid work, duty, or service. The maximum punishment for subsection (2) is equivalent to that for nonaggravated offenses of desertion, willfully disobeying a superior commissioned officer, and nonaggravated malingering by intentional self-inflicted injury.

f. *Sample specification. 1995 Amendment. See* appendix 4, paragraph 177 of MCM, U.S. Army, 1949. Since incapacitation to perform duties is not an element of the offense, language relating to "unfitting himself for the full performance of military service" from the 1949 MCM has been omitted. The phrase "willfully injure" has been changed to read "intentionally injure" to parallel the language contained in the malingering specification under Article 115."

3. Changes to Appendix 22, the Analysis accompanying the Military Rules of Evidence (Part III, MCM, 1984).

a. M.R.E. 311(g)(2). The Analysis accompanying M.R.E. 311(g)(2) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (g)(2) was amended to clarify that in order for the defense to prevail on an objection or motion under this rule, it must establish, *inter alia,* that the falsity of the evidence was "knowing and intentional" or in reckless disregard for the truth. *Accord Franks v. Delaware,* 438 U.S. 154 (1978)."

b. M.R.E. 506(e). The Analysis accompanying M.R.E. 506(e) is amended by inserting the following at the end thereof:

"1995 Amendment: It is the intent of the Committee that if classified information arises during a proceeding under Rule 506, the procedures of Rule 505 will be used.

The new subsection (e) was formerly subsection (f). The matters in the former subsection (f) were adopted without change. The former subsection (e) was amended and redesignated as subsection (f) (see below)."

c. M.R.E. 506(f). The Analysis accompanying M.R.E. 506(f) is amended by inserting the following at the end thereof:

"1995 Amendment. See generally Rule 505(f) and its accompanying Analysis. Note that unlike Rule 505(f), however, Rule 506(f) does not require a finding that failure to disclose the information in question "would materially prejudice a substantial right of the accused." Dismissal is not required when the relevant information is not disclosed in a "reasonable period of time."

Subsection (f) was formerly subsection (e). The subsection was amended to cover action after a defense motion for discovery, rather than action after referral of charges. The qualification that the government claim of privilege pertains to information "that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in a court-martial proceeding" was deleted as unnecessary. Action by the convening authority is required if, after referral, the defense moves for disclosure and the Government claims the information is privileged from disclosure."

d. M.R.E. 506(h). The Analysis accompanying M.R.E. 506(h) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (h) was amended to provide that government information may not be disclosed by the accused unless authorized by the military judge."

e. M.R.E. 506(i). The Analysis accompanying M.R.E. 506(i) is amended by inserting the following at the end thereof:

"*1995 Amendment:* Subsection (i) was amended to clarify the procedure for in camera proceedings. The definition in subsection (i)(1) was amended to conform to the definition of in camera proceedings in M.R.E. 505(i)(1). Subsections (i)(2) and (i)(3) were unchanged. Subsection (i)(4)(B), redesignated as (i)(4)(C), was amended to include admissible evidence relevant to punishment of the accused, consistent with *Brady v. Maryland,* 373 U.S. 83, 87 (1963). Subsection (i)(4)(C) was redesignated as (i)(4)(D), but was otherwise unchanged. The amended procedures provide for full disclosure of the government information in question to the accused for purposes of litigating the admissibility of the information in the protected environment of the in camera proceeding; *i.e.,* the Article 39(a) session is closed to the public and neither side may disclose the information outside the in camera proceeding until the military judge admits the information as evidence in the trial. Under subsection (i)(4)(E), the military judge may authorize alternatives to disclosure, consistent with a military judge's authority concerning classified information under M.R.E. 505. Subsection (i)(4)(F) allows the Government to determine whether the information ultimately will be disclosed to the accused. However, the Government's continued objection to disclosure may be at the price of letting the accused go free, in that subsection (i)(4)(F) adopts the sanctions available to the military judge under M.R.E. 505(i)(4)(E). *See U.S. v. Reynolds,* 345 U.S. 1, 12 (1953)."

f. M.R.E. 506(j). The Analysis accompanying M.R.E. 506(j) is amended by inserting the following at the end thereof:

"*1995 Amendment:* Subsection (j) was added to recognize the Government's right to appeal certain rulings and orders. See R.C.M. 908. The former subsection (j) was redesignated as subsection (k). The subsection speaks only to government appeals; the defense still may seek extraordinary relief through interlocutory appeal of the military judge's orders and rulings. *See generally,* 28 U.S.C. § 1651(a); *Waller v. Swift,* 30 M.J. 139 (C.M.A. 1990); *Dettinger v. United States,* 7 M.J. 216 (C.M.A. 1979)."

g. M.R.E. 506(j) and (k). The Analyses accompanying M.R.E. 506(j) and M.R.E. 506(k) are redesignated as subdivisions (k) and (l), respectively.

Changes to the Discussion Accompanying the Manual for Courts-Martial, United States, 1984.

A. The Discussion accompanying Part I., Preamble, paragraph. 4., is amended by inserting the following at the end thereof:

"The 1995 amendment to paragraph 4 of the Preamble is intended to eliminate the practice of identifying the Manual for Courts-Martial, United States, by a particular year. As long as the Manual was published in its entirety sporadically *(e.g.,* 1917, 1921, 1928, 1949, 1951, 1969 and 1984), with amendments to it published piecemeal, it was logical to identify the Manual by the calendar year of publication, with periodic amendments identified as "Changes" to the Manual. The more frequent publication of a new edition of the Manual, however, means that it is more appropriately identified by the calendar year of edition. Amendments made in a particular calendar year will be identified by publishing the relevant Executive order containing those amendments in its entirety in a Manual appendix."

B. Subsection 2(B)(ii) of the Discussion following R.C.M. 202(a) is amended to read as follows:

"(ii) *Effect of discharge and reenlistment.* For offenses occurring on or after 23 October 1992, under the 1992 Amendment to Article 3(a), a person who reenlists following a discharge may be tried for offenses committed during the earlier term of service. For offenses occurring prior to 23 October 1992, a person who reenlists following a discharge may be tried for offenses committed during the earlier term of service only if the offense was punishable by confinement for five (5) years or more and could not be tried

in the courts of the United States or of a State, a Possession, a Territory or the District of Columbia. However, *see* (iii)(a) below."

C. Subsections 2(B)(iii) and 2(B)(iii)(a) of the Discussion following R.C.M. 202(a) are amended to read as follows.

"(iii) *Exceptions.* There are several exceptions to the general principle that court-martial jurisdiction terminates on discharge or its equivalent.

(*a*) A person who was subject to the code at the time an offense was committed may be tried by court-martial for that offense despite a later discharge or other termination of that status if:

(*1*) For offenses occurring on or after 23 October 1992, the person is, at the time of the court-martial, subject to the code, by reentry into the armed forces or otherwise. See Article 3(a) as amended by the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2505 (1992);

(*2*) For offenses occurring before 23 October 1992,

(*A*) The offense is one for which a court-martial may adjudge confinement for five (5) or more years;

(*B*) The person cannot be tried in the courts of the United States or of a State, a Possession, a Territory, or the District of Columbia; and

(*C*) The person is, at the time of the court-martial, subject to the code, by reentry into the armed forces or otherwise. *See* Article 3(a) prior to the 1992 amendment."

D. The Discussion following R.C.M. 203 is amended to read as follows:

"(a) *In general.* Courts-martial have power to try any offense under the code except when prohibited from so doing by the Constitution. The rule enunciated in *Solorio v. United States,* 483 U.S. 435 (1987) is that jurisdiction of courts-martial depends solely on the accused's status as a person subject to the Uniform Code of Military Justice, and not on the "service connection" of the offense charged.

(b) *Pleading and proof.* Normally, the inclusion of the accused's rank or grade will be sufficient to plead the service status of the accused. Ordinarily, no allegation of the accused's armed force or unit is necessary for military members on active duty. *See* R.C.M. 307 regarding required specificity of pleadings."

E. Subparagraph (F) of the Discussion following R.C.M. 307(c)(3) is amended to read as follows:

"(F) *Subject-matter jurisdiction allegations.* Pleading the accused's rank or grade along with the proper elements of the offense normally will be sufficient to establish subject-matter jurisdiction."

F. The first two sentences of the Discussion following R.C.M. 810(d)(1) are amended to read as follows:

"In approving a sentence not in excess of one more severe than one approved previously, a convening authority is not limited to approving the same or lesser amount of the same type of punishment formerly approved. An appropriate sentence on a retried or reheard offense should be adjudged without regard to any credit to which the accused may be entitled."

G. The following Discussion is inserted after R.C.M. 902(d)(2):

"Nothing in this rule prohibits the military judge from reasonably limiting the presentation of evidence, the scope of questioning, and argument on the subject so as to ensure that only matters material to the central issue of the military judge's possible disqualification are considered, thereby, preventing the proceedings from becoming a forum for unfounded opinion, speculation or innuendo."

H. The Discussion following R.C.M. 1003(b)(6) is amended to read as follows:

"Restriction does not exempt the person on whom it is imposed from any military duty. Restriction and hard labor without confinement may be adjudged in the same case provided they do not exceed the maximum

limits for each. *See* subsection (c)(1)(A)(ii) of this rule. The sentence adjudged should specify the limits of the restriction."

I. The Discussion following R.C.M. 1105(b)(4) is amended by adding the following sentence at the end thereof:

"If the sentencing authority makes a clemency recommendation in conjunction with the announced sentence, see R.C.M. 1106(d)(3)(B)."

J. The following Discussion is inserted after R.C.M. 1106(d)(3)(B):

"The recommendation required by this rule need not include information regarding other recommendations for clemency. *See* R.C.M. 1105(b)(5), which pertains to clemency recommendations that may be submitted by the accused to the convening authority."

K. The Discussion following R.C.M. 1107(d)(1) is amended to read as follows:

"A sentence adjudged by a court-martial may be approved if it was within the jurisdiction of the court-martial to adjudge (*see* R.C.M. 201(f)) and did not exceed the maximum limits prescribed in Part IV and Chapter X of this Part for the offense(s) of which the accused legally has been found guilty.

When mitigating forfeitures, the duration and amounts of forfeiture may be changed as long as the total amount forfeited is not increased and neither the amount nor duration of the forfeiture exceeds the jurisdiction of the court-martial. When mitigating confinement or hard labor without confinement, the convening authority should use the equivalencies at R.C.M. 1003(b)(6) and (7), as appropriate. One form of punishment may be changed to a less severe punishment of a different nature, as long as the changed punishment is one that the court-martial could have adjudged. For example, a bad-conduct discharge adjudged by a special court-martial could be changed to confinement for 6 months (but not vice versa). A pretrial agreement may also affect what punishments may be changed by the convening authority.

See also R.C.M. 810(d) concerning sentence limitations upon a rehearing or new or other trial."

L. The Discussion following R.C.M. 1107(d)(2) is amended by adding the following sentence at the end thereof:

"Since court-martial forfeitures constitute a loss of entitlement of the pay concerned, they take precedence over all debts."

M. The Discussion following R.C.M. 1107(d)(3) is amended to read as follows:

"The convening authority's decision to postpone service of a court-martial sentence to confinement normally should be reflected in the action."

N. The following Discussion is inserted after R.C.M. 1107(f)(2):

"For purposes of this rule, a record is considered to have been forwarded for review when the convening authority has either delivered it in person or has entrusted it for delivery to a third party over whom the convening authority exercises no lawful control (*e.g.*, the United States Postal Service)."

O. The following Discussion is inserted after R.C.M. 1113(d)(2)(A)(iii):

"The convening authority's decision to postpone service of a court-martial sentence to confinement normally should be reflected in the action."

P. The Discussion following R.C.M. 1201(b)(1) is amended to read as follows:

"A case forwarded to a Court of Military Review under this subsection is subject to review by the Court of Military Appeals upon petition by the accused under Article 67(a)(3) or when certified by the Judge Advocate General under Article 67(a)(2)."

Q. The Discussion following R.C.M. 1301(d)(1) is amended to read as follows:

"The maximum penalty which can be adjudged in a summary court-martial is confinement for 30 days, forfeiture of two-thirds pay per month for one month, and reduction to the lowest pay grade. *See* subsection (2) below for additional limits on enlisted persons serving in pay grades above the fourth enlisted pay grade.

A summary court-martial may not suspend all or part of a sentence, although the summary court-martial may recommend to the convening au-

thority that all or part of a sentence be suspended. If a sentence includes both reduction in grade and forfeitures, the maximum forfeiture is calculated at the reduced pay grade. *See also* R.C.M. 1003 concerning other punishments which may be adjudged, the effects of certain types of punishment, and combination of certain types of punishment. The summary court-martial should ascertain the effect of Article 58a in that armed force."

Changes to the Maximum Punishment Chart of the Manual for Courts-Martial, United States, 1984.

Appendix 12, the Maximum Punishment Chart, is amended by adding after Art. 134 (Seizure, destruction, removal, or disposal of property to prevent) the following:

"Self-injury without intent to avoid service In time of war, or while receiving special pay under

37 U.S.C. 310....	DD	5 yrs.	Total
Other.....	DD	2 yrs.	Total"

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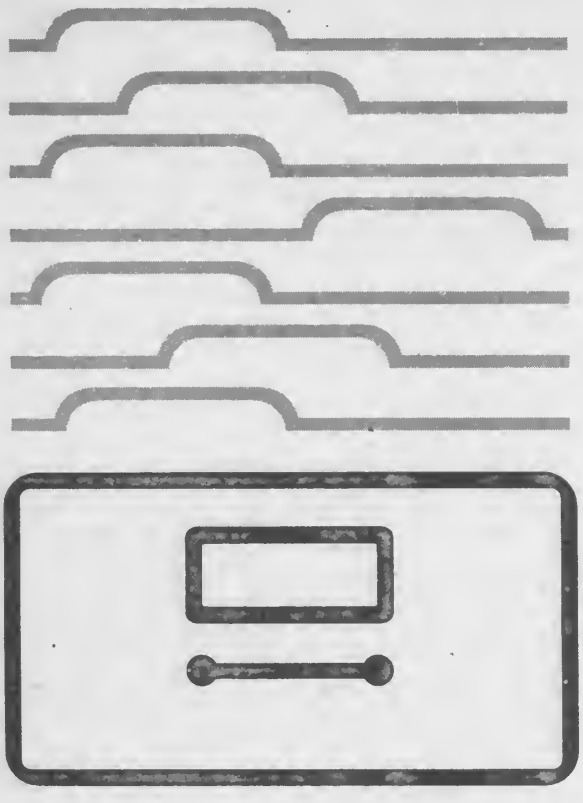

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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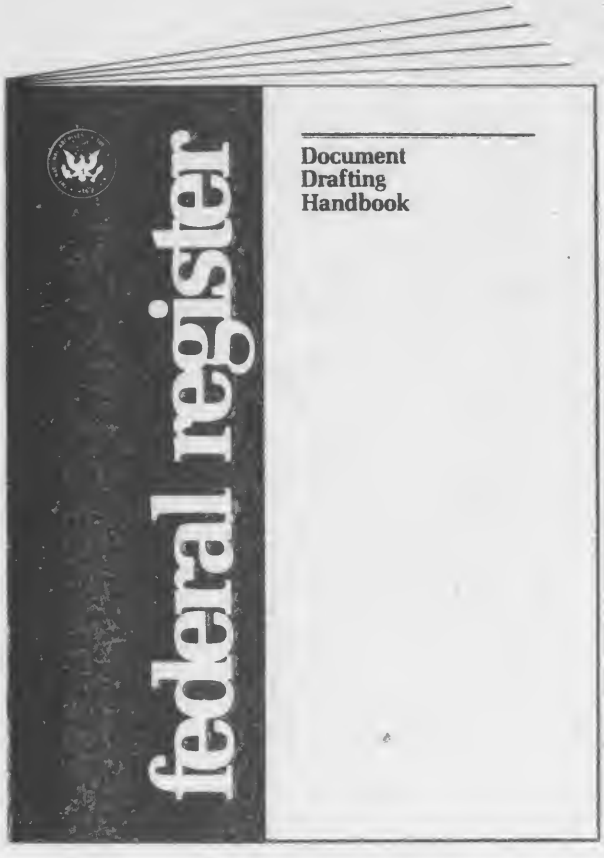

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