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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Schedule A Authority for Employment of Students

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management is revising the Schedule A excepted service appointing authority used by agencies to hire student assistants. These regulations permit appointments under the authority to be made to positions outside the General Schedule. The current language of the authority provides only for appointment to General Schedule positions. However, some positions outside the General Schedule provide practical experience to supplement scientific or technical curricula. It was never intended that the authority should prohibit employment of students in such positions, as long as their employment otherwise meets the conditions prescribed in this authority.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Schedule A authority was established in 1949 for all agencies to use in appointing student assistants. Originally, the authority contained a monetary limit on the compensation that an appointee could receive during the year. In 1958, the authority was revised to set a maximum grade level of GS–7 for appointments under the authority and to replace the monetary limit with a compensation limit stated as a percentage of the grade in which a person was employed. Subsequently, the monetary limit was dropped and the service limit was set at 1040 hours for a service year, but the grade level limit remained at GS–7.

Because the regulatory language of the authority speaks only of GS–7 and makes no provision for equivalent grades, the authority does not clearly permit appointments to positions outside the General Schedule. However, there was no intent to prohibit employment of student assistants in positions outside the General Schedule when such employment otherwise met the conditions for use of the Schedule A authority.

Proposed regulations amending 5 CFR 213.3102(q) to permit appointments to positions at GS–7 and below, or equivalent, were published for comment on June 17, 1987. To ensure that all positions filled under the liberalized language would be of the type the authority was intended to cover, the proposed regulations also prohibited routine trades and crafts employment. Only one Federal agency commented on the proposed regulations; it supported the change.

Therefore, these final regulations contain no changes from the proposed regulations published June 17, 1987.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the procedures used to appoint certain employees in Federal agencies.

List of Subject in 5 CFR Part 213

Government employees.

Office of Personnel Management.
James E. Colvard,
Deputy Director.

Accordingly, OPM is amending 5 CFR Part 213 as follows:

PART 213—[AMENDED]

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, and 8337(h).

2. In § 213.3102(q), the first and fourth sentences are revised to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(q) Positions at grade GS–7, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. * * * No one shall be employed under this provision in—routine clerical positions; routine trades and labor positions, unless such employment clearly relates to a scientific, professional, or technical curriculum; or excess of 1040 working hours a year; except that the 1040 working-hours-a-year limitation shall not apply to positions at grade GS–4 and below that are established in connection with associate degree cooperative education programs. * * *

[FR Doc. 87–22204 Filed 9–24–87; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Bunched Spinach

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule established voluntary United States Standards for Grades of Bunched Spinach. Industry requested establishment of these grade standards in order to provide a common trading language for this product. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Philip C. Eastman, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056, South Building, Washington, DC 20090–6456, (202) 447–5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive

Order 12291 and Departmental Regulation 1521–1 and has been determined to be a "nonmajor" rule. It would not result in an annual effect on the economy of $100 million or more. There would be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies or geographic regions. It would not result in significant effects on competition, employment investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises or domestic or export markets.

The Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because the grade standards it establishes are in-line with current marketing practices. Compliance with these standards will not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of such entities relative to large business. In addition, the standards are voluntary; members of the spinach industry need not have their spinach certified under these standards.

A proposal to establish United States Standards for Grades of Bunched Spinach (7 CFR 51.2891 to 51.2896) was published in the **Federal Register** on October 27, 1986, (51 FR 37914–37915), and invited interested persons to submit written comments.

This proposal was developed at the request of members of the spinanch industry, because presently there are no established U.S. standards for bunched spinach. Copies of the proposal were distributed to various individuals, growers, handlers, receivers, grocery store chains, Federal and State government officials, and industry associations or organizations for review and comment.

The 60-day comment period ended December 26, 1986, and a total of nine comments were received concerning the proposal.

Three of the commenters expressed general support of the rule as proposed. One of these also suggested the need for an additional commercial grade. The Agency does not foresee the active trading of a grade of spinach lower than U.S. No. 2 and believes such a grade is unnecessary at this time. Accordingly, this comment is not adopted. Two additional comments suggested support but recommended modification of the proposal. One suggested adding to the proposal a standard minimum size for each bunch; another recommended adding a standard size for each container. In developing the proposal, the Agency considered specifying a minimum bunch size, as well as a standard container size. These were not included in the proposed rule because they were not deemed practical. The Agency continues to believe they should not be included because of their impractibility and the rigidity they would introduce. Members of the bunched spinach industry pack a wide selection of bunch sizes and consequently use a variety of containers. However, this does not mean that individual firms cannot specify a bunch size or a container. The standards specifically permit such a specification in the "Size" section wherein it states "Size may be specified in connection with the grade in terms of number of bunches per container, or with minimum and/or maximum size of bunches in inches or pounds and/or fractions thereof."

Four commenters were opposed to the proposed rule because they felt they were unnecessary and would not enhance sales of bunched spinach. One of the four comments specifically objected to the "Tolerances" section on the basis that providing for a size tolerance would create problems because spinach does not grow to a uniform size, and limiting the smaller or larger sizes would be difficult. This comment also criticized the definitions contained in § 51.2896. The Agency does not believe these views are correct. The standards are voluntary, not mandatory. They will not impose the rigid restrictions suggested by the comments in opposition to the standards. For example, size need not be specified; but, if specified, the spinach must meet the rule's tolerance to be certified. The standards established herein are intended to provide a tool for the industry which can assist in the marketing of spinach. Members of the industry are free to continue operations without having their product certified if they so choose.

This final rule modifies the definition of "damage" and "serious damage" as proposed in § 51.2896(i) and (h), respectively. The definition of damage in the proposed rule provided that any specific defect described in this section, or any equally objectionable variation of any one of the defects described, or any other defect or combination of defects which materially detracted from the appearance or edible marketing quality would be considered damage. The definition of serious damage provided that any specific defect described in the section, or any equally objectionable variation of any one of these defects described, or any other defect or combination of defects which seriously detracted from the appearance or edible or marketing quality would be considered serious damage.

These general definitions remain unchanged in this final rule. However, this final rule deletes the phrase "and/or materially affects the appearance of the bunch" and the phrase "and/or seriously affects the appearance of the bunch" from the listed defects of seedstems, flower buds, insects, discoloration and mechanical damage as they appear in the definitions of damage and serious damage, respectively.

These phrases are deleted to clarify that the original intent of the proposed definitions was that the basis for determining damage or serious damage for a specific defect is the degree of the defect as specifically described for each individual defect, and not whether the specified defect materially or seriously affected the appearance. However, if any other defect or combination of defects materially or seriously detracts from the appearance or edible or marketing quality of bunched spinach, they then would be considered damage or serious damage, whichever is the case.

The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsiblity to develop and improve standards of quality, condition, grade and packaging in order to encourage uniformity and consistency in commercial practices. The Agency believes this final rule will enhance the marketing of bunched spinach.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

Accordingly, for the reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended (7 U.S.C. 1622–1624).

2. The table of contents for 7 CFR Part 51 is amended to add a new subpart consisting of §§ 51.2891 through 51.2896 to read as follows:

Subpart—United States Standards for Grades of Bunched Spinach

Sec.

Sec.
51.2893 Size.
51.2894 Tolerances.
51.2895 Application of tolerances.
51.2896 Definitions.

3. A new subpart consisting of §§ 51.2891 through 51.2896 is added to read as follows:

Subpart—United States Standards for Grades of Bunched Spinach

§ 51.2891 General.

(a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

(b) These standards are applicable to spinach of goosefoot (Chenopodiaceae) family which is bunched separately and packed separately in containers as either leaves or plants.

§ 51.2892 Grades.

(a) "U.S. No. 1" consists of bunched spinach which meet the following requirements:

(1) Basic requirements:
(i) Similar varietal characteristics;
(ii) Same form;
(iii) Well grown;
(iv) Fairly clean;
(v) Well trimmed; and,
(vi) Fresh.
(2) Free from: Decay.
(3) Free from damage by:
(i) Coarse stalks;
(ii) Seedstems;
(iii) Flower buds;
(iv) Discoloration;
(v) Wilting;
(vi) Foreign material;
(vii) Insects;
(viii) Freezing; and,
(ix) Mechanical or other means.
(4) Tolerances. (See § 51.2894)

(b) "U.S. No. 2" consists of bunched spinach which meet the following requirements:

(1) Basic requirements:
(i) Similar varietal characteristics;
(ii) Same form;
(iii) Well grown;
(iv) Reasonably clean;
(v) Fairly well trimmed; and,
(vi) Fresh.
(2) Free from: Decay.
(3) Free from serious damage by:
(i) Coarse stalks;
(ii) Seedstems;
(iii) Flower buds;
(iv) Discoloration;
(v) Wilting;
(vi) Foreign material;
(vii) Insects;
(viii) Freezing; and,
(ix) Mechanical or other means.
(4) Tolerances (See § 51.2894)

§ 51.2893 Size.

Size may be specified in connection with grade in terms of number of bunches per container, or with minimum and/or maximum size of bunches in inches or pounds and/or fractions thereof.

§ 51.2894 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) *Defects*—(1) *U.S. No. 1.* 12 percent for bunches in any lot which fail to meet the requirements of this grade: Provided, that included in this amount not more than 6 percent shall be allowed for defects causing serious damage; and, Provided, further, that included in this latter amount not more than 3 percent for bunches that are affected by decay.

(2) *U.S. No. 2.* 12 percent for bunches in any lot which fail to meet the requirements of the specified grade: Provided, that included in this amount not more than 3 percent for bunches which are affected by decay.

(b) *Size.* 10 percent in any lot for bunches which are smaller than a specified minimum size and 15 percent which are larger than a specified maximum size.

§ 51.2895 Application of tolerances.

The contents of individual containers in a lot shall be the sample and, based on sample inspection, are subject to the following limitations:

(a) For a tolerance of 10 percent or more, individual packages in any lot may contain not more than one and one-half times the tolerance specified, except that when the package contains 13 bunches or less, individual packages may contain not more than double the tolerance specified; Provided, that the averages for the entire lot are within the tolerances specified for the grade.

(b) For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified. Provided, that at least one bunch which does not meet the requirements shall be allowed in any one package, And provided further, that the averages for the entire lot are within the tolerances specified for the grade.

§ 51.2896 Definitions.

(a) "Similar varietal characteristics" means that the spinach shall be of one type, such as crinkly leaf type or flat leaf type. No mixture of types shall be permitted which materially affects the appearance of the bunch.

(b) "Same form" means bunches and containers shall contain either plants or leaves with no more than a 15 percent by weight mixture of the other in either the bunch or the container.

(c) "Well grown" means not stunted or poorly developed.

(d) "Fairly clean" means generally free from dirt, sand or other adhering foreign matter and the appearance of the bunch is not materially affected.

(e) "Reasonably clean" means mostly free from dirt, sand or other adhering foreign matter and that the appearance of the bunch is not seriously affected.

(f) "Well trimmed" means for plants that the roots are no longer than one inch below the common point of attachment of the leafstems, and for leaves that not more than 15 percent of the leaves in the bunch have leafstems longer than the length of the attached leaf.

(g) "Fairly well trimmed" means for plants that roots are no longer than two inches below the common point of attachment of the leafstems, and for leaves that not more than 15 percent of the leaves in the bunch have leafstems longer than one and one-half times the length of the attached leaf.

(h) "Fresh" means not more than slightly wilted.

(i) "Damage" means any specific defect described in this section or an equally objectionable variation of any one of these defects, or any other defect or any combination of defects which materially detracts from the appearance or edible or marketing quality. The following specific defects shall be considered as damage:

(1) Seedstems when more than one-fourth the length of the longest leaf in the bunch.

(2) Flower buds when mostly opening in the bunch.

(3) Insects when scattered or concentrated or when insect feeding materially affects the appearance of the bunch.

(4) Discoloration when affecting an aggregate area of more than 10 percent of the total surface area of the leaves in the bunch.

(5) Mechanical damage when more than 25 percent of the leaves in the bunch are crushed, torn or broken.

(j) "Serious damage" means any specific defect described in this section or an equally objectionable variation of any one of these defects, or any other defects or any combination of defects which seriously detracts from the appearance or the edible or marketing quality. The following specific defects shall be considered as serious damage.

(1) Seedstems when more than one-half the length of the longest leaf in the bunch.

(2) Flower buds when generally open in the bunch.

(3) Insects when very concentrated or when the insect feeding seriously affects the appearance of the bunch.

(4) Discoloration when affecting an aggregate area of more than 25 percent of the total surface area of the leaves in the bunch.

(5) Mechanical damage when more than 50 percent of the leaves in the bunch are crushed, torn or broken.

Done in Washington, DC, on: September 18, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-22132 Filed 9-24-87; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Director Compensation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), revises regulations relating to the compensation of members of Farm Credit System (System) district boards. The revisions implement Farm Credit Administration Order No. 866 and section 5.5 of Farm Credit Act of 1971, 12 U.S.C. 2226, as amended (Act), as the statute authorizes the FCA to approve the compensation paid to district directors for undertaking certain functions or activities.

EFFECTIVE DATE: The revisions shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published.

FOR FURTHER INFORMATION CONTACT: Nancy E. Lynch, Senior Attorney, or, Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On December 9, 1986 the FCA published for comment a proposed regulation relating to the compensation of members of System district boards (51 FR 44308). The proposed regulation combined existing regulations §§ 611.1020, 611.1021, 611.1022, 611.1030, and 611.1031 into a new § 611.1020. The FCA received comments from the Farm Credit Corporation of America (FCCA), the Farm Credit District of Texas (Texas District) and the Farm Credit District of Baltimore (Baltimore District). The FCA Board has carefully analyzed and considered each comment and responds to them on the basis of a thorough consideration of the merits of the positions expressed.

The FCCA stated that its comments were made on behalf of its member banks. The Texas District also submitted a separate letter expressing its agreement with these comments. In its comments, the FCCA first noted that language had been omitted from the last sentence of § 611.1020(a) of the proposed regulation. The FCA Board acknowledges that language was inadvertently omitted from this sentence. The omitted language has been added to the final regulation at the end of the last sentence of § 611.1020(a)

The FCCA also expressed concern that the last sentence of proposed § 611.1020(a) could be construed to prohibit persons serving as district board directors from being compensated by a Federal land bank association (FLBA), production credit association (PCA), or cooperative of which they are a member, for activities undertaken on behalf of these organizations. The Baltimore District also raised this concern in the comments that it submitted.

The FCA Board did not intend to prohibit district board directors from receiving compensation for services performed on behalf of a FLBA, PCA or cooperative. However, such service is not part of a district board director's official responsibilities. Therefore, as a clarification, the last sentence of § 611.1020(a) has been revised to read "* * * may not be compensated as a district board director * * *."

The Baltimore District stated a general concern that the proposed regulation requires submission of more detailed information than is appropriate for FCA, as an arm's-length regulator, to require. It suggested that the decision-making authority regarding what information is to be acquired pursuant to the regulation should rest with the district boards. The Baltimore District did not specifically object to any particular type of information that the regulation requires to be maintained and did not dispute the need for the information. The FCA Board has determined that the documentation of compensation and expense allowances that district boards are required to maintain pursuant to § 611.1020(c) provides a reasonable means of helping to ensure compliance with the regulation.

The Baltimore District also commented that, because of the daily limit on compensation and the requirement that district boards base their compensation policy primarily on meeting attendance, sufficient recognition is not given to the effort required by directors to handle routine matters and constituent problems. It also requested FCA to clarify whether compensation is allowed for participation in duly called telephone meetings. A method of payment suggested by the Baltimore District consisted of an annual retainer to cover regular monthly meetings and preparation time for such meetings with a per diem allowance for nonroutine matters. The Baltimore District stated that precedent for this arrangement is found in the compensation allowed to directors of the Federal National Mortgage Association (Fannie Mae) and Student Loan Marketing Association (Sallie Mae).

At the present time, the FCA Board declines to amend the regulation to specifically provide for a retainer method of compensation, such as the one used by Fannie Mae and Sallie Mae. A difference exists between the organization of Fannie Mae and Sallie Mae and the Farm Credit System. Unlike Fannie Mae and Sallie Mae, the System is not a single, centralized entity. In addition, section 5.5 of the Act expressly authorizes compensation to district board members for attending meetings of the board as district board and while acting as directors of the district banks, and directs FCA to set the level of compensation. Accordingly, under the regulation, payment for meeting attendance remains an important part of a district board director's overall compensation. However, as the Baltimore District notes in its comments, the Farm Credit Amendments Act of 1985 restructured FCA into an arm's-length regulator. The regulation implements this congressional directive by providing district boards with the opportunity to make policy decisions regarding other types of services for which district directors may be compensated. While the prior § 611.1020 based compensation on "attendance at board meetings and special assignments," § 611.1020(b) of the final regulation directs "(e)ach district board to develop a written policy addressing compensation." Therefore, district boards are provided the flexibility to monitor and control the number of days for which compensation and allowances are paid.

Moreover, § 611.1020(b) specifically states that the list of items to be addressed in the written policy of each district board regarding director compensation is a "minimum," thereby affording flexibility to include additional types of official services in the

compensation policy. The district board's policy-making authority is limited by the requirement that only those services performed in a district board director's official capacity are eligible for compensation. Should a district board determine that some kind of retainer method of compensation is appropriate, the FCA would review the documentation justifying the decision in the normal examination process. Should FCA find that director compensation set by any district board is beyond reasonable bounds, FCA retains the authority under section 5.5 of the Act to require adjustment of the level of compensation and to address any related unsafe of unsound practices in a System bank.

In response to the Baltimore District's specific concern about participation by telephone at duly convened meetings, the FCA Board would not object if a district board policy included a provision for compensation for such participation. However, the Board expects any such district board policy to include standards defining the level of active participation in, and contribution to, telephone meetings necessary in order to be compensated for such meetings. The documentation requirements set forth in § 611.1020(c) would apply to compensation paid pursuant to such a policy.

List of Subjects in 12 CFR Part 611

Accounting, Agriculture, Archives and records, Banks, Banking, Credit, Government securities, Investments, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is revised as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority: 12 U.S.C. 2031, 2061, 2162, 2183, 2216–2216k, 2243, 2244, 2250, 2252.

Subpart F—General Rules for the Districts

2. Section 611.1020 is revised to read as follows:

§ 611.1020 Compensation of district board members.

(a) Each district board director may be compensated for services performed in that person's official capacity as a director of the district banks or as a member of the district board, provided such compensation is fair and reasonable. Payment of such compensation shall be consistent with the compensation policy established by a district board in accordance with 5.5 of the Act and this regulation. A district board director may not be compensated as a district board director for undertaking activities on behalf of Federal land bank associations, production credit associations, cooperatives of which the director is a member, or for performing other assignments of a nonofficial nature.

(b) Each district board shall develop a written policy regarding the compensation of district directors. The policy shall address, at a minimum, the following areas:

(1) The activities or functions for which the attendance or directors is necessary and appropriate and may be compensated.

(2) The rate of compensation to be paid district directors, which shall not exceed $200 per day, plus reasonable allowances for travel, subsistence, and other related expenses incurred in connection with such activities or functions.

(3) The formula used to determine each director's rate of compensation and allowance for expenses, and the timing and frequency when such compensation and allowance is periodically adjusted.

(4) The extent of the compensation to be allowed directors for travel time involved in attending such activities or functions.

(5) The circumstances, if any, under which travel and subsistence expenses for directors' spouses are a necessary expense for which reimbursement may be made.

(c) Each district board shall maintain records documenting all compensation and expense allowances paid to directors by such board. These records shall specify:

(1) The activity or function for which the director is being compensated;

(2) The reason the attendance of the director (and the director's spouse) at such activity or function is necessary and appropriate;

(3) The duration of the director's stay and the location of such activity or function;

(4) The compensation paid the director and the total payments made by the institution in order for the director to attend the activity or function; and

(5) The amount of necessary expenses of the director (and the director's spouse) that are reimbursed and an itemized explanation of the purpose and justification for the expenses.

§§ 611.1021, 611.1022, 611.1030 and 611.1031 [Removed and Reserved]

3. Sections 611.1021, 611.1022, 611.1030, and 611.1031 are removed and reserved.

Elizabeth A. Kirby,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 87–22133 Filed 9–24–87; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 382

[Docket Nos. RM87–3–002 through 018; Order No. 472–B]

Annual Charges Under Omnibus Budget Reconciliation Act of 1986

Issued September 16, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order granting rehearing in part, denying rehearing in part, and making conforming amendments.

SUMMARY: The Federal Energy Regulatory Commission grants in part rehearing of its final rule regarding "Annual Charges Under the Omnibus Budget Reconciliation Act of 1986," 52 FR 21263 (June 5, 1987). The rehearing order removes certain types of gas volumes and oil revenues from the annual charge assessment computations, and specifies the required contents of a gas tariff filing for gas pipelines seeking to pass through their annual charge expenses to their customers through the use of an annual charge mechanism.

EFFECTIVE DATE: November 4, 1987.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8308.

SUPPLEMENTARY INFORMATION:

Note.—Appendixes A–D are available from the Federal Energy Regulatory Commission at the address listed under **"FOR FURTHER INFORMATION CONTACT."**

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction and Background

The Federal Energy Regulatory Commission (Commission) grants in part and denies in part timely requests to

rehear [1] portions of Order No. 472.[2] That final rule established annual charges as required by section 3401 of the Omnibus Budget Reconciliation Act of 1986.[3] Many of the arguments raised on rehearing are reiteration of comments filed in response to the notice of proposed rulemaking [4] in this docket. The Commission has already fully addressed these issues. However, applicants rais new issues. These are specifically discussed below.

II. Discussion

A. Constitutionality of the Budget Act and the Annual Charges Regulations

Numerous entities have again raised the argument that the enabling statute and therefore the annual charges promulgated under that statute are unconstitutional.[5] The Commission continues to believe that it must accept the constitutionality of a statute enacted by Congress, and that the regulations implementing the statute are likewise constitutional.[6] In any event, the Commission believes that Congress properly delegated the authority to promulgate these regulations to the Commission and that the Commission has not exceeded its authority.

B. Multiple Assessment of Energy Units

Many entities question the propriety of the Commission assessing an annual charge on a unit of energy each time it moves from one regulated entity to another (multiple assessment).[7] In Order No. 472, the Commission adopted this approach in lieu of the method recommended in the petition for rehearing, *i.e.*, that the Commission impose a Gas Research Institute (GRI)-type surcharge which would attach to a unit of energy only once, as it was leaving the Commission's sales or transportation jurisdiction. In supporting their position that multiple assessment is unfair and inequitable, the petitioners argue that the Conference Report merely allowed, but did not require, the Commission to base its annual charge computations on:

(1) The type of Commission regulation which applies to such person such as gas pipeline or electric utility regulation;

(2) The total direct and indirect costs of that type of Commission regulation incurred during such year;

(3) The amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and

(4) The total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.[8]

Petitioners further argue that multiple assessment unfairly comes from "upstream" pipeline suppliers and transporters; [9] unfairly assesses multiple charges against subsidiaries, parents, affiliates, and power pool members selling or transporting the same energy; [10] and unfairly assesses the same annual charge unit amount on gas traveling through long and short natural gas pipelines despite the "fact" that regulation of gas traveling through short pipelines requires far less Commission resources.[11]

The Commission continues to believe that its approach of assessing a unit of gas or electricity each time it is sold or transported by a jurisdictional entity is fully in accord with Congressional guidance that the Commission consider: (1) The amount of energy transported or sold in interstate commerce by *each* regulated entity, and compare that amount with (2) the total amount of energy transported or sold in interstate commerce by *all* similar entities.[12] In other words, the Commission is assessing *entities* on the basis of their throughput, rather than assessing *energy volumes* as such. As noted above, annual charges computed under a GRI-type approach would be based on a comparison quite different from that set forth in the Conference Report. They would be calculated by comparing (1) the amount of energy transported or sold by a regulated entity to other entities which are not subject to Commission jurisdiction and (2) the total amount of energy sold or transported by all regulated entities to other entities which are not subject to Commission jurisdiction.

The Commission disagrees that multiple assessment unfairly burdens the "downstream" natural gas pipelines (or electric utilities) and their customers. Those entities frequently pay multiple transportation expenses to receive their energy, due to the presence of "middlemen." For instance, in its rates, an "upstream" pipeline passes along to the "downstream" pipelines the cost of obtaining its natural gas pipeline certificates. Thus, the fact that a "downstream" pipeline incurs more certificate-related costs than an "upstream" pipeline merely results from the pipelines' respective locations, not from any unfairness in the regulations. The same principle applies to annual charges.

Moreover, as noted in the final rule, the annual charge assessments are based on the expenses incurred by the Commission in regulating the energy industries, not on the expenses of the industry members in acquiring their energy. Because the Commission incurs expenses in providing benefits not specifically sought through company filings (such as audits, publication of the *FERC Reports*, availability of staff for informal consultation, *etc.*) and also incurs expenses not fully recouped through filing fees regarding every sale and transportation it reviews and regulates or certificate it issues (even for those certificates issued to subsidiaries, parents, affiliates, and power pool members), the Commission is justified in recouping those expenses from the entities which file for and receive those rates and certificates, regardless of their relationship to their suppliers or purchasers. Similarly, the Commission must issue certificates and establish rates for small and large pipelines alike. The length of the pipe does not

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[1] A list of timely applications for rehearing is included in Appendix A.

[2] Order No. 472, "Annual Charges Under the Omnibus Budget Reconciliation Act of 1986," 52 FR 21263 (June 5, 1987), III FERC Stats. & Regs. ¶ 30,746, *clarified*, Order No. 472-A, 52 FR 23650 (June 24, 1987), 39 FERC ¶ 61,316.

[3] Act of October 21, 1986, Pub. L. No. 99-509, Title III, Subtitle E, sec. 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1874, 1890-1891 (to be codified at 42 U.S.C. 7178), I FERC Stats. & Regs. ¶ 6253.

[4] 52 FR 3128 (Feb. 2, 1987), IV FERC Stats. & Regs. ¶ 32,434.

[5] Petitions of Interstate Natural Gas Ass'n of America (INGAA) at 3-4; ANR Pipeline Co. and Colorado Interstate Gas Co. (ANR) at 1; Texas Eastern Transmission Corp. (Texas Eastern) at 1 and 5; United Distribution Cos. (UDC) at 1-3; Connecticut Natural Gas Corp. (Connecticut Natural) at 2; Consolidated Gas Transmission Corp. (Consolidated) at 10-11; Central Illinois Public Service Co. (CIPSCo) at 1-2; Southern Company Services Inc. (SCSI) at 2-9) Southern Company Services Inc., Blackstone Valley Electric Co., Boston Edison Co., Central Vermont Public Service Corp., Eastern Edison Co., El Paso Electric Co., EUA Power Corp., Florida Power Corp., Montaup Electric Co., Northern States Power Co., Public Service Co. of Indiana, Inc., Public Service Co. of N.H., and Wisconsin Electric Power Co. (collectively referred to as Electric Utilities Group at 2-9; Edison Electric Institute (EEI) at 2-4.

[6] *See, e.g.*, McDonald v. Board of Election Comm'rs, 394 U.S. 802, 809 (1969) ("Legislatures are presumed to have acted constitutionally. . . .")

[7] Petitions of Columbia Gas Transmission Corp. (Columbia) at 2-3; INGAA at 4-7; ANR at 3-5; Texas Eastern at 2-3 and 9; Consolidated at 2-6; SCSI at 9-11; Electric Utilities Group at 9-11.

[8] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884, *quoted in* Petition of INGAA at 6.

[9] Petitions of ANR at 3-4; Columbia at 2-3; Consolidated at 4.

[10] Petitions of SCSI at 9-11; Electric Utilities Group at 10-11; Columbia at 2-3.

[11] Petitions of Consolidated at 3-4; League of Small Pipelines at 1-3.

[12] *See* 52 FR 21278, *citing* Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

necessarily affect the Commission's regulatory expenses.

C. Failure to Increase the Use of Filing Fees

Numerous petitioners criticize the Commission for failing to assess intervenors filing fees,[13] to assess larger filing fees against natural gas pipelines' competitors,[14] and to use more frequently its direct billing authority for computing filing fees.[15] As noted in the final rule, expansion or variation of the Commission's filing fee requirements is not within the scope of this rulemaking proceeding, the only purpose of which is to promulgate regulations concerning annual charges.[16] The Commission will continue to evaluate its fees annually and will refine its fee structure and change its fees as appropriate.[17]

CIPSCo asserts that the Commission should use its direct billing mechanism to recover costs on a case-by-case basis.[18] CIPSCo asserts that there is no reason why the Commission should limit its direct billing to instances where an individual entity presents an issue which will primarily benefit it and which will cost the Commission five times the average amount needed to decide issues of that kind.[19]

CIPSCo is correct that the Budget Act does not require the Commission to use only annual charges when recovering its costs. However, the Budget Act neither expands nor limits the Commission's authority to assess filing fees under the Independent Offices Appropriations Act of 1952 (IOAA).[20] Whatever costs the Commission could recover under the IOAA, it can still recover under that Act, but no more.

The Commission has already considered that extent to which it can and will utilize its direct billing authority under the IOAA. Under the IOAA, the Commission determined that the smallest practical unit for which it could develop a fee was a filing. It determined that the costs of formal evidentiary hearings initiated in connection with the services involved could not be recovered through a direct fee because of the "considerable practical difficulties in determining the primary beneficiary or beneficiaries of hearings generally."[21] Indeed, the Commission found that, given the way the necessary cost information is reported by Commission staff, "it is not administratively feasible to determine how fees should be assessed for this service [hearings]."[22] It is important to note that the IOAA only required that the Commission use the best *available* records to determine costs and that "new cost accounting systems will not be established solely for this purpose."[23]

D. Gross Receipts Tax Vulnerability

Texas Eastern asserts that the Commission's tracking methodology may subject the assessed amounts to gross receipts taxes in certain jurisdictions.[24] Texas Eastern is correct. However, such taxes would be subject to recovery in the pipelines' rate cases.[25]

E. Prorating of DOE Appeal Costs

Texas Eastern also criticizes the Commission for prorating only to interstate gas pipelines the costs associated with DOE adjustment requests and remedial orders, and for failing to take into account that the parties to the DOE cases are readily identifiable and should bear the costs.[26] The company misreads the final rule. Order No. 472 prorated the DOE appeal expenses across gas pipelines, electric utilities, power marketing agencies, and oil pipelines, not just the natural gas pipelines. Moreover, the Commission discussed at considerable length why it cannot collect the entire expense of these proceedings from the appellants.[27] Texas Eastern has raised no arguments not already fully considered and rejected in the final rule.

F. Filing Fee Credits

Texas Eastern challenges the final rule's approach of reducing program costs by the amount of filing fees collected in the prior year for that program. The company asserts that this approach results in a subsidy for some pipelines at the expense of others.[28] Texas Eastern's argument is correct, but irrelevant. As the Commission noted in the final rule, "under either approach [crediting the filing fees to the program or to the companies which paid the fees], some companies will, in varying degrees, subsidize other companies' shares of this agency's expenses.[29] The Commission concurred with numerous commenters that the crediting of individual companies for their filing fees "would undermine the Commission's filing fee system and would contravene the Commission's policy that those who use the Commission's services should pay more than those who do not."[30] Texas Eastern has raised no arguments which would lead the Commission to alter these conclusions.

G. Carrying Costs for Natural Gas Annual Charges

Petitioners argue that annual charge recipients choosing the annual charge adjustment (ACA) clause option (rather than the rate case option) by which to recoup their annual charges should be able to recoup the time value of the charges.[31] Commenters point out that the recipients will either have to borrow money at some cost to pay the charges or forego alternate interest-paying investments.[32] One commenter suggests that the Commission resolve this problem by providing for "either an interest-bearing mechanism or a built-in, one time interest component in the [ACA] unit charge" which pipelines may pass through to their customers.[33]

The Commission agrees that pipelines should be given an opportunity to collect annual charges carrying costs, to recognize the time value of money. However, the mechanism for seeking recovery of this type of expense currently exists. In a rate proceeding, a pipeline may seek to recover this cost and other such cash working capital

[13] Petitions of INGAA at 7–9; Texas Eastern at 4, 12–13.

[14] Petition of INGAA at 7.

[15] Petition of CIPSCo at 2, 10–12.

[16] 52 FR at 21270–21271. The Commission notes that § 381.107(b)(3) of its regulations permits direct billing of intervenors. 18 CFR 381.107(b)(3) (1987).

[17] 52 FR 21271.

[18] Petition of CIPSCo at 10–11. *Cf.* Petition of Arizona Public Service Co. (APSCo) at 3–4 and 5, in which the company argues that filing fees should recover all the Commission's expenses.

[19] Petition of CIPSCo at 10–11, referring to the standard established for the use of the direct billing mechanism, Order No. 435, "Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers," 50 FR 40347–40351 (Oct. 3, 1985), FERC Stats. & Regs. (Regulations Preambles 1982–1985) ¶ 30,663 at 31,458–31,459, *reh'g denied*, 51 FR 35347 (Oct. 3, 1986), III FERC Stats. & Regs. ¶ 30,713.

[20] 31 U.S.C. 9701 (1982).

[21] Order No. 435, 50 FR at 40351.

[22] *Id.*

[23] *Id.*, *quoting* Budget Circular A–25 at 3.

[24] Petition of Texas Eastern at 10.

[25] The Commission notes that the amount attributable to a gross receipts tax on annual charges is quite small. Assuming a 0.75 percent tax rate on sales-for-resale receipts (such as in New York), a typical natural gas pipeline company would be assessed only about .019 percent of its net income (0.75 percent of the amount by which the annual charges will reduce the gas pipeline industry's net income [2.5 percent]), or $.000015 per Mcf (0.75 percent of the per Mcf ACA unit charge of $.0021).

[26] Petition of Texas Eastern at 11.

[27] 52 FR 21266.

[28] Petition of Texas Eastern at 12.

[29] 52 FR 21267.

[30] *Id.*

[31] For a description of these two options, *see* 52 FR 21278–21279.

[32] Petitions of INGAA at 6; Consolidated at 9.

[33] Petition of Consolidated at 9.

costs. Section 154.63 of the Commission's regulations provides for the filing of a fully developed lead-lag study for purposes of determining whether a pipeline experiences a net expense payment lag in its cash items.[34] The Commission believes that this is the appropriate vehicle for providing pipelines the opportunity to collect the time value of the money used to pay annual charges.

H. Incomplete Recovery of Natural Gas Annual Charges Through Passthrough Mechanism

Two petitioners argue that the annual charge adjustment mechanism is flawed. They claim that the mechanism does not permit downstream gas pipelines to flow through to their customers all of the annual charge assessments passed on to the downstream pipelines in the rates of upstream pipelines.[35] Texas Eastern asserts that the Commission's ACA methodology exposes pipelines to the risk of undercollection.[36] INGAA raises a similar point and also argues that the collection mechanism has the potential for anticompetitive results because pipelines will be required to recover part of their annual charges in the commodity portion of their rates.[37]

Generally, the Commission's gas rate regulation does not guarantee the actual recovery of costs. It only guarantees the opportunity to recover costs. Actual recovery depends on market factors.[38] The annual charge regulations as modified herein provide natural gas pipelines the opportunity to recover both their direct and indirect annual charge expenses.

The Commission adopted the ACA mechanism in order to offer pipelines an alternative to recover of annual charges through Natural Gas Act section 4(e) rate filings.[39] The ACA charge is intended to provide for recovery of a pipeline's own annual charges costs but not the annual charges incurred by other pipelines. To the extent that annual charges are included in the cost of service, and hence the rates, of upstream pipelines, there is no reason why this particular cost component warrants special treatment in the rates of the downstream pipeline purchasing the service. Thus, if a pipeline purchases gas from another pipeline that includes an ACA charge in its sales rate, the purchasing pipeline would treat the ACA charge as part of the purchase price and pass the cost through in its rates as a purchased gas cost. Likewise, if a pipeline ships gas via another pipeline that includes an ACA charge in the transportation rate, the shipping pipeline would pass through the charge in its rates as a transportation cost (booked in Account No. 858—Transportation and Compression by Others).

The annual charge costs included in the rates of upstream pipelines are recoverable, therefore, by the downstream pipeline, and the petitioners have not shown why automatic passthrough of these costs in their ACA charges is necessary. Furthermore, the passthrough of such indirect annual charge expenses would be quite difficult to administer because each pipeline would require a different ACA unit charge, depending on the volumes of gas and the quantities of transportation and storage services it purchases from other pipelines. The ACA mechanism established by the Commission provides for an industry-wide rate calculated at the time annual charges are assessed. If upstream pipeline ACA charges are also included in each pipeline's own ACA unit charge, then each ACA unit charge would be different and the Commission would need to review and verify each calculation.

Texas Eastern points out that the ACA mechanism exposes a pipeline to the risk of underrecovery because the pipeline's throughput over which the ACA is collected may be lower than the throughput on which it was assessed. By the same token, however, the pipeline may reap a benefit if its throughput increases. Over the long term, discrepancies in throughput should balance, because the following year's annual charge will be based on the changed throughput. Moreover, if a pipeline does not wish to risk such underrecovery, it may instead seek to recoup its annual charge expenses in a rate proceeding.

INGAA complains that recovery of annual charge costs in commodity rates is anticompetitive. The Commission disagrees. All interstate pipelines are assessed the same unit charge, so there is no adverse competitive effect as between pipelines. Furthermore, this unit charge, 2.1 mills per Mcf for 1987, should have a *de minimis* effect on gas costs and competition with alternative fuels.

I. Natural Gas System Storage Double Assessment

On June 17, 1987, the Commission issued Order No. 472–A, which clarified that the only natural gas storage volumes to be considered in assessing annual charges will be those storage volumes not also included in the reporting pipeline's sales and transportation volumes. Order No. 472–A was designed to prevent the double assessment of storage volumes inherent in Order No. 472, which provided for the calculation of annual charges based upon all sales and transportation volumes plus all volumes delivered to underground storage. Order No. 472–A recognized that certain volumes delivered to storage will also be sold or transported, and endeavored to alleviate the double assessment of such volumes. While Order No. 472–A precluded the double assessment of all volumes that were delivered to storage and either sold or transported in the same calendar year, it did not preclude the double assessment of volumes delivered to storage but not removed from storage during the same calendar year. ANR, Consolidated, and Columbia object to the Commission's double assessment of

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[34] 18 CFR 154.63 (1987).

[35] Petitions of Columbia at 4; Consolidated at 6–7.

[36] Petition of Texas Eastern at 10–11.

[37] Petition of INGAA at 6–7.

[38] *See, e.g.*, Panhandle Eastern Pipeline Co., 38 FERC ¶ 61,164 at 61,470 (1987).

[39] Pipelines wishing to take advantage of the ACA mechanism must file a tariff sheet with the Commission, as they do when seeking to pass through their GRI-related expenses pursuant to § 154.38(d)(5) of the Commission's regulations. *See* 18 CFR 154.38(d)(5) (1987). Pipelines' ACA-related tariff filings must be made pursuant to § 154.38(d)(6) of the Commission's regulations. This regulation is amended to require that the ACA-related tariff sheets include language specifying the purpose and manner of collecting the ACA (to collect an ACA per unit charge as specified by the Commission, applicable to all the pipeline's sales and transportation schedules), the per unit amount of the ACA (2.1 mills per Mcf for purposes of recouping the pipelines' FY 1987 annual charges bill), the proposed effective date of the tariff change (30 days after the filing of the tariff sheet, unless a shorter period is specifically requested and justified in a waiver petition), and an expression of the pipeline's intent not to recover any annual charges recorded in FERC Account No. 928 in a NGA section 4 rate case. These tariff sheets must be accompanied by a $4,700 filing fee pursuant to § 381.204 of the Commission's regulations. 18 CFR 381.204 (1987). Subsequent tariff filings amending the initial ACA-related tariff sheet must be accompanied by the filing fee specified in § 381.205 of the Commission's regulations. However, if a pipeline files in 1987 a revision of an ACA-related tariff filing for the purpose of complying with the new requirements stated above, the pipeline will not be required to pay a filing fee for the revised tariff sheet. A pipeline seeking to take advantage of the ACA mechanism must file a tariff sheet for *all* its sales and transportation rates.

A pipeline availing itself of this option should account for its annual charges by charging the amount to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts. Section 382.106(a) of the Commission's annual charges regulations failed to specify the account into which these pipelines should charge their annual charges expenses. *See* 52 FR 21294. The Commission has amended that regulation to correct this omission.

annual charges on these unremoved system supply storage volumes.[40]

The Commission in Order No. 472-A intended to remove from the annual charges calculations all storage volumes other than contract storage volumes.[41] Order No. 472-A did not fully accomplish that objective. The Commission therefore will give natural gas pipelines the opportunity to inform the Commission of the volumes of gas or LNG which were: (1) Delivered to storage as system supply storage and subsequently sold or transported during calendar year 1986, (2) delivered to storage as system supply storage and intended for transportation or sale in a subsequent calendar year, and (3) delivered to storage as contract storage volumes. Natural gas pipelines may file this data under oath with the Commission by close of business, November 25, 1987.[42] Pipelines should file the data with the Office of the Secretary, Att'n: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges this fall (in order to reflect the Commission's actual FY 1987 expenses),[43] it will also consider such data and will revise the natural gas pipelines' bills to remove assessments based on system supply storage intended for transportation or sale in a subsequent year. Any company that fails to file the data requested in this order will not benefit from the recalculation of storage volumes for the 1987 annual charge bills.

For future years, the Commission will require such data in its Form Nos. 2 and 2-A. To this end, the Commission is amending its instructions for these forms to require that every natural gas pipeline provide such data as part of a footnote on pages 520-521 of Form No. 2 or pages 18-19 of Form No. 2-A.[44]

J. Natural Gas Field Sales Double Assessment

Columbia argues that pipeline production field sales reflected in its Form No. 2 should not be included in calculating its annual charges because they have also been included in Columbia's transportation volumes.[45] The Commission in Order No. 472 did not intend such a double assessment. The Commission will therefore give a natural gas pipeline the opportunity to inform the Commission of the volumes of pipeline production field sale which were included in both the sales and the transportation totals in Form No. 2, page 521, lines 42 and 46, or Form No. 2-A, page 18, lines 11 and 13-15. The pipelines may file this data under oath with the Commission by close of business November 25, 1987.[46] Pipelines should file the data with the Office of the Secretary, Att'n: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges this fall (in order to reflect the Commission's actual FY 1987 expenses),[47] it will also consider such data and will revise the pipelines' bills to correct such double assessment. A pipeline company that fails to file the data requested in this order will not benefit from this correction in the recalculation of the 1987 annual charge bills.

In future years, the Commission will require such data in its Form Nos. 2 and 2-A. To this end, the Commission is amending its instructions for these forms to require that every natural gas pipeline provide such data as part of a footnote on pages 520-521 of Form No. 2 or pages 18-19 of Form No. 2-A.[48]

K. Exemption of Natural Gas Producers and Intrastate Pipelines

INGAA and Texas Eastern object to the Commission's exemption of natural gas producers and section 311 intrastate pipelines.[49] However, these petitioners raise no arguments not previously considered and rejected in the final order.[50]

L. Assessment of Limited Jurisdiction Certificate Holders

Connecticut Natural seeks a clarification that Order No. 472 does not apply to natural gas companies holding limited jurisdiction certificates under section 7(c) of the Natural Gas Act.[51] The company also requests the Commission to revise § 382.102(a) of its annual charges regulations to provide that companies holding limited jurisdiction certificate authority are exempt from annual charges. As already noted in the final rule, the Commission intends that natural gas companies holding limited jurisdiction certificates not be assessed annual charges.[52] The definition of "natural gas pipeline company" in § 382.102(a) of the Commission's annual charges regulations is amended to reflect this intent.

M. Special Requests From Natural Gas Companies

1. *National Fuel Gas Distribution Corporation (NFGDC).* In the Commission's Notice of Proposed Rulemaking issued in this proceeding on January 28, 1987,[52a] NFGDC was listed as a "Section 7(f)" company. In its comments, NFGDC advised the Commission that its section 7(f) status had been vacated pursuant to the Commission's Order of November 4, 1986, in Docket No. CP86-351, which

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[40] Petitions of ANR at 5-6; Consolidated at 9-10; Motion for Clarification of Columbia at 1-3.

[41] *See* 52 FR 23650 (Part V) (June 24, 1987).

[42] To facilitate such natural gas pipelines' timely filing of this data, the Commission is serving a copy of this order on each pipeline which is listed in Appendix B of Order No. 472 and which either reported storage volumes in its 1986 annual report or filed a 1986 Form No. 2-A. This service is by United States Mail on the date of issuance of this order.

[43] *See* 52 FR 21269. Any adjustments will be reflected by a credit to the 1988 annual charges bills of those companies filing the data specified above.

[44] The instructions which Order No. 472-A added to these pages [52 FR 23650 [June 24, 1987], 39 FERC ¶ 61,316] are deleted in their entirety, and are replaced with the following language:

Also indicate by footnote (1) the system supply volumes of gas which are stored by the reporting pipeline during the reporting year and also reported as sales, transportation and compression volumes by the reporting pipeline during the same reporting year, (2) the system supply volumes of gas which are stored by the reporting pipeline during the reporting year and which the reporting pipeline intends to sell or transport in a future reporting year, and (3) contract storage volumes.

This language supplements the instructions which Order No. 472 added to these pages (see 52 FR 21274 n. 151 and 21297-21300 [Appendices C and D]). Revised pages 520-521 and 18-19 are in Appendices B and C and contain all instructions added to those pages as a result of this rulemaking proceeding.

The Commission also notes that it is clarifying instruction 4 on pages 520-521 of Form No. 2 and instruction 2 on pages 18-19 of Form No. 2-A to replace the reference to "nonjurisdictional gas" with the reference to "gas not subject to Commission regulation." The Commission has incorporated this change into the revised pages 520-521 and 18-19. Finally, the Commission notes that it is making a similar revision in § 382.202 of the annual charges regulations by deleting the word "jurisdictional" from the phrase "jurisdictional gas subject to Commission regulation."

[45] Petition of Columbia at 3-4.

[46] To facilitate such natural gas pipelines' timely filing of this data, the Commission is serving a copy of this order on each pipeline which is listed in Appendix B of Order No. 472. This service is by United States Mail on the date of issuance of this order.

[47] *See* 52 FR at 21269. Any adjustments will be reflected by a credit to the 1988 annual charges bills of those companies filing the data specified above.

[48] The new instructions added to pages 520-521 of Form No. 2 and pages 18-19 of Form No. 2-A concerning pipeline production field sales are:

Also indicate the volumes of pipeline production field sales which are included in both the company's total sales figure and the company's total transportation figure [lines 42 and 46 of page 521 on Form No. 2, or lines 11 and 13-15 of page 19 on Form No. 2-A].

Revised pages 520-521 and 18-19 are attached as Appendices B and C of this order, and contain all instructions added to those pages as a result of this rulemaking proceeding.

[49] Petitions of INGAA at 7-9; Texas Eastern at 1, 5-9.

[50] *See* 52 FR 21271-21273.

[51] Petition of Connecticut Natural at 1-3, referring to 15 U.S.C. 717f(c) (1982).

[52] *See* 52 FR at 21276.

[52a] 52 FR 3128 (Feb. 2, 1987), IV FERC Stats. & Regs. ¶ 32,434.

issued NFGDC a certificate to transport gas to Eastern Natural Gas Company (Eastern) and to construct and operate measuring facilities.[53] In Order No. 472, the Commission deleted NFGDC from the list of section 7(f) companies and placed it upon no other list. It also exempted all section 7(f) companies from annual charges.

NFGDC seek clarification that its absence from the lists appearing in Appendix B to Order No. 472 means that it is not subject to annual charges. In the November 4, 1986 order, the Commission limited its jurisdiction over NFGDC to the certificated services.[54] The order expressly stated that certification of the services to Eastern did not affect the nonjurisdictional status of NFGDC's other operations.[55] As a limited jurisdiction certificate holder, NFGDC is not subject to annual charges.[56]

2. *Phillips Petroleum Company.* Both Phillips Petroleum Co. and Marathon Oil Co. were listed as "Importers with NGA Sections 3 and Presidential Permit Authority Only," one of the classes of companies not subject to annual charges. Phillips states that these two companies export rather than import natural gas from the Kenai LNG plant in the Cook Inlet area of Alaska, and that Phillips 66 Natural Gas Co. has succeeded to export permit previously held by Phillips Petroleum Co. relating to the Kenai LNG sale. The Commission will correct its record to reflect these changes. However, as neither company pays annual charges, these corrections will not affect the amount of any company's annual charge bill.

N. Oil Not Subject to the Commission's Oil Transportation Jurisdiction

Eureka Pipe Line Co., Natural Transit Co. and Arco Pipe Line Co. argue that the Commission inadvertently failed to exclude revenue from the intrastate transportation of oil in computing annual charges for oil pipelines. It was not the Commission's intent to include such revenue, for to do so would contravene Congressional intent that the Commission base its annual charges assessments on "the amount of energy . . . transported or sold subject to Commission regulation." [57]

The Commission is therefore amending the definition of "operating revenues" in § 382.102(o) of the annual charges regulations, and will give a jurisdictional oil pipeline the opportunity to file a sworn statement which separates: (1) The revenue in FERC Account Nos. 200, 210 and 220 derived from the interstate transportation of oil from (2) the revenue in FERC Account Nos. 200, 210 and 220 derived from the intrastate transportation of oil. Such statements must be filed with the Commission by close of business, November 25, 1987.[58] Pipelines should file the data with the Office of the Secretary, Att'n: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges this fall (in order to reflect the Commission's actual FY 1987 expenses),[59] it will also consider such data and will revise the oil pipelines' bills to reflect only the revenue derived from the interstate transportation of oil. A company that chooses not to file the data requested in this order will not benefit from the exclusion of intrastate transportation revenue in the recalculation of the 1987 annual charge bills.

In the future, the Commission will require this data in its Form No. 6. Therefore, the Commission is amending its instructions for Form No. 6 to require that every oil pipeline provide such data as part of a footnote on page 301 of that form.[60]

O. Proposed Apportionment of Electric Program Costs

In the final rule, the electric program costs (with the exception of the costs of regulating PMAs) are apportioned among IOUs based upon each IOU's total jurisdictional adjusted sales for resale and adjusted coordination sales. Some IOUs seek rehearing on this issue, asserting that there is no relationship between the number of kilowatt-hours sold and the budgetary impact of regulation of their rate schedules on the Commission.[61]

The Commission is not persuaded by these previously raised arguments. As Order No. 472 stated, the Conference Report indicates Congress' intent that the annual charges be assessed on the basis of the "annual sales or volumes transported." [62]

The Commission has been asked to reconsider its decision to include certain long-term coordination and transmission sales in the adjusted sales for resale category. APSCo alleges that these transactions "normally entail a nominal review by the Commission upon submission of the initial contract." [63] The Commission disagrees with APSCo's argument. Rates for long-term coordination and transmission sales usually require greater use of Commission resources than those for sales which have a duration of less than five years. Long-term sales rates tend to be based upon fully distributed costs and require cost projections (test year data) which must be reasonable. Rates for short-term coordination or transmission sales, on the other hand, are not necessarily exclusively cost-based, but may be made for many non-cost reasons as well.

CIPSCo maintains that the Commission should not assess annual charges on transmission rate volumes because the charges would discourage voluntary transmission. CIPSCo also asserts that these rates benefit the buyer or seller of the power more than the transmitting entity.[64] The Commission believes that the assessment of annual charges on the order of 1/100 of a mill per kilowatt-hour should have no appreciable effect on voluntary transmission, especially in light of the facts that transmitting entities often add up to 1 mill per kilowatt-hour to the otherwise-justified rates for unquantifiable costs. The Commission has seen no evidence that this additional one mill has jeopardized the provision of voluntary transmission service.[65] *A fortiori*, the addition of 1/100 of a mill would not discourage these transactions.

SCSI objects to the Commission's inclusion of certain unit sales in the adjusted sales for resale category. SCSI's assertion brings to light a fundamental misunderstanding reflected

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[53] 37 FERC ¶ 61.082.

[54] *Id.* at 61.214.

[55] *Id.*

[56] *See* Part II L *supra.*

[57] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[58] To facilitate oil pipeline's timely filing of this data, the Commission is serving a copy of this order on each such pipeline listed in Appendix E of Order No. 472. This service is by United States Mail on the date of issuance of this order.

[59] *See* 52 FR 21269. Any adjustments will be reflected by a credit to the FY 1988 annual charges bills of those companies filing the data specified above.

[60] A revised page 301 of Form No. 6 is in Appendix D. The new instructions are:

Also indicate by footnote: (1) The revenues in Account Nos. 200, 210 and 220 which are derived from the interstate transportation of oil, and (2) the revenues in Account Nos. 200, 210 and 220 which are derived from the intrastate transportation of oil. The sum of the two revenue figures should equal the total revenues in Account Nos. 200, 210 and 220.

[61] Petitions of APSCo at 5, 7; CIPSCo at 8.

[62] 52 FR 21287, *quoting* Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[63] Petition of APSCo at 6.

[64] Petition of CIPSCo at 17.

[65] *See* Order No. 84, "Regulations Limiting Percentage Adders in Electric Rates for Transmission Services," 45 FR 31294 (May 13, 1980), FERC Stats. & Regs. (Regulations Preambles 1977–1981), ¶ 30,153, *reh'g denied*, 12 FERC ¶ 61,017 (1980); Allegheny Power System, 20 FERC ¶ 61,336 (1982).

in many petitions for rehearing. The Budget Act does not require that the Commission tailor the annual charges so closely as to, in effect, direct bill all jurisdictional entities. The Commission may utilize reasonable generalized categories for assessment. In general, the rates for long-term unit power sales require a similar use of Commission resources to that required for other sales-for-resale transactions. Consequently, the assessment of the same annual charge per kilowatt-hour for some unit sales as for sales for resale does not give rise to an unreasonable subsidy, nor is it likely to discourage unit power sales.

SCSI maintains that the final rule creates inequities by assessing annual charges to energy transactions among subsidiaries, parents, affiliates, or power pool members. In support of this contention, SCSI makes the same arguments previously raised in response to the NOPR, *i.e.*, these transactions are not normally intended to generate a profit, and such annual charges may produce multiple billing for the same unit of electricity.[66] SCSI further asserts that these types of transactions should be exempted because annual charges would discourage voluntary interconnection and coordination of electric facilities which Congress, in section 202(a) of the Federal Power Act (FPA),[67] specifically instructed the Commission to promote and encourage.

The Commission has already adequately addressed the issue of the role that the profit motive is to play in the assessment of annual charge. Order No. 472 also adequately justified the so-called "multiple billing" for the same kilowatt-hour.[68] The Commission intends to continue encouraging voluntary interconnection.[69] However, the Commission does not believe than an annual charge of the magnitude being charged will affect an entity's decision of whether to engage in voluntary interconnection and coordination.

P. Absence of an Automatic Tracking Mechanism for Electric Annual Charges

Several IOUs argue that the Commission should reconsider its decision not to establish an automatic tracking mechanism for near-contemporaneous recovery of the electric industry's annual charges.[70] The IOUs are particularly concerned with what they characterize as arbitrary and discriminatory treatment that they will receive compared to the natural gas pipelines (which are allowed to use a rate adjustment mechanism to recover annual charges).

The Commission continues to believe that the IOU's alleged need for automatic tracking mechanisms does not outweigh the Commission's long-established policy against such tracking in the electric area. In contrast to fuel costs, which are permitted to be recovered through an automatic adjustment clause, the annual charge expense for electric utilities is a relatively stable cost item which is reasonably easy to project, once the annual charge program is underway. Second, the magnitude of the annual charge expense is not a major element of an electric utility's cost of service. Therefore, the Commission does not believe that annual charge expenses for electric utilities are an appropriate cost item for recovery through an annual charges adjustment clause. However, as stated in the final rule, these annual charge expenses are more appropriately recoverable via inclusion in test period data in an FPA Section 205 rate application.

With respect to the alleged discriminatory treatment of allowing ACA surcharge procedures for the natural gas pipelines and not the electric utilities, the discussion in the final rule as to this exception sufficiently addresses the arguments made by the IOUs in their rehearing petitions.[71]

Q. Cogeneration and Small Power Production

In late-filed request for rehearing, Edison Electric Institute (EEI) argues that the Commission should assess annual charges to cogenerators and small power producers rather than require the IOUs to absorb the cost of regulating these entities.[72] First, EEI argues that under the Budget Act the Commission does not have the authority to exempt all these entities from assessment of annual charges. According to EEI, the Commission only has the power to waive, on an individual basis, responsibility for part or all of an annual charge payment after it has been assessed.[73] Second, EEI

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[66] SCSI argues that the Commission failed to identify significant additional costs associated with the filing of rate schedules for these types of transactions. SCSI also argue that the Commission has already recovered through the filing and service fees the cost of regulating these transactions. Petitions of SCSI at 9–10; Electric Utilities Group at 10–11. SCSI misunderstands the nature of the annual charge. Costs which are directly attributable to these transactions are recovered in the filing fees or not recovered from the responsible entities for policy reasons. All costs not recovered through fees must be recovered through the annual charges. That is what Order No. 472 does.

[67] 16 U.S.C. § 824a(a) (1982).

[68] 52 FR at 21285–21286.

[69] *FERC as a Least-Cost Regulator: Hearing Before the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce, House of Representatives*, 97th Cong., 2d Sess. 30 (April 23, 1982) (statement of C.M. Butler, III, Chairman, FERC). *See also FERC Wants Volunteers for Experiments with Bulk-Power Deregulation*, Inside F.E.R.C., April 26, 1982, at 1.

[70] *See* Petitions of APSCo at 8; SCSI at 11–12; Electric Utilities Group at 12–13; EEI at 13; and CIPSCo at 19–22.

[71] In addition, there are significant differences between the electric and the natural gas regulatory programs. For example, electric utilities provide a much wider range of classes of services than do gas utilities. The rates, terms and conditions for these electric services are typically established by individual contracts. This accounts for the approximately 3,000 to 4,000 electric rate schedules on file with the Commission for fewer than 200 IOUs.

A revision in these contracts to allow special rate surcharge procedures for the annual charges similar to those adopted for the natural gas program would require a utility to file a separate filing with the Commission for each of its rate schedules, and annual revisions thereafter. It would require the Commission to notice every filing and subject to that filing to litigation.

Natural gas pipelines, however, typically have only one tariff. Consequently, implementation of ACA surcharge procedures would involve a significant ongoing process that would be unduly burdensome to implement compared to the natural gas pipelines program.

The Commission notes that implementing such a system would also present a burden on the electric utility because it would have to revise its rate schedules annually in order to incorporate the most recent annual charge data. Additionally, such a filing would require the utility to pay a filing fee for each periodic revision.

[72] EEI filed its Request for Rehearing one day after the statutorily-imposed 30-day deadline for such filings. The Request was filed with an accompanying motion for extension of time to file the Request which alleged that the Request was untimely filed through no fault of the firm representing EEI. EEI also argues that the FPA does not govern the rule to be applied to the late rehearing. Rather, EEI maintains that the Budget Act gives the Commission discretion concerning the deadline for rehearing requests.

The Commission disagrees. This proceeding was instituted under both the FPA and the Budget Act. The Budget Act contains no provision addressing this issue. Section 313(a) of the FPA requires a petition for rehearing to be made within thirty days after the issuance of a Commission order. 16 U.S.C. 825 1(a) (1982). EEI concedes that it did not file its petition within this statutory deadline. The Commission has no discretion to waive the statutory deadline. *See* Kansas Cities v. FERC, 723 F.2d 82 (D.C. Cir. 1983). While the Commission is precluded from considering the late pleading filed by EEI as a request for rehearing, it does have the discretion to consider the pleading as a motion for reconsideration. *See generally* Modesto and Turlock Irrigation Districts and City and County of San Francisco, 24 FERC ¶ 61,152 (1983). EEI was the only entity to raise the issues of assessing annual charges to cogenerators and small power producers. The Commission's decision to view EEI's petition as a reconsideration request gives those arguments one final airing. However, because EEI did not file a timely rehearing request, it will not be able to raise the issues in a later judicial appeal. FPA § 313(b), 16 U.S.C. 825 1(b) (1982).

[73] Petition of EEI at 6–7.

argues that, even if the Commission has the power to exempt these entities from the assessment of annual charges, there is no sound policy reason to do so.[74] According to EEI, "(i)t seems utterly implausible that [the cogeneration and small power production program's] costs [of two cents per kilowatt of installed capacity] could have a 'chilling effect' on the development of cogeneration or small power production capacity." [75] Third, EEI proposes that the Commission correct the problem of not knowing which cogenerators and small power producers to assess annual charges by adopting a filing requirement specifically for that purpose.

The Commission disagrees with EEI's interpretation of the legislative grant of waiver or exemption authority. It is true that the House bill's wholesale exemption for cogenerators and small power producers was not adopted in the Budget Act. However, the Conference Report specifically addressed the issue, saying that the Commission retained the power to achieve the same result.[76] The result to which the conferees referred was the wholesale exemption of these entities from the assessment of annual charges, not the waiver of all or part of an annual charge on an individual basis.

EEI asserts that the Commission should utilize the Budget Act to recover the as-yet unrecovered two-thirds of the costs of regulating these entities. The Commission is in the process of reconsidering recovery of these costs through IOAA filing fees. In light of the possibility that the Commission may in fact decide to recovery through revised filing fees the entire cost of regulating these entities, it will deny EEI's request. At that time, interested persons will be allowed the opportunity to make relevant comments. The Commission also believes that the administrative burden of implementing and administering a new filing requirement outweighs any resulting monetary benefits to be gained from assessing annual charges to these entities.

R. Special Requests From Electric Entities

1. *Central Illinois Public Service Company (CIPSCo).* CIPSCo has requested that the Commission clarify the status of capacity participation sales which it makes to some of its customers. According to CIPSCo, these transactions, "include provisions for supplemental power, economic energy and nondisplacement energy, emergency or back-up energy, spinning reserves, transmission and many other provisions found in traditional coordination and interchange transactions." [77]

CIPSCo's Capacity Participation Agreement represents several different types of services contained within a single contract. These different services are to be used during different operating circumstances of the general plant providing the service. The central service being provided under this agreement is long-term firm capacity service. Long-term firm capacity service is properly included in the "adjusted sales for resale" category for annual charge purposes. CIPSCo refers to the other services, such as economy, emergency, supplemental power, or back-up energy as "traditional coordination and interchange transactions." [78] The Commission believes that only these services are properly categorized as "adjusted coordination sales" for annual charge purposes. CIPSCo requests that the Commission state that *all* capacity participation arrangements are "coordination sales." The Commission does not believe such a broad pronouncement would be appropriate in light of the various services being provided in this arrangement; the separate and distinct operating conditions and terms and conditions; as well as the differing terms and conditions of these various services.

CIPSCo should separate these transactions occurring under this single agreement into the two categories of adjusted sales for resale and adjusted coordination sales, as these categories are defined in Order No. 472. This separation will facilitate the proper assessment of annual charges.

2. *Texas Utilities Electric Company (TUECo).* TUECo requests reconsideration of the Commission decision to categorize it as a public utility for annual charges purposes. This objection stems from TUECo's claim that it is not a "public utility" as defined by the FPA. TUECo refers to the Notice of Proposed Rulemaking (NOPR) in this proceeding which erroneously concluded that the Conference Report instructed the Commission to use the House bill as a guide to determine every entity to be assessed charges.[79] In Order No. 472, the Commission expressly refused to adopt the NOPR's conclusion.[80] Thus, while TUECo's assertion that it is not a "public utility" within the meaning of the FPA may be true, this does not exclude TUECo from being a "public utility" within the meaning of the Budget Act. TUECo is a "public utility" for purposes of the Budget Act because it owns or operates facilities used for interconnection and wheeling under sections 210, 211, and 212 of the FPA.[81]

Order No. 472 defines the term "public utility" for the purposes of the Commission's authority to assess annual charges pursuant to the Budget Act. While the Budget Act term is the same as that in the FPA, the respective definitions are not. The very entities (other than governmental entities) that are excluded from the FPA term "public utility" are included in the Order No. 472 term "public utility." TUECo meets Order No. 472's definition of "public utility" and it meets the final rule criteria for annual charge assessment: That it files a Form No. 1 with the Commission and it has a rate schedule on file. The Commission's inclusion of TUECo in the list of entities to be assessed annual charges is therefore appropriate.

3. *Houston Lighting and Power Company (HL&PCo).* HL&PCo requests rehearing relying on the very same misinterpretation of the Budget Act's legislative history as does TUECo. It is irrelevant for purposes of the final rule whether HL&PCo meets the FPA definition of "public utility." HL&PCo admits that it will own or operate facilities subject to the jurisdiction of the Commission under sections 210, 211 and 212 of the FPA. Those sections of the FPA are in Part II of the statute; therefore HL&PCo meets the definition of "public utility" for purposes of the final rule. Because HL&PCo files a Form No. 1 and has a transmission rate schedule on file, it will be required to pay annual charges, if the charges are not waived.

HL&PCo also argues that, since it is not the direct beneficiary of the Commission's regulatory services, it is not fair or equitable to assess it annual charges. HL&PCo claims that it is not "directly affected" by the Commission's regulations. Furthermore, HL&PCo

[74] Petition of EEI at 8–9.

[75] Petition of EEI at 9.

[76] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[77] Petition of CIPSCo at 13–14.

[78] *Id.*

[79] *See* Notice of Proposed Rulemaking, Part VI B, 52 FR 3128 at 3136–3137 (February 2, 1987). The House bill restricted the set of entities that could be assessed annual charges to only those entities which were defined as "public utilities" in the FPA. The FPA defines public utility as:

> Any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter (other than facilities subject to such jurisdiction solely by reason of section 824i, 824j, or 824k of this title).

16 U.S.C. 824(e) (1982).

[80] 52 FR 21283 n. 276.

[81] *See, e.g.*, Central Power & Light Company, 17 FERC ¶ 61,078 (1981), *modified*, 18 FERC ¶ 61,100 (1982).

claims that the filing fees it paid covered all of the costs of Commission regulation of its transmission rate schedule.

HL&PCo misunderstands congressional intent to have entities which are "directly affected" by Commission regulation pay annual charges. In fact, HL&PCo's understanding of the term "directly affected" would make the Budget Act superfluous. HL&PCo would have the Commission assess annual charges only to entities to which it could specifically attribute a particular regulatory benefit.

If it were possible to assign directly all the Commission's costs with that level of specificity, then the Commission could recover all of its costs through IOAA fees. This cannot be done because there are many aspects of Commission regulatory activities which generally benefit jurisdictional entities and which cannot be specifically assigned. Furthermore, the Commission's resources must always be available to deal with any activities in which HL&PCo or any other IOU or their customers may wish to engage in before the Commission, *e.g.*, rate changes, investigations, and complaints. Consequently, HL&PCo is "directly affected" by Commission regulation and will be assessed annual charges based upon energy transactions carried out pursuant to the rate schedule it has on file with the Commission.[82]

4. *Citizens Energy Corporation (CEC).* On June 12, 1987, CEC requested that the Commission confirm CEC's understanding that it will not be assessed annual charges. CEC points out that the Commission waived any requirements that it file a Form No. 1 or 1–F or any other reports or maintain its accounts in accordance with the Commission's Uniform System of Accounts.[83]

CEC correctly points out that its name was excluded from Appendix F in Order No. 472 which listed the electric entities to be assessed annual charges. The Commission continues to believe that CEC should not be assessed annual charges so long as it does not meet both of these criteria.

5. *Southern Company Services, Inc. (SCSI).* In both of its requests for rehearing, SCSI asked that the Commission reconsider its decision denying requests for a longer comment period, technical conferences, and a hearing. According to SCSI, these procedures are necessary for meaningful participation of interested IOUs in this rulemaking. Such a procedure, SCSI alleges, is the only way to formulate a fair and equitable final rule.[84]

The Commission remains convinced that the procedure it adopted for public comment on the NOPR and the final rule provided for adequate and substantive participation by interested entities. SCSI has raised no new points to bolster its procedural requests. Because Order No. 472 adequately addresses these issues,[85] the Commission will not reconsider them.

III. Paperwork Reduction Act Statement

The information collection provisions of this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [86] and OMB's regulations.[87] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357–5311). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

If the information collection provisions in this rule do not receive OMB approval before November 25, 1987 filing deadline, then the information collection requirements will be suspended pending OMB approval. The public will be notified by notice in the **Federal Register** if suspension of the information collection requirements is necessary.

IV. Effective Date

Section 553(d) of the Administrative Procedure Act requires, with certain exceptions, that an agency publish or serve any substantive rule not less than 30 days before its effective date.[88] In order to provide the companies sufficient time to collect and file the requested data and to provide OMB sufficient time to review the new information collection requirements, this order becomes effective on November 4, 1987.

List of Subjects

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 382

Annual charges.

In consideration of the foregoing, the Commission amends Parts 154 and 382 of Title 18, Code of Federal Regulations as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—[AMENDED]

1. The authority citation for Part 154 continues to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509, Title III, Subtitle E, Sec. 3401 (Oct. 21, 1986); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12,009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 791a–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. Section 154.38(d)(6)(ii) is revised to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.* * * *

(6) * * *

(ii) (A) Except as provided in paragraph (d)(6)(ii)(B) of this section, a company must reflect the ACA unit charge in each of its rate schedules applicable to sales or transportation deliveries. The company must apply the ACA unit charge to the commodity component of rate schedules with two-part rates. The company seeking authorization to use an ACA unit charge must file with the Commission an ACA-related tariff sheet which must include:

(*1*) Language specifying the purpose and manner of collecting the ACA (to collect an ACA per unit charge as specified by the Commission, applicable to all the pipeline's sales and transportation schedules),

(*2*) The per unit charge of the ACA,

(*3*) The proposed effective date of the tariff change (30 days after the filing of the tariff sheet, unless a shorter period is specifically requested and justified in a waiver petition), and

[82] The Commission disagrees with HL&PCo's assertion that it is being treated unfairly because it is being assessed annual charges while Alaskan and Hawaiian IOUs are not. HL&PCo is being treated differently from Alaskan and Hawaiian IOUs because it has a rate schedule on file which is regulated by the Commission. HL&PCo ignores the fact that, while Alaskan and Hawaiian IOUS do file Form Nos. 1 or 1–F, they *do not* have rate schedules on file. Both conditions must be present if an annual charge is to be assessed.

[83] *See* Citizens Energy Corp., 35 FERC ¶ 61,198 (1986).

[84] Petitions of SCSI at 12–13; Electric Utilities Group at 13–14.

[85] 52 FR 21267–21268.

[86] 44 U.S.C. 3501–3502 (1982).

[87] 5 CFR 1320.13 (1987).

[88] 5 U.S.C. 553(d) (1982).

(4) An expression of the pipeline's intent not to recover any annual charges recorded in FERC Account No. 928 in a NGA Section 4 rate case.

(5) Tariff sheets must be accompanied by the filing fee specified in § 381.204 of the Commission's regulations. Subsequent tariff filings amending the initial ACA-related tariff sheet must be accompanied by the filing fee specified in § 381.205 of the Commission's regulations.

(B) If a pipeline files in 1987 a revision of an ACA-related tariff for the purpose of complying with the requirements of this section, the pipeline will not be required to pay a filing fee for the revised tariff sheet.

* * * * *

PART 382—[AMENDED]

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

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, Title III, Subtitle E, Sec. 3401 (Oct. 21, 1986); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12,009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Federal Power Act, 16 U.S.C. 791a-828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982); Interstate Commerce Act, 49 U.S.C. 1-27 (1976).

4. In § 382.102 paragraphs (a) and (o) are revised to read as follows:

§ 382.102 Definitions.

* * * * *

(a) "Natural gas pipeline company" means any person:

(1) Engaged in natural gas sales for resale or natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act whose sales for resale and transportation exceed 200,000 Mcf at 14.73 psi (60°F) in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges; and

(2) Not engaged solely in "first sales" of natural gas as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978; and

(3) To whom the Commission has not issued a Natural Gas Act Section 7(f) declaration; and

(4) Not holding a limited jurisdiction certificate.

* * * * *

(o) "Operating revenues" means the monies: (1) Received by an oil pipeline company for providing interstate common carrier services regulated by the Commission, and (2) included in FERC Account No. 200, 210, or 220 in FERC Annual Report Form No. 6, page 301, lines 1, 2 and 3, column d, under Part 352 of the Commission's regulations.

* * * * *

5. Section 382.106(a) revised to read as follows:

§ 382.106 Accounting for Annual Charges paid under Part 382.

(a) Any natural gas pipeline company subject to the provisions of this part must account for annual charges paid by charging the account to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts.

* * * * *

6. Section 382.202 is revised to read as follows:

§ 382.202 Annual Charges under the Natural Gas Act and Natural Gas Policy Act of 1978 and related statutes.

The adjusted costs of administration of the natural gas regulatory program will be assessed against each natural gas pipeline company based on the proportion of the total gas subject to Commission regulation which was sold and transported by each company in the immediately preceding calendar year to the sum of the gas subject to the Commission regulation which was sold and transported in the immediately preceding calendar year by all natural gas pipeline companies being assessed annual charges.

[FR Doc. 87-21830 Filed 9-24-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Sterivet Laboratories, Inc.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Sterivet Laboratories, Inc., sponsor of approved NADA 113-510 for phenylbutazone granules, advised FDA of a change of address from 7320 Florence Blvd., Omaha, NE 68101, to 3909 Nashua Dr., Mississauga, ON, Canada L4V 1R3. The agency is amending 21 CFR 510.600(c)(1) and (2) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

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, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Sterivet Laboratories, Inc.," and in paragraph (c)(2) in the entry for "047408" by amending the sponsor address to read "3909 Nashua Dr., Unit 5, Mississauga, ON, Canada L4V 1R3."

Dated: September 18, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-22118 Filed 9-24-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510, 520, 522, 524, and 540

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several new animal drug applications (NADA's) from Wendt Laboratories to Quality Plus Essar Corp.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Quality Plus Essar Corp., P.O. Box 459, Fort Dodge, IA 50501, has informed FDA of a change of sponsor for several NADA's from Wendt Laboratories, 100 Nancy Dr., P.O. Box 128, Belle Plaine, MN 56011. Wendt Laboratories also informed FDA of the sponsor change. The NADA's affected are:

Product	NADA
Oxytetracycline-50 injectable	48-287
Phenylbutazone injection	48-646
Phenylbutazone tablets	48-647
Procaine penicillin G mastitis tubes	65-383
Nitrofurazone ointment	118-506
Iron hydrogenated dextran injection	119-142
Nitrofurazone solution (injection)	119-974
Dexamethasone sodium phosphate injection	123-815
Oxytocin injection	124-241

This sponsor change does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel.

FDA is amending 21 CFR 520.1720a(b)(5), 522.540(e)(2), 522.1183(e)(1), 522.1662a(i)(2), 522.1680(b), 522.1720(b)(2), 524.1580d(b), and 540.874a(c) (3)(i) and (4)(i) to reflect the sponsor change.

FDA is also amending 21 CFR 510.600(c)(1) and (c)(2) to remove Wendt Laboratories because it is no longer the sponsor of any approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

21 CFR Part 524

Animal drugs.

21 CFR Part 540

Animal drugs, Antibiotics.

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, Parts 510, 520, 522, 524, and 540 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. In § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* in paragraph (c)(1) by removing the entry for "Wendt Laboratories" and in paragraph (c)(2) by removing the entry for "015579."

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1720a [Amended]

4. In § 520.1720a *Phenylbutazone tablets and boluses* by removing paragraph (b)(5).

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

5. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.540 [Amended]

6. In § 522.540 *Dexamethasone injection* in pargaph (e)(2) by removing "015579" and inserting in numerical sequence in its place "053617."

§ 522.1183 [Amended]

7. In § 522.183 *Iron hydrogenated dextran injection* in paragraph (e)(1) by removing "015579" and inserting in its place "053617."

§ 522.1662a [Amended]

8. In § 522.1662a *Oxytetracycline hydrochloride injection* in paragraph (i)(2) by removing "015579" and inserting in its place "053617."

§ 522.1680 [Amended]

9. In § 522.1680 *Oxytocin injection* in paragraph (b) by removing "015579" and inserting in numerical sequence in its place "053617."

§ 522.1720 [Amended]

10. In § 522.1720 *Phenylbutazone injection* in paragraph (b)(2) by removing "015579."

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

11. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1580d [Amended]

12. In § 524.1580d *Nitrofurazone solution* in paragraph (b) by removing "015579" and inserting in numerical sequence in its place "053617," and further in the paragraph by removing "and 053617."

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

13. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 540.874a [Amended]

14. In § 540.874a *Procaine penicillin G in oil* in paragraph (c)(3)(i) and (4)(i) by removing "015579" and inserting in its place "053617."

Dated: September 18, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-22119 Filed 9-24-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1971

[Docket No. S-506 B]

Servicing of Single Piece and Multi-Piece Rim Wheels at Marine Terminals

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its rules for the servicing of rim wheels at marine terminals to include safety measures to be taken for the servicing of both single piece and multi-piece rim wheels. Prior to this regulatory action, only multi-piece rim wheel servicing was addressed in OSHA's rules for marine terminals (29 CFR 1917.44(o)). With this notice, OSHA adopts by reference the General Industry Standards (29 CFR 1910.177) that are specific to the servicing of both single piece and multi-piece rim wheels, for application within the marine terminal environment.

EFFECTIVE DATE: This rule shall become effective October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3637, 200

Constitution Avenue, NW., Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 1984, OSHA issued a final General Industry Standard on the servicing of single piece and multi-piece rim wheels (49 FR 4338). That action amended § 1910.177 by making minor revisions to the provisions for multi-piece rim wheels, and by adding provisions for the servicing of single piece rim wheels to the existing provisions for multi-piece rim wheels.

The Marine Terminals Standard, 29 CFR Part 1917, as published in 1983 (48 FR 30886), also included coverage for the servicing of multi-piece rim wheels (§ 1917.44(o)). However, since the 1984 revision of the General Industry Standard occurred subsequent to issuance of the final rule for marine terminals, single piece rim wheels coverage was not included within the framework of Part 1917. This final rule bridges that existing gap in coverage.

OSHA's intention to close that regulatory gap was buttressed by petitions from the National Maritime Safety Association (NMSA) and the International Longshoremen's and Warehousemen's Union (ILWU). The Agency subsequently issued its proposed rule on August 26, 1986 (51 FR 30230).

II. Comments Received on the Proposal

In all, five organizations submitted responses to OSHA's proposal. All five were substantially in accord with the **Federal Register** notice. The first commenter (Ex. 143–1) was R.F. Harold & Associates, a firm with substantial experience as consultants to many rim wheel and tire manufacturers concerning design, production and testing of products as well as failure analysis. They stated:

> Because the single piece and multi-piece rims in marine environments are identical to those used in commercial and industrial trucking, improper servicing can present the same potential for personal injury as in the areas now covered by OSHA regulation. Thus, we support this position and favor the inclusion of all marine facilities into the rim wheel standard.

The next commenter (Ex. 143–2) was Eagle Pacific Insurane Co., an insurer of marine terminal operators. Citing a variety of reasons why OSHA should move to cover single-piece rim wheel servicing at marine terminals, including personal experience with a number of injuries associated with such servicing, Eagle Pacific concluded by saying:

> Eagle Pacific supports the proposed changes and we believe they would have a beneficial effect on Marine Terminal injuries caused by tire changing incidents.

The next commenter (Ex. 143–3) was the American Trucking Association. Addressing the need for uniformity of regulation, they stated:

> ATA participated in the development of OSHA's General Industry Standards for servicing tires on single and multipiece rims found on 29 CFR 1910.177. We support these rules and request that they be referenced without change in 29 CFR 1917 where they will apply to work done in marine terminals. It is imperative that no changes be made to the General Industry Standards when referenced in the Marine Terminal standards, so as to maintain the integrity and quality and to avoid confusion on the part of workers transferring to or from the Marine Terminal environment.

The fourth commenter (Ex. 143–4) was the State of California's Occupational Safety and Health Administration, whose comments merely indicated that Federal OSHA's proposal would present no programmatic difficulty to its own operation.

The last commenter (Ex. 143–5) was the International Longshoremen's and Warehousemen's Union (ILWU), one of the two petitioners encouraging OSHA to take this initiative. The ILWU supported OSHA's regulatory approach saying:

> The International Longshoremen's and Warehousemen's Union fully supports the proposed revision of the Marine Terminals Standard, 29 CFR Part 1917, to include rules addressing the servicing of single piece rim wheels. This proposal is necessary due to the hazards of servicing single piece rim wheels and the recent, and projected, increased use of such wheels at marine terminals.

Additionally, the ILWU requested that these same rules be extended to apply to operations aboard vessels as well as to those on shore. However, they provided no data to support such an extension, nor is there evidence in the record as to whether similar hazards exist aboard vessels. OSHA has little information on rim wheel servicing aboard vessels. Further, while it is true that under special circumstances rim wheel servicing could possibly occur aboard some vessels, it is also true that such operations are categorized as longshoring and, as such, are under the scope of 29 CFR Part 1918. OSHA is currently developing proposed revisions of its safety and health regulations for longshoring in Part 1918. OSHA will consider the ILWU's recommendation within the context of that separate rulemaking.

III. Effect of the Final Rule

This rule amends Part 1917 by deleting the current multi-piece rim wheel servicing requirements in § 1917.44(o). In its place, OSHA is placing a reference to the General Industry Standard for the servicing of multi-piece and single piece rim wheels, § 1910.177. As a result of that reference, § 1910.177 is made applicable at marine terminals, and marine terminal employers will be required to comply with the provisions of that section in the same manner as any other Part 1917 standard.

As part of this final rule, a reference to § 1910.177 is also inserted into § 1917.1 and § 1910.16. Each of these sections contains a list of those Part 1910 provisions having application at marine terminals. Additionally, this final rule amends paragraph (a)(2) of § 1910.177, which previously indicated that the General Industry Standard did not apply to any maritime employments covered by Parts 1915–1919, to reflect that marine terminals covered by Part 1917 are now covered by § 1910.177.

IV. Regulatory Impact Assessment and Regulatory Flexibility Analysis for Servicing Single Piece Rim Wheels at Marine Terminals

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has assessed the potential economic impact of this standard. Based on the Executive Order criteria, OSHA has determined that this final rule is not a "major" action. Therefore, it does not require a regulatory impact assessment.

OSHA's determination that the amendment will not have a major impact is based primarily upon four studies. The first study was a June 1978 report by Centaur Management Consultants, Inc., for OSHA entitled, "Economic Impact Statement/ Assessment for Multi/Piece Rim Assemblies" [Docket S–005, Ex. 2–33]. The second study was a March 1981 report by Dr. Roger L. McCarthy and Mr. James R. Finnegan of Failure Analysis Associates for the National Wheel and Rim Association [NWRA] entitled, "Large Vehicle Wheel Servicing: Reduction of Risk Through Implementation of an OSHA Standard Governing Multi/Piece and Single/Piece Rims" [Docket S–010, Ex. 31]. The third study was a March 1981 report prepared for NWRA by Dr. Thomas Gale Moore of the Hoover Institute, entitled "An Economic Evaluation for Proposed OSHA Single Piece Rim Standard" [Docket S–010, Ex. 4]. The fourth study was the August 1983 report by OSHA's Office of Regulatory Analysis entitled,

"Regulatory Impact and Regulatory Flexibility Assessment of the Final Standard on Servicing Single/Piece Rim Wheels" [Docket S–010, Ex. 11]. These four studies demonstrate that the single piece wheel servicing standard is technologically feasible in general industry. This amendment to the Marine Terminals Standard covers the exact same activity that is covered by the general industry single piece rim wheel servicing standard. As there do not appear to be any significant differences in the circumstances under which single piece rim wheels are serviced at marine terminals as compared to general industry, OSHA has concluded that this amendment would also be technologically feasible in marine terminals.

Currently, most, if not all, marine terminals servicing single piece rim wheels also service multi-piece rim wheels. As a result, OSHA has concluded that the promulgation of a single piece rim wheel servicing standard will result in no additional capital costs because the equipment currently required to meet the multi-piece rim wheel servicing provisions will also meet the equipment requirements for single piece rim wheel servicing.

Based on the NWRA Reports, OSHA has determined that the number of large vehicle rim wheels serviced within marine terminals will remain constant over the next 10 years. However, the percentage of single piece rim wheels of all large vehicle rim wheels is expected to increase from about 35 percent in 1987 to about one-half by 1990. This increase is due largely to greater fuel efficiency of tubeless tires which require, for the most part, the use of single piece rim wheels. Thus, OSHA expects that the number of single piece rim wheels serviced will increase while the number of multi-piece rim wheels serviced will decrease. Since equipment currently used to service multi-piece rim wheels can be shifted to servicing single piece rim wheels, no additional equipment will need to be purchased in order to comply with the single piece rim wheels servicing provisions.

Nevertheless, OSHA does expect that there will be some initial and continuing costs of compliance due to the provision requiring employee safety training and to the provision requiring tires on single piece wheels to be inflated at a safe distance from the employee. In the preamble to the general industry rule on servicing single piece rim wheels (40 FR 4338 [Ex. 6]). OSHA had estimated that the present value in 1981 dollars of the costs of compliance to be incurred by general industry during 1981–1990 would be $16.47 million. The average yearly cost for each of the approximately 102,000 workplaces was about $16. The same $16 average annual cost is projected for each of the approximately 400 affected marine terminals, for a total cost estimate of $6,400 for the whole industry.

In response to its request in the **Federal Register** Notice of Proposed Rulemaking, OSHA received no direct statistical or anecdotal information from interested commenters concerning fatalities or injuries that have occurred to marine terminal employees servicing of single piece rim wheels. Nevertheless, the physical hazards associated with servicing single piece rim wheels are the same in both general industry and in marine terminals. Consequently, OSHA has determined that the accident rate per tire serviced would be the same in both sectors. OSHA had estimated in its RIA for the standard governing the servicing single piece rim wheels in general industry [Docket S–010, Ex. 11] that there is about one injury-producing accident for every million truck tire changes. Of these accidents between 15 percent and 20 percent result in a fatality and another 15 percent to 20 percent result in a total disability that would prevent the injured employee from ever working. The remaining 60 to 70 percent of these accidents result in a lost workday injury. These lost workday injuries involve an average of six months lost from work (about 120 days). Therefore, although these accidents infrequently occur, they tend to cause an injury that is substantially more serious than the average occupational injury. Thus, incorrect methods of servicing single piece rim wheels were determined to constitute a serious safety hazard in general industry.

Similarly, OSHA has concluded that such servicing methods produce a serious safety hazard in marine terminals. For example, if an average of only two single piece rim wheels are serviced per day in a marine terminal, then there would be a total of about 200,000 single piece rim wheels annually serviced in marine terminals. Consequently, OSHA anticipates that there would be an average of about two single piece rim wheel servicing accidents (of which one would be either a fatality or a total disability) every 10 years in marine terminals. Preventing these accidents would impose a 10-year total of $64,000 in undiscounted costs of compliance.

OSHA's analysis of the accident data available for single piece rim wheel in general industry indicated that compliance with the provisions of the single piece rim wheel servicing standard would have prevented nearly all of the reported accidents. In addition, OSHA has found that there was a 75 percent national reduction in fatalities and injuries associated with servicing multi-piece rim wheels after the promulgation of the OSHA Multi-Piece Rim Wheel Servicing Standard. Further, that there was a 75 percent reduction in fatalities and injuries in California after the promulgation of their multi-piece and single piece rim wheel servicing standard in 1970. As a result, OSHA has concluded that promulgating this general industry standard for marine terminals would also prevent nearly all single piece rim wheel servicing accidents in marine terminals because the cause and the preventability of the accidents are the same in both sectors. OSHA, therefore, concludes that this standard will likely reduce the number of worker deaths and disabilities, will provide net benefits to society, and will not have a significant adverse effect on marine terminals.

Regulatory Flexibility Certification. In accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, (5 U.S.C. 601 et seq.)), OSHA has assessed the potential economic impact of this standard on small entities and has examined some of the alternatives to it. Based on this assessment, OSHA certifies that the standard will not have a significant economic effect on small entities.

The only provisions that may impose costs of compliance are those requiring employee safety training and those requiring that tires be inflated at a distance from the employee. The fact that firms must train new employees at the time they are hired largely precludes training many employees at the same time. Consequently, large employers will not garner any significant economies of scale in training and these costs will be largely proportional to the number of employees trained. Similarly, the increased time needed to service each single piece rim wheel, because the employee must move away from the tire to inflate it, is independent of the number of such rim wheels serviced. As the smaller terminals would service fewer rim wheels than would the large marine terminals, OSHA believes that these minimal costs of compliance will neither significantly affect nor create any competitive disadvantages for small entities.

V. Environmental Impact Assessment—Finding of No Significant Impact

This rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (62 U.S.C. 4321, et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that this rule will have no significant environmental impact.

The amendment to 29 CFR Parts 1910 and 1917 for servicing multi-piece and single piece rim wheels, covers the same activity as the general industry standard. In other words, the reduction of accidents or injuries is to be achieved by means of work practices and procedures, proper use and handling of equipment, and training. Such procedures do not impact on air, water, or soil quality; or plant or animal life; or on the use of land or other aspects of the environment. These safety-oriented revisions are therefore categorized as excluded actions according to Subpart B, § 11.10 of the DOL NEPA regulations.

VI. State Plan Standards

Those of the 25 states with their own OSHA-approved occupational safety and health plans whose plans cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of this final standard or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective"as the revised Federal standard. Currently five states (California, Minnesota, Oregon, Vermont and Washington) with their own state plans cover private sector onshore maritime activities.

Federal OSHA enforces maritime standards offshore in all states and provides on shore coverage of maritime activities in Federal OSHA states and in the following State plan states: Alaska, Arizona, Connecticut [1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York [1], North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All states with State plans must also extend coverage to state and local government employees engaged in maritime activities.)

[1] Plan covers only State and Local government employees.

List of Subjects

29 CFR Part 1910

Chemicals, Diving, Electric power, Electric products, Fire prevention, Gases, Hazardous substances, Health records, Noise control, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

29 CFR Part 1917

Cargo, Certification, Gear, Intermodal container, Longshoring, Maritime, Occupational safety and health, Safety.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, under sections 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; section 41 of the Longshore and Harborworkers' Compensation Act, 33 U.S.C. 941; Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Parts 1910 and 1917 are amended, as set forth below.

Signed at Washington, DC, this 18th day of September, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

29 CFR Part 1910 is amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart B of 29 CFR Part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35, et seq.; Service Contract Act of 1965, 41 U.S.C. 351 et seq.; Sec. 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 333; Sec. 41 of the Longshore and Harborworkers' Compensation Act, 33 U.S.C. 941; National Foundation on Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Orders 12–71 (36 FR 8754, 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. A new paragraph (b)(2)(ix) is added to § 1910.16, to read as follows:

§ 1910.16 Longshoring and marine terminals.

* * * * *

(b) * * *

(2) * * *

(ix) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177.

* * * * *

3. Paragraph (a)(2) of § 1910.177 is revised to read as follows:

§ 1910.177 Servicing multi-piece and single piece rim wheels.

(a) * * *

(2) This section does not apply to employers and places of employment regulated under the Construction Safety Standards, 29 CFR Part 1926; the Agriculture Standards, 29 CFR Part 1928; the Shipyard Standards, 29 CFR Part 1915; or the Longshoring Standards, 29 CFR Part 1918.

* * * * *

29 CFR Part 1917 is amended as follows:

PART 1917—MARINE TERMINALS

4. The authority citation for Part 1917 continues to read as follows:

Authority: Secs. 4, 6, and 8, of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Sec. 41, Longshore and Harborworkers' Compensation Act, 33 U.S.C. 941; Secretary of Labor's Order 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

5. A new paragraph (a)(2)(ix) is added to § 1917.1 to read as follows:

§ 1917.1 Scope and applicability.

(a) * * *

(2) * * *

(ix) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177.

6. Paragraph (o) of § 1917.44 is revised to read as follows:

§ 1917.44 General rules applicable to vehicles.

* * * * *

(o) *Servicing multi-piece and single piece rim wheels.* Servicing of multi-piece and single piece rim wheels is covered by § 1910.177 of this chapter.

* * * * *

[FR Doc. 87–22105 Filed 9–24–87; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Removal of Conditions From Colorado Permanent Regulatory Program Under Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the removal of two conditions which the Secretary placed on his approval of the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in response to two legal opinions submitted by Colorado to satisfy the conditions listed at 30 CFR 906.11 (p) and (oo). The conditions pertain to the permit renewal process and Colorado's authority to cease underground mining operations.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Albuquerque, New Mexico 87102. Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214). Subsequent decisions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16 and are discussed in detail in the **Federal Register** published on December 16, 1982 (47 FR 56350); May 1, 1984 (49 FR 18481); November 15, 1985 (50 FR 47216); December 6, 1984 (50 FR 49925); February 5, 1986 (51 FR 4496); May 30, 1986 (51 FR 19548); July 1, 1986 (51 FR 23752); February 5, 1987 (52 FR 3632); and May 7, 1987 (52 FR 17291).

II. Discussion of Conditions and Legal Opinions

Condition "p"

As discussed in Finding 4(d)(xv) of the December 15, 1980 **Federal Register** notice approving the Colorado program (45 FR 82184), the Secretary found that the Colorado program failed to clearly provide that no holder of a valid permit could continue to mine after the term of his or her original permit expired if the State had determined that the permit should not be renewed. The State statute at CRS 34–33–109(7)(f) and the State regulations at 2.08.5(3)(f) provide that the holder of a valid permit may continue surface mining operations until a final administrative decision on renewal is rendered, provided he or she has submitted an application for renewal 180 days in advance of the permit expiration date. The conflict arises in those situations where the Division of Mined Land Reclamation ("Division") has found that the permit should not be renewed, and the operator has petitioned for administrative review of the decision. Since the final administrative decision would be made by the Mined Land Reclamation Board ("Board"), the entire process could take more than 180 days. The Federal rules applicable to such situations (30 CFR 775.11) allow continuation of mining only where the operator is granted temporary relief. Accordingly, the Secretary conditioned his approval of the Colorado program on the submission of further amendments to require that applications for renewal be submitted one year prior to expiration, or the submission of other program modifications to resolve this problem.

At a June 30, 1986 meeting attended by representatives of the Division, OSMRE's Albuquerque Field Office, and OSMRE's Division of State Program Assistance, Colorado pointed out that CRS 34–33–109(7)(a) allows only the Board to deny renewal applications; therefore, there is no administrative review process and the condition is moot. By letter dated August 14, 1986 (Administrative Record No. CO–299), OSMRE agreed that, if this strict interpretation of the statutory language was correct and affirmed by a legal opinion provided by the State, then the condition as such would cease to be relevant.

In its response of December 22, 1986, Colorado submitted a December 15, 1986 opinion prepared by an assistant attorney general within the Office of the State Attorney General affirming that only the Board has the legal authority to deny permit renewal applications (Administrative Record No. CO–310). Since, under the Colorado program, the Board receives all applications for administrative review and conducts all administrative hearings, a decision of the Board constitutes final agency action from which there is no administrative appeal.

Condition "oo"

This condition concerns the circumstances under which the Division has the authority to cease underground mining operations when they create an imminent danger to persons. Section 516(c) of SMCRA requires the regulatory authority to suspend underground coal mining under urbanized areas and adjacent to industrial or commercial buildings, major impoundments or permanent streams if an imminent danger to the inhabitants exists. The Colorado statue at CRS 34–33–121(3) requires that the Division order such closures after consultation with the operator and the Division of Mines, but only if the mining activities are in violation of CRS 34–29–125 (water control in steeply pitching veins), 34–29–128 (barrier pillars at property lines) or 34–48–102 (mining under buildings), or are adjacent to perennial streams. The Colorado regulations at 2 CCR 407–2, 4.20.4(4) contain provisions similar to the statutory language, but they also (1) extend protection to major impoundments, (2) do not require that the operator first be found in violation of one of the three provisions cited in the State statute, and (3) allow a waiver of the consultation requirement.

Previous discussions of this issue have centered on the "priority of right" exception provided by CRS 34–48–102. As discussed in Finding 4(i)(v) of the December 15, 1980 **Federal Register** notice approving the Colorado program (45 FR 82192), the Secretary conditioned his approval on the future submission of a proposed program amendment disallowing any exception to the requirement that underground mining be ceased where it creates an imminent danger to persons. In subsequent correspondence, Colorado maintained that (1) the priority of right exception provided by CRS 34–48–102 deals only with liability for surface property damage and does not prevent the State from prohibiting mining where an imminent danger to personal safety exists (letter of May 26, 1983, from David Shelton to Robert Hagen, Administrative Record No. CO–207), and (2) CRS 34–48–102 applies only to noncoal mines (letter of May 20, 1986, from David Getches to Jed Christensen, Administrative Record No. CO–290). In addition, as noted above, the Colorado regulations at 2 CCR 407–2, 4.20.4(4) do not require that the operator first be found in violation of CRS 34–48–102 before the Division can order closure of the mine.

Accordingly, by letter of August 14, 1986 (Administrative Record No. CO–229), OSMRE notified Colorado that, if it would clarify by legal certification that State rule 4.20.4(4) is not limited by CRS 34–33–121(3), i.e., that the Division does not have to first find an operator in violation of one of the three cited statutory provisions prior to issuing a cessation order, condition "oo" would be removed. In response, on January 26, 1987, Colorado submitted a December 9, 1986 opinion prepared by the Office of the State Attorney General (Administrative Record No. CO–316) concluding that Rule 4.204.(4) was

indeed not limited by CRS 34–33–121(3). As stated in the opinion, the Division is required, pursuant to CRS 34–33–123(1), to order cessation of mining where any operator is in violation of any requirement of Article 33 or any permit condition, which condition, practice or violation creates an imminent danger to the health and safety of the public. This statutory language provides adequate basis for Rule 4.20.4(4). The opinion further states that the language of CRS 34–33–121(3) merely adds or explains additional statutory requirements dealing with environmental protection and public safety beyond the comprehensive protection standards in the enforcement provisions of CRS 34–33–123(1), and that it would therefore be logically inconsistent to intrepret CRS 34–33–121(3) as limiting Rule 4.20.4.

III. Secretary's Findings and Decision

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Secretary's findings and decisions concerning the legal opinions submitted by Colorado on December 22, 1986 and Janaury 26, 1987 pertaining to conditions of program approval "p" and "oo".

Condition "p"

For the reasons set forth in Colorado's legal opinion dated December 15, 1986, and prior correspondence from the State of Colorado, as discussed in the section of this notice entitled "Discussion of Conditions and Legal Opinions", the Secretary finds the lack of any provisions for administrative review of decisions denying applications for permit renewal renders condition "p" moot. Therefore, he is amending the Federal rules at 30 CFR 906.11 to remove paragraph (p), which establishes this condition.

Condition "oo"

For the reasons set forth in Colorado's legal opinion dated September 9, 1986, as discussed in the section of this notice entitled "Discussion of Conditions and Legal Opinions", the Secretary finds that, since the Colorado regulations at 2 CCR 407–2, 4.20.4(4) are not limited by the provisions of the Colorado statute at CRS 34–33–121(3), the State regulations are no less stringent than section 516(c) of SMCRA. Therefore, he finds that condition "oo" is now moot, and he is amending the Federal regulations at 30 CFR 906.11 to remove paragraph (oo), which contains this condition.

IV. Public Comment

The Director announced receipt of the legal opinions in the March 27, 1987 **Federal Register**, inviting the public to comment on their adequacy and providing an opportunity for a public hearing (52 FR 9887–9890). No comments were received and since no one requests an opportunity to testify at a public hearing, the hearing scheduled for April 21, 1987 was canceled.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(b)(10)(i), comments were also solicited from various Federal agencies. The Regional Forester for the Rocky Mountain Region of the U.S. Forest Service supported removal of the conditions based on the legal opinions. No other agencies elected to comment, although the Bureau of Mines, the Bureau of Land Management and the Fish and Wildlife Service acknowledged receipt of the request for comments.

V. Procedural Determinations

1. *Compliance with the National Environmental Policy Act* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Compliance with the Regulatory Flexibility Act* The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Compliance With Executive Order No. 12291* On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this program amendment.

List of Subjects in 30 CFR Part 906:

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: September 15, 1987

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

Part 906 of Title 30, Code of Federal Regulations, is amended as follows:

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

§ 906.11 [Amended]

2. Section 906.11 is amended by removing and reserving paragraphs (p) and (oo).

[FR Doc. 87–22170 Filed 9–24–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[DOD Instruction 6010.15]

Coordination of Benefits

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This part establishes Department of Defense policies under Pub. L. 99–272, section 2001, Consolidated Omnibus Budget Reconciliation Act of 1985, April 7, 1986. It also assigns responsibility for implementing the authority for collection by the United States of inpatient hospital costs incurred by retirees and dependents.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John Maddy, Office of the Assistant Secretary of Defense (Health Affairs), Pentagon, Washington, DC 20301, telephone (202) 694–3242.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 220

Claims, Health insurance, Medical records.

Accordingly, 32 CFR Part 220 is added to read as follows:

PART 220—COORDINATION OF BENEFITS

Sec.

Authority: Pub. L. 99–272, section 2001; 10 U.S.C. Chapter 55

§ 220.1 Purpose.

This part: (a) Establishes DOD policies under Pub. L. 99–272, section 2001 and 10 U.S.C. 1074(b), 1076(a), 1076(b), and 1095.

(b) Assigns responsibility for implementing the authority for collection by the United States of inpatient

hospital costs incurred by retirees and dependents.

§ 220.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

§ 220.3 Definitions.

Inpatient Hospital Care. Treatment provided to an individual, other than a transient patient, who is admitted (placed under treatment or observation) to a bed in a medical treatment facility that has authorized or designated beds for inpatient medical or dental care.

Insurance Plan. Any plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services and supplies. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

Medical Service or Health Plan. A medical service or health plan is any plan or program of an organized health care group, corporation, or other entity for the provision of health care to an individual from plan providers, both professional and institutional. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

Third-Party Payer. An entity that provides an insurance, medical service, or health plan by contract or agreement to include plans for State and local government employees. Includes both insurance underwriters and private employers offering self-insured or partially self-insured and/or partially underwritten health insurance plans.

§ 220.4 Policy.

(a) In the case of a person who is covered by section 1074(b), 1076(a), or 1076(b) of 10 U.S.C., the United States has the right to collect from a third-party payer (to include State and local government plans) the reasonable costs of inpatient hospital care incurred by the United States for such person through a facility of the uniformed services only to the extent that the person should be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such costs on the person's own behalf. This does not include "income maintenance" or "CHAMPUS supplemental" type plans. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is the reasonable cost of the care provided less the deductible or copayment amount.

(b) A person covered by section 1074(b), 1076(a), or 1076(b) of 10 U.S.C. may not be required to pay deductible or copayment amounts to the United States for inpatient hospital care. This applies only to a deductible or copayment imposed by the third-party payer.

(c) Participating hospital agreements are premised on compliance with State and local laws and regulations by a State nonprofit health care corporation. Since Federal entities are governed by Federal statutes and regulations, DoD medical treatment facilities should not enter into local participating hospital agreements.

(d) The Military Services shall establish procedures to document that each dependent or retiree admitted as an inpatient is specifically questioned whether or not they have private insurance. Documentation will also be required for these patients to assign benefits to the United States Government for payments due from third-party payers.

(e) When a physician provides inpatient services for dependents or retirees under the Joint Health Benefits Program, the medical treatment facility will bill the third-party payer for only the hospital and ancillary charges, not the physician charges.

§ 220.5 Responsibilities.

The Military Departments shall be responsible for developing procedures to implement this Coordination of Benefits Program.

§ 220.6 Procedures.

(a) Authority to collect applies to an insurance, medical service, or health plan agreement entered into, amended, or renewed on, or after, April 7, 1986 for inpatient hospital care provided after September 30, 1986. An amendment includes, but is not limited to, any change of rates, changes in benefits, changes in carriers, and conversions from insured plans to self insured plans or the reverse.

(b) The Military Medical Treatment Facility (MTF) shall use the Uniform Bill, UB–82, to prepare bills to third-party payers for medical care and services rendered to dependents and retirees. Local situations could require using a form other than the UB–82 to bill some third-party payers. MTFs shall complete those data elements and codes identified by the National Uniform Billing Committee as required entries for submitting bills to third-party carriers.

(c) A per diem charge equal to the inpatient full reimbursement rate shall be used to bill third-party payers in accordance with the medical and subsistence charges established and published by the Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), for each fiscal year; this publication will also contain instructions on the disposition of amounts collected. For billing third-party payers, the rates for FY 1987 and thereafter shall be subdivided by OASD(C) into three categories:

(1) Hospital charges.

(2) Physician charges.

(3) Ancillary charges.

(d) Medical services and subsistence charges for dependents and retirees are considered separate rates and are an integral part of medical financial systems. Each Service shall continue to bill and collect these charges using current methods. The additional collections and billings for third-party payers provided for in this part shall be accounted for separately.

(e) Accounting records shall be established to be able to report the following:

(1) Total amount billed to third-party payers.

(2) Amount collected.

(3) Amount not collected for various reasons.

(f) Military MTFs when requested, at no charge, shall make the health care records or copies of the records of individuals for whose care the United States is seeking recovery of costs available for inspection and review by representatives of the third-party payer covering the individual's medical care. This will be done solely for permitting the carrier to verify that:

(1) Care, for which recovery of costs is sought by the MTF, was furnished.

(2) Such care to the individual meets criteria applicable under the health plan contract involved.

(g) The sponsor's Social Security Account Number (SSAN) shall be used as the patient ID number.

(h) Each Military Department shall submit a quarterly report to the Office of the Assistant Secretary of Defense (Health Affairs) (OASD(HA)). Reports shall be due on 1 February, 1 May, 1 August, and 1 November. The Report Control Symbol (RCS) number is DD–HA(Q) 1752. The following information shall be required in the report:

(1) Number of bills submitted to third-party payers.

(2) Total amount billed to third-party payers (accounts receivable).

(3) Total collected.

(4) Total not collected. The report shall provide a dollar amount for each of the categories, below, for which payment was not received:

(i) Amount of coverage (e.g., policy only pays 80 percent).

(ii) Payment reduced due to preadmission review, concurrent review, discharge planning, and second surgical opinion.

(iii) Care provided is not covered under the policy (covered by a prepaid plan that only covers emergency care outside the plan, preexisting conditions, cosmetic exclusions, and dental care etc.).

(iv) Policy expired, nonexistent, or patient not a named beneficiary on the policy.

(v) Policy not enterd into, renewed, or modified on or after April 7, 1986.

(vi) Other reasons (specify).

(5) The Secretary of the Military Department that provided care covered by this Instruction, or the Secretary's designee, may compromise, settle or waive a DoD claim under 10 U.S.C. 1095 and under this part.

(6) The Secretary of the Military Department that provided care covered by this Instruction, or the Secretary's designee, normally shall request the Department of Justice to institute and prosecute legal proceedings to collect amounts due under the Federal Claims Collection Act (31 U.S.C. 3701 et seq.) as amended by the Debt Collection Act of 1982 (Pub. L. 97-365) and this part when administrative efforts to collect such amounts are unsuccessful.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1987.

[FR Doc. 87-22190 Filed 9-24-87 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 251

[DoD Directive 4175.1]

Sale of Government-Furnished Equipment or Materiel and Services to U.S. Companies

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part is revised to comply with the authority provided by Pub. L. 98-525 which liberalized some of the provisions of the original part that pertains to certain Army working capital funded arsenals. Articles manufactured by the arsenals and related services may not be sold to an authorized purchaser outside the Department of Defense provided specific requirements are met.

EFFECTIVE DATE: February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Wise, Defense Security Assistance Agency, the Pentagon, Washington DC 20301, telephone (202) 697-8108.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 251

Arms and munitions, Exports, Government property.

Accordingly, 32 CFR Part 251 is revised to read as follows:

PART 251-SALE OF GOVERNMENT-FURNISHED EQUIPMENT OR MATERIEL AND SERVICE TO U.S. COMPANIES

Sec.

Authority: Sec. 305(2) Pub. L. 98-525, Pub. L. 97-392, 10 U.S.C. 2208(i), 22 U.S.C. 2770, and 96 Stat 1962.

§ 251.1 Reissuance and purpose.

This part reissues 32 CFR Part 251 expanding its coverage to implement Title 10, United States Code, section 2208(i). It provides policy, assigns responsibilities, and prescribes procedures.

§ 251.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 251.3 Policy.

(a) The Department of Defense executes the authority provided by 22 U.S.C. 2770 to sell to U.S. companies defense articles and defense services (hereafter also "items") in connection with proposed exports on a direct commercial basis pursuant to State Department licenses or approvals under International Traffic in Arms Regulation. The Department of Defense also executes the authority provided by 10 U.S.C. 2208(i), which applies only to a working-capital funded Department of Army Arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms.

(b) Sales under 22 U.S.C. 2770 may be authorized only if the following applies:

(1) The items are of a type approved for foreign military sales (FMS);

(2) Sale to a U.S. company under this part would simplify and expedite the direct commercial sale involved;

(3) The items are of the type that would be supplied to the prime contractor as Government-furnished equipment (GFE) or materiels (GFM) for manufacture or assembly into end items for use by the Military Services, and have in fact been supplied as GFE or GFM in connection with any past or present DoD procurement of such end items; and

(4) The other provisions of this part are complied with.

(c) Sales under 10 U.S.C. 2208(i) may be authorized by the Department of the Army only if the following applies:

(1) The article or related services are sold to a U.S. manufacturer, assembler, or developer:

(i) For use in developing new products, or

(ii) For incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government.

(2) The sale has been approved previously by the Office of Deputy Assistant Secretary of Defense (Production Support) (ODASD)(PS)), or a designee.

(3) The other applicable provisions of this part are complied with.

§ 251.4 Definitions.

(a) *Authorized purchasers under 22 U.S.C. 2770.* A company incorporated in the United States as defined in paragraphs a. and c. or in paragraphs b. and c. of the definitions.

(1) The existing prime contractor for the specific end item with a DoD contract for final assembly or final manufacture in the United States of the end item for use by the Military Services.

(2) A known DoD-qualified producer of the end item to be used by the Military Services, or one considered by the commanding officer of the Military Department procuring activity to be a responsible contractor for final assembly or final manufacture in the United States of the end item for use by the Military Services, and which is not debarred, ineligible, or suspended for defense procurement contracts.

(3) A U.S. manufacturer that has an approved license under the International Traffic in Arms Regulation, which provides for the use of GFE or GFM in the direct commercial export to a foreign country for the use of the Armed Forces of that country or international organization. The license shall identify the defense end item being sold and exported, the quantity and identification of concurrent and follow-on spares, end item delivery schedule, and name of the ultimate user.

(b) *Authorized purchasers under 10 U.S.C. 2208(i).* A company incorporated in the United States as defined in paragraphs (a) and (b) of this definition. Where export of an article from the United States is involved, paragraph (c) of this definition also applies.

(1) A known DoD-qualified manufacturer, assembler, or developer of articles, and which is not debarred, ineligible, or suspended for defense procurement contracts.

(2) A company considered by the Commanding Officer of the Military Department procuring activity to be a responsible contractor for the proposed work.

(3) A company exporting articles is restricted to sales to a friendly foreign government and must have an approved license under the International Traffic in Arms Regulation, which provides for use or sale of the article in the direct commercial export to a foreign country for use by the Armed Forces of that country. The license shall identify the article being sold and exported, the quantity and identification of arsenal-produced items provided as concurrent and follow-on spares, item delivery schedule, and name of the ultimate user.

§ 251.5 Responsibilities.

(a) The *Under Secretary of Defense for Policy (USD(P))*, or designee, shall provide overall guidance regarding the sale of the GFE or GFM to U.S. companies for commercial export.

(b) The *Director, Defense Security Assistance Agency (DSAA)*, shall:

(1) Monitor the sale of GFE and GFM to U.S. companies and implementation of this Part with coordination with the ASD(A&L), where applicable.

(2) Determine priorities or make allocations between two or more competing foreign requirements.

(c) The *Assistant Secretary of Defense (Acquisition and Logistics) (ASD(A&L))*, or designee, shall approve all sales under 10 U.S.C. 2208(i) in accordance with policies set forth in DoD Directive 4005.1.[1]

(d) The *Secretaries of the Military Departments:*

(1) Shall execute the functions conferred upon the Secretary of Defense by 22 U.S.C. 2770.

(2) May redelegate the authority under 22 U.S.C. 2770, but such delegation may not be below the level of the commanding officer or head of a procuring activity of the Military Department responsible for procurement or acquisition of the applicable end item.

(3) Shall provide a quarterly report to the Director, DSAA, of sales made to U.S. companies under 22 U.S.C. 2770.

(e) The *Secretary of the Army:*

(1) Shall execute the functions conferred by 10 U.S.C. 2208(i).

(2) May delegate the authority under 10 U.S.C. 2208(i).

(f) The *Assistant Secretary of Defense (Comptroller) (ASD(C))* shall monitor pricing compliance and financial administration set forth under DoD 7290.3–M.

§ 251.6 Procedures.

(a) *Articles and services authorized for sale under 22 U.S.C. 2770.*

(1) Defense items that currently are in fact being furnished (or have in fact been furnished) by the U.S. Government as GFE or GFM to a U.S. company that is or has been under contract to the Department of Defense for final assembly or final manufacture into an end item for use by the Military Services.

(2) Defense services that are directly associated with the installation, testing, and certification of GFE that are or have been in fact provided by the U.S. Government to a U.S. company in connection with the U.S. Government procurement of similar end items for use by the Department of Defense. Such defense services, including transportation (subject to paragraph (e)(3)(iii) of this section), may be performed only in the United States and only in support of the sale of defense articles under this part; that is, services alone may not be provided under this part.

(3) Defense items shall not be procured by the Department of Defense for sale under Section 30 of the Arms Export Control Act if they are available to the authorized purchases directly from U.S. commercial sources at such times as may be required to meet the delivery schedule of the authorized purchaser.

(b) *Articles and services authorized for sale under 10 U.S.C. 2208(i).*

(1) Articles that can be manufactured by a working-capital funded Department of the Army Arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms without present or future interference with performance of the work by that Arsenal for the Department of Defense or for a contractor performing for the Department of Defense.

(2) Services that are directly associated with the articles sold. Such services, including transportation (subject to paragraph (e)(3)(ii) of this section), may be performed only in the United States and only in support of the sale of articles under this part; that is, services alone may not be provided under this part.

(3) Articles shall not be sold by Army Arsenals under authority of 10 U.S.C. 2208(i) if they are readily available to the authorized purchaser directly from a U.S. commercial source.

(4) Nothing in this Directive shall be construed to affect the application of the export controls provided for in Section 38 of the Arms Export Control Act to items that incorporate or are produced through the use of an article sold under this part.

(c) *Pricing, Financing, and Accounting.*

(1) To afford U.S. companies the ability to conduct planning and marketing of items, Military Departments are authorized to provide cost and delivery scheduling data to authorized potential purchasers (see § 251.4) in advance of execution of a sales agreement. Such data shall be identified as estimates and shall not be binding on the U.S. Government. Efforts shall be made to provide accurate data.

(2) Actual sales of items shall be made in cash, with payment upon signature of the sales agreement by the representatives of the U.S. Government and the U.S. company. Payment shall be received by the U.S. Government in U.S. dollars upon such signature and shall precede procurement action by the U.S. Government or, in cases of stock sales, delivery to the authorized purchaser.

(3) Prices for sales from procurement or sales from DoD stocks, under 22 U.S.C. 2770 section 30 or 10 U.S.C. 2208(i) shall be established in accordance with DoD 7290.3–M. Prices to be charged shall be the same as those established for sales under the FMS Program of the same defense articles and services, to include all surcharges and accessorial charges applicable to FMS, including an amount for administration not less than the FMS administrative surcharge. Full replacement cost pricing shall be used

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

for all sales of defense articles from DoD stocks and all diversions from DoD procurement. Sales prices (under 10 U.S.C. 2208(i)), for articles to be exported or for independent research and development will include the same appropriate surcharges and accessorial charges that are applicable to sales under FMS. Sales to Federal customers other than the Department of Defense shall be priced in accordance with Chapter 26 of the DoD Accounting Manual, DoD 7220.9–M.

(4) An obligation for a reimbursable procurement may not exceed the cash received from an authorized purchaser as prescribed in paragraph (c)(2) of this section. If there is an increase in the procurement contract cost, the purchaser shall be required to make additional cash payment to the Military Service to fund the contract fully, plus applicable surcharges, when such an increase is known. The cash received from an authorized purchaser as prescribed in paragraph (c)(3) of this section, must be sufficient to fund the replacement cost of defense articles shipped from DoD stocks.

(5) Accountability shall be in accordance with DoD 7290.3–M with reimbursements from sales being credited to the current appropriation, fund, or account of the selling agency. Surcharges on items sold, such as nonrecurring cost recoupment charge, asset use charge, and FMS administrative charge, shall be accountable as FMS surcharges under DoD 7290.3–M. Amounts collected for items sold shall be credited to accounts, specified in paragraph 10402 of Foreign Military Sales Financial Management Manual, DoD 7290.3–M.

(d) *Establishment of priorities and allocations.*

(1) Unless otherwise directed by the USD(P) in coordination with the ASD(A&L), sales are not authorized if they result in inventory stockage levels dropping below the established reorder points. Except as provided in Section 21(i) of the Arms Export Control Act, sales, are not authorized if they constitute a withdrawal of assets from U.S. stocks that result in a significant adverse impact on the combat readiness of the Military Services.

[2] See footnote 1 to § 251.5(c).

(2) When procurement is required, or manufacture in Government-owned facilities is necessary, the Military Department concerned shall determine whether a sale will be concluded. Unless directed by the DSAA (see paragraph (d)(2)), the Military Department concerned is responsible for the establishment of priorities for procurement or manufacture and for allocations and delivery of military equipment and services. In determining production priorities and allocations, the Military Departments shall consider fully all existing DoD requirements for U.S. and other foreign requirements and normally will schedule delivery, manufacture, and allocation on a first-in, first-out basis. In making such determinations, the Military Departments shall be guided by DoD Directive 4410.6 [2] and related assignments of force activity designators by the Joint Chiefs of Staff (JCS).

(3) If there are two or more competing foreign requirements, the Director, DSAA, shall determine priorities or shall make allocations. Such priorities or allocations for foreign requirements shall supersede determinations made by the Military Department under paragraph (d)(2).

(e) *Sales agreement.*

(1) The sales agreement with the U.S. company will identify the company, the items and quantities being sold, the estimated availability of the items, whether from DoD stocks or procurement, the estimated price of the items, the item into which the GFE or GFM item or items will be incorporated for resale, the identity of the foreign purchaser and the number and date of the munitions export license, or State Department approval.

(2) The sales agreement shall be approved by the appropriate Military Department's General Counsel, or designee, and shall, as a minimum, indicate that the U.S. Government:

(i) Retains the right to cancel in whole or in part or to suspend performance at any time under unusual or compelling circumstances if the national interest so requires.

(ii) Provides no warranty or guarantee, either expressed or implied, regarding the items being sold.

(iii) Shall provide best efforts to comply with the delivery leadtime cited, but will incur no liability for failure to meet an indicated delivery schedule.

(iv) Shall use its best efforts to deliver at the estimated prices, but that the purchaser is obligated to reimburse the U.S. Government for the total cost if it is greater than the estimated price.

(3) Moreover, the sales agreement shall state that:

(i) Payment terms are cash, payable in advance, in accordance with paragraph (c)(2) of this section;

(ii) Delivery shall be "Free on Board (FOB) Point of Origin" with purchaser to arrange for continental U.S. (CONUS) transportation, except for sensitive or hazardous cargo that normally shall be shipped by way of the Defense Transportation Services (DTS) at rates established in DoD 7290.3–M;

(iii) The purchaser is responsible for both insurance coverage, if desired, and ultimate customs clearance for export;

(iv) The purchaser is required to reimburse the U.S. Government for all costs incurred by the U.S. Government if the purchase agreement is canceled by the purchaser before delivery of the defense materiel or completion of defense services.

(v) The purchaser renounces all claims against the U.S. Government, its officers, agents, and employees arising out of or incident to this agreement, whether concerning injury to or death of personnel, damage to or destruction of property, or other matters, and will indemnify and hold harmless the U.S. Government, its officers, agents, and employees against any such claims of third parties and any loss or damage to U.S. Government property.

(vi) The U.S. company agrees to provide for protection of classified information and will require the agreement with the foreign government to provide for protection of U.S. classified information.

§ 251.7 Information requirements.

(a) The quarterly report (see § 251.5(d)(3)) shall be provided within 30 days of the end of each fiscal quarter and shall contain the information specified in 22 U.S.C. 2770.

(b) The reporting requirement of this Directive has been assigned Report Control Symbol DSAA(Q)1149. The report format is in 22 U.S.C 2770.

Appendix A to Part 251—Status report on sales of GFE or GFM and related quality assurance services (RCS DSAA (Q)1149)

FOR PERIOD ENDING

[Military Department]

U.S. Company	Items being sold [1]	Quantities	Stock source	Procurement source	Estimated availability	Estimated price	Recipient Foreign country and recipient Armed Force	Export [2] license No. & date	Date of delivery	Final price

[1] Provide breakout of items being sold as concurrent or follow-on spares that will not be incorporated into an end item by the U.S. company before sale to a foreign government.
[2] Or other State Department approval.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 18, 1987.

[FR Doc. 87-22191 Filed 9-24-87; 8:45 am]

BILLING CODE 2810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3267-3]

Standards of Performance for New Stationary Sources, Delegation of Additional Standards to North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On July 15, 1987, the North Carolina Division of Environmental Management requested that EPA delegate to the State the authority to implement and enforce EPA's New Source Performance Standards (NSPS) for a category of air pollution sources (identified below under "Supplementary Information"). Since EPA's review of pertinent North Carolina laws, rules, and regulations showed them to be adequate to implement and enforce these federal standards, the Agency has delegated authority for them to North Carolina. Affected sources are now under the jurisdiction of the State.

EFFECTIVE DATE: August 20, 1987.

ADDRESSES: Copies of the State's requests and EPA's letter of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (identified below) should be submitted to the Air Quality Section, North Carolina Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Bob Peddicord of the EPA Region IV Air Programs Branch at the above address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Section 111 of the Clean Air Act authorizes EPA to delegate authority to implement and enforce the Standards of Performance of New Stationary Sources (NSPS) to any state which has adequate implementation and enforcement procedures. On November 24, 1976, EPA delegated to North Carolina authority to implement and enforce most of the NSPS then extant. Since that date, EPA has updated the State's delegation several times. On July 15, 1987, the North Carolina Division of Environmental Management requested a delegation for the following recently promulgated NSPS: 40 CFR Part 60, Subpart Do, Industrial-Commercial-Institutional Steam Generating Units.

After a thorough review of the request, I determined that such delegation was appropriate with the conditions set forth in the original delegation letter of November 24, 1976 and granted the State's request in a letter dated August 20, 1987. North Carolina sources subject to the NSPS listed above are now under the jurisdiction of the State of North Carolina.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempt this rule from requirements of section 3 of Executive Order 12291.

Authority: Sec. 111, Clean Air Act (42 U.S.C. 7411)

Date: September 4, 1984.

Joe R. Franzmathes

Acting Regional Administrator.

[FR Doc. 87-22151 Filed 9-24-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-473; RM-5388]

Radio Broadcasting Services; Roseville, Chico & South Lake Tahoe, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, issued in response to a petition for rule making filed by Fuller-Jeffrey Broadcasting Companies, Inc., substitutes channels and modifies affected stations, accordingly, all of which are licensed to petitioner, as follows: Channel 229B1 is substituted for Channel 228A at Roseville, CA and the Class A license of Station KRXQ(FM) is modified to reflect the higher class channel; Channel 230B1 is substituted for Channel 229B1 at Chico, CA and the license of Station KFMF(FM) is modified accordingly. Channel 230B1 was requested in lieu of Channel 230B at South Lake Tahoe, CA with accompanying reclassification of license of Station KRLT(FM). The latter two substitutions were required to accommodate the Roseville proposal. Both Stations KFMF(FM) and KRLT(FM), were recently reclassified to Class B1 by Commission action, *Reclassification of FM Facilities Pursuant to BC Docket 80-90,* (see, *Public Notice,* April 13, 1987, No. 2698), since their operating values are less than the minimum required for Class B status.

With this action, this proceeding is terminated.

EFFECTIVE DATE: October 19, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-473, adopted August 18, 1987, and released

September 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California by amending the following entries: Chico, delete Channel 229 and add Channel 230B1; Roseville, delete Channel 228A and add Channel 229B1; South Lake Tahoe, delete Channel 230 and add Channel 230B1.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-21107 Filed 9-24-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-478; RM-5484]

Radio Broadcasting Services; Seymour, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230C2 for Channel 232A at Seymour, Texas, and modifies the license of Station KSEY-FM to specify operation on the new frequency, at the request of KSEY Broadcasting, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-478; adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR PART 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas by revising Channel 232A to Channel 230C2 for Seymour.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-22164 Filed 9-24-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status and Designation of Critical Habitat for Cape Fear Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Cape Fear shiner *(Notropis mekistocholas)* to be an endangered species and designates its critical habitat under the Endangered Species Act (Act) of 1973, as amended. This fish has recently undergone a reduction in range and population. It is currently known from only three small populations in the Cape Fear River drainage in Randolph, Moore, Lee, and Chatham Counties, North Carolina. Due to the species' limited distribution, any factor that degrades habitat or water quality in the short river reaches its inhabits—e.g., land use changes, chemical spills, wastewater discharges, impoundments, changes in stream flow, or increases in agricultural runoff—could threaten the species' survival. This determination of endangered species status and the designation of critical habitat implements the protection provided by the Act for the Cape Fear shiner.

EFFECTIVE DATE: The effective date of this rule is October 26, 1987.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The Cape Fear shiner *(Notropis mekistocholas)*, the only endemic fish known from North Carolina's Cape Fear River drainage, was discovered in 1962 and described by Snelson (1971). This fish has been collected from nine stream reaches in North Carolina (Bear Creek, Rocky River, and Robeson Creek, Chatham County; Fork Creek, Randolph County; Deep River, Moore and Randolph Counties; Deep River, Chatham and Lee Counties; and Cape Fear River, Kenneth Creek, and Parkers Creek, Harnett County (Snelson 1971; W. Palmer and A. Braswell, North Carolina State Museum of Natural History, personal communication, 1985; Pottern and Huish 1985, 1986)). Based on a recently completed Service-funded study (Pottern and Huish 1985, 1986) involving extensive surveys in the Cape Fear River Basin (including all historic sites) and a review of historical fish collection records from the Cape Fear, Neuse, and Yadkin River systems, the fish is now restricted to only three populations that occur primarily on private lands. The strongest population (101 individuals collected in 1984 and 1985) is located around the junction of the Rocky River and Deep River in Chatham and Lee Counties where the fish inhabits the Deep River from the upstream limits of the backwaters of Locksville Dam upstream to the Rocky River then upstream from the Rocky River to Bear Creek and upstream from Bear Creek to the Chatham County Road 2156 Bridge. A few individuals were collected just downstream of the Locksville Dam, but because of the limited extent of Cape Fear shiner habitat at this site, it is not believed this is a separate population. Instead, it is thought these fish represent a small number of individuals that periodically drop down from the population above Locksville Dam pool.

The second population, represented by the collection of a specimen near State Highway Bridge 902 in Chatham County, is located above the Rocky River Hydroelectric Dam. This population was historically the best, but the area yielded only the one specimen after extensive surveys by Pottern and

Huish (1985). The third population was found in the Deep River system in Randolph and Moore Counties. This population is believed to be small (Pottern and Huish 1985, 1986). Three individuals were found above the Highfalls Hydroelectric Reservoir—one in Fork Creek, Randolph County, and two in the Deep River, Moore County. The species was also found downstream of the Highfalls Dam. However, the extent of suitable habitat in this stream reach is limited, and it is thought that these individuals likely result from downstream movement from above the reservoir where Cape Fear shiner habitat is more extensive.

The Cape Fear shiner is small, rarely exceeding 2 inches in length. The fish's body is flushed with a pale silvery yellow, and a black band runs along its sides (Snelson 1971). The fins are yellowish and somewhat pointed. The upper lip is black, and the lower lip bears a thin black bar along its margin. The Cape Fear shiner, unlike most other members of the large genus *Notropis*, feeds extensively on plant material, and its digestive tract is modified for this diet by having an elongated, convoluted intestine. The species is generally associated with gravel, cobble, and boulder substrates and has been observed to inhabit slow pools, riffles, and slow runs (Snelson 1971, Pottern and Huish 1985). In these habitats, the species is typically associated with schools of other related species, but it is never the numerically dominant species. Juveniles are often found in slackwater, among large rock outcrops in mid-stream, and in flooded side channels and pools (Pottern and Huish 1985). No information is presently available on breeding behavior, fecundity, or longevity.

The Cape Fear shiner may always have existed in low numbers. However, its recent reduction in range and its small population size (Pottern and Huish 1985, 1986) increases the species' vulnerability to a catastrophic event, such as a toxic chemical spill. Dam construction in the Cape Fear system has probably had the most serious impact on the species by inundating the species' rocky riverine habitat, and changes in flow regulation at existing hydroelectric facilities could further threaten the species. The deterioration of water quality has likely been another factor in the species' decline. The North Carolina Department of Natural Resources and Community Development (NCDNRCD) (1983) classified water quality in Deep River, Rocky River, and Bear Creek as good to fair, and referred to the Rocky River below Siler City as an area where sampling indicates degradation. That report also stated: "Within the Cape Fear Basin, estimated average annual soil losses from cropland ranged from 3 tons per acre in the lower basin to 12 tons in the headwaters." The North Carolina State Division of Soil and Water Conservation considers 5 tons of soil loss per acre as the maximum allowable.

The Cape Fear shiner was one of 29 fish species included in a March 18, 1975, Notice of Review published by the Service in the **Federal Register** (40 FR 12297). On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that the Cape Fear shiner, along with 147 other fish species, was being considered for possible addition to the List of Endangered and Threatened Wildlife. On April 4, 1985, the Service notified Federal, State, and local governmental agencies and interested parties that the Asheville Endangered Species Field Office was reviewing the species' status. That notification requested information on the species' status and threats to its continued existence. Twelve responses to the April 4, 1985, notification were received. The COE, Wilmington District; North Carolina Division of Parks and Recreation, Natural Heritage Program; and the North Carolina State Museum of Natural History provided data on potential threats and supported some type of protection for the species. Concern for the species' welfare was also expressed by private individuals. The other respondents provided no information on threats and did not take a position on the species' status. The Cape Fear shiner was included in the Services' September 18, 1985, Notice of Review of Vertebrate Wildlife (50 FR 37958) as a category 1 species, indicating that the Service had substantial biological data to support a proposal to list the species as endangered or threatened.

Summary of Comments and Recommendations

In the July 11, 1986, proposed rule (51 FR 25219) and associated notifications, all interested parties are requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted (county governments, regional planning commission, U.S. Army Corps of Engineers (COE), and North Carolina Wildlife Resources Commission (NCWRC) were contacted in person or by phone) and requested to comment. A newspaper notice was published in the *Sanford Daily Herald* on August 2, 1986. A news release summarizing the proposed rule and requesting comments was also provided to newspapers in North Carolina. Fourteen written comments were received and are discussed below.

The COE analyzed, as part of its Section 7 responsibilities for proposed species and critical habitat, the potential impacts of two proposed Deep River COE projects (Randleman Dam and Howards Mill Dam) on the Cape Fear shiner and its critical habitat. The COE stated that Randleman Dam, which would be located in Randolph County, North Carolina, about 30 miles upstream of the Cape Fear shiner's proposed critical habitat in Randolph and Moore Countries, is not likely to adversely modify proposed critical habitat or jeopardize the continued existence of the Cape Fear shiner. The COE concluded that listing would not result in changes to the proposed design, construction, operation, or maintenance of the project. The COE further concluded that designation of the species' critical habitat should have no economic effect on the Randleman Dam project. The Service responds that analysis of the data presented by COE on the potential downstream impacts from siltation during construction and the relocation of a sewage treatment discharge further downstream indicates that COE's assessment is correct and that no significant impacts to the fish and its proposed critical habitat are expected to occur. Concerning Howards Mill Dam, which is proposed to be located within the critical habitat in Randolph and Moore Counties, COE responded that this project could be precluded by designating critical habitat on the Deep River. However, the COE stated that the Howards Mill Dam project was placed in a deferred category in October 1980 because it lacked economic justification. The NCDNRCD, Division of Water Resources, also addressed Howards Mill Dam and concluded that it ". . . is presently a low priority project with unfavorable benefit-cost considerations. Howards Mill Dam will probably never be constructed." The Service concurs that the designation of critical habitat on the Deep River in Randolph and Moore Counties could preclude construction of the Howards Mill Dam. However, if the project were ever to become economically justifiable and of national or regional significance, the dam proponents could file for an exemption pursuant to section 10 of the Endangered Species Act.

The Federal Energy Regulatory Commission (FERC) commented that no new hydroelectric facilities were proposed for the area and that all hydroelectric facilities presently operating within or above the species and its proposed critical habitat were operating as run-of-the-river facilities and therefore should not affect stream flows and habitat conditions. FERC did conclude that the listing and designation of critical habitat could have future unknown impacts on hydroelectric activities under its jurisdiction. The Service agrees that if the existing projects are operating as conditioned in their permits as fun-of-the-river facilities, impacts to stream flow and habitat should be minimal. The Service also agrees that there may be some unknown future impacts to activities under FERC jurisdiction by the listing of the species and the designation of its critical habitat, but the Service cannot assess the significance of unknown future impacts.

The NCDNRCD provided comments through the North Carolina State Clearinghouse and stated "We concur with the listing . . . ." Other divisions within the NCDNRCD also provided individual comments. The Division of Forest Resources responded that it did not perceive any adverse impacts on its activities. The Division of Water Resources informed the Service of two COE projects and requested additional data on the potential impacts of the listing on these projects. The Service has supplied the analysis conducted by COE (see above COE comments). The NCWRC, Division of Environmental Management (DEM), Division of Coastal Management, and Division of Parks and Recreation supported the proposal. The NCWRC and DEM also expressed concern that construction and operation of Randleman Dam and the associated downstream relocation of a sewage treatment plant outfall could adversely affect the species and its habitat. The Service is aware of the potential problems associated with the Randleman Dam project. However, the only hard data and complete analysis provided on the project's potential impacts was provided by the COE (see above COE comments). Based on analysis of this data, the Service believes that the impacts of the Randleman Dam project on the fish and its habitat should be minimal. However, subsequent to listing, further consultation between the COE and the Service will occur regarding this matter.

The North Carolina Department of Human Resources, Division of Health Services, stated that it would be opposed to the listing if it would delay completion of Randleman Dam. The Service has been in contact with the COE on potential conflicts concerning Randleman Dam, and, based on analysis of the COE's data and its conclusions, the Service does not anticipate that the listing of the fish or the designation of its critical habitat will delay the completion of Randleman Dam. Further, the Service will be working with the COE as the Randleman Dam project progresses to deal quickly with any presently unforeseen conflicts between the fish and the project.

The U.S. Geological Survey, North Carolina Department of Transportation, and Pee Dee Council of Governments commented that they foresaw no major conflicts with listing the fish and designating its critical habitat. Support for listing was expressed by a college biology professor.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Cape Fear shiner should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Cape Fear shiner (*Notropis mekistocholas*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* A review of historic collection records (Snelson 1971; W. Palmer and A. Braswell personal communication 1985), along with recent survey results (Pottern and Huish 1985, 1986), indicates that the Cape Fear shiner is presently restricted to only three populations (see "Background" section). Three historic populations have apparently been extirpated (Pottern and Huish 1985, 1986). The Robeson Creek population, Chatham County, was believed lost when Jordan Lake flooded part of the creek. The reasons for the loss of populations from Parkers Creek and Kenneth Creek in Harnett County are not known. The shiner has also not been recollected (Pottern and Huish 1985) from the Cape Fear River in Harnett County. However, review of historical and current collection records reveals that only one specimen has ever been collected from this portion of the river, and the fish likely was a stray individual from an upstream or tributary population. Since much of the Deep, Haw, and Cape Fear Rivers and their major tributaries has been impounded for hydroelectric power, and much of the rocky shoal habitat inundated, other populations and population segments that were never discovered have likely been lost to these reservoirs.

Of the three remaining populations, only the one located around the confluence of the Deep and Rocky Rivers in Chatham and Lee Counties (inhabiting a total of about 7.3 river miles) appears strong (Pottern and Huish 1985). The second population in the Rocky River, above the Rocky River hydroelectric facility, was the source of the type specimens used to describe the species (Snelson 1971). Historic records (W. Palmer and A. Braswell personal communication, 1985) reveal that collections of 15 to 30 specimens could be expected in this stretch of the Rocky River (State Route 902) or Chatham County Road 1010 Bridge) during a sampling visit in the late 1960s and early 1970s. Pottern and Huish (1985) sampled the Rocky River throughout this reach on numerous occasions and were able to collect only one specimen. The reason for the apparent decline in this population is unknown. The third population, located in the Deep River system in Moore and Randolph Counties, is represented by the collection of six individuals (Pottern and Huish 1986). Three individuals were taken above the Highfalls Hydroelectric Reservoir. The other specimens were taken from below the dam. As the available habitat below the dam was limited, these fish were probably migrants from the unstream population.

Potential threats to the species and its habitat could come from such activities as road construction, stream channel modification, changes in stream flows for hydroelectric power, impoundments, land use changes, wastewater discharges, coal mining operations and other projects in the watershed if such activities are not planned and implemented with the survival of the species and the protection of its habitat in mind. The species could be impacted by two COE projects presently under review for the Deep River. The Randleman Dam project would consist of a reservoir of the Deep River in Randolph County, above known Cape Fear shiner habitat. However, according to data presented by the COE to the Service, this project as presently planned should not further threaten the species' survival. The Howards Mill Reservoir would be on the Deep River in Moore and Randolph Counties and

would flood proposed Cape Fear shiner critical habitat. However, this reservoir is not likely to be constructed (see "Background" section). The species and its habitat could also be impacted by coal mining if the activity was not carried out in a manner compatible with the species. The Office of Surface Mining within the Department of the Interior is currently reviewing and evaluating a coal mining permit application submitted April 30, 1987 by the Chatham Coal Company, Inc. of Stanford, North Carolina. Preliminary discussions between the Service and the Office of Surface Mining indicate that mining operations could be planned that are also compatible with the conservation of the Cape Fear shiner and its critical habitat. Both agencies are aware of the permit application and are cooperating in their efforts to ensure the survival of this freshwater fish species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Most of the present range of the Cape Fear shiner is relatively inaccessible and overutilization of the species has not been and is not expected to be a problem.

C. *Disease or predation.* Although the Cape Fear shiner is undoubtedly consumed by predatory animals, there is no evidence that this predation is a threat to the species.

D. *The inadequacy of existing regulatory mechanisms.* North Carolina State law (Subsection 113–272.4) prohibits collecting wildlife and fish for scientific purposes without a State permit. However, this State law does not protect the species' habitat from the potential impacts of Federal actions. Federal listing will provide additional protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The major portion of the best Cape Fear shiner population is located at the junction of the Deep and Rocky Rivers in Chatham and Lee Counties. A major toxic chemical spill at the U.S. Highway 15–105 Bridge upstream of this site on the Rocky River could jeopardize this population, and as the other populations are extremely small and tenuous, the species' survival could be threatened.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Cape Fear shiner (*Notropis mekistocholas*) as an endangered species. Because of the species' restricted range, and vulnerability of the isolated populations to a single catastrophic accident, threatened status does not appear to be appropriate for this species (see "Critical Habitat" section for a discussion of why critical habitat is being proposed for the Cape Fear shiner).

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (III) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. The critical habitat designation for the Cape Fear shiner consists of about 17 river miles including: (1) Approximately 4 river miles of the Rocky River in Chatham County, North Carolina; (2) approximately 7 river miles of Bear Creek, Rocky River, and Deep River in Chatham and Lee Counties, North Carolina; and (3) approximately 6 river miles of Fork Creek and Deep River in Randolph and Moore Counties, North Carolina. (See "Regulation Promulgation" section of this final rule for the precise description of critical habitat.) These stream sections contain gravel, cobble, and boulder substrates with pools, riffles, and shallow runs for adult fish and slackwater areas with large rock outcrops, side channels, and pools for juveniles. These areas also provide water of good quality with relatively low silt loads.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Activities which presently occur within the designated critical habitat include, in part, fishing, boating, scientific research, and nature study. These activities, at their present use level, do not appear to be adversely impacting the area.

There are also Federal activities that do or could occur within and in the vicinity of critical habitat that may affect or be affected by the critical habitat designation. These activities include construction of impoundments (such as the COE reservoirs under study for the upper Deep River), stream alterations, bridge and road construction, discharges of municipal and industrial wastes, hydroelectric facilities and a coal mining permit application. These activities could, if not carried out with the protection of the species in mind, degrade the water and substrate quality of the Deep River, Rocky River, Bear Creek, and Fork Creek by increasing siltation, water temperatures, organic pollutants, and extremes in water flow. If any of these activities may affect the critical habitat area and are the result of a Federal action, Section 7(a)(2) of the Act, as amended, requires the agency to consult with the Service to ensure that actions it authorizes, funds, or carries out, are not likely to destroy or adversely modify critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional data obtained. Based on this analysis, there does not appear to be any foreseeable significant economic or other impact from the designation of any of the particular critical habitat areas. Therefore, no adjustment has been made in critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required for Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate

their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service is presently aware of only two Federal actions under consideration (Randleman and Howards Mill Reservoirs) that may affect the Cape Fear shiner and the proposed critical habitat. The Service has been in contact with the COE concerning the potential impacts of these projects on the species and its habitat (See "Summary of Comments and Recommendations" section). It has been the experience of the Service, however, that nearly all Section 7 consultations are resolved so that the species is protected and the project objectives can be met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are availabe for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 et seq.). Based on currently available data, present and planned uses of the critical habitat area and the watershed above it are compatible with the critical habitat designation. Based on the information discussed in this rule concerning public projects within and private lands fronting the proposed critical habitat, it is not expected that significant economic impacts will result from the critical habitat designation. In addition, there is no known involvement of Federal funds that would affect or be affected by the critical habitat designation for the private lands that front the critical habitat areas. No direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by the critical habitat designation. Further, the rule contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980. These determinations are based on a Determination of Effects that is available at the U.S. Fish and Wildlife Service, Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia 22201.

References Cited

North Carolina Department of Natural Resources and Community Development. 1983. Status of Water Resources in the Cape Fear River Basin. 135 pp.

Pottern, G.B., and M.T. Huish. 1985. Status survey of the Cape Fear shiner (*Notropis mekistocholas*). U.S. Fish and Wildlife Service Contract No. 14-16-0009-1522. 44 pp.

Pottern, G.B., and M.T. Huish. 1986. Supplement to the status survey of the Cape Fear shiner (*Notropis mekistocholas*). U.S. Fish and Wildlife Service Contract No. 14-16-0009-1522. 11 pp.

Snelson, F.F. 1971. *Notropis mekistocholas*, a new cyprinid fish endemic to the Cape Fear River basin, North Carolina. Copeia 1971:449-462.

Author

The primary author of this final rule is Richard G. Biggins, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*		
Shiner, Cape Fear	*Notropis, mekistocholas*	U.S.A. (NC)	Entire	E	290	17.95(e)	NA
*	*	*	*	*	*		

3. Amend § 17.95(e) by adding critical habitat of the "Cape Fear Shiner," in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * *

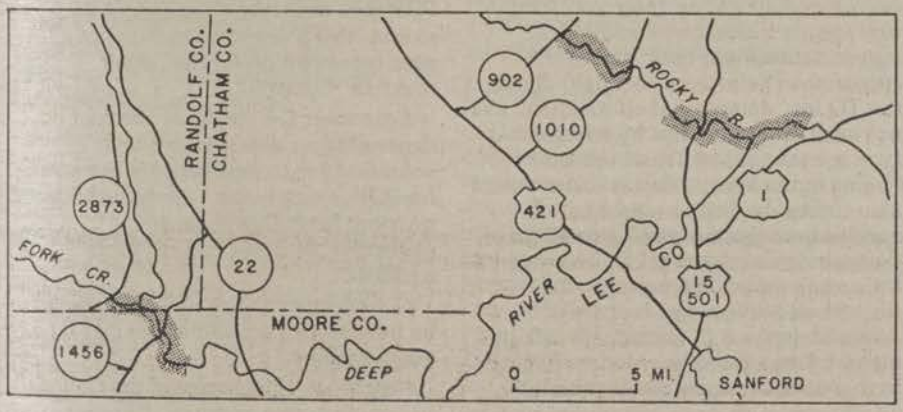
Cape Fear Shiner (Notropis mekistocholas)

(1) *North Carolina.* Chatham County. Approximately 4.1 river miles of the Rocky River from North Carolina State Highway 902 Bridge downstream to Chatham County Road 1010 Bridge;

(2) *North Carolina.* Chatham and Lee Counties. Approximately 0.5 river mile of Bear Creek, from Chatham County Road 2156 Bridge downstream to the Rocky River, then downstream in the Rocky River (approximately 4.2 river miles) to the Deep River, then downstream in the Deep River (approximately 2.6 river miles) to a point 0.3 river mile below the Moncure, North Carolina, U.S. Geological Survey Gaging Station; and

(3) *North Carolina.* Randolph and Moore Counties. Approximately 1.5 river miles of Fork Creek, from a point 0.1 river mile upstream of Randolph County Road 2873 Bridge downstream to the Deep River then downstream approximately 4.1 river miles of the Deep River in Randolph and Moore Counties, North Carolina, to a point 2.5 river miles below Moore County Road 1456 Bridge.

* * * * *



Dated: August 26, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-22268 Filed 9-24-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 61220-7033]

Groundfish of the Gulf of Alaska; Closure Modification

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure modification.

SUMMARY: The Director, Alaska Region, NMFS, is reopening the Eastern Regulatory Area of the Gulf of Alaska to trawling for groundfish species for which a target quota or a trawl gear share is available. This action is necessary to promote full utilization of groundfish, including Pacific ocean perch, without biological harm to "other rockfish". It is intended as a conservation and management measure to optimize groundfish yields from the fishery.

EFFECTIVE DATE: September 22, 1987, until 12 midnight, Alaska Standard Time (AST), December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1987, the Secretary of Commerce (Secretary) closed the Eastern Regulatory Area, defined at 50 CFR 672.2, to trawling for all groundfish species (52 FR 27202, July 20, 1987). Comments on the closure were invited until July 30, 1987.

One letter of comment was received, which was from the Alaska Factory Trawler Association (AFTA). It is summarized and responded to below.

The closure was part of a general closure to fishing for "other rockfish" in the exclusive economic zone (EEZ) of the Gulf of Alaska. The closure action was taken, because the target quota of 4,000 metric tons (mt) for "other rockfish" had been reached. The closure action was taken to protect "other rockfish", stocks of which are in a depressed condition. Fishing for other groundfish species in the Central and Western Regulatory Areas was still permitted. Trawl vessels were thus able to pursue fishing for Pacific ocean perch (POP) as well as other groundfish species for which harvest quotas remained. Any catches of "other rockfish" in those two areas were to be treated as a prohibited species and discarded at sea.

In the Eastern Regulatory Area, however, all trawling was closed under § 672.20(c)(2)(ii), even though about 1,600 mt of POP, as well as substantial amounts of other groundfish species, remained available for harvest. POP is the only species in the Eastern Regulatory Area of interest to fishermen using trawl gear for the rest of the 1987 fishing year. Closing all of the area was necessary, because the best available information indicated that POP occur in water depths similar to "other rockfish" in the Eastern Regulatory Area and that substantial amounts of "other rockfish" would be caught in a POP fishery. Additional mortality on "other rockfish" was not acceptable to the Secretary.

The information forming the basis for the closure was from the 1984 NMFS-conducted triennial Gulf of Alaska trawl survey. Actual fishery information to compare with NMFS survey data on the mix of trawl-caught "other rockfish" and

POP was lacking for the Eastern Regulatory Area prior to 1987. As a result of the closure, about 1,600 mt of POP remain unharvested in the Eastern Regulatory Area. This amount is worth about $1.6 million.

One of AFTA's comments stated that the results of the 1987 "other rockfish" fishery showed that POP occurred in deeper water in the Eastern Regulatory Area than the results of the 1984 triennial survey indicated. AFTA has requested that trawling in the Eastern Regulatory Area be allowed to permit full utilization of unharvested POP. AFTA would voluntarily place NMFS-trained observers onboard a representative number of its vessels to provide at-sea verification that further trawling for POP would not inflict significant harm on "other rockfish" stocks.

The Regional Director recognizes that the NMFS survery data may not be the best available, since it is now three years old and that the 1987 fishery data may be more representative of the POP distribution. He has received a fishing plan from AFTA whereby no less than 40 percent of AFTA vessels would have onboard a NMFS trained observer while those vessels are engaged in trawling in the Eastern Regulatory Area. Such cause of observers would be without any cost to the Federal Government. Representatives of some other vessels that are not part of AFTA have also stated that they would place an observer onboard if the Eastern Regulatory Area were reopened to trawling. The Regional Director estimates that about five vessels might actually commence trawling. The Secretary has determined that the Eastern Regulatory Area can be opened to trawl fishing if means are available to certify that the risk of biological harm to "other rockfish" would be insignificant. As a result of AFTA's fishing plan, the Secretary finds that the means are available. By this notice, the Regional Director advises the fishing industry that a bycatch of "other rockfish" of 10 percent or less of the amount of POP caught would not jeopardize the status of "other rockfish" stocks.

Therefore, the Secretary hereby modifies the closure in the Eastern Area to allow trawling for groundfish species for which a target quota or a trawl gear share is available. Despite this modification, all gear types fishing in the Eastern Area must treat "other rockfish" as a prohibited species because the area remains closed to species for which the TQ has been reached. "Other rockfish" does not include a rockfish group in the Southeast Outside District for which a TQ of 1,250 mt is specified. The preamble to the interim notice establishing 1987 TQs (see 52 FR 785, January 9, 1987) had described these species as being in the Southeast Outside District in waters shallower than 100 fathoms. These are rockfish species that have been managed by the State of Alaska under authority of the FMP that recognizes that State's regulatory role of demersal shelf rockfish. This notice clarifies this category of "other rockfish" by listing them as follows: By species and common name, they include *Sebastes paucispinus* (Bocaccio), *S. pinninger* (Canary rockfish), *S. nebulosus* (China rockfish), *S. courinus* (Copper rockfish), *S. mallinger* (Quillback rockfish), *S. proiger* (Redstripe rockfish), *S. helvomaculatus* (Rosethorn rockfish), *S. brevispinis* (Silvergrey rockfish), *S. nigrocinctus* (Tiger rockfish), *S. ruberrimis* (Yelloweye rockfish). Since the TQ for "demersal shelf rockfish" has not been taken, catches by any gear type are retainable. Trawl vessels fishing in the West Yakutat district must also treat sablefish as a prohibited species because the trawl gear share of that species has been taken. However, a little more than 100 mt of sablefish remains of the trawl gear share of sablefish in the S.E. Outside/E. Yakutat district. Consequently, trawlers fishing in this district may retain incidentally caught sablefish up to 20% of their catch, take, or harvest.

The amount of "other rockfish" that will be caught while trawling for other species of groundfish will not pose a significant risk to "other rockfish" if they are 10 percent or less of catches of POP harvested in the trawl fishery. The Regional Director will compile the information from the observers and advise the affected trawl industry of the catch rates of "other rockfish" and POP. If observer information shows the "other rockfish" catch to be in excess of 10 percent, the Regional Director will again close the Eastern Regulatory Area to trawling.

Participating trawl vessel operators could earn about $1.6 million if they are allowed to harvest the remaining POP quota without significant risk to "other rockfish". The amount that they would forego if the Eastern Regulatory Area is not opened to trawling is not acceptable to the Secretary.

Public Comments

One letter of comment was received from AFTA, which represents certain domestic trawl vessles. The comments are summarized and responded to as follows:

Comment 1: POP are found in deeper water in the Eastern Regulatory Area than are "other rockfish".

Response: AFTA's statement was based on the results of the 1987 fishery. Although the closure was based on the best available scientific information, the results of the 1987 fishery may be new information. At-sea observation of the catches as a result of the voluntary observer program should yield quantitative information on bycatch rates of "other rockfish" in a POP directed fishery in the Eastern Regulatory Area.

Comment 2: The Eastern Regulatory Area should be opened to trawling for POP with observer coverage, to the extent NMFS deems necessary, of all gear types to monitor the "other rockfish" bycatch.

Response: The Regional Director is depending on trawl vessels to voluntarily use observers while trawling for POP to determine whether additional trawling for POP will cause unacceptable bycatches of "other rockfish".

Comment 3: "Other rockfish" should be treated as a prohibited species if no quota remains.

Response: The closure of the Gulf of Alaska to "other rockfish" included treating this group as a prohibited species Gulf-wide. This treatment will extend to the Eastern Regulatory Area during the reopening.

Comment 4: Management measures should be initiated to allow placing target species in a bycatch status when the quota is being approached.

Response: Comment noted. The NMFS is preparing a regulatory amendment that would provide authority to close directed fishing and thus leave a retainable bycatch to support other ongoing directed fisheries.

Classification

This action is required under 50 CFR 672.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries.

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

Dated: September 22, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-22200 Filed 9-22-87; 4:56 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0614]

Bank Holding Companies and Change in Bank Control; Board Policy Regarding the Acquisition and Operation of Thrift Institutions By Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of public comments.

SUMMARY: The Federal Reserve Board is soliciting comment on whether, in light of changing economic and regulatory circumstances, the Board should determine that the acquisition and operation of thrift institutions by bank holding companies is, as a general matter, a proper incident to banking under the Bank Holding Company Act, and, on this basis, a permissible activity for bank holding companies under the Act and Regulation Y. 12 CFR 225.25. The Board has previously determined that the operation of a thrift institution is closely related to banking, but has permitted bank holding companies to acquire thrifts only where the acquisition involved a failing thrift institution. The Board also seeks comments on the terms and conditions under which bank holding companies should be permitted to acquire and operate health thrift institutions, if it should determine to allow such acquisitions.

DATE: Comments must be received by November 20, 1987.

ADDRESS: All comments, which should refer to Docket No. R-0614, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2223, 20th & Constitution Avenue NW, Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Scott G. Alvarez, Senior Counsel (202/452-3583), Michael J. O'Rourke, Senior Attorney (202/452-3288), Legal Division; Roger Cole, Manager (202/452-2618), or Molly Wassom, Senior Financial Analyst (202/452-2305), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452-3544).

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of this request for comment is to assist the Board in its review of Board policy regarding the acquisition and operations of thrift institutions by bank holding companies, and to obtain the commenters' view as to whether any changes to that policy are appropriate in light of changing economic and regulatory circumstances. The Board is now considering adding to the list of permissible nonbanking activities in Regulation Y the acquisition and operation of thrift institutions. To date, however, the Board has approved only the acquisition of failing thrift institutions, and not thrift institutions generally. Its rationale for adopting that policy was articulated in the Board's 1977 *D.H. Baldwin* decision,[1] which is discussed below.

II. Background

A. Statutory and Regulatory Framework

The BHC Act does not specifically authorize or prohibit bank holding companies from acquiring thrift institutions. Rather, the Act contains a general prohibition against bank holding companies acquiring companies engaged in any activity unless the Board has determined the activity to be "so closely related to banking * * * as to be a proper incident thereto" within the meaning of section 4(c)(8) of the BHC Act. 12 U.S.C. 1843(c)(8). Section 4(c)(8) thus imposes a two step test for determining the permissibility of nonbanking activities for bank holding companies: (1) Whether the activity is closely related to banking; and (2) whether the activity is a proper incident to banking—that is, whether the proposed activity can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.[2]

When the Board adopted the initial list of permissible nonbanking activities for bank holding companies in 1971, it did not include the operation of an S&L. (36 **Federal Register** 1077 (1971)). Notwithstanding its 1971 decision not to include the operation of S&Ls in the Regulation Y laundry list of permissible nonbanking activities, the Board in 1972 and 1975 approved applications from New England thrifts to become bank holding companies by acquiring commercial banks, in view of the unique, longstanding affiliation between thrifts and commercial banks in that region.[3] With these few exceptions, prior to 1982 the Board did not permit bank holding companies to acquire thrift institutions. The reasons for this policy were articulated in the Board's 1977 order denying an application by D.H. Baldwin, at the time a registered bank holding company, to retain ownership of a healthy savings and loan association it had acquired in 1969 before it became a banking holding company.[4]

B. The D.H. Baldwin Case

In *D.H. Baldwin*, the Board determined that as a general matter operating an S&L is closely related to banking, but ruled that such activities should not be regarded as a proper incident to banking; that is, as a general matter the public benefits associated with the affiliation of a bank and a thrift were not sufficient to outweigh the adverse effects of such an affiliation. This determination was based on three factors: (1) The perception of a competing and conflicting regulatory framework governing banks and S&Ls; (2) the possibility that cross-industry acquisitions would undermine the perceived rivalry between the banking and thrift industries; and (3) the

[1] *D.H. Baldwin Company*, 63 Federal Reserve Bulletin 280 (1987).

[2] *See Board of Governors v. Investment Company Institute*, 450 U.S. 46 (1984); *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229 (D.C. Cir. 1975).

[3] *Newport Savings and Loan Association*, 58 Federal Reserve Bulletin 313 (1972); *Old Colony Co-Operative Bank*, 58 Federal Reserve Bulletin 417 (1972); *Profile Bancshares, Inc.*, 61 Federal Reserve Bulletin 901; 1975).

[4] *D.H. Baldwin Company*, 63 Federal Reserve Bulletin 280 (1977).

possibility that such acquisitions could undermine the interstate banking restrictions of the Douglas Amendment to the Bank Holding Company Act ("Act" or "BHC Act"). Since that time, in all its orders regarding thrift acquisitions, the Board has continued to maintain the position that, as a general matter, the acquisition of a thrift institution is not a proper incident to banking.

C. Worsening Condition of the Thrift Industry and the First Failing Thrift Acquisitions

In 1981, in response to worsening conditions in the thrift industry, the Board informed the Congress that it might be forced to allow bank holding companies to acquire failing thrifts, and requested passage of the so-called Regulators Bill, which provided a series of procedures and priorities to guide the Bank Board's discretion in approving such acquisitions and otherwise to provide capital assistance to troubled thrifts.

Before the proposed legislation could be enacted, however, the Board was faced with two proposals by bank holding companies to acquire failing thrifts, proposals which necessitated the Board's immediate consideration in order to avoid the probable failure of the institutions. The first, Scioto Savings Association in Ohio, was acquired by an instate bank holding company at the urging of the Ohio Thrift Commissioner.[5] In the second,[6] the Federal Home Loan Bank Board requested that the Board allow Citicorp to acquire Fidelity Federal Savings and Loan of San Francisco. To allay the concerns of interested trade groups, state regulatory authorities, competing banks, members of Congress, community groups and others, whose opposition could have required the Board to conduct a time consuming formal hearing on the application and thus jeopardize the attempt to rescue the institution, the Board imposed a series of conditions on the operations of an S&L acquired by a bank holding company. Several of these conditions, such as continued operation of the institution as a thrift and branching restrictions, reflect the terms or spirit of the then-pending Garn-St Germain Depository Institutions Act of 1982. As part of this process, the Board also imposed conditions that limited transactions and operations between a thrift institution owned by a bank holding company and its affiliates. These conditions, known as the tandem operations restrictions, have been imposed on all thrift acquisition since that time.[7] The tandem operation restrictions will be reviewed below with respect to the Board's request for comment regarding the terms and conditions under which bank holding companies should acquire and operate thrift instiutions, should the Board determine that, as a general matter, this activity is a proper incident to banking.

D. The 1982 Garn-St Germain Act

Shortly after the Board's approval of the Fidelity acquisition by Citicorp, Congress passed the Garn-St Germain Depository Institutions Act, which authorized the purchase of ailing S&LS by out-of-state bank holding companies, provided the FSLIC follows certain bidding procedures that gave priority to intra-industry acquisitions and in-state organizations. In addition to the bidding priorities, the Garn-St Germain Act required that FSLIC minimize the cost for any S&L rescue; allowed the Board to waive the notice and hearing requirements of section 4 of the BHC Act in approving failing thrift acquisitions; and excluded FSLIC-insured thrifts from the definition of bank in the Bank Holding Company Act, thereby permitting such acquisitions under the interstate banking provisions of the Douglas Amendment. The act also expressly limited the expansion of the acquired S&L to those locations where a national bank could branch in the state.

Throughout the course of the debate leading to passage of the Garn-St Germain Act, the Chairman of the Federal Reserve Board made clear the Board's belief that it could exercise its existing authority to approve acquisitions of thrifts by bank holding companies.[8] As a policy matter, however, the Chairman indicated that the Board had not yet exercised that power, because to do so would open up larger questions of interstate banking and healthy thrift acqusitions generally.[9] This view, that the Board could exercise existing powers to approve such acquisitions, was shared by members of Congress,[10] the acting Comptroller of the Currency,[11] the Department of Justice,[12] the Federal Home Loan Bank Board,[13] and groups opposing the pending legislation such as the Independent Bankers Association of America, among others.[14] Without passage of the Garn-St Germain Act, the Chairman and other indicated the Board might be forced to use the Board's more general powers to approve such acquisitions,[15] and there was doubt whether, as a legal matter, the Board could limit its grant of approval to failing institutions only.

E. Thrift Acquisitions Since the 1982 Garn-St Germain Act

Since passage of the Garn-St Germain Act in October, 1982, the Board has continued to approve the acquisition of failing thrifts, particularly in response to the Ohio and Maryland thrift crises.[16] In all of these instances, the Board imposed conditions substantially similar to those laid out in the *First Fidelity* Order. The Board has limited its approval to acquisitions of failing thrifts only, and, when presented with an application by Old Stone Corporation to

[5] *Interstate Financial Corporation* (Scioto Savings Association), 68 Federal Reserve Bulletin 316 (1982).

[6] *Citicorp* (Fidelity Federal Savings and Loan), 68 Federal Reserve Bulletin 656 (1982).

[7] Citicorp petitioned the Board for relief from these conditions. In response, the Board issued a proposed rulemaking requesting comment on the tandem restrictions. The Board recently has rendered its decision on the conditions. *See* Letter of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, to Patrick Mulhern, Senior Vice President and General Counsel, Citicorp (Aug. 10, 1987).

[8] Chairman Volcker stated that: "One of the difficulties—a major difficulty—is not that we don't have those powers [to authorize bank holding company acquisitions of thrifts] but that they are not directed and limited. This bill provides a sense of priorities. Without it, we would be forced back on those powers, which I feel quite certain, would open up broader issues than is probably necessary to open up at this particular time. This bill gives us the specific authority to deal just with institutions in serious difficulty." *The Deposit Insurance Flexibility Act: Hearing on H.R. 4603 Before the Subcommittee on Financial Institutions Supervision, Regulations, and Insurance of the House Committee on Banking, Finance and Urban Affairs*, 97 Cong., 1st Sess. 167, 181 (1981) ("1981 House Hearings").

[9] *Id.*, at 177. (refrain from exercising existing authority.) Chairman Volcker continued his testimony by stating that if the Board used its existing authority to allow bank holding companies to acquire thrifts, it would be acquisition of failing thrifts. *Id.*, at 191.

[10] *See e.g.*, 127 Cong. Rec. H7798 (daily ed. Oct. 27, 1981) (remarks of Rep. Vento); 127 Cong. Rec. H7795 (daily ed. Oct. 27, 1981) (remarks of Rep. Wylie).

[11] *Financial Institutions Restructuring and Services Act of 1981: Hearings on S.1686, S.1703, S.1720, and S.1721 Before the Senate Committee on Banking, Housing, and Urban Affairs*, 97th Cong. 1st Sess. 26 (1981) (Part III) (hereafter, the "1981 Senate Hearings, Parts I, II and III", as appropriate).

[12] *Conduct of Monetary Policy: Hearings Before the House Committee on Banking, Finance and Urban Affairs*, 97th Cong. 1st Sess. 956 (1981) (hereafter, "1981 House Monetary Policy Hearings").

[13] 1981 House Monetary Policy Hearings at 109.

[14] 1981 House Hearings at 88, 95.

[15] *See* footnote 9, *supra*. *See also Capital Assistance Act and Deposit Insurance Flexibility Act: Hearing on S.2531 and S.2532 Before the Senate Committee on Banking, Housing, and Urban Affairs*, 97th Cong., 2d Sess. 54 (1982) (hereafter, "1982 Senate Hearings") (remarks of Sen. Riegle); 1982 Senate Hearings at 144 (remarks of Sen D'Amato); and 1982 Senate Hearings at 369 (remarks of Sen. Garn).

[16] These provisions have recently been renewed with the passage of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86 (enacted Aug. 10, 1987) ("CEBA").

acquire in essence a healthy thrift in June, 1984, the Board denied the application.[17] Out of the approximately 18 acquisitions of failing thrifts approved by the Board since 1982, currently only 7 remain in operation as thrifts, with the others having been converted to bank status.

III. The Changing Economic and Regulatory Climate

This request for comment is prompted by certain economic and regulatory changes since 1982 that may implicate possible changes to the Board's current bank/thrift policy. First, interstate banking has become widespread in the last two years. Approximately 23 states have authorized (or will authorize within the next 18 months) nationwide interstate banking, and only seven states have not yet authorized either regional or nationwide interstate banking. The remaining states have entered, or are about to enter, into regional interstate banking compacts. In addition, the FHLBB has approved over 50 acquisitions by thrifts of failing thrifts on an interstate basis, and also has recently allowed interstate branching under certain circumstances. This development tends to undermine one of the basic reasons for the *D.H. Baldwin* decision—concern about impairing the Congressional policy embodied in the Douglas Amendment.

Second, recent changes in the law substantially broadening the powers of thrift institutions may have tended to erode the distinction between thrift institions and banks at which the Board's conditions were directed. For example, thrift institutions have in the past several years been granted broad powers to conduct additional activities, including authority to make commercial and nonhousing related loans and to accept NOW accounts as well as demand deposits in certain circumstances—all services that are offered by commercial banks. The elimination of the interest rate differential has removed another significant distinction between banks and thrifts.

Third, it has been publicly reported that certain thrifts have considered leaving the FSLIC fund for a number of reasons. Thrifts, if converted to banks, may be attractive acquisition vehicles for bank holding companies to increase their market share on an intra-state basis, or as a cost-effective means to establish a regional banking network. Thrift institutions may also be priced more favorably, in terms of multiples of earnings, than are similarly situated banks. Moreover, there may be enhanced incentives for the thrifts themselves to consider converting their charter and applying for FDIC insurance. The imposition of a special FSLIC insurance premium has been publicly cited by some thrifts as an incentive to leave the fund. Although the recent passage of CEBA imposes a temporary moratorium on such conversions, upon its expiration thrifts would be eligible to convert their charters and opt for FDIC insurance upon payment of twice their regular and annual premiums to the FSLIC, among other requirements.[18] *See CEBA*, Pub. L. No. 100–86, section 306(h); section 302(b)(4)(B). With this recent increased interest in the conversion of FSLIC-insured thrifts to bank status, the FHLBB has indicated that such conversions may affect the FSLIC's recapitalization plans by reducing the flow of insurance premiums to FSLIC.[19]

Finally, it can be argued that the Board's existing policy itself serves as an incentive for healthy thrifts to seek to leave the FSLIC fund. Under current Board policy, a bank holding company wishing to acquire a healthy thrift in the holding company's home state or banking region has no alternative but to convert the thrift into a bank which it may acquire, because the Board's *D.H. Baldwin* policy will not permit the holding company to acquire and operate the healthy thrift as a thrift.

Accordingly, in light of the above factors, it appears that current (and changing) financial and regulatory circumstance may warrant a review of the Board's policies regarding the acquisition and operation of thrift institutions by bank holding companies. The Board requests comment on the implications of such changing circumstances for its current policies, as well as commenters' views on what additional factors, if any, the Board should consider in reaching its determination.

A. Public Benefits Considerations

Commenters may also wish to consider the nature of any impact on the FSLIC fund if the Board were to approve the acquisition of healthy thrifts. On the one hand, it could be argued that Board approval of the acquisition by bank holding companies of healthy thrifts could lower the incentive for those companies to bid on failing thrift institutions. On the other hand, bank holding company acquisition of healthy thrifts, and their continued operation as thrifts, could provide the FSLIC with a continued, stable source of insurance premiums.

At this juncture, it should be noted that bank holding companies' acquisition of thrifts has not to date provided the solution to the problems of the thrift industry. Currently, in addition to Citicorp's 4 S&Ls, only three additional thrifts acquired by bank holding companies are still operating as thrift institutions, and they are relatively small institutions. Moreover, most thrift problems to date have been resolved on a intra-industry basis through mergers with other S&Ls.

As noted above, one of the important motivations for a reconsideration of the *D.H. Baldwin* decision is the major developments in the interstate provision of depository institution services by both banks and thrifts. Nevertheless, this development is still circumscribed by the decisions of most states that have authorized some form of out-of-state acquisitions to keep interstate expansion within specific regions. In view of the fact that the Board considered that the *D.H. Baldwin* decision was necessary in order to prevent the undermining of the Douglas Amendment, the question arises, with respect to the scope of any authorization for acquisition of healthy thrifts, whether the Board should limit the acquisition of healthy thrifts to those geographic areas where a bank holding company would be permitted to buy a bank under the Douglas Amendment. Such an approach would allow bank holding companies to purchase healthy thrifts in their home state, or in those states where acquisitions are permitted because of a regional arrangement, or a reciprocal or other authorization of interstate banking. Comment is requested on whether such a limitation is necessary to carry out the Board's original intention of giving effect to the intent of the Douglas Amendment, and on whether such a limitation is still necessary in the light of present interstate banking arrangements. Comment is also requested on whether such a policy would be effective in accomplishing the public benefits of encouraging the acquisition of failing thrifts and of avoiding the creation of

[17] *Old Stone Corporation (Catawba)*, 70 Federal Reserve Bulletin 593 (1984).

[18] Other provisions of CEBA might serve as a *dis*incentive for particular thrifts to leave the FSLIC fund, depending on the extent of that institution's so-called "secondary reserves". *See New Law Punishes Thrifts Leaving FSLIC Before 1993*, Am. Banker, Sept. 2, 1987, at 3 ("Thrift Article").

[19] *See* Testimony of Edwin Gray, Chairman, Federal Home Loan Bank Board, Before the Subcommittee on General Oversight and Investigations of the House Committee on Banking, Housing and Urban Affairs 10–13 (May 14, 1987); and a similar statement before the Senate Committee on Banking, Housing and Urban Affairs 3–4 (May 21, 1987).

artificial incentives for healthy thrifts to withdraw from participation in the FSLIC.

B. Conditions Under Which the Board Should Allow the Acquisition and Operation of Thrift Institutions Generally

If the Board should determine that the operation of a thrift institution as a general matter is a proper incident to banking, then the issue remains as to the terms and conditions under which it should allow the conduct of this activity.

Commencing with the 1982 acquisition by Citicorp of Fidelity Federal Savings and Loan of San Francisco and continuing to the present, the Board has imposed a series of conditions on the operation of thrift institutions by bank holding companies. These conditions were imposed in direct response to the concerns voiced by banking organizations, thrift institutions, their trade groups, state regulators, and others opposed to the acquisitions that: (1) The bank holding companies would divert funds from the S&Ls and housing needs in the home states of the S&Ls to other areas served by the bank holding company or its affiliates; (2) the bank holding companies would use the S&Ls to advance the business or operations of other holding company subsidiaries; (3) the acquisitions would erode interstate banking prohibitions and the statutory distinctions between banks and thrift institutions; (4) the thrifts would be operated as banks or branches of bank affiliates in violation of statutory limitations on interstate banking and bank branching; and, (5) the acquisitions would give the bank holding company and its S&Ls an unfair competitive advantage over other banks and thrifts.

Among the conditions established were requirements that:

(1) The bank holding company would operate the S&Ls as savings and loan associations having as their primary purpose the provision of residential housing credit;

(2) The S&Ls would not engage in any activities not permissible for a bank holding company;

(3) The S&Ls would not establish new branches at locations not permissible for national or state banks located in the state where the S&L is located (a specific requirement of the Garn-St Germain Act, which authorizes acquisitions by bank holding companies of failing thrifts);

(4) The S&Ls would be operated as separate independent, profit-oriented corporate entities and would not be operated in tandem with any other subsidiary of the bank holding company. In order to carry out this condition, the bank holding company and S&Ls would limit their operations so that:

(a) No banking or other subsidiary of the bank holding company would link its deposit-taking activities to accounts at the S&Ls in a sweeping arrangement or similar arrangement;

(b) The S&Ls would not directly or indirectly solicit deposits or loans for any other subsidiary of the bank holding company and the bank holding company and its subsidiaries would not solicit deposits or loans for the S&Ls;

(5) To the extent necessary to insure independent operation of the S&L and prevent the improper diversion of funds, the S&Ls would not engage in any transactions with the bank holding company or its other subsidiaries without prior approval of the appropriate Federal Reserve Bank;

(6) The S&L would not establish or operate remote service units at any location outside of the home state of the S&L;

(7) The bank holding company would not change the name of the S&L to include the word "bank" or any other term that might confuse the public regarding the S&Ls status as a nonbank, thrift institution; and

(8) The S&L would not convert its charter to a bank charter or a state thrift charter without prior Board approval.

Board approvals of all thrift acquisition by bank holding companies since 1982 have contained substantially similar restrictions. In response to a request by Citicorp for relief from the tandem operation restrictions (conditions 4 and 5 above), the Board requested public comment on whether it should retain, modify or remove the fourth and fifth conditions.[20]

On August 10th of this year, the Board granted certain limited relief from those restrictions, principally with respect to allowing such tandem operations where a bank holding company could otherwise acquire and operate a commercial bank in the state where the thrift is located, on the basis that such joint operations would not implicate the board's concerns regarding the preservation of the integrity of the Douglas Amendment in such situations.[21] The Board also allowed the Citicorp S&L to affiliate with the Citishare ATM switch in order to reduce the cost to the thrifts of joining certain ATM networks.

At this time in connection with the proposed addition of the operation of a thrift insitution to Regulation Y's list of permissible nonbanking activities, the Board will consider more generally the terms and conditions under which bank holding companies may be permitted to acquire and operate thrift institutions. The first and third of these conditions listed above—continued operation of the thrift as a thrift, and restrictions on establishment of new thrift branches to those locations permissible for banks in the state—reflect the terms or spirit of the Garn-St Germain Act emergency thrift acquisition provisions. Retention of the first condition would reflect the Congressional intent behind that Act to maintain a separate thrift industry to serve the nation's housing needs. The limitation on branching except as permitted for national banks (the third condition) appears necessary to maintain the integrity of the Garn-St Germain Act's emergency thrift acquisition provisions. If a bank holding company could acquire a healthy thrift without such a branching limitation, the incentive for bank holding companies to acquire failing thrifts would decrease, and the cost to the FSLIC of resolving those situations could well increase. Finally, commenters should direct their attention to whether these conditions are necessary to preserve the integrity of the Douglas Amendment to the BHC Act, which reserves to the states the decision to allow out-of-state bank holding companies to acquire banking institutions in the state. Continued imposition of the second condition—that a thrift subsidiary of a bank holding company should engage only in activities permissible for bank holding companies—is required by the BHC Act.[22]

The Board is prepared to entertain comments with respect to any terms or conditions under which bank holding companies may acquire and operate thrift institutions.

Conclusion:

In sum, the Board believes that changing economic and regulatory circumstances render it appropriate to review the Board's overall policy regarding the acquisition and operation of thrift institutions by bank holding companies.

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[20] Citicorp contended that the requested relief is necessary to enable its S&Ls to offer a broader range of services and to utilize the advantages inherent in the bank holding company structure (particularly, economies of scale and cross-marketing) in order to maintain its S&Ls as competitive institutions in the S&L industry.

[21] *See* Letter of William W. Wiles, Secretary, Federal Reserve Board, to Patrick Mulhern, Senior Vice President and General Counsel, Citicorp (Aug. 10, 1987).

[22] *Central Pacific Corporation*, 68 Federal Reserve Bulletin 382 (1982).

The Board will consider the following options with respect to this issue:

1. Maintain the current *D.H. Baldwin* policy;

2. Modify the *D.H. Baldwin* policy to allow the acquisition of thrifts where a bank holding company could otherwise own a bank; and

3. Overrule the *D.H. Baldwin* policy and allow the acquisition of healthy thrifts nationwide.

The Board requests comment on the advisability of selecting one of these options, or the availability of additional courses of action for its consideration. The Board also requests comment on the terms and conditions under which thrift institutions may be acquired and operated by bank holding companies, if the Board determines to allow such acquisitions a general matter.

Regulatory Flexibility Act Analysis

This proposal to expand the permissible nonbanking activites of bank holding companies is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Board is required by section 4(c)(8) of the BHC Act, 12 U.S.C. 1843(c)(8), to determine whether nonbanking activites are closely related to banking and a proper incident thereto, and thus are permissible for bank holding companies. This proposal, if adopted, would permit bank holding companies to acquire and operate healthy thrift institutions—an activity bank holding companies are not now permitted to conduct. The proposal does not impose more burdensome requirements on bank holding companies than are currently applicable, and these provisions provide no barrier to meaningful participation by small bank holding companies in the proposed activity.

The Board notes that there are not a significant number of small bank holding companies engaged in the operation of thrift institutions at this time. As noted, bank holding companies have not previously been permitted to acquire healthy thrift; the proposal, if adopted, would expand the powers of bank holding companies by authorizing bank holding companies to acquire healthy, in addition to failing, thrift institutions.

List of Subjects in 12 CFR 225

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)), the Board solicits comment regarding the possible amendment of 12 CFR Part 225.

The Board solicits comment regarding a proposed amendment to § 225.25(b), to add a paragraph (9) to the Board's list of permissible nonbanking activiites, which may read as follows:

(9) *Thrift Institutions.* Acquiring and operating thrift institutions, including savings and loan associations, building and loan associations, and FSLIC—insured savings banks, so long as the institution is not a bank.

In connection with solicitation of comment regarding a possible amendment to Regulation Y to authorize the acquisition and operation of healthy thrift institutions, the Board also seeks comment regarding the terms and conditions which the proposed activity should be conducted, should the Board determine to allow such acquisitions as a general matter. In that regard, the commenters' particular attention is drawn to the terms and conditions specified above that the Board traditionally has imposed on failing thrift acquisitions, and, as well, the Board's August 10, 1987 determination to grant certain limited relief from those conditions.

Board of Governors of the Federal Reserve System, September 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21980 Filed 9-24-87; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24931; File No. S7-25-87]

Multiple Trading of Options

AGENCY: Securities and Exchange Commission.

ACTION: Rescheduling of date of public hearing; extension of time for comment and for requests to appear at the hearing; and request for additional comment.

SUMMARY: The Securities and Exchange Commisson ("Commission") announced today that it has postponed until Novement 23, 1987, the public hearing on multiple trading of options originally scheduled to take place on September 29, 1987 as set forth in Securities Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849. The Commission also is extending until October 30, 1987, the date by which those interested in testifying at the public hearing should notify the Commission; until November 10, 1987, the date by which written testimony is due; and until December 4, 1987, the comment period on the multiple trading of options. Finally, the Commission is seeking additional comment on various matters in connection with the multiple trading of options proceeding.

DATES: The public hearing will be held on November 23, 1987, at 9:30 a.m. Requests to appear at the public hearing should be received by October 30, 1987. Those scheduled to appear at the hearing must submit an original and ten copies of their written statements by November 10, 1987. All other written comments must be received by December 4, 1987, and must be submitted in triplicate.

ADDRESSES: The public hearing will be held in Room 1C30 at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Those wishing to appear at the hearing should contact Holly H. Smith, Esq., (202) 272-2406, Division of Market Regulation, Mail Stop 5-1, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should send copies of their written testimony to her. All other written comments should refer to File No. S7-25-87 and be addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of all written submissions and the transcript of the public hearing will be available at the Commission's Public Reference Room, at the above address in File No. S7-25-87.

FOR FURTHER INFORMATION CONTACT: Holly H. Smith, Esq. (202) 272-2406, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5-1, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On June 18, 1987, the Commission issued a release commencing a proceeding on the multiple trading of options to consider whether to (1) adopt a policy permitting the multiple trading of options on exchange-listed stocks; and (2) adopt a rule amending the rules of the options exchanges to remove restrictions on the multiple trading of options on exchange-listed stocks.[1] In that release the Commission scheduled a public hearing on multiple trading of options to take place on September 29, 1987.

By letter, dated September 1, 1987, the Chicago Board Options Exchange, Inc.

[1] *See* Securities Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849.

("CBOE") requested a postponement of the public hearing date and an extension of the time period in which to comment on the multiple trading of options proposals.[2] In its request the CBOE maintained that because the Commission's proposal "raises issues which are of fundamental importance to the structure and health of the nation's standardized options markets," additional time is needed "to complete to its satisfaction the tasks necessary for a full presentation of its views." [3]

In view of the CBOE request for an extension of time in which to prepare its testimony and comment on this matter, the Commission has determined to postpone the date of the public hearing on the multiple trading of options until November 23, 1987, and to extend the period in which interested persons may submit written comments until December 4, 1987.[4]

Request for Additional Comment

By letter dated August 9, 1987, five members of the U.S. Senate Committee on Banking, Housing, and Urban Affairs requested that the Commission consider a variety of issues in connection with its proceeding on the multiple trading of options.[5] In particular, the Senate Letter requests that the Commission consider (1) the feasibility of developing a national market system for options; (2) the safeguards necessary for public limit orders in a multiple trading environment; and (3) the costs and benefits of multiple trading of options in the absence of facilities to link the various options markets.[6] The Commission requests that commentators specifically address the issues raised in the Senate Letter.

Dated: September 21, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22173 Filed 9-24-87; 8:45 am]

BILLING CODE 8010-01-M

[2] *See* letter from Burton R. Rissman, Schiff Hardin & Waite, to Jonathan G. Katz, Secretary, Commission, dated September 1, 1987.

[3] *See id.*, at 1 and 2.

[4] As noted above, requests to appear at the hearing must be received by October 30, 1987, and copies of testimony must be submitted by November 10, 1987.

[5] *See* letter from Senator Alan Cranston, *et al.*, U.S. Senate, Committee on Banking, Housing, and Urban Affairs, to David S. Ruder, Chairman, Commission, dated August 19, 1987 ("Senate Letter"). The Senate Letter has been placed in File No. S7-25-87 in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

[6] *See id.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 80N-0140]

Diluted Fruit or Vegetable Juice Beverages Other Than Diluted Organce Juice Beverages; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending for 90 days the period for submitting comments on its proposal to revoke the common or usual name regulation for diluted fruit or vegetable juice beverages other than diluted orange juice beverages. FDA is granting this extension based on requests for the extension of the comment period.

DATE: Comments by December 13, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry Troxell, Center for Food Safety and Applied Nutrition (HFF-313), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 16, 1987 (52 FR 26690), FDA proposed to revoke the regulation establishing the common or usual names for diluted fruit and vegetable juice beverages other than diluted orange juice beverages (21 CFR 102.33) and to withdraw the proposal to amend this regulation which, among other things, exempted cranberry juice products from percentage ingredient labeling requirements. Interested persons were given until September 14, 1987, to submit written comments on the proposal.

The National Juice Products Association (NJPA) submitted a request seeking a 60-day extension of the comment period on the proposed rulemaking. This extension is sought to allow NJPA to formulate appropriate recommendations for comments to be considered by the NJPA board at their mid-year meeting in October.

The Center for Science in the Public Interest (CSPI) also submitted a request seeking a 180-day extension. CSPI based its request on the fact that it needs the requested time to systematically obtain and compile, on its own initiative, data regarding consumer complaints and awareness problems concerning the value of diluted juice beverages.

Although valid data of the type CSPI is attempting to gather would be relevant in evaluating the proposal, the agency believes that the CSPI request for extension of the comment period does not support the need for a 180-day extension. The agency belives that a 90-day extension of the comment period is reasonable and will provide sufficient time for CSPI, NJPA, and any other interested persons to prepare comments on the proposed rule. Therefore, the agency is granting an extension of 90 days at this time.

Interested persons may, on or before December 13, 1987, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m., and 4 p.m., Monday through Friday.

Dated: September 22, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-22120 Filed 9-24-87; 8:45 am]

BILLING CODE 4160-01-M

PEACE CORPS

22 CFR Part 302

Organization

AGENCY: Peace Corps.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the Peace Corps proposes to update its statement of organization and description of available forms.

DATES: Comments must be received on or before October 26, 1987.

ADDRESS: Comments may be mailed to Peace Corps, 806 Connecticut Avenue, NW., Room P-314, Washington, DC 20526, or delivered to 1735 I Street, NW., Room P-314, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John M. von Reyn, Chief, Paperwork and Records Management Branch, Office of Administrative Services, 202-254-6180.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Peace Corps has determined that this proposed rule is not a major rule for

the purpose of E.O. 12291 because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This proposed rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The Director certifies that this rule, if adopted, will not have a significant impact on a substantial number of small entities.

The proposed regulations revise the information currently published in 22 CFR Part 302. These regulations describe Peace Corps' central and field organization; the methods whereby the public may secure information, make submittals, or request or obtain decisions, and statements of the general course and methods by which its functions are channeled and determined; a description of major Agency forms and where they may be obtained; and the location of the Agency's substantive rules of general applicability in the Code of Federal Regulations.

List of Subjects in 22 CFR Part 302

Organization and functions.

Accordingly, Title 22, Code of Federal Regulations, is proposed to be amended by revising Part 302 as follows:

PART 302—ORGANIZATION

Sec.

Authority: Sec. 4, 75 Stat. 612; 22 U.S.C. 2503, 5 U.S.C. 552, E.O. 10501, 18 FR 7049, 3 CFR 1949–1953 Comp., page 979, E.O. 11041 as amended, 27 FR 7859, 3 CFR 1959–1963 Comp., page 623, State Department Delegation of Authority No. 85–11A, as amended.

§ 302.1 Introduction.

The regulations of this part are issued pursuant to section 3 of the Administrative Procedure Act, 5 U.S.C. 552, effective July 4, 1967.

§ 302.2 Central and field organization, established places at which, the officers from whom, and the methods whereby the public may secure information, make submittals, or request, or obtain decisions; and statements of the general course and methods by which its functions are channeled and determined.

(a) The following are statements of the central and field organization of the Peace Corp:

(1) *Central Organization*—(i) Director. As head of the Peace Corps, the Director is responsible for all the activities of the agency. He or she is assisted by a Deputy Director, a Chief of Staff, and the following staff units:

(A) The Office of General Counsel which provides legal advice and assistance relating to Peace Corps programs and activities;

(B) The Office of Congressional Relations which serves as primary informational contact between Congress and the Peace Corps, advising the Director and other senior managers on governmental and legislative affairs;

(C) The Office of Public Affairs which promotes public awareness of the Peace Corps, monitors agency news coverage and prepares/disseminates national news releases and other information about the Peace Corps. The Office also coordinates agency activities and maintains files relating to graphic photographic and audiovisual services and works closely with the Advertising Council on placement of public service announcements;

(D) The Office of Private Sector Relations/Development Education which coordinates private sector support and participation in Peace Corps activities;

(E) The Executive Secretariat which manages correspondence and other documents on behalf of the Director.

(ii) Office of the Associate Director for International Operations consists of the Regional Offices for Africa; Inter-America; and North Africa, Near East, Asia and Pacific; and the Office of Training and Program Support. The immediate office of the Associate Director includes the Overseas Staff Training and the United Nations Volunteer Program staff.

(A) The Regional offices are responsible for the negotiation, establishment and operation of Peace Corps projects overseas and for the training of Peace Corps Volunteers for such projects. They also provide, on behalf of the Director, policy guidance and immediate supervision to Peace Corps staff and operations overseas.

(B) The Office of Training and Program Support provides technical assistance and policy direction in the development of effective program and training strategies/designs, and coordinates a wide variety of program and training services.

(iii) The Office of the Associate Director for Management consists of the following offices:

(A) The Office of Medical Services which provides medical screening for applicants and health care services to Volunteers and in-country staff.

(B) The Office of Special Services which provides personal and administrative support to Peace Corps trainees and Volunteers, and their families.

(C) The Office of Personnel Policy and Operations which provides Agency personnel services.

(D) The Office of Financial Management which provides accounting, contracting and budget operations.

(E) The Office of Planning and Policy Analysis which provides support to the Agency in the areas of policy, planning assessment and management information.

(F) The Office of Administrative Services whic provides administrative and logistical support to the Agency.

(G) The Office of Information Resources Management which manages the Agency's information resources and central computer facility.

(H) The Office of Compliance which carries out Agency audit, investigation, internal controls and equal opportunity functions.

(iv) The Office of the Associate Director for Volunteer Recruitment and Selection consists of the following offices:

(A) The Office of Recruitment which directs the operational and managerial aspects of headquarters and domestic field recruitment activities in support of the recruitment of qualified Peace Corps trainees.

(B) The Office of Placement which conducts final placement, processing and orientation of Peace Corps applicants in preparation for final selection and training.

(2) *Domestic Field Organization.* (i) Regional Peace Corps Recruitment Offices

(A) Chicago Regional Office, 175 West Jackson Boulevard, Room A–531, Chicago, Illinois 60604. (Overseas Area Offices in Atlanta, Chicago, Detroit, Kansas City and Minneapolis.)

(B) New York Regional Office, 1515 Broadway, Room 3515, New York, New York 10036. (Overseas Area Offices in Miami, Puerto Rico, Washington, DC, Philadelphia, New York City and Boston.)

(C) San Francisco Regional Office, 211 Main Street, Room 533, San Francisco, California 94105. (Overseas Area Offices in San Francisco, Seattle, Denver, Los Angeles, and Dallas.)

(3) *Foreign Field Organization*—(i) *Africa Region:*

Benin, Cotonou
Botswana, Gaborone
Burundi, Bujumbura
Cameroon, Yaounde
Central African Republic, Bangui
Chad, N'Djamena
Gabon, Libreville
The Gambia, Banjul
Ghana, Accra
Guinea, Conakry
Kenya, Nairobi
Lesotho, Maseru
Liberia, Monrovia
Malawi, Lilongwe
Mali, Bamako
Mauritania, Nouakchott
Niger, Niamey
Rwanda, Kigali
Senegal, Dakar
Sierra Leone, Freetown
Swaziland,Mbabane
Tanzania, Dar es Salaam
Togo, Lome
Zaire, Kinshasa

(ii) *Inter-America Region:*

Belize, Belize City
Costa Rica, San Jose
Dominican Republic, Santo Domingo
Eastern Caribbean, Bridgetown, Barabados
Ecuador, Quito
Guatemala, Guatemala City
Haiti, Port-au-Prince
Honduras, Tegucigalpa
Jamaica, Kingston
Paraguay, Asuncion
Turks and Caicos Island (Santo Domingo, Dominican Republic)

(iii) *North Africa, Near East Asia and Pacific Region:*

Cook Islands (Apia, Western Samoa)
Fiji, Suva
Federated States of Micronesia, Pohnpei
Kiribati (Honiara, Solomon Islands)
Marshall Islands, Majuro
Morocco, Rabat
Nepal, Kathmandu
Papua New Guinea, Port Moresby
Phillippines, Manila
Republic of Palau (Pohnpei, F.S.M)
Seychelles, Victoria
Solomon Islands, Honiara
Sri Lanka, Colombo
Thailand, Bangkok
Tonga, Nuku'alofa
Tunisia, Tunis
Tuvalu (Suva, Fiji)
Western Samoa, Apia
Yemen Arab Republic, Sana'a

(b) Any person desiring information concerning a matter handled by the Peace Corps, or any persons desiring to make a submittal or request in connection with such a matter, should communicate either orally or in writing with the appropriate office. If the office receiving the communication does not have jurisdiction to handle the matter, the communication, if written, will be forwarded to the proper office, or, if oral, the person will be advised how to proceed.

§ 302.3 Rules or procedure, description of forms available, the places at which forms may be obtained, and instructions as to the scope and content of all papers, reports, or examinations.

Forms regarding the following listed matters and instructions relating thereto may be obtained upon application to the offices listed below.

Application for Peace Corps, Volunteer Service.	Office of Recruitment, Room P-301, Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526, or the Peace Corps area recruitment offices listed in 302.2(a)(2)

§ 302.4 Substantive rules of general applicability adopted as authorized by law, and statement of general policy or interpretation of general applicability formulated and adopted by the agency.

The Peace Corps regulations published under the provisions of the Administrative Procedure Act are found in Part 301 of Title 22 of the Code of Federal Regulations and the **Federal Register**. These regulations are supplemented from time to time by amendments appearing initially in the **Federal Register**.

Dated: August 19, 1987.

Loret Miller Ruppe,

Director.

[FR Doc. 87-22041 Filed 9-24-87; 8:45 am]

BILLING CODE 6051-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-022]

South Carolina State Plan; Eligibility for Final Approval Determination; Comment Period and Opportunity To Request Public Hearing

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

ACTION: Proposed final State plan approval; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the eligibility of the South Carolina State occupational safety and health plan, as administered by the South Carolina Department of Labor, for determination under section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State plan should be granted.

If an affirmative determination under section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the South Carolina plan. This notice announces that OSHA is soliciting written public comment regarding whether or not final State plan approval should be granted, and offers an opportunity to interested persons to request an informal public hearing on the question of final State plan approval.

DATES: Written comments or requests for a hearing must be received by October 30, 1987.

ADDRESS: Written comments or requests for a hearing should be submitted, in quadruplicate, to the Docket Officer, Docket No. T-022, Room N3670, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et. seq., (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial

approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34).

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA (29 CFR 1954.3(f)). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied.

An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for 18(e) determinations are found at 29 CFR Part 1902, Subpart D. In general, in order to be granted final approval, actual performance by the State must be "at least as effective" overall as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals Decision, that directed the Assistant Secretary to caluculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

A final requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final approval.

History of the South Carolina Plan and of Its Compliance Staffing Benchmarks.

South Carolina Plan

On May 8, 1972, South Carolina submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on May 24, 1972, a notice was published in the **Federal Register** (37 FR 10535) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons 30 days in which to submit data, views and arguments in writing concerning the plan. Because of the wide public interest anticipated in the proposal, notice was also given that an informal public hearing on the plan would be held on July 10, 1972, in Columbia, South Carolina.

In response to comments on South Carolina's initial submission notice and testimony received at the informal hearing, the State submitted modifications to the plan on September 13, 1972. Notice of receipt of these modifications and an invitation for public comments on the plan as modified, as well as an opportunity to request an informal hearing, was published in the **Federal Register** on September 28, 1972 (37 FR 20289). Comments on the amended plan were received from the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO). In response to these comments as well as to OSHA's review of the plan modifications, South Carolina made additional changes in its plan. Since there were no objections which were outstanding on the plan, as amended, no further public hearing was held.

On December 6, 1972, the Assistant Secretary published a notice granting initial approval of the South Carolina plan as a developmental plan under section 18(b) of the Act (37 FR 25932). The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The South Carolina State plan covers all occupational safety and health issues except private sector maritime employment, and employment on military bases. The South Carolina Department of Labor is designated as having responsibility for administering the plan throughout the State. The day-to-day administration of the plan is directed by the South Carolina Division of Occupational Safety and Health. The plan provides for the adoption by South Carolina of standards which are "at least as effective" as Federal occupational safety and health standards. The plan requires employers to furnish employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the agency. Employees are required to comply with all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; coverage under the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Appeals of citations and penalties are now heard by an independent South Carolina Occupational Health and Safety Review Board, which was established in October 1983 and the Board's decisions may be appealed to the Court of Common Pleas. Formerly, appeals of citations and penalties were heard by a hearing officer with appeals to the Commissioner of Labor.

The notice of initial approval noted a few distinctions between the Federal and South Carolina program. The State plan does not cover safety and health in private sector maritime employment or employment on military bases. Under South Carolina law employees have the right to contest the terms and conditions of citations as well as abatement dates whereas Federally, employees may only object to the established abatement periods. The law also provides for injunctive action to relieve imminent danger situations. The Assistant Secretary's initial approval of South Carolina's development plan, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent

Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart C; 37 FR 25932, December 6, 1972).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and documentation submitted for OSHA approval on or before December 31, 1975. These "developmental steps" included amendments to the South Carolina Occupational Safety and Health Act, promulgation of State occupational safety and health standards essentially identical to Federal standards and program regulations, and establishment of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program including, among other things, legislative amendments, management information system, a merit staffing system, regulations for inspections, citations and proposed penalties, recordkeeping and reporting regulations, a voluntary compliance program, including on-site consultation services and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of Section 18 of the Act and 29 CFR 1902.3 and 1902.4. The South Carolina subpart of 29 Part 1952 was amended to reflect each of these approval determination (see 29 CFR 1952.104).

On May 9, 1975, an operational status agreement was entered into between Federal OSHA and South Carolina. A **Federal Register** notice announcing the operational status agreement was published on June 26, 1975 (40 FR 27024) and amended May 23, 1984 (49 FR 30173, July 27, 1984). Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the South Carolina plan.

On August 3, 1976, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that South Carolina had satisfactorily completed all developmental steps (41 FR 3224). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the South Carolina plan—to be at least as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with section 18(e) of the Act whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On January 31, 1978 OSHA published notice in the **Federal Register** (43 FR 4073) requesting public comment on a petition the Agency received requesting withdrawal of OSHA approval of the South Carolina plan. The petition was submitted by the President of the Carolina Brown Lung Association. A second petition was subsequently filed by the national American Federation of Labor-Congress of Industrial Organizations (AFL–CIO). On April 21, 1978 notice was published in the **Federal Register** (43 FR 17003) requesting public comments on the AFL–CIO petition to withdraw approval of the South Carolina State Plan and providing an additional time period for public comment on the Carolina Brown Lung Association petition, which was requested by the South Carolina General Assembly's Textile Studies Subcommittee. Both petitions alleged specific performance deficiencies in enforcement of the cotton dust standard and prosecution of contested cotton dust cases and in such other areas as hazard recognition, review procedures, inspection scheduling, health referrals, and response to major Federal Program changes. In addition, the Carolina Brown Lung Association petition alleged deficiencies in employee training and education and the AFL–CIO petition alleged legislative and regulatory deficiencies.

OSHA's investigation of all allegations contained in the petitions revealed that charges of legislative and regulatory deficiencies were unfounded. Although the South Carolina Act does not mirror the Federal Act, the South Carolina Plan, along with its implementing regulations, provide coverage and employee rights comparable to that of the Federal Act. In addition, OSHA's investigation revealed that the performance deficiencies cited had been corrected or considerable improvement had been demonstrated by South Carolina, especially since the filing of the petitions. Based on the findings of OSHA's investigation, a **Federal Register** notice (44 FR 13013) was published on March 9, 1979, which denied both petitions to withdraw approval of the South Carolina State Plan.

South Carolina Benchmarks

Under the terms of a 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" endorcement program was required to be established for each State operating an approval Stare plan. In 1980, in respone to the Court Order, OSHA established benchmarks for all approved State plans, including benchmarks of 39 safety and 60 health compliance officers for South Carolina. The 1978 Court Order noted that new information might warrant an adjustment by OSHA of the fully effective benchmarks. In September 1984 South Carolina, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 17 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986 (51 FR 2481).

Determination of Eligibility

This **Federal Register** notice announces the eligibility of the South Carolina plan for an 18(e) determination. (29 CFR 1902.39(c) requires that this preliminary determination of eligibility be made before 18(e) procedures begin.) The determination of eligibility is based upon OSHA's findings that:

(1) The South Carolina plan has been monitored in actual operation for at least one year following certification. The results of OSHA monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are prepared annually and made available to the State and to the public. The results of OSHA's most recent post-certification monitoring during the period from December 1, 1985 through January 31, 1987 are set forth in an 18(e) *Evaluation Report of the South Carolina Plan*, which has been made part of the record of the present proceedings.

(2) The plan meets the State's revised benchmarks for enforcement staffing. In January 1986, pursuant to the terms of the Court Order and the *1980 Report to the Court* in *AFL–CIO* v. *Marshall*, OSHA approved revised fully effective benchmarks of 17 safety and 12 health compliance officers for South Carolina based on an assessment of State-specific characteristics and historical experiences. South Carolina has

allocated these positions, as evidenced by the FY 1987 *Application for Federal Assistance* in which the State has committed itself to funding the State share of salaries for 17 safety and 12 health compliance officers. The FY 1987 application has been made part of the record in the present proceeding.

(3) South Carolina participates and has assured its continued participation in the Integrated Management Information System (IMIS) developed by OSHA.

Issues For Determination In The 18(e) Proceedings

The South Carolina plan is now at issue before the Assistant Secretary for determination as to whether the criteria of section 18(c) of the Act are being applied in actual operation. 29 CFR 1902.37(a) requires the Assistant Secretary, as part of the final approval process, to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in §1902.37(b). OSHA believes that the results of its evaluation of the South Carolina plan, contained in the 18(e) Evaluation Report, considered in light of these regulatory criteria and the criteria in section 18(c) of the Act, indicate that the regulatory indices and criteria are being met, and the Assistant Secretary accordingly has made an initial determination that the South Carolina plan is eligible for an affirmative 18(e) determination. This notice initiates proceedings by which OSHA expects to elicit public comment on the issue of granting an affirmative 18(e) determination to South Carolina. In order to encourage the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

(a) Standards and Variances

Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate standards and amendments at least as effective as the Federal standards. See §§ 1902.37(b)(3), 1902.3(c), 1902.4 (a) and (b). The South Carolina plan provides for adoption of standards which are in most cases identical to Federal standards. For OSHA standards requiring State action during the 18(e) evaluation period, South Carolina's adoption process met with the six month time frame for all standards. (Evaluation Report, pp. 10–12).

Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure coverage at least as effective as comparable Federal standards. While acknowledging prior approval of individual standards by the Assistant Secretary, this requirement stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902.3(c)(1), 1902.3(d)(1), 1903.4(a), and 1902.4(b)(2). As already noted, the South Carolina plan provides for adoption of standards identical to Federal standards. South Carolina likewise adopts standards interpretations which are identical to the Federal.

The State is required to take the necessary administrative judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is adopted from the Federal standards or developed by the State. See 1902.37(b)(5). No such challenge to State standards has ever occurred in South Carolina.

When granting permanent variances from standards, the State is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if the standard were in effect. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). South Carolina had six requests for a permanent variance during the 18(e) evaluation period. Four were deemed to provide equivalent protection one was denied, and one is pending. (Evaluation Report, p. 13).

Where a temporary variance is granted, the State must ensure, among other things, that the employer complies with the standard as soon as possible and provides appropriate interim employee protection. See §§ 1902.37(b)(7) and 1902.4(b)(2)(iv). The South Carolina temporary variance procedures require that any employer granted a temporary variance must have an effective program for coming into compliance with the standard as soon as possible. During the 18(e) evaluation period, no temporary variance requests were received (Evaluation Report, p. 14).

(b) Enforcement

Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA; section 18(c)(3) requires the State plan to provide for right of entry and inspection of all work places at least as effective as that in Section 8 of the Act.

The State inspection program must provide that sufficient resources be directed to designated target industries while providing adequate protection to all other workplaces covered under the plant. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). Data contained in the 18(e) evaluation report indicates that 100% of both State programmed safety inspections and of programmed health inspections were conducted in high hazard industries. (Evaluation Report p. 38).

In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9), 1902.3 (e) and (f), and 1902.4(c)(2) (i) and (ix). The South Carolina Law allows the Commissioner to seek a warrant to permit entry into such establishment that has refused entry for the purpose of inspection or investigation. South Carolina had 15 denials of entry during this evaluation period, was successful in obtaining warrants for 11 of them, and gained entry voluntarily for the other 4. (Evaluation Report, pp. 46 and 47).

Inspections must be conducted in a competent manner following approved enforcement procedures which include the requirement that inspectors acquire information adequate to support any citation issued. See §§ 1902.37(b)(10, 1902.3(d)(1), and 1902.4(c)(2).

Procedures for the South Carolina occupational safety and health compliance program are set out in the South Carolina Field Operations Manual, which is patterned after the Federal manual, and thus follows inspection procedures, including documentation procedures, which are similar to Federal. The evaluation Report notes overall adherence by South Carolina to these procedures.

South Carolina cites an average of 3.0 violations per programmed safety inspection with citations and 2.3 violations per programmed health inspection with citations, and 20.5% of safety and 21.2% of health violations were cited as serious. While the percent of violations cited as serious by the State was comparable to Federal OSHA, the lower number of violations per health inspection with citations is attributed to the fact that South Carolina inspected smaller establishments than did Federal OSHA. Additionally, a larger percent (48.3%) of the State's

health inspections were partial inspections. Also South Carolina's penetration rate into establishments also impacted the number of health violations cited by the State. (Evaluation Report, pp. 49–51).

State plans must include a prohibition on advance notice, and exceptions must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). South Carolina adopted approved procedures for advance notice similar to the Federal procedures. There were 17 instances of advance notice. In all 17 instances, advance notice was properly given in accord with procedures as required for the effective conduct of inspections (Evaluation Report, p. 48).

State plans must provide for inspections in response to employee complaints, and must provide an opportunity for employee participation in State inspections. See § 1902.4(c)(2) (i) through (iii). South Carolina has procedures similar to Federal OSHA for processing and responding to complaints. The data indicate that during the evaluation period the State responded to 34.6% of safety complaints and 20.2% of health complaints with an inspection.

South Carolina recently adopted the "tenth letter" inspection policy, and data indicated that the States percent of safety (58.2%) and health (55.1%) complaints responded to by letter was comparable to Federal OSHA.

During the current evaluation period, 95.4% of all State inspections included either an employee representative on the walkaround or interviews with employees.

State plans must also provide protection for employees against discrimination similar to that found in section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). The South Carolina Act and regulations provide for discrimination protection equivalent to that provided by Federal OSHA. Twenty-one (21) complaints of discrimination were investigated during this evaluation period.

Five (5) were found meritorious. Of these, four (4) were settled or litigated and the other one was still open. (Evaluation Report pp. 64–65).

The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2)(x) and (xi). The State's lapse time from last day of inspection to issuance of citation averaged 12.8 days for safety and 11.3 days for health (Evaluation Report, page 68).

The State must propose penalties in manner that is least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of comparable factors required in the Federal program. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c)(x) and (xi).

South Carolina's procedures for penalty calculation are similar to Federal OSHA. However, there are some differences between the two programs, for example, the minimum penalty that can be proposed, number of penalty levels, multi-instance penalty, etc. The average penalty for serious safety violation is $292; and the average serious health penalty is $400 (Evaluation Report, pp. 56–58).

The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c)(vii) and (xi). South Carolina conducts a low persent of follow-up inspections (1.2% safety and 3.6% health) due to the fact that follow-up inspections resulted in the issuance of few failure-to-abate notifications (4.0% safety and 0% health). South Carolina's abatement periods averaged 8.2 days for serious safety and 17.6 days serious health violations. (Evaluation Report, pp. 37 and 55).

Whenever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3(d) and (g). The Evaluation Report for South Carolina noted no adverse adjudications which could result in program deficiencies.

(c) Staffing and Resources

The State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1); 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See section 18(c)(5) of the Act and § 1902.3(i). As discussed above, the South Carolina plan provides for 17 safety compliance officers and 12 industrial hygienists as set forth in the South Carolina FY 1987 grant. This staffing level meets the approved revised "fully effective" benchmarks for South Carolina for health and safety staffing, as discussed elsewhere in this notice.

South Carolina provides a comprehensive training program for new compliance personnel and refresher and specialized training for experienced staff, which includes attendance at the OSHA Training Institute and in-house training exercises. During the evaluation period, State safety and health inspectors received, on the average, 40 hours of training. (Evaluation Report, pp. 18–20).

(d) Other Requirements

States which have approved plans must maintain a safety and health program for State and local employees which must be as effective as the State's plan for the private sector. See § 1902.3(j). The South Carolina plan provides a program in the public sector which is very similar to that in the private sector, except that no penalties are proposed for other-than-serious violations. Additionally, employers in the public sector may be given a two-thirds credit on proposed penalties for serious violations if they certify that the funds saved will be utilized to correct the violations, provide safety and health training to employees, or improve other elements of their safety and health programs. Injury and illness rates for State and local government employment are lower than in the private sector (1985: All case rate—5.8; lost work day case rate—2.7). The State and local government lost workday case rate did not change from 2.7, in 1984, while the private sector rate had a slight increase from 2.7 to 2.8.

As a factor in its 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See § 1902.37(b)(15). The 1984 and 1985 Bureau of Labor Statistics injury and illness rates for South Carolina (private sector all case rate for 1984 was 6.9% and for 1985 was 7.1%; lost workday case rate for 1984 was 2.7 and for 1985 was 2.8%) were lower than rates in States where Federal OSHA provides enforcement coverage. In 1985, the all case incidence rates and the lost workday case rates for the private sector, manufacturing and construction experienced a mix of increases and decreases in South Carolina, the rates of increase were within the acceptable range established under OSHA's State Plan Activities Measures and the absolute rates in each case for 1985 were lower than corresponding rates in

Federal States. In addition, the percent change in lost workday cases for the State's five most hazardous industries were all within the acceptable range when compared to the change in rates under Federal jurisdication. In fact, only one of the five industries showed an increase (SIC 44, Water Transportation) and this increase was experienced by the Federal as well.

State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect. See section 18(c)(7) of the Act; 29 CFR 1902.3(k). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require. Section 18(c)(8) of the Act; 29 CFR 1902.4(1). South Carolina employer recordkeeping requirements are identical to those of Federal OSHA, and the State particpates in the BLS Annual Survey of Occupational Illness and Injuries. As noted above, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

Section 1902.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. Training programs for both the State's staff and the public sector have been established and are ongoing. South Carolina does not differentiate between employers and employees when conducting training sessions in the public sector. In the public sector, 5754 public sector employers and employees participated in 128 training sessions. For the private sector, 1375 employers participated in 62 training sessions, while 13,254 employees participated in 598 training sessions (Evaluation Report, p. 16). South Carolina has established a Voluntary Protection Program (VPP) identical to the Federal program. The program recognizes exemplary safety and health programs as a means of expanding worker protection. Establishments which meet the program criteria will be removed from the general schedule inspection list for one year from the date of the establishment's approval. There is currently one establishment participating in this program.

Effect of 18(e) Determination

If the Assistant Secretary, after completion of the proceedings described in this notice, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to issues covered by the Sourth Carolina plan, as provided by section 18(e) of the Act and 29 CFR 1902.42(c). South Carolina has excluded from its plan: safety and health coverage in provate sector maritime activites (enforcement of occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments).

In addition, South Carolina does not cover employment on military bases. Thus, Federal coverage of private sector maritime employment and military bases would be unaffected by an affirmative 18(e) determination.

In the event an affirmative 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the **Federal Register** in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal authority is withdrawn, will state that Federal authority with respect to enforcement under section 5(a)(1) of the Act and discrimination complaints under section 11(c) of the Act remains in effect, and will state that if continuing evaluations show that the State has failed to maintain a compliance staff which meets the revised fully effective benchmarks, or has failed to maintain a program which is at least as effective as the Federal, or that the State has failed to submit program change supplements as required by 29 CFR Part 1953, the Assistant Secretary may revoke final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State plan. At the same time, Subpart C of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the South Carolina plan, would be amended to reflect the 18(e) determination if an affirmative determination is made.

Documents of Record

All information and data presently available to OSHA relating to the South Carolina 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. The contents of the record are available for inspection and copying at the following locations:

Docket Office, Room N-3670, Docket No. T-022, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210

Regional Administrator—Region IV, U.S. Department of Labor—OSHA, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367

South Carolina Department of Labor, 3600 Forest Drive, Post Office Box 11329, Columbia, South Carolina 29211-1329

To date, the record on final approval determination includes copies of all **Federal Register** documents regarding the plan, including notices of plan submission, initial Federal approval, certification of completion of development steps, codification of the State's operational status agreement, and approval of various standards, developmental steps, and other plan supplements. The record also includes the State plan document, which includes a plan narrative, the State legislation, regulations and procedures, an organizational chart for State staffing; the State's FY 1987 Federal grant; and the December 1, 1985 through January 31, 1987 18(e) Evaluation Report and all previous, post-certification reports.

Public Participation

Request for Public Comment and Opportunity to Request Hearing

The Assistant Secretary is directed under § 1902.41 to make a decision whether an affirmative 18(e) determination is warranted or not. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by South Carolina of the requirements of section 18(c) of the Act and all the specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and indices must be considered in light of the 15 factors in 29 CFR 1902.37(b) (1) through (15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during an informal public hearing, if held, is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, criteria and factors presented in 29 CFR Part 1902, as they apply to South Carolina State plan, are available to the Assistant Secretary during this administrative proceeding.

Interested persons are invited to submit written data, views, and arguments with respect to this proposed 18(e) determination. These comments must be received on or before October 30, 1987, and submitted in quadruplicate to the Docket Officer, Docket No. T–022, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. The State of South Carolina will be afforded the opportunity to respond to each submission.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed 18(e) determination. Such requests also must be received on or before October 30, 1987, and should be submitted in quadruplicate to the Docket Officer, Docket T–022, at the address noted above. Such requests must present particularized written objections to the proposed 18(e) determination. The Assistant Secretary will decide within 30 days of the last day for filing writting views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish his decisions in the **Federal Register**. All written and oral submissions, as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing and all materials submitted in response to this notice and at any subsequent hearing, will be available for inspection and copying in the Docket Office, Room N–3670, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in South Carolina under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. A copy of this certification has been forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736))

Signed at Washington, DC, this 22nd day of September, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87–22196 Filed 9–24–87; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3267–7]

Approval and Promulgation of Implementation Plan; Good Engineering Practice-Stack Height Regulations, New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA today proposes approval of New Mexico Air Quality Control Regulation (AQCR) 710 if the State remedies a single deficiency regarding public participation requirements. If appropriately supplemented and approved, AQCR 710 will ensure that the degree of emission limitation required for the control of any pollutant under New Mexico's State Implementation Plan (SIP) is not affected by that portion of any stack height which exceeds good engineering practice stack height (GEP-SH) or by any other dispersion technique. The rationale for the proposed approval is contained in today's notice and is further documented in a publicly available *Technical Support Document*. EPA solicits public comment on its proposed approval.

DATES: Comments must be received on this proposed action on or before October 26, 1987.

ADDRESSES: Written comments should be submitted to the address below: Mr. Thomas H. Diggs, Chief, SIP New Source Section (6T-AN), Air Programs Branch, Air, Pesticides and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Copies of the State's submittal and EPA's *Technical Support Document* along with other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, Air Programs Branch, SIP New Source Section, 1445 Ross Avenue, Dallas, Texas 75202

New Mexico Air Quality Bureau, New Mexico Department of Environmental Improvement Division, P.O. Box 968, Crown Building, 1190 St. Francis, Santa Fe, New Mexico 87504

FOR FURTHER INFORMATION CONTACT: Mr. Thomas H. Diggs, SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: Section 123 of the Clean Air Act, amended August 1977, regulates the manner in which techniques for dispersion of pollutants from a source may be considered in setting emission limitations. Specifically, Section 123 requires that the degree of emission limitation shall not be affected by the portion of a stack which exceeds GEP or by "any other dispersion technique."

To fulfill this requirement of the Act, EPA initially promulgated GEP-SH regulations limiting stack height credits and other dispersion techniques on February 8, 1982 [47 FR 5864]. Portions of those regulations were successfully challenged in the U.S. Court of Appeals for the D.C. Circuit [see *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983)], resulting in their revision on July 8, 1985 [50 FR 27892]. On November 7, 1986, the GEP-SH regulations were renumbered as part of a comprehensive restructuring and consolidation of EPA's SIP development regulations [see 51 FR 40656]. Except in quoting AQCR 710, which was adopted by New Mexico prior to the renumbering, today's **Federal Register** proposal uses current regulatory citations.

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, the EPA has required that all States (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the EPA's July 8, 1985, revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or by any other dispersion techniques. For any limitations that have been so affected, States have been

required to prepare revised limitations consistent with their revised SIPs.

Because New Mexico has not completed its review of existing limitations, today's proposal concerns only the first of these requirements.

On August 15, 1986, the Governor of New Mexico submitted a copy of New Mexico's GEP–SH AQCR 710, adopted by the New Mexico Environmental Improvement Board (NMEIB) on July 11, 1986, as a SIP Revision, along with supporting documents.

In essence, AQCR 710 requires that the New Mexico Environmental Improvement Department "shall give no credit for reductions in emissions due to so much of source's stack height that exceeds good engineering practice or due to any other dispersion technique" in evaluating permits for new or modified sources, then glosses the terms "good engineering practice stack height" and "dispersion technique" by incorporating federal regulatory definitions. With one exception, EPA now regards AQCR 710 adequate for implementation of Section 123 of the Clean Air Act in its permitting actions.

In relevant part, 40 CFR 51.164 requires that states provide notice, public disclosure, and opportunity for public hearing on approved fluid modeling or field studies before using them to establish GEP–SH in excess of that allowed by 40 CFR 51.100 (ii)(1) or (2). AQCR 710 does not incorporate this provision of 40 CFR 51.164 by reference nor has New Mexico otherwise imposed that procedural limitation on determining GEP–SH pursuant to 40 CFR 51.100(ii)(3). Until it does, EPA will not approve AQCR 710 as a revision to the New Mexico SIP.

Additionally, AQCR 710 does not incorporate nor has New Mexico otherwise adopted provisions equivalent to 40 CFR 51.164's "grandfather" provision which permits states to exempt certain older sources from GEP–SH requirements. To avoid uncertainty, EPA is requesting that New Mexico provide clarification on whether it intended to forego this exemption in promulgating AQCR 710.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this proposed SIP approval will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Lists of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen Dioxide, Lead, Particulate Matter, Carbon Monoxide, and Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Date: July 16, 1987.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 87–22154 Filed 9–24–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[A–5–FRL–3267–5]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to (1) change the attainment status designation for seven counties in Ohio relative to the total suspended particulate (TSP) National Ambient Air Quality Standard (NAAQS), and (2) retain the present secondary nonattainment designation for one county. The seven counties where USEPA is proposing to change the attainment status designations are: Columbiana, Logan, Medina, Miami, Monroe, Sandusky and Scioto. The present TSP air quality status for either a part or all of these counties is nonattainment for either the primary or secondary TSP NAAQS. For these counties USEPA is proposing to either redesignate the counties to full attainment or reduce the size of the nonattainment area(s). The one county where USEPA is retaining the present secondary nonattainment designation is Jackson. The purpose of this notice is to discuss the results of USEPA's review of the State's request and supporting data and to solicit comments on these data and USEPA's proposed action.

DATE: Comments must be received by October 26, 1987.

ADDRESSES: Copies of the redesignation request and supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) to the Clean Air Act (the Act). This section directed each State to submit, to the Administrator of USEPA, a list of the attainment status for all areas within the State. The primary TSP NAAQS was violated when, in a year, either: (1) The geometric mean value of monitored TSP concentrations exceeds 75 micrograms per cubic meter of air (75 ug/m^3) (the annual primary standard); or (2) the 24-hour concentration of TSP exceeds 260 ug/m^3 more than once (the 24-hour standard). The secondary TSP NAAQS was violated when, in a year, the 24-hour concentration exceeds 150 ug/m^3 more than once. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). However, EPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (52 FR 24682, column 1) describes EPA's transistion policy regarding TSP redesignations.

USEPA may redesignate an area to attainment if it is supported by all available data including eight consecutive quarters of the most recent, quality assured, representative ambient air quality data which show no violations of the NAAQS, and evidence of a fully approved and implemented SIP control strategy. In special situations, USEPA may consider less than the eight consecutive quarters of such data; for example, when a state of the art modeling analysis is provided showing that the basic SIP strategy is sound and

that actual, enforceable emission reductions are responsible for the recent air quality improvements. Note that any approved emission reductions used to support a redesignation cannot be used carte blanche to support another SIP action, i.e. provide offsets for new source review.

An exception to the requirement for a fully approved and implemented SIP control strategy can be made if the physical circumstances and long-term economic factors are such that the approved and implemented measures have the same weight as a fully approved SIP control strategy for purposes of demonstrating attainment; for example, the permanent closing of the major emitting sources, road paving to eliminate fugitive emissions, or other irreversible measures. Submittals including such approved changes, even though these changes do not constitute a fully approvable Part D SIP, have the practical air quality impact of fully approved strategies and can thus be the basis for approval of the redesignation. In addition, an exception to the requirement for a fully approved and implemented control strategy can be made for areas which were initially and inaccurately "oversignated." That is, areas which should never have been designated nonattainment initially. USEPA's policy on redesignations is summarized in a memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards, dated April 21, 1983, entitled "Section 107 Designation Policy Summary"; a memorandum from G.T. Helms, Chief, Control Programs Operations Branch, dated December 23, 1983, entitled "Section 107 Questions and Answers"; and a memorandum from G.A. Emison, Director, Office of Air Quality Planning and Standards, dated September 30, 1985, entitled "Total Suspended Particulate (TSP) Redesignations." These memoranda are available for public review in the rulemaking file on this notice.

On May 16, 1983, the State of Ohio submitted a request to revise the attainment status designation for the following 16 counties relative to the TSP NAAQS: Columbiana, Erie, Gallia, Jackson, Jefferson, Lake, Logan, Medina, Miami, Monroe, Muskingum, Richland, Scioto, Summit, Trumbull and Washington. On February 24, 1984 (49 FR 6926), in a notice of proposed rulemaking, USEPA proposed to disapprove the State's request for all of the counties because of a lack of sufficient technical support. In that notice, USEPA stated that if the State provided the additional technical support, including evidence of implemented control strategies, and USEPA determined that it was acceptable, then USEPA would withdraw its notice of proposed disapproval and approve the designations.

On April 12, 1984, the State submitted additional information for Erie County, and in a notice of final rulemaking published on April 22, 1985 (50 FR 15746), USEPA approved the redesignation for Erie County, along with Lawrence County. On June 1, 21, and 25, 1984; July 9, and 10, 1984; September 27, 1984; November 27, 1984; and April 1, 1985, the State submitted additional information for the 15 counties. In addition, in a November 27, 1984, submittal, the State amended its redesignation request for Columbiana, Jefferson, Lake, and Scioto Counties. On November 21, 1984, the State submitted a TSP redesignation request for Franklin County. On April 23, 1985, the State submitted a TSP redesignation request for Sandusky County.

However, on July 8, 1985 (50 FR 27892), USEPA promulgated a newly revised stack height regulation to comport with the stack height requirements of section 123 of the Act. The impacts of the new stack height regulations must be assessed in any TSP redesignation. Thus, until the impact of the stack height regulations is assessed, USEPA cannot proceed with rulemaking on these 17 counties (15 counties contained in the May 16, 1983, submittal: Franklin County from a November 21, 1984, redesignation request; and Sandusky County from an April 23, 1985, redesignation request).

USEPA's rulemaking on the acceptability of the TSP redesignation for these 17 counties will now be segmented into two groups. Group I consists of those counties with few sources and less potential for significant stack height impacts (Columbiana, Jackson, Logan, Medina, Miami, Monroe, Sandusky and Scioto Counties). Group II consists of those counties with more sources and greater potential for significant stack height impacts (Gallia, Franklin, Jefferson, Lake, Muskingum, Richland, Summit, Trumbull and Washington Counties).

In today's rulemaking notice, USEPA proposes to rulemake on the eight Group I counties listed above in which the State, in a December 3, 1985, letter, discussed the impacts of tall stacks or illegal dispersion techniques. USEPA will take separate action on the remaining nine Group II counties upon receipt of the necessary stack height data from the State. Before USEPA begins its discussion on the acceptability of the redesignation for the 8 counties, based upon the three policy memoranda discussed earlier and the newly revised stack height regulations, we would like to first discuss the implication of the revised stack height regulation on TSP redesignations, both in general and in Ohio.

Implications of Newly Revised Stack Height Regulations on TSP Redesignations

On July 8, 1985 (50 FR 27892), USEPA promulgated a newly revised stack height regulation under section 123 of the Act. This regulation is intended to ensure that air pollution emission limitations required under applicable SIPs are not affected by dispersion techniques. According to the regulation, a dispersion technique means any method which attempts to affect the concentration of a pollutant in ambient air by: (1) Using that portion of a stack which exceeds good engineering practice (GEP) stack height; (2) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or (3) increasing final exhaust gas plume rise by manipulating source process parameters and other methods, including the merging of exhaust gas steams. The Stack Height Regulations can affect a redesignation because improvements in air quality which are due to "non-creditable" dispersion cannot form the basis for a redesignation. Therefore, USEPA has reviewed these eight redesignations for consistency with the Stack Height Regulations. This review consisted of looking at whether the ambient air concentrations, which were used as a basis for the State's redesignation requests, were influenced by any non-creditable dispersion. A summary of the results of this review follow. Specific details are contained under each county discussion. The only two dispersion techniques which were found by the State are merged gas streams and stack heights greater than GEP.

1. *Merged Stacks*—USEPA redesignation policy states that designated nonattainment areas which are meeting the NAAQS either solely or partially through the use of unauthorized dispersion techniques cannot be redesignated to attainment. The Stack Height Regulations prohibit dispersion techniques (such as merged stacks) which increase the final exhaust gas plume rise, unless certain exemptions are met. These exemptions include where the merging both was performed in conjunction with the installation of

pollution control equipment and did not result in an increase in allowable emissions for stacks merged before July 8, 1985. (Note, only mergings before this date are relevant here since the redesignations are based on data collected before July 8, 1985.)

All the merged stacks identified by the State represent mergings that were done in conjunction with the installation of pollution control equipment that was required to comply with the SIP emission limitations. We note, however, that the State only reviewed major stack sources for compliance with the Stack Height Regulations. Consequently, allowable emissions did not increase from the identified sources, while actual emissions decreased. For these sources, this satisfies the exemption cited above. Therefore, all of the merged stacks identified by the State (i.e. major stack sources) comply with the Stack Height Regulations.

The Stack Height Regulations are to insure that certain dispersion enhancing practices, such as merged stacks, do not lower the ground-level concentration of pollutants and allow sources to emit greater amounts of pollution. The State's monitoring data show attainment at gound-level of the TSP NAAQS for most areas as discussed below. However, monitored attainment may be due to the additional effect of the unreviewed minor, and reviewed major, merged stacks. Moreover, the emission limits for these sources are technology-based (i.e., not supported by air quality modeling analysis designed to assure attainment of the NAAQS), and therefore, it is possible that compliance with these limits might not be enough alone to attain the NAAQS.

USEPA has reviewed these issues, and does not believe that the merged stacks have significantly affected the data here of monitored attainment for the following reasons: First, the most culpable sources in most cases (according to the filter analyses) are fugitive TSP sources. Plume rise is not important for these low-level sources. Furthermore, because these are non-stack sources, the concept of combining exhaust gas streams is irrelevant. Second, the lesser contributing major merged stack sources have experienced reduction in ambient impact due to the reduction in emissions alone (due to the new pollution control equipment). Thus, USEPA believes that the improvement in air quality, due both to controlling fugitive emissions and to the installation of pollution control equipment, is sufficient to support the redesignation requests.

2. *Physical Stack Height.* The Stack Height Rules allow automatic physical stack height credit up to 65 meters (m). For the sources in the areas that we are proposing redesignation, no sources have a stack greater than 65m.

In summary, USEPA has determined that the monitoring data which serve as the primary basis for these redesignations are not significantly affected by the merged stacks or illegal stack heights. Thus, USEPA accepts the State's determination that the redesignation request for these eight counties is consistent with the Stack Height Regulations.

USEPA's discussion on the acceptability of the redesignations for Columbiana, Jackson, Logan, Medina, Miami, Monroe, Sandusky and Scioto follows:

I. Columbiana

A. Present designation (40 CFR 81.336)

Primary Nonattainment—Cities of East Palestine, East Liverpool, and Wellsville, plus the Townships of Fairfield, Unity, Elk Run, Middleton, Madison, St. Clair, Liverpool, and Yellow Creek.
Attainment—Knox and West Townships
Secondary Nonattainment—Remainder of County

B. Requested Designation (November 27, 1984)

Primary Nonattainment—Cities of East Liverpool and Wellsville, Townships of Yellow Creek and Liverpool.
Secondary Nonattainment—Center Township and City of Lisbon,
Attainment—Remainder of County.

To support its request, the State submitted TSP data collected at the six monitoring sites in the County for the period January-December 1983. These data were supplemented with USEPA Storage and Retrieval of Aerometric Data (SAROAD) from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources which had installed air pollution control equipment or had been shutdown.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

For the most recent eight quarters of air quality monitoring data, there have been no violations of the primary NAAQS. A violation of the annual primary NAAQS, however, was recorded in 1982 at site 36190003I01 in the City of East Liverpool. This monitor has also measured secondary 24-hour violations in 1982, 1983, and 1984. The requested primary nonattainment area includes the area around this monitor and the Cities of East Liverpool and Wellsville and Townships of Yellow Creek and Liverpool. Violations of the secondary NAAQS for TSP were also recorded in 1984 at monitor 35200001I03 in the City of Lisbon. The requested secondary nonattainment area includes the area around this monitor, i.e., Center Township and the City of Lisbon. In the remainder of the County, no violations of the primary or secondary NAAQS for TSP have been recorded during the last 2 calendar years. Nevertheless, USEPA is concerned about the air quality in Perry Township because Eljer Plumbingware has operated at levels significantly below their permitted allowed levels. Thus, the actual emissions from this facility and other smaller sources have been less than their allowed emissions. Since the monitored air concentrations do not reflect the potential air emission, it is not certain that ambient levels would remain attainment if the sources in Perry Township were to emit at their allowable levels. Because the State has not shown that either (1) emission rates will not increase significantly at units operating below their SIP allowables or (2) ambient concentrations would reflect attainment levels (i.e., modeled attainment demonstration), USEPA is retaining Perry Township as a secondary nonattainment area. USEPA notes that because all the major sources are located in the areas that are being retained as primary or secondary nonattainment, the representativeness of the monitors in these areas was not an issue.

The State attributed the improvements in TSP levels in the area that is being redesignated to the permanent shutdown of the entire Ohio Edison East Palestine Power Plant (which had actually emitted approximately 600 TPY in 1977. Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source review permitting requirements. Actual emissions in 1983 totaled only 138 TPY in the areas being redesignated. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. USEPA believes an adequate explanation for air quality improvements has been provided to support the State's request. Based on monitoring data, and the permanent shutdown of the Ohio Edison East

Palestine Power Plant, USEPA believes that the redesignation request is approvable.

Proposed Action

USEPA proposes to redesignate Columbia County for TSP as follows:

Primary Nonattainment—Cities of East Liverpool and Wellsville, Townships of Yellow Creek and Liverpool.
Secondary Nonattainment—Center Township including the City of Lisbon and Perry Township including the City of Salem.
Attainment—Remainder of County.

II. Jackson

A. Present Designation (40 CFR 81.336)

Secondary Nonattainment—Entire County

B. Requested Designation (May 16, 1983)

Attainment—Entire County

To support its request, the State submitted data collected at the one monitoring site in the County for the period January-December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources which have reduced emissions.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

Jackson County is a rural county and the entire county was designated secondary nonattainment based on the monitoring data at only one site (site 363100002F01) in the City of Jackson. Violations of the secondary NAAQS were recorded at this site in 1976 and 1977. No violations of the primary or secondary TSP NAAQS have occurred in Jackson for the most recent eight consecutive quarters of data.

As stated above Jackson County is rural and has a total population of only 31,000. Of the 500 TPY emissions (1983 emissions inventory) from industrial sources, the Cedar Heights Clay Company in southern Jackson County contributes about 400 TPY. USEPA considers Jackson County, except the City of Jackson and the Cedar Heights Clay Company (two plants) in Southern Jackson County, "overdesignated". Because USEPA considers the areas surrounding the City of Jackson and the Cedar Heights Clay Company to be of primary concern within this redesignation request to attainment, USEPA focused its review to these areas. A necessary redesignation criteria is that improvement in air quality must be the result of Federally enforceable emission reductions. The State attributed the improvements in TSP levels in the City of Jackson to fugitive TSP controls which include the strict enforcement of the prohibition on open burning. USEPA notes that while some of the fugitive controls may not be federally enforceable, many of the controls, such as paving of roads, are permanent. However, because Federally enforceable emission reductions are a critical part of this redesignation, the USEPA requested that the State provide any Federally enforceable emission reductions in the City of Jackson. In addition, because the City of Jackson's monitor does not represent air quality in the vicinity of the Cedar Heights Clay Company and there is a lack of short-term (24-hour) screening modeling in this area to substantiate an attainment classification, USEPA requested that the State provide results of screening modeling for the area surrounding the Cedar Heights Clay Company. None of the requested information was provided. In addition, no information was provided to support narrowing the nonattainment area(s) within the county (e.g., map of sources, allowable emission inventory, isopleths of modeling results, etc.). Therefore, without the State providing such information, USEPA cannot approve the redesignation for Jackson County and is proposing to retain it as a secondary nonattainment area. If the State provides the additional information and USEPA determines it acceptable, USEPA will propose to approve the redesignation.

Proposed Action

USEPA proposes to retain the designation of Jackson County for TSP as follows:

Secondary Nonattainment—Entire County

III. Logan

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—Entire County

B. Requested Designation (May 16, 1983)

Full Attainment—Entire County

To support its request, the State submitted data collected at one monitoring site in the County for the period January-December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for the air quality imnprovement, the State submitted descriptive information regarding the monitoring site.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

Logan County is a rural county. The present designation for the entire County is based on violations of the primary and secondary NAAQS for TSP at one site (360500001F01), located in the City of Bellefontaine. This original designation for Logan County, except Bellefontaine, was overly broad because of the generally rural nature of the County (38,000 population) and the few number of industrial sources.

One violation of the secondary TSP NAAQS occurred at the Bellefontaine site during the most recent eight consecutive quarters of data. A second high 24-hour value of 152 $\mu g/m^3$ occurred on April 30, 1984. However, the State contends that this exceedance of the secondary TSP NAAQS was due to rural fugitive dust which occurred as a result of a dust storm on April 30, 1984. On this day, 114 monitors throughout the State exceeded the 24-hour secondary standard. As support for their position that the data should not be used for designation purposes, the State submitted Local Climatological Data for Columbus, Cincinnati, and Cleveland, Ohio. According to USEPA's August 1, 1977, rural fugitive dust policy which was summarized in the March 3, 1978, **Federal Register** notice on section 107 designations (43 FR 8973), TSP exceedances attributable to rural fugitive dust do not count against the attainment/nonattainment designation of an area. USEPA agrees with the State that rural fugitive dust caused the April 30, 1984, exceedance, and will not consider this exceedance at Belefontaine monitor 360500001F01 for designation purposes.

The current monitoring network consists of two monitors in Bellefontaine. Only two small industrial sources of TSP are located in Logan County. They are Hobart Manufacturing (5 TPY, 1983) and Warren Tool (15 TPY, 1983). The State also noted that special purpose monitoring for lead near an industry in south Bellefontaine did not show any exceedances of the TSP NAAQS. in 1977, State analysis of four filters from the Bellefontaine monitor (360500001F01) showed a high percentage of limestone fragments. The State assumed that vehicle traffic passing over gravel paved surfaces caused the violation at the monitor. The State attributed the improvements in TSP levels at the Bellefontaine monitor to the paving of a parking lot and alley adjacent to the monitor.

The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. Based on monitoring data and permanent emission reductions, USEPA believes an

adequate explanation for air quality improvement has been provided to support the State's request.

Proposed Action

USEPA proposes to redesignate Logan County for TSP as follows:
Attainment—Entire County

IV. Medina

A. Present Designation (40 CFR 81.336)

Secondary Nonattainment—Entire County

B. Requested Designation (May 16, 1983)

Attainment—Entire County.

To support its request, the State submitted data collected at the two monitoring sites in the County for the period January–December 1983. These data were submitted with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources that had reduced emissions.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

The bases of the present secondary nonattainment classification were violations of the secondary NAAQS in the City of Wadsworth. One violation of the secondary TSP NAAQS occurred at the Wadsworth monitor in the most recent eight consecutive quarters of data. A second-high 24-hour concentration of 168 $\mu g/m^3$ occurred on April 30, 1984. USEPA will not use this value for attainment purposes due to the presence of rural fugitive dust (see discussion under Logan County). The rural nature of the County (i.e., the lack of significant industrial sources) is demonstrated by the low actual emission levels for industrial point sources of only 160 TPY (1983). No sources have emissions greater than 100 TPY. The State attributed the improvements in TSP levels in the Wadsworth area to the Oho Match Company permanently switching from coal to natural gas, which reduced TSP emissions by about 140 TPY. TSP emissions from burning natural gas are basically negligible. This switch can be considered permanent because the coal boiler with stokers and grates has been physically removed. Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source permitting requirements. The remainder of the County contains few industrial sources, and no violations of the primary or secondary NAAQS have been recorded at the remaining site in the County since 1974. Medina County, except for the Wadsworth area, was "overdesignated". The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "non-creditable" dispersion. Based on monitoring data and permanent emission reductions, USEPA believes an adequate explanation for air quality improvements has been provided to support the State's request.

Proposed Action

USEPA proposes to redesignate Medina County for TSP as follows:
Full Attainment—Entire County.

V. Miami

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—City of Piqua.
Secondary Nonattainment—That area in Miami County North of the line determined by Fenner Road from the Darke-Miami County Line, east to Pemberton Road, south to Horse Bend Road, east to Route 55, northeast through Troy to Troy-Urbana Road, northest to Miami-Champaign County line and south of the line determined by Route 40 north from the Montgomery-Miami County line to Route 202, north to Route 571, east to Route 201, north to Route 41, east to the Miami-Clark County line and excluding the City of Piqua.
Reminder of Country—Attainment

B. Requested Designation (May 16, 1983)

Secondary Nonattainment—City of Piqua.
Attainment—Remainder of County.

To support its request, the State submitted data collected at the two monitoring sites in the County for the period January—December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for the air quality improvement, the State submitted information concerning the emission reductions at the Piqua Municipal Power Plant.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

For the most recent eight quarters of air quality monitoring data violations of the secondary, but not the primary, NAAQS for TSP were recorded in 1983 at site 365520003G01 in the City of Piqua. The requested secondary nonattainment area includes the area around this monitor and the City of Piqua. Located in the City of Piqua is the Piqua Municipal Power Plant, the major TSP source in Miami County. The 1983 emissions for Piqua Municipal Power were 1,800 TPY. In the entire County, total 1983 emissions were 1,870 TPY with no single source emitting more than 50 TPY. The State attributed the improvement in TSP levels from primary to secondary nonattainment in the City of Piqua to emission reductions at the Piqua Municipal Power Plant due to the installation of federally required and enforceable air pollution control equipment. Piqua Municipal Power replaced its multiclones with baghouses on their three boilers. USEPA recognizes that the pollution control equipment at Piqua Municipal Power has experienced malfunctions. However, the equipment has contributed to reducing TSP below the primary NAAQS. The remainder of the County contains no major industrial sources, and no violatins of the primary or secondary NAAQS have been recorded at the remaining site in the County during its operation from 1976 through the present. The impact of the stack heigh regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. Based on monitoring data, federally enforceable emission reductions, and on overly broad original designation USEPA believes an adequate explanation for air quality improvements has been provided to support the State's request.

Proposed Action

USEPA proposes to redesignate Miami County for TSP as follows:
Secondary Nonattainment—City of Piqua
Attainment—Remainder of County.

VI. Monroe

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—City of Clarington, Townships of Salem and Switzerland.
Secondary Nonattainment—Townships of Adams, Greene, Lee, Ohio, Sunbury.
Attainment—Remainder of County.

B. Requested Designation (May 16, 1983)

Secondary Nonattainment—City of Clarington, Townships of Salem and Switzerland.
Attainment—Remainder of County.

To support its request, the State submitted date collected at the two monitoring sites in the County for the period January—December 1983. These

data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for the air quality improvement, the State submitted a list of sources which had installed air pollution control equipment.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

The two monitoring sites currently operating in Monroe County are located near the Towns of Clarington and Hannibal. For the most recent eight quarters of air quality monitoring data, violations of the secondary, but not the primary, NAAQS for TSP were recorded in 1983 at site 36446001102 near the City of Clarington and at site 364460002102 at Hannibal. The requested secondar nonattainment area includes the area around the Clarington monitor, i.e., the City of Clarington and the Townshps of Salem and Switzerland, but not the area around the Hannibal monitor. The State attributed the improvement in TSP levels in this area primary to secondary nonattainment, to the permanent shutdown of two proces sources, and the installtion of air pollution control equipment at Ohio-Ferro Alloys. Ohio-Ferro Alloys permanently shutdown in 1984. Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source review permitting requirements.

The only other major industrial source, Ormet Corporation (340 TPY, 1983) is located near the Hannibal monitor. No other sources emit more than 100 TPY. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. Based on the monitoring data and the permanent emission reductions, USEPA believes an adequate explanation for the air quality improvement has been provided to support the State's request for the redesignation from primary to secondary nonattainment for the City of Clarington and Townships of Salem and Switzerland. However, a violation of the secondary NAAQS was recorded at the Hannible site (364460002102) in 1984 after the State submitted its requests. Therefore, USEPA cannot approve the redesignation of the present secondary nonattainment area surrounding the Hannibal site; and thus, the Townships of Adams, Greene, Lee, Ohio and Sunbury must be retained as secondary nonattainment.

Proposed Action

USEPA proposes to redesignate Monroe County for TSP as follows:

Secondary Nonattainment—City of Clarington, Townships of Adams, Greene, Lee, Ohio, Salem, Sunbury and Switzerland.

Attainment—Remainder of County.

VII. Sandusky

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—Entire County

B. Requested Designation (April 23, 1985)

Secondary Nonattainment—Woodville, Madison, Sandusky, Jackson and Ballville Townships, including the Cities of Fremont, Gibsonburg and Woodville

Attainment—Remainder of County.

To support its request, the State submitted data collected at the 14 monitoring sites in the County for the period 1981–1984. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for the air quality improvement, the State submitted a list of sources which had installed air pollution control equipment or had been shut down.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

The bases of the present primary nonattainment classification were violations of the TSP primary NAAQS at six sites in 1976 and 1977 in Madison Township (City of Gibsonburg) and Woodville Township (City of Woodville). Although montoring data indicated secondary nonattainment to be an appropriate designation in Jackson, Ballville, and Sandusky Townships during this period, the entire County was designated primary nonattainment based on the monitoring data in Madison and Woodville Townships. In addition, the rural Townships of Riley, Townsend, Green Creek, York, Scott, Washington, and Rice, which have neither major sources nor ambient monitors, were included in the primary nonattainment designation. Thus, the original designation for Sandusky County was overly broad.

1. Discussion on Redesignation of Woodville Township

No violation of the primary TSP NAAQS have been recorded at the three sites (365980001F01, 365980005J02, 365980006J02) in Woodville Township for the last eight consecutive quarters of data (1983–1984) available at the time the State submitted the redesignation request. Nevertheless, USEPA is concerned about the air quality in Woodville Township because: (1) In 1983, the highest monitored 24-hour concentration was 470 ug/m^3 and the second highest was 248 ug/m^3, and (2) the currently available monitoring data for 1985 showed an exceedance of 404 ug/m^3 on May 1, 1985.

Even though ambient data are close to the primary standard, USEPA is able to redesignate an area to attainment only if certain criteria are met by the State. The State must provide evidence of either permanent or federally enforceable emission reductions which resulted in the improvement in air quality. The State also must show that actual operating rates during the most recent eight quarters were similar to anticipated operating rates. Thus, the State must demonstrate that either: (1) Emission rates will not increase significantly at units operating below their SIP allowable emission rates; or (2) plants were operating at their maximum SIP allowable operating rates.

In Woodville Township, only the emission reduction of 200 tons per year at the Ohio Lime Company are federally enforceable. The State did not demonstrate that the reduction at Ohio Lime Company was sufficient to result in attainment throughout the Township. Because the State has not provided this demonstration, USEPA is proposing to deny the State's redesignation request and, thereby, retain the primary nonattainment classification for Woodville Township, including the City of Woodville.

2. Discussion of Redesignation of Sandusky, Madison, Ballville and Jackson Townships.

No applicable violations of the primary TSP NAAQS were recorded in Sandusky, Madison, Ballville, or Jackson Townships for the last eight consecutive quarters. USEPA notes that two exceedances of the primary TSP NAAQS were recorded at Jackson Township site 36598002J02 during 1984. (The 24-hour primary standard for TSP is 260 micrograms per cubic meter (ug/m^3), not to be exceeded more than one per year. Two or more exceedances of this standard constitute a violation.) However, one of the 1984 exceedances at this site can be disregarded for designation purposes. This exceedance had a 24-hour value of 373 ug/m^3 and occurred on April 30, 1984. The State contends that this exceedance of the primary TSP NAAQS was due to rural fugitive dust which occurred as a result

of a dust storm on that date. (See discussion of the storm in the Logan County Section.) Therefore, USEPA will not consider the April 30, 1984, exceedance at Jackson Township site 365980002J02 for designation purposes. Among the four townships of Sandusky, Madison, Ballville and Jackson, only the Gibsonburg monitor in Madison Township indicated a secondary nonattainment problem in the last eight consecutive quarters. It should be noted that the major TSP sources are located near the monitors. Major emission reductions in Madison Township resulted from the permanent shutdown of the Pfizer Corporation Plant in 1982. Ohio must submit evidence showing that these shutdown are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start up why they must be treated as new sources under Ohio's new source review permitting requirements. Actual emissions from Pfizer were 4,000 TPY in 1977. Given the permanent emission reduction from Pfizer, which resulted in a concurrent improvement in air quality, USEPA believes adequate support has been presented by the State to redesignate Madison Township from primary nonattainment to secondary nonattainment. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to "noncreditable" dispersion. Based on primary standard violation-free monitoring data, permanent TSP emission reductions, and an overly broad original designation, USEPA believes adequate support has been presented by the State to redesignate Sandusky, Ballville, and Jackson Townships from primary nonattainment to secondary nonattainment. Actual 1983 emissions in these Townships totaled approximately 150 TPY.

3. Discussion of Redesignation of the Remainder of the County

The remainder of the County is rural. Although these portions of the County contain no monitors, they also contain no industrial sources of TSP, and the original primary nonattainment classification was based solely on monitored data in other parts of the County. Therefore, USEPA proposes to approve the State's request to redesignate to attainment the remainder of the County based upon the original overly broad designation and the lack of industrial sources of TSP in these areas.

Proposed Action

USEPA proposed to resesignate Sandusky County for TSP as follows:

Primary Nonattainment—Woodville Township including the City of Woodville.
Secondary Nonattainment—Madison, Sandusky, Jackson and Ballville Townships including the Cities of Fremont and Gibsonburg.
Attainment—Remainder of County.

VIII. Scioto

A. Present Designation (40 CFR 81.336)

Primary Nonattainment—Cities of Portsmouth, New Boston, South Webster, and Bloom Township.
Secondary Nonatttainment—Harrison Township, excluding primary nonattainment area.
Attainment—Remainder of County.

B. Requested Designation (May 16, 1983)

Primary Nonattainment—Bloom Township and the City of South Webster
Attainment—Remainder of County.

To support its request, the State submitted data collected at the five monitoring sites in the County for the period January–December 1983. These data were supplemented with USEPA SAROAD data from January 1976 to December 1985. As justification for air quality improvement, the State submitted a list of sources that had permanently reduced emissions.

C. USEPA's Evaluation of Technical Support Data and Proposed Action

1. Discussion on Redesignation of Present Primary Nonattainment Area

The present primary nonattainment classification in Scioto County was based on violations of the primary NAAQS at monitor 365620002H01 in Portsmouth, monitor 366020002H01 in South Webster, and monitor 364720001H01 in New Boston. USEPA notes that monitor 366020002H01 (South Webster) was discontinued in 1981. The State is retaining the primary nonattainment classification for the area around this monitor, including Bloom Township and the City of South Webster, until current air quality data in this area are obatined.

For the most recent eight calendar quarters of data, the only violation of the secondary TSP NAAQS occurred at Portsmount (monitor 365620002H09). No violations of the primary or secondary TSP NAAQS have occurred at any of the remaining sities in Scioto County. For monitor 365620002H09, the State contends that one of the two exceedances of the secondary TSP NAAQS was due to rural fugitive dust which has occurred as a result of a dust storm on April 30, 1984. (See discussion under Logan County.) Winds were from the southwest on April 30, 1984, and monitor 365620002H09 is located to the southwest of the point sources in Portsmouth and New Boston. Thus, USEPA will disregard the April 30, 1984, exceedance at this monitor for designation purposes. By disregarding the April 30, 1984, data from monitor 365620002H09, the remaining monitoring data suggest a full attainment classification. The monitoring network, however, is not acceptable as being representative, because it does not accurately characterize the worst-case air quality in the New Boston area. The only monitor located near New Boston Coke Company is approximately 1.5 km to the west of the coke battery. It is USEPA's position that maximum air quality impacts from coke batteries usually occur near the source (usually within 1 km) due to the process fugitive emissions, building downwash, and the low release heights of emissions from the battery. USEPA reviewed the modeling performed by the State for New Boston Coke as part of the Part D SIP for Scioto County, and determined that it could not be used to justify attainment due to several deficiencies (e.g., failure to address both building downwash effects and the 24-hour standard).

USEPA acknowledges that emission reductions have occurred in the present nonattainment area of Portsmouth and New Boston. The major reduction occurred as a result of the permanent shutdown in 1982 of Empire Detroit Steel Company which had actual emissions in 1979 of approximately 4,500 TPY. Other smaller sources which permanently shutdown in the Portsmouth area include Portsmouth Standard Slag (60 TPY 1979 actual emissions) and Harbison-Walker (15 TPY 1979 actual emissions). Ohio must submit evidence showing that these shutdowns are permanent and federally enforceable during the public comment period on today's rulemaking notice. This evidence must be in the form of documentation showing if these sources were to start-up why they must be treated as new sources under Ohio's new source review permitting requirements. Note that actual industrial point source emissions in 1983 for Scioto County were only 1,093 TPY, of which New Boston Coke contributed 888 TPY. The impact of the stack height regulations was assessed, and USEPA has determined that the improvements in air quality were not due to

"noncreditable" dispersion. USEPA believes an adequate explanation for the air quality improvement has been provided to redesignate most of the Cities of Portsmouth and New Boston to attainment based on monitoring data, and permanent emission reductions. Based on the lack of sufficient monitoring data or modeling results for the affected local area near New Boston Coke, however, USEPA believes a 2 km by 2 km square area around the New Boston coke battery should be retained as primary nonattainment. Specifically, this area should be those portions of the Cities of Portsmouth and New Boston that surround New Boston Coke, extending 1 km to the west, north and east of the coke battery and bounded on the south by the Ohio River. USEPA notes that its April 21, 1983, Section 107 Designation Policy Summary memorandum states that appropriate boundaries for designation of nonattainment areas are "generally political boundaries such as city or county for TSP. . . ." Because there are no appropriate geopolitical boundaries surrounding New Boston Coke, USEPA believes it is acceptable to define the nonattainment area in terms of distance from the New Boston Coke battery. USEPA chose not to retain primary nonattainment throughout the Cities of Portsmouth and New Boston because the available monitoring data in these cities indicates full attainment.

2. Discussion on Redesignation of Present Secondary Nonattainment Area

Harrison Township is rural with no industrial sources of its own, but borders the present primary nonattainment areas. While no monitors are located in Harrison Township, the monitors in bordering areas suggest that the Township is attaining the NAAQS for TSP. Further, the available SIP modeling for Harrison Township suggests attainment of the primary and secondary TSP NAAQS. The only basis for the present secondary nonattainment classification was the proximity of Harrison Township to the present primary nonattainment areas. Therefore, based on the lack of industrial sources and on monitoring and modeling data, USEPA believes it is appropriate to redesignate Harrison Township to attainment.

Proposed Action

USEPA proposes to redesignate Scioto County for TSP as follows:

Primary Nonattainment—Those portions of the Cities of Portsmouth and New Boston that surround New Boston Coke, extending 1 km to the west, north and east of the coke battery and bounded on the south by the Ohio River.

—Bloom Township and the City of South Webster.

Remainder of County—Attainment.

Note the source shutdowns (both total and partial facility) identified in this notice were relied on by the State to explain the improvement in these areas and, thus, are an integral part of the State redesignation request. Since these shutdowns are a necessary condition for the redesignations, these emission reduction credits are hereby used up and cannot be applied again. Thus, these credits would not be available for emissions trading. As a result, if these particular sources wish to resume operation, then they must first satisfy the applicable new source requirements.

All interested parties are invited to submit comments on this proposed action notice. USEPA will consider all comments received within 30 days of publication of this notice.

The Office of Management and Budget has exempted this rule from the reqirements of section 3 of Executive Order 12291.

Under 5 U.S.C. § 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks.

Authority: 42 U.S.C. 7401–7642.

Dated: December 31, 1986.

Valdas V. Adamkus,

Regional Administrator.

[Editorial Note. This document was received at the Office of the Federal Register on September 22, 1987.]

[FR Doc. 87–22152 Filed 9–24–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 33, 35, 75, 77, 94, 96, 108, 154, 160, 161, 192 and 195

[CGD 82–042]

Hand Held Flashlights

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rulemaking would delete 46 CFR 161.008, and incorporate by reference the American Society for Testing and Materials standard ASTM F1014–1986, Standard Specification for Flashlights on Vessels in the specific vessel regulations. The intended effect of this proposal is to incorporate this industry standard by reference in the regulations which require flashlights on lifeboats and liferafts and flashlights suitable for use in hazardous atmospheres in emergency lockers and firemen's outfits, and as part of the safety equipment on self-propelled vessels carrying bulk liquefied gases. The present regulations for flashlights do not reflect the recent advances in technology. The proposed regulations will incorporate an up to date standard which will allow a wider variety of flashlights to be used, without jeopardizing the safety of either the vessel or personnel.

DATES: Comments must be received on or before November 9, 1987.

ADDRESSES: Comments should be mailed to the Commandant, (G-CMC/21) (CGD82–042), U.S. Coast Guard, Washington, DC 20593–0001. Between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays, comments may be delivered to, and available for inspection and copying at, the Marine Safety Council (G-CMC/21) Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, (202) 267–1477

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Nolan, Marine Technical and Hazardous Materials Division, Room 1304, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2206. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking procedure by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify this notice (CGD 82–042) and the specific section of the proposal to which each comment applies, and the reason for the comments. No public hearing is anticipated at this time, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial. All comments will be considered by the Coast Guard before taking further rulemaking action.

Drafting Information

The principal persons involved in drafting this proposal are Mr. Thomas M., Nolan, Project Manager, and Lieutenant Sandra R. Sylvester, Project Counsel, Office of Chief Counsel.

Background

Flashlights on lifeboats and liferafts are required to be constructed in accordance with Title 46 of the Code of Federal Regulations (46 CFR), Part 161.008. 46 CFR 161.008 requires that each flashlight built to this specification be Coast Guard approved. This requirement forces shipowners and operators to purchase flashlights from a specific group of manufactures.

The present regulations for emergency outfits on Tank Vessels and in fireman's outfits on other vessels require an explosionproof flashlight or a flashlight listed by Underwriters Laboratories Inc (UL) for use in the hazardous atmosphere in which it will operate. A flashlight of this type is also required as part of the safety equipment on self-propelled vessels carrying bulk liquefied gases.

The Coast Guard, in conjunction with the American Society for Testing and Materials (ASTM) Committee F25 on Shipbuilding, has developed a standard specification for flashlights on vessels. This standard, ASTM F1014–1986, Standard Specification for flashlights on Vessels, covers three types of flashlights. These types are as follows:

Type I—Flashlights for use in lifeboats and liferafts,

Type II—Flashlights for use in hazardous locations where fire or explosion hazards may exist due to the presence of flammable gases or vapors, flammable liquids, combustible dust, or ignitable fibers or flyings, and

Type III—Flashlights for use in lifeboats and liferafts and suitable for hazardous locations.

This proposal intends to delete 46 CFR 161.008. Manufacturers of flashlights who have current Certificates of Approval for their flashlights may continue to label their flashlights with the appropriate U.S. Coast Guard approval number up to the expiration date of the Certificate of Approval. These Certificates will not be re-issued after their expiration date. Coast Guard approved flashlights in lifeboats presently installed on U.S. flag vessels need not be replaced as long as they are in serviceable condition. These flashlights will be checked at each servicing of the lifeboats. This proposal will require flashlights for lifeboats and liferafts to be constructed to ASTM F1014–1986 as a Type I or Type III flashlight. It is also proposed that flashlights in emergency lockers, fireman's outfits, and as part of the safety equipment on self-propelled vessels carrying bulk liquefied gases to be constructed to ASTM F1014–1986 as a Type II or Type III flashlight. ASTM F1014–1986 contains a section on marking which requires the flashlight to be marked with the ASTM standard number and the Type of flashlight. This labeling enables Coast Guard inspectors to determine product acceptability through product marking. Flashlights constructed in accordance with this ASTM Standard wil provide a wider variety of acceptable flashlights without jeopardizing the safety of either the vessel or personnel.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; Feb 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The cost of a flashlight constructed according to 46 CFR 161.008 with the required Coast Guard approval, is approximately $16.00 (sixteen dollars). Manufacturers involved in the development of the ASTM standard specification for flashlights have stated that flashlights constructed to ASTM F1014–1986 as Type I flashlights would cost approximately $8.00 (eight dollars). The cost of a flashlight constructed to ASTM F104–1986 as a Type II or Type III flashlight would not change the cost of a flashlight required in an emergency outfit, fireman's locker or as part of the safety equipment on self-propelled vessels carrying bulk liquified gases. These cost savings result from reducing the administrative overhead borne by the manufacturer to comply with 46 CFR 161.008. This overhead includes submission of plans in triplicate and samples of the flashlights to the Coast Guard for approval. Since the impact of the proposal is expected to be so minimal, the agency certifies that it will not have a significant economic impact on a substantical number of small entities.

List of Subjects

46 CFR Part 33

Marine safety, Fire protection, Tank vessels, Barges,
Incorporation by reference.

46 CFR Part 35

Marine safety, Navigation (water), Reporting requirements, Tank vessels, Barges, Seaman, Incorporation by reference.

46 CFR Part 75

Marine safety, Passenger vessels, Incorporation by reference.

46 CFR Part 77

Marine safety, Passenger vessels, Navigation (water), Incorporation by reference.

46 CFR Part 94

Cargo vessels, Marine safety, Incorporation by reference.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water), Incorporation by reference.

46 CFR Part 108

Fire protection, Vessels, Continental shelf, Oil and Gas Exploration, Marine safety, Marine resources, Incorporation by reference.

46 CFR Part 154

Gases, Hazardous materials transportation, Marine safety, Natural Gas Vessels, Incorporation by reference.

46 CFR Part 160

Marine safety, Incorporation by reference.

46 CFR Part 161

Fire prevention, Marine safety, Incorporation by reference.

46 CFR Part 192

Marine safety, Oceanographic vessels, Communications Equipment, Incorporation by reference.

46 CFR Part 195

Marine safety, Oceanographic vessels, Navigation (water), Incorporation by reference.

For the reasons set forth in the preamble, the Coast Guard proposes to amend 46 CFR Parts 33, 35, 75, 77, 94, 96, 108, 154, 160, 161, 192 and 195 of Chapter I of title 46, Code of Federal Regulations, as follows:

PART 33—[AMENDED]

1. The authority citation for Part 33 continues to read as follows:

Authority: 46 U.S.C. 3102(a), 3306; and 49 CFR 1.46.

2. In §33.15–10 paragraph (j) is revised to read as follows:

§ 33.15–10 Description of equipment of lifeboats-TA/ALL.

* * * * *

(j) *Flashlights.* The flaslight shall be a Type I or Type III constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced yearly during the annual stripping, cleaning, and

overhaul of the lifeboats.

Note: Coast Guard approved flashlights may be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 35—[AMENDED]

3. The authority citation for Part 35 continues to read as follows:

Authority: 46 U.S.C. 3306 and 3703; 49 CFR 1.46.

4. In § 35.30–20 paragraph (c)(3) is revised to read as follows:

§ 35.30–20

Emergency equipment-TB/ALL.

* * * * *

(c) * * *

(3) One, Type II or Type III, flashlight constructed in accordance with ASTM F1014–1986.

* * * * *

PART 75—[AMENDED]

5. The authority citation for Part 75 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

6. In § 75.20–15 paragraph (j) is revised to read as follows:

§ 75.20–15 Description of equipment for lifeboats.

(j) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced early during the annual stripping, cleaning, and overhaul of the lifeboats.

Note: Coast Guard approved flashlights may be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 77—[AMENDED]

7. The authority citation for Part 77 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

8. In § 77.35–5 paragraph (c) is revised to read as follows:

§ 77.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed in accordance with ASTM F1014–1986.

* * * * *

PART 94—[AMENDED]

9. The authority citation for Part 94 continues to read as follows:

Authority: 46 U.S.C. 3102(a) and 3306; 49 CFR 1.46(b).

10. In § 94.20–15 paragraph (j) is revised to read as follows:

§ 94.20–15 Description of equipment for lifeboats.

* * * * *

(j) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced yearly during the annual stripping, cleaning, and overhaul of the lifeboats.

Note: Coast Guard approved flashlights may be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 96—[AMENDED]

11. The authority citation for Part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

12. In § 96.35–5 paragraph (c) is revised to read as follows:

§ 96.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed in accordance with ASTM F1014–1986.

* * * * *

PART 108—[AMENDED]

13. The authority citation for Part 108 continues to read as follows:

Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306, 46 App. U.S.C. 86; 49 CFR 1.46.

14. In § 108.497 paragraph (b) is revised to read as follows:

§ 108.497 Fireman's outfits.

* * * * *

(b) A Type II or Type III flashlight constructed in accordance with ASTM F1014–1986.

* * * * *

PART 154—[AMENDED]

15. The authority citation for Part 154 continues to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 3 CFR, 1980 Comp. p. 277, 49 CFR 1.46 (b) and (n)(4).

16. In § 154.1 paragraph (b) the entry for American Society for Testing and Materials is revised to read as follows:

§ 154.1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103

ASTM A20–1978 Steel Plates for Pressure Vessels

ASTM F1014–1986 Standard Specification for Flashlights on Vessels, 1986.

* * * * *

17. In § 154.1400 paragraphs (a)(4), (b)(4), and (c)(4) are revised to read as follows:

§ 154.1400 Safety equipment: All vessels.

(a) * * *

(4) Six Type II or Type III flashlights constructed in accordance with ASTM F1014–1986.

* * * * *

(b) * * *

(4) Eight Type II or Type III flashlights constructed in accordance with ASTM F1014–1986.

* * * * *

(c) * * *

(4) Three Type II or Type III flashlights constructed in accordance with ASTM F1014–1986.

* * * * *

PART 160—[AMENDED]

18. The authority citation for Subpart 160.051 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

19. In § 160.051–7 paragraph (c)(4) and (d)(2) are revised to read as follows:

§ 160.051–7 Equipment.

* * * * *

(c) * * *

(4) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced at each servicing of the liferaft.

* * * * *

(d) * * *

(2) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced at each servicing of the liferaft.

* * * * *

PART 161—[AMENDED]

20. The authority citation for Part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104; 49 CFR 1.46.

21. Subpart 161.008 consisting of §§ 161.008–1 through 161.008–8 is removed.

PART 192—[AMENDED]

22. The authority citation for Part 192 continues to read as follows:

Authority: 46 U.S.C. 3102(a), 3306, 3703; 49 CFR 1.46(b), unless otherwise noted.

23. In § 192.20–15 paragraph (j) is revised to read as follows:

§ 192.20–15 Description of equipment for lifeboats.

* * * * *

(j) *Flashlight.* A Type I or Type III flashlight constructed in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced yearly during the annual stripping, cleaning, and overhaul of the lifeboats.

Note: Coast Guard approved flashlights may be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 195—[AMENDED]

24. The authority citation for Part 195 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

25. In § 195.35–5 paragraph (c) is revised to read as follows:

§ 195.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed in accordance with ASTM F1014–1986.

* * * * *

26. Sections 33.01–3, 35.01–3, 75.01–3, 77.01–3, 94.01–3, 96.01–3, 108.101, 160.051–0, 192.01–3, and 195.01–3 are added to read as follows:

§ _____ Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table are found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001.

(b) The material approved for incorporation by reference in this part is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103
ASTM F1014–1986 Standard Specification for Flashlights on Vessels, 1986.

August 18, 1987.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 87–22088 Filed 9–24–87; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–374, RM–5726]

Radio Broadcasting Services; Stuart, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition for rule making filed by CRB of Florida, Inc., licensee of Station WZZR(FM), Stuart, Florida, proposing to substitute Channel 224C2 for Channel 224A at Stuart, and to modify its Class A license to specify the new channel. A site restriction 9.2 kilometers (5.7 miles) north of Stuart is proposed for Channel 224C2.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerome S. Silber, Fly, Shuebruk, Gaguine, Boros and Braun, 45 Rockefeller Plaza, Suite 1759, New York, New York 10111.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–374 adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 1.1231 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.

Mark N. Lipp,

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

[FR Doc. 87–22163 Filed 9–24–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–376, RM–5839]

Radio Broadcasting Services; Dalton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Calvin R. Means, which proposes to allot Channel 297A to Dalton, Georgia, as a first FM Service.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as foilows: Perties Gutmann, Pepper and Corazzini, 200 Montgomery Building, 1776 K Street NW., Washington, DC 20006 (attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.

87-376, adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 1.1231 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.

Mark N. Lipp,

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

[FR Doc. 87-22166 Filed 9-24-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-377, RM-5783]

Radio Broadcasting Services; Kekaha, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Timothy D. Martz which proposes to allot Channel 277A to Kekaha, Hawaii, as a first FM service.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerry V. Haines, Wiley, Rein and Fielding, 1776 K Street NW., Washington, DC 20002, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-377, adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 1.1231 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 Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-22167 Filed 9-24-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-364, RM-5683]

Radio Broadcasting Services; Wabash, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Conaway Communications Corporation proposing the allotment of FM Channel 290A to Wabash, Indiana as that community's second FM broadcast service.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John L. Tierney, Esq., Tierney & Swift, 1020 19th Street NW., Suite 200, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-364 adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 1.1231 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.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-22160 Filed 9-24-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-363, RM-5838]

Radio Broadcasting Services; Hampton, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Harold A. Jahnke proposing the allotment of FM

Channel 255A to Hampton, Iowa as that community's second FM service.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Harold A. Jahnke, 421 Central Avenue East, Hampton, Iowa 50441 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–363, adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 1.1231 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.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau

[FR Doc. 87–22161 Filed 9–24–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–362, RM–5633]

Radio Broadcasting Services; Copeland, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Great Plains Christian Radio, Inc., proposing the allotment of FM Channel 256C1 to Copeland, Kansas as that community's first FM broadcast service.

DATES: Comments must be filed on or before November 12, 1987, and reply comments on or before November 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jeffrey D. Southmayd, Esq., Southmayd Powell & Taylor, 1764 Church Street NW., Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–362 adopted August 20, 1987, and released September 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 1.1231 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.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau

[FR Doc. 87–22162 Filed 9–24–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–381, RM–5934]

Radio Broadcasting Services; Slaton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Williams Broadcast Group, licensee of Station KJAK(FM), Channel 225A, Slaton, Texas, proposing the substitution of Class C Channel 224 for 225A at Slaton, and modification of its license, accordingly. The proposal could provide a first wide coverage area FM station at Slaton. The substitution can be made in compliance with the Commission's minimum spacing requirements from the station's current transmitter site, which is 10.7 kilometers northwest of the city.

DATES: Comments must be filed on or before November 16, 1987, and reply comments on or before December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John H. Midlen, Jr., Esquire John H. Midlen, Jr., Chartered, 1050 Wisconsin Avenue NW., Washington, DC 20007–3633 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–381, adopted August 25, 1987, and released September 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 1.1231 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.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-22165 Filed 9-24-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192, 193, and 195

[Docket No. PS-96; Notice 1]

Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and Liquefied Natural Gas Facilities

AGENCY: Office of Pipeline Safety (OPS), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Operators of gas pipelines and associated liquefied natural gas (LNG) facilities and hazardous liquid piplines would be required to report unsafe conditions in addition to the incidents or accidents they currently are required to report. These new reporting requirements were mandated by the 99th Congress in the pipeline safety authorization act for fiscal year 1987, Pub. L. 99-516 (October 22, 1986). The reports are intended to prevent known unsafe conditions from going uncorrected by prompting government intervention, if needed, to avoid the occurrence of an incident of accident.

DATES: Insterested persons are invited to submit written comments in duplicate before close of business on November 9, 1987. Late filed comments will be considered to the extent practicable. However, because of a statutory deadline, final rules will be issued soon after the due date for comments. Therefore, OPS urges commenters not to delay in making their submissions.

ADDRESS: Send comments to the Dockets Unit, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L. M Furrow, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 3 of Pub. L. 99-516 directs the Secretary of Transportation is issue regulations requiring operators of gas and hazardous liquid pipeline facilities (other than operators of master meter systems) to report certain unsafe conditions, and to provide for discovery of such conditions in their inspection and maintenance plans.

More specifically, the following new reporting requirements were added to section 3(a) of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 App. U.S.C. 1672(a)):

> (3) Not later than 12 months after the date of the enactment of this paragraph, the Secretary shall issue regulations requiring each person who operates pipeline facilities, not including master meters, to report to the Secretary—
>
> (A) any condition that constitutes a hazard to life or property, and
>
> (B) any safety-related condition that causes or has caused a significant change or restriction in the operation of pipeline facilities.
>
> Reports submitted under this paragraph shall be in writing and shall be received by the Secretary within 5 working days after any representative of a person subject to the reporting requirements of this paragraph first determines that such condition exists. Notice of any such condition shall concurrently be supplied to appropriate State authorities.

In conjunction with these new reporting requirements, Section 13 of the NGPSA (49 App. U.S.C. 1680) was amended by adding the following requirement concerning inspection and maintenance plans: "Such plan[s] shall include terms designed to enhance the ability to discover safety-related conditions described in section 3(a)(3)."

Substantially identical amendments were made respectively to Section 203(a) and Section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 App. U.S.C. 2002(a) and 2009).

Currently, operators of gas pipeline facilities are required by regulations issued under the NGPSA (49 CFR Part 191) to report "incidents." Under these "incident" reporting requirements, operators must telephonically notify OPS of (1) each release of gas or liquefied natural gas (LNG) that involves a death, hospitalization, or property damage of $50,000 or more, (2) each emergency shutdown of an LNG facility, and (3) and other event the operator deems significant. Except for master meter systems and LNG facilities, follow-up written reports are also required. Regulations issued under the HLPSA for operators of hazardous liquid pipelines contain similar reporting requirements for pipeline "accidents" that involve releases of hazardous liquids (49 CFR Part 195, Subpart B).

Under current requirements, therefore, practically all the "incidents" and "accidents" reported to OPS involve releases of gas or hazardous liquid that have had serious or potentially serious consequences. Unsafe conditions that may be precursors of these events are not required to be reported. Pub. L 99-516 changes this situation by mandating that operators also be required to report conditions that potentially could cause "incidents" or "accidents."

Administrative Discretion

Because the statutory language broadly describes the conditions to be reported, Pub. L. 99-516 allows the Secretary discretion to determine, through the issuance of regulations, precisely what conditions are to be reported and under what circumstances. Greater specificity is in fact necessary to avoid overlapping the existing "incident" and "accident" reporting requirements, to eliminate unnecessary reporting of events that do not meet the intent of the law, and to establish a clear, uniform basis for enforcement. Providing for enforcement is important because operators who fail to submit reports as required will be liable for civil and criminal penalties under Section 11 of the NGPSA (49 App. U.S.C. 1679 a or Section 208 of the HLPSA (49 App. U.S.C. 2007).

Legislative History

For insight into the conditions Congress thought should be reported under Pub. L. 99-516, OPS has looked at the situation that led the House Committee on Energy and Commerce to include the new reporting requirements in the fiscal year 1987 pipeline authorization bill, H.R. 4426, which was the forerunner of Pub. L. 99-516. In a short period, a single interstate gas operator had suffered three major pipeline incidents in Kentucky. An investigation of one incident revealed that an employee had discovered a seriously corroded area that eventually failed. However, the employee's internal report of the matter was not acted on promptly. The Committee apparently reasoned that, had there been a legal

obligation to report the corrosion condition to the government, the information might have prompted government intervention in time to assure correction and thus avoid the eventual major incident. (132 Cong. Rec. H6935).

The legislative history of Pub. L. 99–516 in the Senate is consistent with this reasoning. It indicates that the purpose of the reports is to permit State and Federal pipeline inspection officials to review the reported information and investigate the problem to assure that appropriate remedial action is taken. (132 Cong. Rec. 515587).

To avoid a flood of routine reports, however, operators were expected to disclose only "glaring, hazardous conditions which might, if left to linger, constitute an imminent danger," or "potentially cause an incident." (132 Cong. Rec. H6935).

Additional information about the conditions to be reported is contained in "Pipeline Safety Reauthorization," a report by the House Committee on Energy and Commerce to accompany H.R. 4426 (H.R. Rept. 99–779, Part 1, 99th Cong., 2d Sess., 10). The Committee indicated that the reports are for "near accident" or "severe" conditions that are not subject to reporting under 49 CFR Part 191 (and by implication Part 195), and not for "routine replacement, repair or other types of maintenance."

Specifying Reportable Conditions

OPS is proposing that operators report hazardous and other safety-related conditions that occur on pipelines and those LNG facilities that are used to control, process or contain gas or LNG. (See proposed §§ 191.23(a) and (b) and 195.55(a) and (b)). As defined in Parts 191 and 195, "pipelines" are physical facilities through which gas or hazardous liquid moves in transportation, including such things as pipe, valves, compressors, pumps, regulator stations, and liquid breakout storage tanks. Under Part 191 and 49 CFR Part 193, "LNG Facilities" are pipeline facilities used for liquefying or solidifying natural or synthetic gas or transferring, storing or vaporizing liquefied natural gas in conjunction with the pipeline transportation of gas. Among the pipeline facilities to which the Department's safety standards in 49 CFR Parts 192, 193 and 195 apply, OPS believes that "pipelines" and those "LNG Facilities" used to control, process, or contain gas or LNG are the most likely sources of "near accidents."

In determining precisely what conditions should be reported, OPS has considered many conditions that arguably could meet the statutory test of "hazard to life or property." However, OPS is bound by the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35) "to minimize the federal paperwork burden" and to "maximize the usefulness of information collected." Therefore, in light of these precepts, and the Congressional intent for reporting, OPS is proposing under §§ 191.23(a)(1)–(7) and 195.55(a)(1)–(6) that only the most severe reasonably identifiable hazardous conditions be reported, subject to the limitations discussed hereafter. Based on its pipeline safety experience, OPS believes these conditions are the ones most apt to result in imminent danger.

Some of these proposed hazardous conditions may fall into the second statutory category of conditions to be reported, "safety-related" conditions that result in a "significant change or restriction in operation." This second category includes conditions characterized by pressure reduction or shutdown occurring either as a direct consequence of the condition or as part of the operator's response to the condition. Therefore, OPS is additionally proposing under §§ 191.23(b) and 195.55(b) that any safety-related condition resulting in reduced operating pressure or shutdown be reported, subject to the limitations discussed hereafter. Since Congress intended that this reporting requirement apply to conditions that could lead to an imminent hazard, the proposed rule only would apply to such safety-related conditions.

Limitations on Reporting

Based on the legislative history, OPS is proposing three limitations on reporting. First, because the reports are intended to identify precursors of gas "incidents" or liquid "accidents," reports would not be required for conditions that are reportable "incidents" or "accidents" or subsequently develop into reportable "incidents" or "accidents" before the condition report must be filed. (See proposed §§ 191.23(c)(2) and 195.55(c)(2)). Since by statute reports of conditions are to be filed within 5 (Federal) working days after their discovery, if on the third day, for example, an unsafe condition were to turn into an "incident" or "accident" requiring a separate report, the condition report need not be filed. This provision would minimize duplicate reporting.

Operators, of course, would have to keep in mind the actual time needed to file a condition report. This generally will mean mail time or time for overnight delivery to assure receipt by the Secretary before close of business on the 5th day, in addition to the time needed for company processing. As a practical matter, therefore, an "incident" or "accident" would have to occur substantially before the filing deadline for operators to avoid filing both a condition report and a subsequent "incident" or "accident" report.

Secondly, the legislative history strongly indicates that the purpose of the condition reports is to incite government action in time to prevent unsafe conditions from turning into an "incident" or "accident." Therefore, OPS has reasoned that the reports are not to be mere vehicles for data collection, but in effect, warning notices of severe conditions requiring prompt corrective action and government attention to assure that such action is taken. Viewing the reports in this light means there is no need for operators to file reports after prompt corrective action has been taken, unless the condition involves corrosion or the corrective action constitutes a "significant change or restriction in the operation" of the pipeline (see duscussion below). Consequently, reports would not be required for conditions other than corrosion that are corrected by permanent repair or replacement before the deadline for filing the condition report. (See proposed §§ 191.23(c)(4) and 195.55(c)(3)). Thus, if after discovering a reportable condition other than corrosion, an operator effects a permanent repair or replacement within 5 (Federal) working days, no report is required. This provision should eliminate a large amount of the potential reporting burden and stimulate operators to promptly correct known unsafe conditions. Again, operators would have to keep in mind the time needed to file a report in judging whether permanent repair or replacement would be completed before the deadline.

Conditions involving corrosion, as described by §§ 191.23(a)(1) and 195.55(a)(1), would have to be reported within 5 working days of discovery regardless of repair or replacement. An exception is not proposed for these conditions, because the existence of corrosion in one location can indicate a more extensive problem in the aggregate that warrants governmental attention.

Making an unsafe condition safe solely by pressure reduction or shutdown (not in conjunction with prompt repair or replacement) would not qualify for an exception from reporting, because Pub. L. 99–516 specifically requires that any safety-related condition that causes a significant

change or restriction in operation be reported. However, OPS does not consider temporary pressure reduction or shutdown in conjunction with prompt permanent repair or replacement of a safety-related condition to be a "significant" change or restriction in operation for which reports are required by the statute.

Finally, OPS recognizes the potential for confusion and dispute over whether the circumstances surrounding particular conditions on pipelines threaten "imminent danger," or are otherwise severe enough to warrant filing a report. Therefore, the proposed reporting requirements have been founded on the assumption that when a specified unsafe or safety-related condition is discovered within a railroad or public road right-of-way, or within 220 yards of any building intended for human occupancy or outdoor place of assembly, the danger is sufficient to make the condition reportable. (The approximate limit of the hazard zone in one of the Kentucky incidents was 200 yards, and 220 yards is a dimension of the class location unit under § 192.5.) As proposed in §§ 191.23(c)(3)) and 195.55(c)(1)), no reports would be required for pipeline conditions found outside such areas. For offshore pipelines, this provision would have the effect of limiting reports to conditions near or on certain platforms and shores. Conditions relating to LNG facilities would be reportable regardless of location because of the greater potential for disaster posed by unsafe conditions proximate to LNG storage tanks.

Alternatively, OPS invites comment on whether the specified conditions for gas and liquid pipelines should be reported regardless of location, even when they occur in remote areas. If adequate justification is presented, the proposed exception under §§ 191.23(c)(3) and 195.55(c)(1) may be deleted in the final rule.

Other Proposed Rules and Amendments

In Part 191, the proposed reporting requirements would be added at the end of the existing rules, with minor word changes to the title of the part and the scope section. By contrast, many of the existing reporting requirements of Part 195 would be revised editorially to distinguish "accident" reporting from "unsafe condition" reporting. In addition to specifying the conditions to be reported, the proposed reporting requirements also set forth, in §§ 191.25 and 195.56, the format and content of the reports. A report form is not considered appropriate because of the descriptive nature of the information to be provided. Further, under §§ 191.7 and 195.58 the addressee for written reports would be amended to require concurrent filing with appropriate State agencies in keeping with the statutory mandate. Amendments are also being proposed to §§ 192.605, 193.2605, and 195.402 to implement the statutory requirements that operators adopt plans to enhance the discovery of safety-related conditions.

Effective Date

As provided by the NGPSA and the HLPSA, new regulations normally take effect 30 days after publication. OPS believes, however, that because this is the first instance of reporting conditions that are precursors to incidents and accidents, operators will need more that 30 days to revise their operating plans, instruct personnel, and otherwise prepare for compliance. Therefore, OPS is proposing that the final rules not become effective until 90 days after publication. More time is not considered necessary given that new reporting requirements are mandatory and that operators may use the time between publication of this notice and the final rule to take preliminary steps toward compliance.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in the following sections: §§ 191.7, 191.23, 191.25, 192.605, 193.2605, 195.55, 195.56, 195.58, and 195.402. These requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW, Washington DC 20503, Attention: Desk Officer, Research and Special Programs Administration (RSPA). Persons submitting comments to OMB are also requested to submit a copy of their comments to RSPA as indicated above under ADDRESS.

Impact Assessment

This notice is considered to be nonmajor under E.O. 12291 and is a significant rule under DOT procedures (44 FR 11034) because it implements a safety statute passed in response to serious pipeline accidents. The impact of these proposed rules is not considered large enough to warrant production of a draft economic evaluation.

The proposed reporting requirements are estimated to add less than 2 percent to the existing paperwork burden imposed on pipeline operators. OPS specifically requests commenters to address the number of reports they believe would be filed under the proposed rule, and the amount of time, on average, they estimate it would take to prepare those reports. OPS believes that the added burden should be minimal for several reasons: First, except for conditions involving corrosion, operators would have 5 working days after discovery to correct an unsafe condition and thereby avoid reporting it. OPS believes most of the proposed unsafe conditions can be returned to safety within the time frame. Secondly, the reporting burden for conditions taking a longer period for corrective action should be offset to some extent by a reduction in the burden of reporting an "incident" or "accident," since the purpose of the condition reports is to prevent these events from happening. Although the number of unsafe conditions that operators normally would correct after 5 working days before they become "incidents" or "accidents" cannot be estimated precisely, in OPS's experience it should be minimal. Finally, reports would not be required for the numerous small master meter operators or for pipelines located outside certain populated areas.

Because operators are currently required to prepare operations and maintenance plans, which have as their objective the prevention of unsafe conditions, OPS believes that the proposed minor changes to regulations affecting the existing plans should be of minimal impact.

Based on the facts available about the impact of this rulemaking action, I certify pursuant to Section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 191

Pipeline safety, Gas, Reporting and recordkeeping requirements

49 CFR Part 192

Pipeline safety, Gas, Operation, Maintenance

49 CFR Part 193

LNG facility, Operation, Maintenance

49 CFR Part 195

Pipeline safety, Hazardous liquids, Reporting and recordkeeping requirements, Operation, maintenance

In consideration of the foregoing, OPS proposes to amend 49 CFR Parts 191, 192, 193, and 195 as follows:

PART 191—[AMENDED]

1. The authority citation of Part 191 is revised to read as follows:

Authority: 49 App. U.S.C. 1681(b) and 1808(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. The title of Part 191 would be revised to read as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND UNSAFE CONDITION REPORTS

§ 191.1 [Amended]

3. In § 191.1(a), immediately after the word "incidents" the following would be added:, "unsafe conditions,".

4. Section 191.7 would be revised to read as follows:

§ 191.7 Addressee for written reports.

Each written report required by this part must be made to the Information Resources Manager, Office of Pipeline Safety, U.S. Department of Transportation, Washington, DC 20590. However, incident and annual reports for intrastate pipeline transportation subject to the jurisdiction of a State agency pursuant to a certification under section 5(a) of the Natural Gas Pipeline Safety Act of 1968 may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt for incident reports and not later than March 15 for annual reports to the Information Resources Manager. Unsafe condition reports required under § 191.23 for intrastate pipeline transportation must be submitted concurrently to that State agency, and if that agency acts as an agent of the Secretary with respect to interstate transmission facilities, unsafe condition reports for these facilities must be submitted concurrently to that agency.

5. Section 191.23 would be added to read as follows:

§ 191.23 Reporting unsafe conditions.

(a) Except as provided in paragraph (c) of this section, each operator shall report in accordance with § 191.25 the existence of any of the following hazardous conditions involving facilities in service:

(1) General or localized corrosion on a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength requiring pipe replacement or reduction in operating pressure.

(2) Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the structural integrity of a pipeline or the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.

(3) Any crack or other material defect that impairs the structural integrity of a pipeline or the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.

(4) Physical damage to a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength, such as a dent or gouge.

(5) Pressurization of a pipeline or LNG facility that contains or processes gas or LNG above its relief capacity.

(6) A leak in pipeline or LNG facility that contains or processes gas or LNG which, taking into account its severity, requires prompt repair.

(7) Inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank.

(b) Except as provided in paragraph (c) of this section, each operator shall report in accordance with § 191.25 the existence of any safety-related condition, in addition to those listed in paragraph (a) of this section, that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator) a reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility that contains or processes gas or LNG.

(c) A report is not required for any unsafe condition that—

(1) Exists on a master meter system;

(2) Is an incident or results in an incident before the unsafe condition report must be filed;

(3) Exists on pipelines outside any railroad or public road right-of-way, or more than 220 yards from any building intended for human occupancy or outdoor place of assembly; or

(4) Except for a condition under paragraph (a)(1) of this section, is corrected by permanent repair or replacement before the deadline for filing the unsafe condition report.

6. Section 191.25 would be added to read as follows:

§ 191.25 Filing unsafe condition reports.

(a) Each report required by § 191.23 must be filed (received by the Secretary) in writing within 5 working days (not including Saturday, Sunday, or Federal holidays) after the day a representative of the operator discovers the condition that must be reported. Separate conditions may be described in a single report if they are closely related.

(b) The report must be headed "Unsafe Condition Report" and provided the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Name and job title of person who discovered the condition.

(5) Date condition was discovered.

(6) Location of condition, with reference to nearest street address, station number, or landmark.

(7) Description of the condition, including circumstances leading to its discovery and any significant effects of the condition on safety.

(8) The corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned followup or future corrective action, including the anticipated schedule for starting and concluding such action.

PART 192—[AMENDED]

7. The authority citation for Part 192 is revised to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

8. Section 192.605 would be amended by adding a new paragraph (f) and the introductory text of this section is republished to read as follows.

§ 192.605 Essentials of operating and maintenance plan.

Each operator shall include the following in its operating and maintenance plan:

* * * * *

(f) Instructions enabling personnel who perform operation and maintenance activities to recognize the hazardous and other safety-related conditions that are subject to the reporting requirements of § 191.23 of this subchapter.

PART 193—[AMENDED]

9. The authority citation for Part 193 is revised to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; 49 CFR 1.53.

10. Section 193.2605 would be amended by adding a new paragraph (c) to read as follows:

§ 193.2605 Maintenance procedures.

* * * * *

(c) Each operator shall include in the manual required by paragraph (b) of this section instructions enabling personnel who perform operation and maintenance activities to recognize the hazardous and other safety-related conditions that are subject to the reporting requirements of § 191.23 of theis subchapter.

PART 195—[AMENDED]

11. The authority citation for Part 195 is revised to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

12. The title of Subpart B of Part 195 would be revised to read as follows:

Subpart B—Reporting Accidents and Unsafe Conditions

13. The introductory text and title of § 195.50 would be revised to read as follows:

§ 195.50 Reporting accidents.

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid transported resulting in any of the following.

* * * * *

14. Section 195.54 would be revised to read as follows:

§ 195.54 Accident reports.

(a) Each operator that experiences an accident that is required to be reported under § 195.50 shall as soon as practicable, but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000–1, or a facsimile.

(b) Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000–1, it shall file a supplemental report within 30 days.

15. Section 195.55 would be added to Subpart B to read as follows:

§ 195.55 Reporting unsafe conditions.

(a) Except as provided in paragraph (c) of this section, each operator shall report in accordance with § 195.56 the existence of any of the following hazardous conditions involving pipelines in service:

(1) General or localized corrosion requiring pipe replacement or reduction in operating pressure.

(2) Unintended movement or abnormal loading of a pipeline by environmental causes, such as an earthquake, landslide, or flood, that impairs its structure integrity.

(3) Any crack of other material defect in a pipeline that impairs its structural integrity.

(4) Physical damage to a pipeline, such as a dent or gouge.

(5) Pressurization of a pipeline above its relief capacity.

(6) A leak in a pipeline which, taking into account its severity, requires prompt repair.

(b) Except as provided in paragraph (c) of this section, each operator shall report in accordance with § 195.56 the existence of any safety-related condition, in addition to those listed in paragraph (a) of this section, that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator) a reduction in operating pressure or shutdown of operation of a pipeline.

(c) A report is not required for any unsafe condition that—

(1) Exists outside any railroad or public road right-of-way, or more than 220 yards from any building intended for human occupancy or outdoor place of assembly;

(2) Is an accident that is required to be reported under § 195.50 or results in such an accident before the unsafe condition report must be filed; or

(3) Except for a condition under paragraph (a)(1) of this section, is corrected by permanent repair or replacement before the deadline for filing the unsafe condition report.

16. Section 195.56 would be added to Subpart B to read as follows:

§ 195.56 Filing unsafe condition reports.

(a) Each report required by § 191.55 must be filed (received by the Secretary) in writing within 5 working days (not including Saturday, Sunday, or Federal holidays) after the day a representative of the operator discovers the condition that must be reported. Separate conditions may be described in a single report if they are closely related.

(b) The report must be headed "Unsafe Condition Report" and provide the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Name and job title of person who discovered the condition.

(5) Date condition was discovered.

(6) Location of condition, with reference to nearest street address, station number, or landmark.

(7) Description of the condition, including circumstances leading to its discovery and any significant effects on the conditon on safety.

(8) The corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned followup or future corrective action, including the anticipated schedule for starting and concluding such action.

17. Section 195.58 would be revised to read as follows:

§ 195.58 Addressee for written reports.

Each written report required by this subpart must be made to the Information Resources Manager, Office of Pipeline Safety, U.S. Department of Transportation, Washington, DC 20590. However, accident reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to a certification under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Resources Manager. Unsafe condition reports required under § 195.55 for Intrastate pipelines must be submitted concurrently to that State agency, and if that agency acts as an agent of the Secretary with respect to interstate pipelines, unsafe condition reports for these pipelines must be submitted concurrently to that agency.

18. Section 195–402 would be amended by adding a new paragraph (f) to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(f) *Unsafe condition reports.* The manual required by paragraph (a) of this section must include instructions enabling personnel who perform operation and maintenance activities to recognize the hazardous and other safety-related conditions that are subject to the reporting requirements of § 195.55.

Issued in Washington, DC on September 21, 1987.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 87–22127 Filed 9–24–87; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. 87-09; Notice 3]

Odometer Disclosure Requirements; Extension of Comment Period

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

ACTION: Denial of request for extension of comment period.

SUMMARY: This notice denies a request for an extension of the comment period on the notice of proposed rulemaking published on July 17, 1987, regarding odometer disclosure requirements. The comment period was scheduled to close on September 15, 1987. NHTSA received a petition from the American Association of Motor Vehicle Administrators (AAMVA) asking that the comment period be extended. NHTSA concluded that a response representing the comments and concerns of all states would be useful and that NHTSA should have the opportunity to consider such data before proceeding with this rulemaking. Accordingly, the comment period for the notice of proposed rulemaking was extended until September 30, 1987. The American Financial Services Association (AFSA) has requested that the comment period be extended for an additional thirty days so that all of its members have a sufficient opportunity to respond to AFSA concerning the proposed rule which will enable AFSA's legal staff to compile comments. Because the provisions of the Truth in Mileage Act concerning the title of a vehicle and the disclosure of a vehicle's mileage become effective on April 29, 1989, and these provisions will result in changes to many state motor vehicle titling laws and title forms, NHTSA has decided not to grant AFSA's request. Accordingly, the comment period will not be extended.

DATE: Comments for Docket 87-09; Notice 1, are due no later than September 30, 1987.

ADDRESS: Written comments should refer to Docket No. 87-09, Notice 1 and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION: NHTSA published a notice of proposed rulemaking regarding odometer disclosure requirements at 52 FR 27022, July 17, 1987. The comment period for that proposal was scheduled to close on September 15, 1987.

NHTSA received a petition from the American Association of Motor Vehicle Administrators (AAMVA) asking that the comment period be extended for 30 days. The reason offered for the extension was that using the procedural approach AAMVA laid out to analyze and develop a unified response, there would not be sufficient time to meet the closing date for comments.

NHTSA carefully considered this request, bearing in mind the agency's attempt to inform all those involved in selling and leasing motor vehicles and the AAMVA since the enactment of the Truth in Mileage Act about the new law; the provisions of the Act concerning the title of a vehicle and the disclosure of a vehicle's mileage become effective on April 29, 1989; and that these provisions will result in changes to many state motor vehicle titling laws and title forms. Because a unified response might yield some significant comments and NHTSA wanted the opportunity to examine this information before proceeding with this rulemaking, and to allow the interested public more time to analyze the available information, the comment period was extended for an additional fifteen days.

NHTSA has received a petition from AFSA asking that the comment period be extended for an additional thirty days to ensure that all of its members have a sufficient opportunity to respond to AFSA concerning the proposed rule, which will enable AFSA's legal staff to compile comments. NHTSA continues to recognize that a unified response might lead to significant comments. However, due to the time constraints imposed by the Truth in Mileage Act's April 29, 1989 effective date, and because certain provisions of the Act will result in changes in state motor vehicle titling laws and title forms, we must deny the request for an extension of the comment period. Comments filed after the due date of September 30, 1987, will be considered as far as practicable.

Erika Z. Jones,

Chief Counsel.

September 21, 1987.

[FR Doc. 87-22113 Filed 9-22-87; 9:36 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

Mid-Atlantic Fishery Management Council and Gulf of Mexico Fishery Management Council; Atlantic Billfish Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic and the Gulf of Mexico Fishery Management Councils will hold a series of public hearings and provide comment periods to solicit public imput into the proposed Billfish Fishery Management Plan. Various measures to conserve and manage the resource will be discussed.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and locations of the hearings. All hearings will begin at 7:00 p.m. The public comment period on the proposed plan will close November 2, 1987, for the Gulf of Mexico Fishery Management Council and will close November 22, 1987, for the Mid-Atlantic Fishery Management Council.

ADDRESSES: All written comments should be sent to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19901-6790; or Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 302-674-2331 concerning the hearings scheduled by the Mid-Atlantic Fishery Management Council. Contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 813-228-2815, concerning the hearings scheduled by the Gulf of Mexico Fishery Management Council.

SUPPLEMENTARY INFORMATION: The Billfish Fishery Management Plan was prepared jointly by the Mid-Atlantic, South Atlantic, New England, Gulf of Mexico, and Caribbean Fishery Management Councils. It establishes a management regime for Atlantic billfishes throughout the Atlantic, Gulf and Caribbean exclusive economic zones (EEZs) of the United States. The species addressed by this plan were listed in the notice of public hearings scheduled to be held by the South

Atlantic Fishery Management Council published September 15, 1987 (52 FR 34825). Hearings scheduled by the New England Fishery Management Council were published September 17, 1987 (52 FR 35119).

The dates and locations of the public hearings scheduled by the Mid-Atlantic Fishery Management Council are as follows:

October 12, 1987—Holiday Inn, 39th and Oceanfront, Virginia Beach, VA

October 13, 1987—Holiday Inn, Route 13, Salisbury, MD

October 15, 1987—South Wall Fire Company, Route 34, Atlantic Avenue, Wall Township, NJ

October 20, 1987—Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY

The dates and locations of the public hearings scheduled by the Gulf of Mexico Fishery Management Council are as follows:

October 12, 1987—Best Western Bayside Inn, 711 West Beach Drive, Panama City, FL

October 13, 1987—Mobile Municipal Auditorium, Room G, 401 Auditorium Drive, Mobile, AL

October 14, 1987—Seafood Museum, Highway 90 North, Biloxi, MS

October 15, 1987—Landmark Motor Hotel, 2601 Severn Avenue, Metairie, LA

October 19, 1987—Westin Galleria Hotel, 5060 W. Alabama Street, Houston, TX

October 20, 1987—Community Center, 710 Avenue A, Port Aransas, TX

October 21, 1987—Community Building, 213 Yturria, Port Isabel, TX

October 22, 1987—Holidome Holiday Inn, 2032 NE., Evangeline Thruway, LaFayette, LA

Dated: September 22, 1987.

Richard H. Schaefer,

Acting Director for Fisheries, Conservation Management.

[FR Doc. 87-22201 Filed 9-24-87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

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

Forest Service

Small Business Timber Set-Aside Program

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy.

SUMMARY: The Forest Service hereby gives notice of a new proposal to govern administration of the Small Business Timber Sale Set Aside Program which would replace the final policy published on June 13, 1985 at 50 FR 24788. The new procedures would: Clarify the definition of structural change; reduce the threshold for structural change qualification from 10 percent to 5 percent of purchased volume during the prior 5-year period; begin the 3-year structural change recomputation period the next full 6-month period following the structural change and implement it the next full fiscal year; increase the length of period from 6 months to 1 year for the log export reporting used in crediting nonmanufacturer volume distribution from open timber sales; eliminate future recomputations of market shares; retain the shares established in the 1986 recomputation, and establish a commitment for review of the program effects in 1991. The agency invites public comment on this latest proposal.

DATE: Comments on this proposal must reach the agency by November 9, 1987.

ADDRESSES: Those wishing to comment on this proposal should submit their views in writing to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090. Public comments received may be inspected during normal business hours in the office of the Director of Timber Management Staff, Room 3207, South Agriculture Building, 14th and Independence Avenue, SW. Parties wishing to view comments are requested to call ahead (447–6893) with their names and time of visit to facilitate their entry into the building.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations at 13 CFR Part 121 and Forest Service Manual Chapter 2430 set forth current policy and procedures for the administration of the timber sale set-aside program on National Forest System lands. The basic objective of the programs is to ensure that small timber businesses have the opportunity to purchase a fair proportion of the sales of National Forest timber.

Public Comment on the Current Policy

On November 21, 1984, the Forest Service published a proposed policy (49 FR 45889) which would change the procedures by which the agency administers the Small Business Timber Sale Set-Aside Program. On June 13, 1985, the Forest Service published their notice of adoption of final policy [50 FR 24788].

The 1985 policy recognized Regional differences in relation to (1) timber supply and demand, (2) dependence on National Forest timber, and (3) market fluctuations in recent years. The policy revised methods for determining small business shares for each marketing area, developed measures to credit volume to small and large businesses for volume purchased by non-manufacturers, limited the maximum amount of timber sale volume set aside in a given period for set-aside sale selection, provided for Regional differences in the manufacturing requirements for set-aside sale volume to be processed in small business manufacturing facilities, and eliminated volume included in the Special Salvage Timber Sale Program (SSTS) from inclusion in the regular timber set-Aside program. On November 5, 1985, a lawsuit was filed which opposed the implementation of the final policy. As settlement of this lawsuit, the Forest Service agreed to a stipulation to reopen the period of public comment to permit response to the final policy. On February 3, 1986, the Forest Service reissued a notice requesting additional comments on the final policy [51 FR 4264]. A correction to that notice was made March 28, 1986 [51 FR 10645].

The Forest Service received about 130 written comments. These came from large and small firms (119), associations representing the interests of each business group (9), one State Forester, and the Small Business Administration.

A summary of the major new comments received follows. The summary does not repeat comments received on the original proposal. Those were discussed fully in the notice of final policy published June 13, 1985 [50 FR 24788].

A. Establishment of Small Business Shares

1. *Structural Change*

The current policy defines structural change. Several reviewers asked for clarification of the definition, expansion of its application, and changed procedures for its use. Comments from both large and small business suggested clarifying whether structural change occurred when small business grew to large business or large business reduced its size class to small business. One small business commented that structural change needs to account for new market entries or mills with expanded production.

Large business felt that structural change provisions which included firms purchasing 10 percent of total sawlog volume or more during the last recomputation period unfairly favored small business because many more small businesses purchase at a level of less than 10 percent than do large businesses. A number of small businesses could change their status in a market area and not be included in the data even though collectively they would represent more than 10 percent. Large business recommended a lower figure of 5 percent to provide greater sensitivity to the structural change recomputation process. One large business asked that, if this minimum threshold were changed, that all FY 1986 structural change recomputations be redone.

The Agency agrees with the need to clarify the definition of structural change and to modity application procedures. The Agency also agrees with the position that the threshold for qualifying for structural change needs to be reduced to 5 percent. The recognition of a firm that purchased 5 percent of total sawtimber during the last recomputation period will add greater sensitivity to the structural change mechanism. Under the new proposal

two conditions would determine structural change:

1. Change in the size class of the firm(s), including purchase of one size class firm by another, internal growth by small business, purchase or merger of two or more small business firms, or shrinkage of a large business to small business.

2. The discontinuance of a firm's operation within the market area. When one or both situations occur, the affected firms must have purchased at least 5 percent of the total sawlog volume during the previous 5-year period which begins with the complete six-month period immediately preceding the structural change.

The agency disagrees that structural change occurs when a small business firm adds production but remains small, or when an intirely new entity enters the market area. Such a firm must compete within the share established by existing small businesses. The objective of recognizing structural change is to make market share adjustments to account for changes in the size class composition of those active in the market area. It is not to give an unearned advantage to an outside firm which wants to begin operations in a market area.

The agency disagrees with the suggestion that it should recompute 1986 shares if the minimum threshold is changed. The 1986 market shares were based on the procedures in effect at that time and were to be in effect for 5 years. Recomputation at this time would be disruptive to operations of large and small businesses alike.

2. Limit on Shares

Shares refer to the percent of timber volume sold by the Forest Service within a given market area that is reserved for preferential bidding by small businesses. Reviewers essentially supported the current policy which established an 80 percent upper limit and ½ of the share established in 1971 as a lower limit. Of the three comments suggesting a change, one commented on the need to set a basic floor; another wanted the same difference for the lower limit as for the upper limit; and one agreed with the 80% upper limit but wanted flexibility to better utilize National Forest timber. The current lower limit offers a minimum level of protection to small business, while the upper limit of 80 percent was designed to define the maximum level for a proportionate share and to offer enhanced opportunities for better utilization of both expanded market area volume opportunities and of materials not commonly utilized by small business. The Agency will retain the lower and upper limits defined in the current policy.

3. Recomputation of Shares

Current policy contains a complex procedure for recomputation of small business shares at 5 year intervals. Comments from small business generally supported continuance of the June 13, 1985 policy. Large business comments were opposed on the basis that with protection from competition on set-aside timber sales small businesses were free to compete aggressively on open sales and to increase their market share at each successive recomputation. This concern was most strongly expressed by respondents in the western Regions. Comments from both classes pointed out that the procedures seemed overly complex.

The Forest Service has decided that future scheduled recomputations should not occur in western Regions. Under the proposed policy, current shares would remain in effect. Future recomputation would be limited to the redefined structural changes within a market area and special recomputations as defined in the current policy. The Forest Service intends to proceed with the planned 2-year study on computation of shares for Regions 8 and 9 and will continue that study which would identify procedures for recomputation in those Regions.

B. Future Share Changes

(1) Recomputation Due to Structural Change

Under the current policy, shares are recomputed 3 years after a structural change. Large business reviewers generally supported a rapid transfer of the equivalent share of the firm changing size class or going out of business. Under their range of proposals, this recomputation would occur from immediately, to a priod of 12 to 18 months, following the change in structure. Small business uniformly supported the current policy, except for three reviewers who felt some provision should exist to reduce the small business share in the situation in which small businesses became large through internal growth or acquisition of other firms. These reviewers favored a prompt reduction in the small business share.

The Forest Service disagrees with the concept of immediate transfer of the equivalent share. This places a share related value on the purchase and harvest volumes of a firm undergoing structural change. The small business share could be dramatically reduced through purchase of small businesses by large. The Agency also disagrees with the premise that a small business, having had the protection of the Small Business Act, should immediately reduce the small business share when the firm changes size class to large. Under existing procedures, such a firm which grows internally to a large business may process volume it purchased as set-aside sales. The current policy for recomputation after 3 years would be retained.

(2) Special Recomputations

Having received no major comment, the agency would retain the policy on special recomputations which would occur under unique circumstances and when agreed to by the Forest Service and the Small Business Administration.

C. Purchases by Non-Manufacturers

Non-manufacturers are loggers or timber purchasers that do not own facilities for manufacturing logs into lumber or do not qualify as small or large timber businesses as defined in current policy. The policy affecting allocation to the large or small businesses that do manufacture their purchases of timber varies in different regions and is based on the conditions in those regions.

1. Regions 8, 9, and 10

The current procedure for allocating purchases by non-manufacturers to large and small businesses is based on the anticipated size of the processor.

Comments received supported the adopted policy.

The Forest Service proposes to retain the current procedure. Part of the planned Forest Service-Small Business Administration study of Regions 8 and 9 will include review of this procedure and evaluation of alternatives which may more accurately identify delivery source.

2. Regions 1–6

The current policy credits harvest volumes to small or large business based on actual deliveries to them from the open sales purchased by non-manufacturers.

A few comments supported the adopted policy and no other specific comments were received. However, since adoption of this policy, the Forest Service has changed procedures for export control reporting from a 6-month basis to an annual basis. Accordingly, the proposed policy will reflect annual reporting as the basis crediting sale volume purchased by non-manufacturers based on harvest records of delivery derived from the export control reporting.

Use of a 2-year rolling average, updated annually, will develop the percentage of sawtimber which non-manufacturers deliver to each manufacturer size class.

D. Triggering of Set-Aside Sales

When small businesses are unsuccessful in purchasing the established share of timber volume by more than ten percent, a portion of sales offered are set-aside for preferential bidding by small businesses. This situation is referred to as triggering.

1. The proposed policy retains current procedures for triggering a set-aside program when small business firms fail to purchase their share by 10 percent or more.

No comments supported changing this aspect of the current policy; therefore, the Agency has retained it in the new proposal.

2. The current policy includes a process for setting aside a volume of timber equal to the small business share plus the accumulated deficit volume. However, at least 20 percent of the timber volume in each 6-month period consists of open sales.

Comments reflected uniform support by small business and uniform opposition by large business. Large business advocated setting aside only the deficit volume when set-aside sales were triggered. They felt that small business deserved the opportunity to purchase the volume of their share which was in deficit from the prior period but should not get preferential opportunity to bid upon their proportionate share of the forthcoming 6-month sale program plus the deficit. The Forest Service continues to maintain that setting aside both the share plus the deficit rapidly eliminates the trigger situation. Analysis has shown that setting aside only the deficit volume can lead to continuous periods of set-aside sales. The current policy provides additional purchasing opportunities for large business by permitting elimination of the deficit volume over two 6-month periods when necessary. In the absence of factual information that refutes agency analysis, the process of setting aside the small business share and the accumulated deficit is retained in this proposal.

E. Selection of Set-Aside Sales

This policy received little additional specific comment. A few large business respondents favored sale selection solely by the Forest Service. The Agency feels that participation by the SBA representative will result in a timely selection and agreement of set-aside sales.

The proposed policy would continue the current procedure where the Forest Supervisor selects set-aside sales with the concurrence of the local SBA representative.

F. Manufacturing Requirements on Set-Aside Sales

The current policy establishes a percent of timber volume that purchasers of set-aside sales may deliver to large businesses that varies in different regions. Comments did not suggest change; therefore, the Agency would continue this policy.

G. Special Salvage Timber Sale Program (SSTS)

Comments did not suggest change; therefore, the agency would continue current policy. The Forest Service will not include the SSTS program volume in its operation of the regular set-aside program.

H. Review of Program

Even though the agency is proposing revisions in the timber sale set-aside procedures, the Forest Service still plans to review the set-aside program in 1991, after the current program has been in effect for a period of time, to determine whether the program is performing as anticipated when the current changes were made. A large number of the concerns expressed in the comments were based on uncertainty as to what the effects will actually be. The forest products industry is still restructuring as a result of the severe market slump of the early 1980's. Sufficient time must be allowed for the industry to stabilize and operate under the established procedures before the effects of the policy changes can be determined. The review will occur after enough time has elapsed to permit judgments to be made on the actual effects of this policy.

Therefore, based on consideration of comments received on the existing policy, the Forest Service proposes to revise its current timber sale set-aside program procedures. If adopted the changes would be issued as an amendment to section 2436 of the Forest Service Manual and the Sale Preparation Handbook (FSH 2409.18) containing informational and instructional material. For ease of presentation and review the full text of the proposal is set forth at the conclusion of this document.

Impacts

This proposed policy has been reviewed against the objectives and criteria of Executive Order 12291. These changes in the set-aside policy will not result in any of the economic or regulatory impacts associated with a major rule. This revision is not expected to have an annual effect on the economy of $100 million or more and would not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Moreover, this proposed policy would not have significant economic impact on a substantial number of small entities. The proposal, if adopted, would continue to protect the interests of small business timber industry firms and to assure them of the opportunity to obtain a fair proportion of National Forest timber sales. The proposal would require the use of existing reporting and inspection procedures and does not increase compliance or administrative costs of small entities.

This proposed policy will not significantly affect the environment. Therefore, an environmental impact statement would not be prepared. Furthermore, the proposal will not result in additional information collection requirements, therefore, it is not subject to review under the regulations at 5 CFR 1320 which implement the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The policy revises procedural methods of conducting and administering the Small Business Timber Set-Aside Programs in response to a Forest Service-SBA Joint Review of the Small Business Timber Sale Set-Aside Program which identified key procedures in the current program which needed revision in order to make the set-aside program operate more effectively. Substantial public involvement with associations representing both timber industry size groups, individuals from both large and small business firms, and from government entities helped shape the initial proposed changes. As noted above, substantial comments on previous proposals have been published in the **Federal Register**. These comments as well as those received more recently on the current policy have influenced the changes in this proposal.

Date: July 23, 1987.

Mark A. Reimers,

Associate Deputy Chief, Programs and Legislation.

Proposed Timber Sale Set Aside Program Policy and Procedure

Note—The proposed policy and procedures will at the final stage be divided into direction appropriate to the Forest Service Manual, Chapter 2430, and Chapter 90 of the Sale Preparation Handbook. For ease of review it is presented as one document.

Authority

Basic authority of the Department to participate in programs with the Small Business Administration is found in the Small Business Act (15 U.S.C. 631). SBA rules applicable to administration of the small business timber sale set-aside program are set forth in 13 CFR Part 121. Forest Service rules governing award of small business set-aside sales are at 36 CFR 223.102.

Objective

The objective of the Department's participation in the Small Business Timber sale Set-Aside Program is to ensure that small business timber purchasers have the opportunity to purchase a fair proportion of the sales of National Forest Timber.

Policy

The Department endorses the declared policy of the Congress that small business should have the opportunity to purchase a fair proportion of timber sales from National Forest lands. National Forest administrators shall cooperate with Small Business Administration representatives in meeting the spirit and objectives of the Small Business Act. National Forest administrators shall apply the operational instructions pertaining to the implementation of this policy that are contained in FSH 2409.18.

Responsibility

1. *Regional Forester.* The Regional Forester is responsible for ensuring consistency between Forests in the application of the timber sale set-aside program and for resolving conflicts, appeals, and disputes which elevate to the Regional level.

2. *Forest Supervisor.* The Forest Supervisor is responsible for scheduling, coordinating, and conducting the timber sale set-aside program at the Forest level.

Definitions

1. *Small Business.* The Small Business Administration defines a small business (13 CFR Part 121) as a concern that:

(a) Is primarily engaged in the logging or forest products industry.

(b) Is independently owned and operated.

(c) Is not dominant in its field of operation.

(d) Does not employ, together with its affiliates, more than 500 persons.

(e) Agrees that it will not sell, trade, or a combination of sell and trade to a concern that is not a small business within the meaning of this paragraph more than a specified percent of such timber in each Region as set forth in this policy.

(f) Agrees to manufacture lumber or timbers from such Government logs only at its own facilities or those of concerns that qualify as a small business.

2. *Timber.* Trees in the form of logs as listed in sale contracts or permits, and which are suitable for manufacture into lumber, dimensional timbers or veneer and are normally appraised as such.

3. *Market Areas.* Market areas are the basic units for administration of the timber set-aside program. They generally coincide with logical and feasible administrative units—the National Forest in most instances. Within some Forests, traditional marketing patterns, geographic or topographic barriers, limits of the transportation system, or other factors delineate more than one market area within the Forest. Unless economic factors change substantially, market area boundaries seldom change.

4. *Base Average Share.* The original base average share determination for small business used the small business purchase history for the 5-year period from January 1, 1966, to December 31, 1970. Analysis to determine the base average share was based on a recognizable market area.

5. *Manufacturer.* A manufacturer is a concern with an existing sawmill, specialty mill (such as cedar mill, shingle mill, shake plant, or pole plant) or veneer manufacturing facility within an economic or logical haul distance, or with firm commitments and permits for construction of such a facility.

6. *Nonmanufacturer.* A nonmanufacturer is a concern:

a. Which manufactures, with its own or leased facilities, or contracts for manufacture less than 50 percent of its annual sawlog purchases within an economic or logical haul distance to such facilities.

b. That does not have the capacity to manufacture 50 percent or more of its average annual sawlog purchases because of factors such as timber species or size or specialized nature of the mill.

c. Purchases National Forest timber outside an economic and logical haul distance to its manufacturing facility.

d. Which purchases sales with a sawtimber component when it has no manufacturing facility for lumber, dimension, or veneer.

7. *Deficits and Surpluses.* These represent the accumulated volume which results from the difference between the small business market share of timber sawtimber volume sold and the volume actually purchased or credited to small business firms. These deficit and surplus volumes guide operation of the 6-month timber sale set-aside program.

8. *TRIGGER.* A small business set-aside program is initiated ("triggered") on a market area when the cumulative deficit volume of small business purchases exceeds by 10 percent, the small business share of volume sold during the current 6-month period.

9. *Structural Change.* A structural change is a collective change in the size status of firms operating in a market area. To be included in the definition of structural change the firm must have purchased 5 percent or more of the timber sold in a market area in the preceding 5 years and must have changed size class or discontinued operation in the market area. To be included in the definition of structural change the firm must have purchased 5 percent or more of the timber sold in a market area in the preceding 5 years and must have changed size class or discontinued operation in the market area.

10. *Share Percentage Points.* When the small business share changes in a market area, the change results in a change in "share percentage points." For example, the small business share may change from 45 percent to 50 percent of the timber sale program within a market area. This would represent a change of five share percentage points.

Establishment of Small Business Limit on Market Share. The small business share in any market area shall not exceed 80 percent nor decrease to less than 50 percent of the original base share established in 1971.

Recomputation of Small Business Share. Regularly scheduled recomputations will no longer be made in western Regions. The shares computed in FY 1986 shall be used unless a structural change or special recomputation occurs. In Regions 8 and 9, future recomputation procedures will be proposed following completion of the two year study now in progress.

Market Areas. Forest Supervisors, upon consultation with the Small

Business Administration representative and approval of the Regional Forester, may change market area boundaries. Documentation must support such a proposal. The definition of market areas identifies some of the factors which create them. Changes may be needed when a significant change in the Forest transportation system joins two previously separate market areas, or when a major purchaser discontinues business, and firms from outside the market area begin to routinely operate within it. The Forest Supervisor shall solicit views of firms operating within the market areas affected before submitting a proposal to change boundaries to the Regional Forester for approval.

The Forest Supervisor must accomplish a boundary change so that the weighted average recomputed share of all the market areas remains unchanged. The action must compare the results obtained with or without the boundary change. In a simple case of combining two market areas, the comparison would look like Exhibit 1. Another example, Exhibit 2, shows realignment of four market areas into three.

EXHIBIT 1

Market area	Average periodic sale program	Recomputed share	
		Percent	Volume
A	200	50	100
B	*100*	*80*	*80*
X (A+B)	300	60	*180/300=60%*

The new share for the combined area is 60 percent.

EXHIBIT 2

Market area	Average periodic sale program	Recomputed share	
		Percent	Volume
A	200	50	100
B	100	75	75
"OLD" C	150	30	45
D	*75*	*40*	*30*
Total and average	[1] 525	48	[2] 250
X	220	60	132
"NEW" Y	180	43	78
Z	*125*	*32*	*40*
Total and average	[1] 525	48	[2] 250

[1] These figures must agree.
[2] These figures must agree.

Recomputation Due to Structural Change. Small business shares shall be recomputed following structural change. The objective is to provide small business firms the opportunity to maintain their historical share when a firm changes size, class but to adjust shares to reflect the purchase and harvest patterns which actually develop. Recompute small business shares approximately 3 years after a structural change occurs, based on the purchase and harvest history for the 3-year period. Use data beginning the full 6-month period following the structural change. When a change is indicated after the three year period, make the new shares effective at the beginning of a fiscal year. The necessity for the recomputation of shares due to structural change will be determined by the Forest Supervisor, in consultation with the SBA representative.

There are two conditions that will determine structural change:

a. Change in the size of the firm(s).

b. Discontinuance of the operation of the firm(s).

To be considered, the firms must have purchased 5 percent of the timber sold in the preceding 5 years. In making decisions concerning structural changes, judgment must be exercised about what constitutes "discontinued operations." A mill closing must be carefully evaluated in terms of intent to resume operations. Cessation of operations due to natural disasters beyond the control of a firm must be evaluated in terms of the declared intent to reconstruct and resume operations. A firm with two mills in a market area may close one mill or may close both but use a mill in an adjacent market area to process timber from the first market area. Neither of these circumstances represents structural change.

Special Recomputation. Unique situations may develop which require special recomputations and departure from the established procedure. In such cases, the Forest Supervisor, in consultation with the SBA Representative, may propose procedures necessary to adapt to the situation. The Forest Supervisor shall solicit the views of firms operating within the market area before submitting a proposal for special recomputation.

Review of Program. The Forest Service shall review the timber sale set-aside program in 1991 to determine whether the program is performing as anticipated when the current changes were made.

Operation of the Regular Set-Aside Program

Semiannual Analysis. The Forest Supervisor shall prepare a semiannual analysis of the set-aside program for the first and last 6 months of each fiscal year, for each market area on the Forest. Summarize data, using Form FS–2400–31, Cumulative Set-Aside Program Analysis.

Crediting of Sales Volume. The Forest Supervisor shall credit timber sale sawtimber volume to the size class of the initial purchaser at the time of the timber sale bid, except that:

1. Sawtimber volume from set-aside sales on which no self-certified small business bids were received and that were purchased without readvertisement, or with advertisement under the same terms, by a large business firm or small business firm that did not self-certify shall be credited to small business for 6-month analysis. If a small business firm elects to purchase a set-aside sale after neither small or large business entered bids at the initial offering, credit the volume to small business. Set-asides shall not be increased later by volumes in which small business was not interested. If set-asides sales or the reoffering of such sales are not bid upon by either size class firms the volume shall not be included in the 6-month analysis.

2. Where a small business nonmanufacturer purchases sawtimber volume from set-aside sales, credit 100 percent to small business, although, in most market areas they may deliver a portion of advertised sawtimber volume to a large business firm. Do not include special salvage timber sales. Distribute sale volumes for all but excepted sales by small and large purchasers. Excepted sales may include those in urgent need of harvesting, sales under $2,000 in advertised value, sales within some Federal sustained-yield units and those sales included in the Special Salvage Timber Sale (SSTS) program.

Include sales under $2000 in advertised value in the semiannual analysis only when they form a substantive portion of the sale program over a historical period of time.

Allocate volume for 6-month analysis purposes which nonmanufacturers purchase from open sales. At the end of each 6-month period, sale award may not occur until the next period for reasons such as size protests, appeals, lawsuits, or election of Government road construction. In such instances, use the bid date in preparation of the semiannual analysis. Credit volumes to the size class of the successful bidder on

the bid opening date. In instances where the purchaser successfully bids and receives credit for a sale, but does not consummate or receive sale award because of factors such as appeals, litigation, or failure to obtain a small business road option contract, the Forest Supervisor shall make a retroactive adjustment of the semiannual analysis for the current and one preceding semiannual analysis period. Compute the accumulated sale volumes and percentages for each 6-month analysis period by rounding to the nearest whole percent, except that .5 is to be rounded to the nearest whole even percent (19.5 and 20.5 both round to 20 percent).

The Forest Service may find that a concern changed its size status prior to actual knowledge of change or the Small Business Administration determination of such change. During affected periods, incorrect crediting of purchases by that firm occurred. Make corrections for the current semiannual analysis period and for the one semiannual analysis period preceding the determination. Such retroactive adjustment shall not include any semiannual analysis periods in which the Small Business Administration makes a final determination of size. Forest Supervisors shall delay award of set-aside sales to allow the Small Business Administration to process size class protests and appeals to the Office of Hearings and Appeals. Do not retroactively change volume credited in previous semiannual analysis periods as a result of purchase history reviews, except as noted herein.

Distribution of Nonmanufacturer Volume. Distribute nonmanufacturer volume by size class for purchasers during each semiannual analysis period at time of bid. Use the following procedure to complete 6-month analysis.

1. For Regions 8, 9, and 10, continue to follow the procedures historically used for distributing nonmanufacturer volume for open timber sales. If possible, determine where the nonmanufacturer delivered sawtimber for manufacture. If data is not available, consult with purchasers to establish delivery patterns. As a last resort use a standard formula for distribution based on the last recomputation data.

2. For all other Regions, use a 2-year rolling average, updated annually, to develop the percentage of sawtimber which nonmanufacturers deliver to each manufacturer size class. For each 6-month period, apply the calculated percentage to open sale volume purchased by nonmanufacturers to develop the volume accrued to small business in order to determine set-aside needs for the next 6-month period. Use Form FS–2400–46, Purchaser Certification of Timber Domestically Processed and Exported, to determine the source of sawtimber delivery of nonmanufacturers open sale purchases to each manufacturer size class. These reports are due annually and they form a reasonably current data base for use in crediting volume. Do not credit special salvage timber sales volume.

Initiating Required Set-Aside Program. The Forest Supervisor shall initiate a set-aside sale program when the accumulated volume deficit to date (within the current 6-month period) equals or exceeds 10 percent of the small business share for the past 6-month analysis period.

When a set-aside program results (triggers), the Forest Supervisor shall provide at least 20 percent of the volume in a 6-month period as open sales. In a trigger situation, the Forest Supervisor shall set aside the small business share for the current period and, normally, the deficit volume. The Forest Supervisor may elect two use to 6-month periods to eliminate the deficit volume situation. If not eliminated in two periods The Forest Supervisor shall act to eliminate it in each succeeding 6-month period, subject to the 20 percent of open sale volume limitation as long as the accumulated deficit exceeds the trigger volume.

When a set-aside sale program triggers, individual sale volume makeup may make it impractical to provide the exact volume for the period. Forest Supervisors may consider this factor when selecting set-aside sales.

Variation from Required Set-Aside Program. The Forest Supervisor, upon consultation with the Small Business representative, may establish or eliminate set-aside sales if determined appropriate under the Small Business Act. Such variances shall require documentation.

Selecting and Scheduling Set-Aside Sales. The Forester Supervisor shall initiate the selection of tentative set-aside sales early enough to reach agreement with the local Small Business Administration representatives 60 calendar days prior to the start of the next 6-month period.

Sale Selection. As each 6-month period progresses, the Forest Supervisor will assess the potential need for set-aside sales in the next 6-month period. If it appears that set-asides may be triggered, the Forest Supervisor will reach agreement with the local SBA representative on tentative set-aside sales. Following consultation with the SBA representative, agreement on tentative set-aside sales shall be documented in writing. When the actual volume needed for the set-aside program is established, the Forest Supervisor will list enough sales from the tentative selection to meet the required program on SBA Form 441, Joint Set-Aside for Small Business Timber, and secure the SBA representative's signature on that document. The executed Form 441 establishes authority for advertisement of the listed sales as set-asides. The Forest Supervisor will announce both the tentative and final selection of set-aside sales.

Avoid changes on departure from announced programs because of the need for prospective bidders to examine proposed sales during accessible periods. If the Forest Supervisor cannot offer specific sales, as agreed, or the program requires additional sales to meet the actual set-aside program, the Forest Supervisor shall select alternative sales in consultation with the Small Business Administration representative.

In selecting set-aside sales, the Forest Supervisor and Small Business Administration representative should consider the following:

1. The allowable sale quantity determined in the forest plan and the annual budget for the Forest control the level of timber offerings.

2. The business and timber supply needs of local forest industry enterprises that draw on National Forests for supply control the size and nature of sales that can be purchased.

3. Timber supply decisions and policies that may lead to timber allocations to individual companies or specific communities are to be avoided.

4. Multiple-use objectives may limit the volume of timber offered for sale at any particular time or place.

5. A variety of sale size classes, terms, and quality are needed to meet the range in demand represented by possible purchasers.

6. The type of material needed by small business and the capability of small business to operate the sales are critical factors.

7. The bidding system for set-asides should be the same as for other sales offered in the area.

Exclusion of Sales from Set-Aside Program. Forest Supervisors, after consulting with the Small Business Administration representative, and obtaining approval of the Regional Forester, may exclude sales from the set-aside program when unusual circumstances disrupt the planned sale program. These include sales in urgent need of harvesting because of a natural disaster or large volume sales which disrupt the normal sale pattern. The Regional Forester shall grant such

exceptions only when strict adherence to standard procedures would substantially delay rapid and orderly removal of timber in urgent need of harvesting or cause the spread of insects. The Forest Supervisors shall make appropriate adjustments in purchase history for operation of the 6-month program analysis.

If sales are in urgent need of harvesting, immediately refer disagreements over inclusion or exclusion from the set-aside program to the Chief for resolution.

Sale Selection Disputes

1. It is the intent of the sale selection process to reach agreement with the Small Business Administration. If agreement does not occur, the Small Business Administration may apply for review at higher levels in the Forest Service. Withhold advertisement of a disputed sale until the dispute is resolved.

2. The Regional Forester shall investigate, consult with the Small Business Administration, and arrive at a decision. If the matter is not satisfactorily resolved at this level, the Regional Forester or the Small Business Administration representative may submit the issue to the Washington Offices of the two agencies for resolution in a timely manner. Following review by both agencies, the Chief shall make the decision.

Special Salvage Timber Sale Program. The special salvage timber sale program operates as a joint program administered by the Forest Service and the Small Business Administration. It provides for preferential award to loggers and forest products concerns qualified under size standards promulgated by the Small Business Administration of certain salvage sales funded under section 14(h) of the National Forest Management Act of 1976. Forest Supervisor's shall not include sale volumes from sales set aside under the special salvage timber sale program in the 6-month analysis.

Special Salvage Sale Program. The Small Business Administration, under authority (see FSH 2436) of the Small Business Act, has established a small business size standard that defines firms eligible for preferential award of special salvage timber sale offerings. The program operates independent of the regular timber sale set-aside program.

Purpose. The National Forest Management act authorized the establishment of a revolving fund to cover the cost of preparing and administering sales of insect-infested, dead, damaged, or down timber. The intent of this fund is to provide for increasing the sales of such timber. The special salvage timber sale program operates on a portion of the additional volume of timber funded under this authority.

Eligible Firms. Under the special salvage timber sale program a small business is a concern that (13 CFR Part 121):

1. Is primarily engaged in the logging or forest products industry.

2. Is independently owned and operated.

3. Is not dominant in its field of operation.

4. Together with its affiliates, its number of employees has not exceeded 25 persons during any pay period for the past 12 months.

5. Will accomplish a significant portion of the logging operation, exclusive of hauling, with its own employees.

6. Will manufacture a significant portion of the logs with its own employees and will accomplish the logging of the timber, exclusive of hauling, with its own employees or will subcontract such logging only to concerns eligible for preferential award of a special salvage timber sale.

Eligible Sales. When sales meet all of the following criteria, the Forest Supervisor may set them aside for preferential bidding by small business:

1. Salvage sale funds predominately finance sale preparation activities. Eligible sales may include material such as cedar products, even though salvage sale funds did not finance preparation. Where a mix of appropriated and salvage sale funds finance sale preparation, salvage sale funds must comprise more than 50 percent of the estimated preparation cost.

2. The sale period does not exceed 1 year. For a sale sold part way through a logging season, the sale period may extend through the following operating season.

3. The sale involves only minor road construction or reconstruction. Minor means less than $10,000 in value.

4. The sale does not involve significant catastrophic damage, such as fire or windstorm.

Generally, set-aside salvage sales meet the above criteria, unless experience demonstrates that competitive bidding by small loggers and small forest products firms will not occur. Prepare and offer smaller sales suitable for completion in the time period described above and which loggers of average capability in the area can complete in time. Offer larger sales, provided the logging firms of average capability in the area can complete them in time.

Avoid larger sales suitable for logging by a limited number of operators in the area in order to prevent allocation to individual firms. When significant fire, windstorm, or other catastrophic losses occur, the circumstances may require the total capacity of the industry to salvage the timber in a timely manner. Therefore, eliminate such sales from set-aside under this program. A significant catastrophic loss results from a single, identifiable event that affects more than 10 percent of the volume planned for sale on the affected Ranger District within any 6-month period, or 1 million board feet, whichever is less. As a general rule, manage the size of the program in any locality to the existing capability of the local qualifying firms.

Sale Selection Process. Forest Supervisors administering salvage sale programs shall, after considering advice from the Small Business Administration representative, select set-aside sales for preferential bidding by concerns with less than 25 employees. The Forest Supervisor shall notify the Small Business Administration representative, using SBA Form 441, Joint Set-Aside for Small Business Timber, to document the selection process. In appropriate situations, the Forest Supervisor may lump several sales and list the expected special salvage sale volume for the period. The Small Business Administration representative shall sign and return a copy of SBA Form 441 to indicate concurrence in the selection.

In the event the Small Business Administration representative disagrees on whether or not to set aside a proposed sale, refer the matter promptly to the Regional Forester for review. Because of the need for prompt action on salvage sales, failure of the agencies' representatives to agree should not result in delay of the sale. Lacking agreement, advertise the sale as an open sale. However, if the Small Business Administration representative or the Regional Forester believes that the disagreement involves policy issues relating to the operation of the program, either may seek review of the policy issues, without delay of the particular sale, by higher authorities within the agencies. If the parties agree to a set aside, and the Forest Supervisor later finds the sale no longer advisable, or proposes a new sale after agreement on the 6-month program, the Forest Supervisor shall consult with the Small Business Administration representative, following the same procedures as outlined above.

Contract Conditions. Contracts for special salvage timber sales shall not require the purchaser to provide the

Forest Service with an accounting of log deliveries by 6-month periods. The contract shall require the purchaser to make records, including payroll, available to the Forest Service and the Small Business Administration to verify eligibility for participation in the program. Purchasers of special salvage timber sales may sell the logged volume to other firms irrespective of their size class.

Program Administration

Award of Set-Aside Sales. Delay award of all set-aside sales 5 working days to allow for protest of size class. The Forest Service has no authority to shorten this procedure.

Mergers and changes in a concern's organization make it difficult to know the current size status of every prospective bidder. Include a self-certification form with the bid form for each set-aside sale.

Under Small Business Administration regulations, accept the self-certification unless:

1. The Contracting Officer or another interested party protests within 5 working days of the bid date.

2. The Small Business Administration has previously declared the firm as a large business for sake of Government timber purposes, and the concern has not obtained a recertification of small business status.

Refer to FSM 2431.79 for procedures which a Contracting Officer may use to determine financial ability of a bidder prior to award of sales to small businesses.

Protests of Size Class. Any interested party may challenge (protest) the small business status of any bidder on a particular set-aside sale by delivering the written protest to the Contracting Officer within 5 working days of bid opening, to ensure consideration by the Small Business Administration. Also, the Contracting Officer may question the small business status of the highest bidder, by sending a written request for a size determination to the Small Business Administration. Any protester must state a factual basis in the written protest.

The Contracting Officer shall promptly forward all written size protests to the appropriate Regional Administrator of the Small Business Administration, and immediately notify the Regional Director of Timber Management and concerned Forest Supervisors of the size protest. The Director will notify other Regions when appropriate. After receipt of a protest, and response thereto, the Small Business Administration shall determine the small business status of the protested bidder and notify the Contracting Officer, the protestant, and the protested bidder of its decision within 10 working days, if possible (13 CFR Part 121).

When the Contracting Officer receives a timely protest, and the sale does not include timber in urgent need of harvesting, delay sale award until the Regional Administrator makes a size determination. However, if the delay exceeds 20 working days following the date the Contracting Officer forwarded the request to the Regional Administrator, the Regional Forester should contact the Chief for advice.

If the sale includes timber in urgent need of harvesting, and the Contracting Officer receives a timely size protest, withhold award. However, the request for a size determination to the Small Business Administration Regional Administrator shall inform the Administrator of the salvage nature of the sale and of the need for a prompt decision. In such cases, if the Small Business Administration does not render a size decision within 10 working days after notifying the Administrator, the Regional Forester should contact the Chief for advice.

Appeals to the Small Business Administration Office of Hearings and Appeals. The Small Business Administration Office of Hearings and Appeals has jurisdiction to consider appeals from formal (written) determinations of a concern's small business size status. Those who may file an appeal include:

1. Any concern or other interested party that has protested the small business status of another concern and that the Small Business Administration Regional Administrator denied.

2. Any concern adversely affected by the decision of the Small Business Administration Regional Administrator or delegate. Small Business Administration regulations (13 CFR 121.3–6) also provide: ". . . Unless written notice of such appeal is received by the Office of Hearings and Appeals before the close of business on the 5th working day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned."

After formal determination of size class by the Small Business Administration Regional Administrator, delay sale award another 5 days to provide the affected parties the authorized time to exercise their appeal rights. Following this 5 working day period, award the sale if no appeal results, and the Regional Administrator has determined that the high bidder qualifies as a small business eligible for preferential award of the set-aside timber sale.

When a concern appeals the Regional Administrator's decision, it should direct the appeal to the Office of Hearings and Appeals, Small Business Administration, 1441 L Street NW., Washington, DC 20416, Attention: Size Specialist, within 5 working days of receipt or notification of the Decision on the Protest. The Contracting Officer should allow an additional 20 working days, if the additional delay will not disadvantage the Government. If the Office of Hearings and Appeals does not make a determination within this period and notify the Contracting Officer, the Regional Forester should contact the Washington Office for advice. Normally, allow the Office of Hearings and Appeals sufficient time to complete their size review.

In the event award of a set-aside sale results during an appeal of high bidder size class, and the decision declares the purchaser as a large business, the decision applies to the award. The purchaser must meet the small business delivery requirements which apply to the Region containing the market area. Credit the sale to small business for 6-month analysis purposes. Normally delay award until resolution of size class occurs.

The Contracting Officer shall delay award of other set-aside sales to bidders where protest or appeal affects their status until resolution of the protest or appeal results.

After resolution of protests or appeals, the Forest Supervisor shall promptly notify the Regional Director of Timber Management and concerned Forest Supervisors. The Director of Timber Management shall also promptly notify Directors in other Regions as necessary.

Required Delivery of Set-Aside Volume. The required delivery of sawtimber volume to small businesses varies by Region as stated below:

1. In Regions other than Regions 8 and 10, purchasers of set-aside sales may delivery up to 30 percent of advertised sawtimber volume (30/70 rule) to large businesses processing facilities.

2. In Region 8, purchasers of set-aside sales must deliver 100 percent of southern pine sawtimber to small businesses processing facilities. Southern pine species include slash pine, longleaf pine, shortleaf pine, and loblolly pine. For other coniferous species and all hardwood species, purchasers of set-aside sales may deliver up to 30 percent of the total advertised sawtimber volume of all species to large business processing facilities.

3. In Region 10, purchasers of set-aside sales may deliver up to 50 percent of advertised sawtimber volume to large business processing facilties.

Small Business Certification. As a condition of award for a regular set-aside sale, a small business concern must execute SBA Form 723, Small Business Certification or its equivalent. It is required on all preferential sales of set-aside timber (Except Region 8). Provisions for purchase of special salvage timber sales do not require execution of Form 723.

Contract Provisions. The requirements for delivery of set-aside timber volume to small business shall be incorporated in timber sale contracts through appropriate contract provisions. The contract requirements shall bind the purchaser and any successor in interest to the purchaser, whether or not purchaser or a successor remains a small business concern. Third-party agreements must include the required delivery to small business.

Monitoring. The Forest Service shall monitor volume delivery requirements for the regular timber sale set-aside program. The Forest Service will check set-aside sales during the course of sale administration, scaling, log accountability, and review of export control reporting. When the Contracting Officers question operator compliance with certification conditions and delivery requirements, they should notify the Small Business Administration representative for investigation and action. If the Small Business Administration certifies noncompliance, the Contracting Officer will take appropriate action for breach of contract. If a number of contracts are involved or a pattern of noncompliance occurs, the Contracting Officer shall bring the matter to the attention of the Forest Supervisor for recommendation to the Forest Service Debarring Official under 36 CFR 223.130–145.

If, after award of a set-aside sale, a small business concern sells out to, becomes controlled by, or merges with a large business, the entity shall sell an amount of sawtimber volume to one or more small businesses to comply with the applicable volume delivery requirement. Any agreement for return, directly or indirectly, of logs from small to large concerns which does not meet the delivery requirements shall constitute noncompliance. In cases of possible size change status, the Contracting Officer shall ask the Small Business Administration to determine the size status and the date of change.

The sawtimber delivery requirements shall not apply to the manufacture of preferential timber by a small business concern that purchases the set-aside sale, and at a later date exceeds the applicable small business size standard due to internal growth. Internal growth includes an internal increase in number of employees without change of control. Examples of changes of control include those which may occur in the acquisition or merger of small business concerns or in a joint venture in which conditions of the venture bind performance or operation of the subject firm's management or has the power to control it. Also, the delivery requirement shall not apply to a concern certified as small business at time of sale award but later certified as large business. This is provided that large business did not purchase, assume control, or merge with the small business after sale award date. Determinations regarding changes in size of a firm are most appropriately referred to the Small Business Administration for resolution.

To carry out its responsibility under the Small Business Act, the Small Business Administration may conduct reviews of the small business program for the sale of National Forest timber at field offices of the Forest Service. They will give due notice of intention to perform such reviews to the field office concerned and agree upon a time schedule for the review.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meeting; Gulf of Mexico and South Atlantic Fishery Management Councils

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils' Spiny Lobster Management Committees and Spiny Lobster Advisory Panels will convene a public meeting, October 7–9, 1987, at the Brickell Point Holiday Inn, 495 Brickell Avenue, Miami, FL. The Committees and Advisory Panels will discuss alternative management structures to determine mechanisms for ensuring more compatible state and Federal regulations, and will review alternative limited entry strategies to determine potential applicability to the spiny lobster fishery.

For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Date: September 21, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–22143 Filed 9–24–87; 8:45 am]
BILLING CODE 3510–22–M

Meeting; Pacific Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting, October 6–8, 1987, at 11 a.m., at the Council's office (address below) to prepare an annual status of stocks document which the Council will review at its November 18–19, 1987, meeting in Portland, OR.

The Council's Scientific and Statistical Committee will convene a joint public meeting with the Groundfish Management Team to discuss the annual stocks assessments for various groundfish species, October 7, 1987, at 9 a.m., in Salon 1 and 1A of the Ramada Inn at the Coliseum, 10 North Weidler, Portland, OR

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: September 21, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–22142 Filed 9–24–87; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1987 commodities produced by and a service provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 26, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite

1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 26 and July 24, 1987, the Committee for Purchase for the Blind and Other Severely Handicapped published notices (52 FR 24048 and 27841) of addition to and deletions from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987:

Service

Janitorial/Custodial, Pueblo Army Depot Activity, Pueblo, Colorado

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6

Commodities

Screwdriver, Cross Tip
5120-00-234-8913
Screwdriver, Flat Tip
5120-00-287-2505
5210-00-227-7334
5210-00-222-8866
5210-00-180-3490
5210-00-289-9662
5210-00-278-1273
5210-00-062-8454
5210-00-236-2127
5210-00-293-0314
5210-00-222-8852
5210-00-720-4969
5210-00-260-4837
5210-00-596-9364

C.W. Fletcher,

Executive Director.

[FR Doc. 87-22139 Filed 9-24-87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987, Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1987 a commodity to be produced by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: October 26, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodity

Side Rack, Vehicle
2510-00-535-6797

C. W. Fletcher,

Executive Director.

[FR Doc. 87-22140 Filed 9-24-87; 8:45 am]

BILLING CODE 6820-33-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in People's Republic of China

September 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 25, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textile and Apparel, U.S Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consulations have requested call (202) 377-3740.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of man-made fiber coveralls and overalls in Category 659-C, produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on September 25, 1987 and extends through September 24, 1988 in excess of the designated level of restraint.

Background

On September 25, 1986, a notice was published in the **Federal Register** (51 FR 34116) which announced the establishment of import restraint limits for certain man-made fiber textile products, including Category 659-C, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on September 25, 1986 and extends through September 24, 1987, pending agreement on a mutually satisfactory solution concerning this category between the Government of the United States and the People's Republic of China. To avoid continued risk of market disruption, the Committee for the Implementation of Textile Agreements, in accordance with section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles, done in Geneva on December 20, 1973 and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986; and the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, has decided to extend

the restraint level for the twelve-month period which begins on September 25, 1987 and extends through September 24, 1988.

The United States remains committed to finding a solution concering this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 21, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 25, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 659–C,[1] produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on September 25, 1987 and extends through September 24, 1988, in excess of 333,228 pounds.

Goods shipped in excess of the twelve-month limit established in the directive of September 22, 1986, which began on September 25, 1986 and extends through September 24, 1987 shall be subject to the level set forth in this letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22129 Filed 9–24–87; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 659–C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

Announcement of an Import Level for Certain Wool Textile Products Produced or Manufactured in the Republic of Maldives Effective September 29, 1987

September 22, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 29, 1987. For further information contact Kimbang Pham, International Trade Specialist (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports in Category 445/46 during the twelve-month period which begins on September 29, 1987 at the designated limit.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 7 and 19, 1984, as amended and extended, between the Governments of the United States and the Republic of Maldives establishes a specific limit for wool textile products in Category 445/446 (sweaters), produced or manufactured in the Republic of Maldives and exported during the twelve-month period which begins on September 29, 1987 and extends through September 28, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 22, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 7 and 19, 1984, as amended and extended, between the Governments of the United States and the Republic of Maldives; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 29, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in the Republic of Maldives and exported during the twelve-month period which begins on September 29, 1987 and extends through September 28, 1988, in excess of 53,530 dozen.

In carrying out this directive, entries of textile products in category 445/446, produced or manufactured in the Maldives, which have been exported to the United States during the period which began on September 29, 1986 and extends through September 28, 1987, shall, to the extent of any unfilled balances, be charged against the restraint limit established for that period. In the event the limit has been exhausted by previous entries, such goods shall be subject to the limit set forth in this letter.

Administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of

this agreement. Appropriate adjustments will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22130 Filed 9-24-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Licensing System to Include Silk Blend and Other Vegetable Fiber Sweaters in Category 845/846, Produced or Manufactured in the People's Republic of China

September 22, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 28, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated February 23, 1984 (49 FR 7269), as further amended on July 29, 1987 (52 FR 28741), established an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and exchange of letters dated August 28, 1987 between the Governments of the United States and the People's Republic of China, agreement was reached to further amend the existing export licensing system to include the use of export licenses for shipments of silk blend and other vegetable fiber sweaters in merged Category 845/846, excluding merchandise in Categories 845(2) and 846(2) which are assembled in Hong Kong from parts made in the People's Republic of China provided these products have an appropriate export visa from Hong Kong (see 51 FR 27235 and 52 FR 3328, published on July 30, 1986 and February 3, 1987, respectively), produced or manufactured in China and exported on or after August 3, 1987. Shipments classified in these categories and exported from China on or after August 3, 1987 for which the Government of the People's Republic of China has not issued an appropriate export license will be denied entry.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175 May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 22, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as amended on July 29, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements which established an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China.

Effective on September 28, 1987 and until further notice, you are directed to prohibit entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber sweaters in merged Category 845/846, excluding merchandise in Categories 845pt.[1] 846pt.[2] If these products have an appropriate export visa from Hong Kong, produced or manufactured in China and exported on or after August 3, 1987 for which the Government of the People's Republic of China has not issued an appropriate export license. Shipments of merchandise in the foregoing categories exported before August 3, 1987 will not be denied entry for lack of an appropriate export license.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] In Category 845, only TSUSA numbers 381.3578, 381.6685, 381.9985, 384.2735, 384.5316 and 384.9694.

[2] In Category 846, only TSUSA numbers 381.3574, 381.8554, 384.2733 and 384.7781.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22131 Filed 9-24-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contract.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has applied for designation as a contract market in options on Australian dollar futures. The application also contains a petition for exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Commission has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 26, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Deputy Director, Market Analysis Section, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed Australian dollar option contract, the Commission also is requesting comment on the merits of a petition filed by the CME pursuant to § 33.11 of the Commission's rules.[1] That petition

[1] Commission Rule 33.11, adopted on August 10, 1987, provides that

The Commission may, by order, by written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provision of this Part, other than §§ 33.9 and 33.10, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

requests exemptive relief for this proposed contract from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

> . . . the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application; . . .

As the Commission has previously noted, the numerical volume criterion is meant to ensure that the underlying futures market would not be affected adversely by option trading and to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting position could be offset without suffering a substantial loss of the option's true economic value. (51 FR 17467) (May 13, 1986)).

The Commission has noted that, in certain cases, it may be appropriate for the Commission to consider the alternative test in § 33.4(a)(5)(iii) with respect to volume in the underlying futures contract. With respect to that alternative test, the Commission stated that

> . . . this provision will be most useful in instances where a newly introduced futures contract or an existing one which begins to exhibit higher volumes than in the past, trades above the 3,000 contract a week level, substantially meeting the required volume level in less than a year. Under this test, the higher the trading volume the less time would be needed to demonstrate a liquid market, but in no event could the test be met until there has been some history concerning deliveries on the contract. (51 FR 17468)

Under the alternative test, the Commission has designated options on futures contract for which there has been less than a full year's trading experience. These cases involved a sufficiently high and sustained level of trading volume in the underlying futures contract to support a reasonable expectation that sufficient liquidity would continue to exist in the underlying futures contract; among other things, in each case under the alternative criterion the underlying futures contract had a trading history of at least six months with several successful expirations, and trading volume was in the range of at least 5,000 contracts per week.

The CME began futures trading on the Australian dollar contract on January 13, 1987, and two expirations have taken place (March and June 1987) without any apparent problems. Between January 13 and the end of August 1987, volume averaged about 1,300 contracts per week. Therefore, the numerical volume requirement has not been met. The Exchange stated that, notwithstanding the trading volume to date, the present level of futures trading activity demonstrates liquidity and that the existence of the proposed option on the Australian dollar futures will enhance this liquidity.

The CME further noted that the Australian dollar futures contract and all other CME foreign currency futures contracts are constantly arbitraged with the underlying cash markets so that "any option trader that exercises into the futures will be bidding and offering in a market that is constantly scrutinized by inter-bank traders for arbitrage opportunities." Finally, the CME indicated that the presence in the market of commercials assures that spreads between the inter-bank forward market and CME futures market will not be pushed out of line to uneconomic levels.

The CME noted in its application that it did not believe that a minimum underlying futures volume level should be a precondition for Commission approval of the proposed option on a futures contract. In this connection, the CME stated that the Commission should "look through" the underlying futures market to the adequacy of the cash market. This approach, according to the CME, would provide for consistent treatment by the Commission in the designation process for options on futures with that for designation of futures contracts and options on physicals.

The Commission continues to believe that option trading should be permitted only when it is unlikely to cause adverse effects on the underlying futures market and when exercise of the option affords a reasoanble opportunity to realize the option's true economic value. The Commission, therefore, intends to move cautiously in granting any exemption from the requirements set forth in §33.4(a)(5)(iii). In this context, the Commission will consider several factors, as discussed below, in determining whether to grant an exemption from the requirements of that regulation as it pertains to options on futures which involve delivery of the physical commoity.[2]

The Commission believes that, at the minimum, the underlying cash market for the commodity must exhibit a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evalaute accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission believes that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the futute.

In requesting comment on the CME's option on Australian dollar futures, the Commission is seeking specific comment on whether it should grant the CME's request for an exemption from the requirements of § 33.4(a)(5)(iii). Commenters are requested to consider the issues noted above. Also, the Commission requests commenters to address whether, if the petition were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CME for this proposed contract.[3]

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW.,

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[2] With respect to further possible exemptions of option contracts on futures in which the underlying futures contract has not met the volume requirement test, such petitions for an exemption from § 33.4(a)(5)(iii) will be considered on a case-by-case basis.

[3] The Commission notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for trading during a six-month period, no new option contract month may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

Washington DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the petition and the terms and conditions of the proposed contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on September 21, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22168 Filed 9–24–87; 8:45 am]

BILLING CODE 6351–01–M

Chicago Mercantile Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contract.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has applied for designation as a contract market in options on gold futures. The application also contains a petition for exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Commission has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 26, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Deputy Director, Market Analysis Section, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed gold option contract, the Commission also is requesting comment on the merits of a petition filed by the CME pursuant to § 33.11 of the Commission's rules.[1] That petition requests exemptive relief for this proposed contract from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

> . . . the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application:. . .

As the Commission has previously noted, the numerical volume criterion is meant to ensure that the underlying futures market would not be affected adversely by option trading and to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting position could be offset without suffering a substantial loss of the option's true economic value. (51 FR 17467) (May 13, 1986)).

The Commission has noted that, in certain cases, it may be appropriate for the Commission to consider the alternative test in § 33.4(a)(5)(iii) with respect to volume in the underlying futures contract. With respect to that alternative test, the Commission stated that

> . . . this provision will be most useful in instances where a newly introduced futures contract or an existing one which begins to exhibit higher volumes than in the past, trades above the 3,000 contract a week level, substantially meeting the required volume level in less than a year. Under this test, the higher the trading volume the less time would be needed to demonstrate a liquid market, but in no event could the test be met until there has been some history concerning deliveries on the contract. (51 FR 17468)

Under the alternative test, the Commission has designated options on futures contracts for which there has been less than a full year's trading experience. These cases involved a sufficiently high and sustained level of trading volume in the underlying futures contract to support a reasonable expectation that sufficient liquidity would continue to exist in the underlying futures contract; among other things, in each case under the alternative criterion the underlying futures contract had a trading history of at least six months with several successful expirations, and trading volume was in the range of at least 5,000 contracts per week.

The CME began relisting delivery months for its gold futures contract on June 16, 1987. During the first five weeks following the relisting of the contract, trading volume averaged over 20,000 contracts per week. More recently, trading volume has averaged approximately 9,000 contracts per week and continues to be significantly above the minimum threshold level of 3,000 contracts per week. Although the cumulative trading volume in the underlying gold futures contract already exceeds the total annual trading volume required by § 33.4(a)(5)(iii) of the Commission's rules, the contract has traded only approximately three months and has had only one expiration (August 1987). Thus, the proposed option currently would not be eligible for designation under either the one-year or the alternative standard of § 33.4(a)(5)(iii).

The CME noted in its application that it did not believe that a minimum underlying futures volume level should be a precondition for Commission approval of the proposed option on a futures contract. In this connection, the CME stated that the Commission should "look through" the underlying futures market to the adequacy of the cash market. This approach, according to the CME, would provide for consistent treatment by the Commission in the designation process for options on futures with that for designation of futures contracts and options on physicals.

The CME also noted that gold futures contracts are constantly arbitraged with the underlying cash markets so that "any option trader that exercises into

[1] Commission Rule 33.11, adopted on August 10, 1987, provides that

> The Commission may, by order, by written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provision of this Part, other than §§ 33.9 and 33.10, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

the futures will be bidding and offering in a market that is constantly scrutinized by gold traders for arbitrage opportunities." Finally, the CME indicated that the presence in the market of commercials assures that spreads between the cash market and the CME futures market will not be pushed out of line to uneconomic levels.

The Commission continues to believe that option trading should be permitted only when it is unlikely to cause adverse effects on the underlying futures market and when exercise of the option affords a reasonable opportunity to realize the option's true economic value. The Commission, therefore, intends to move cautiously in granting any exemption from the requirements set forth in § 33.4(a)(5)(iii). In this context, the Commission will consider several factors, as discussed below, in determining whether to grant an exemption from the requirements of that regulation as it pertains to options on futures which involve delivery of the physical commodity.[2]

The Commission believes that, at the minimum, the underlying cash market for the commodity must exhibit a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active training in the unerlying futures contract, the Commission believes that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the future.

In requesting comment on the CME's option on gold futures, the Commission is seeking specific comment on whether it should grant the CME's request for an exemption from the requirements of § 33.4(a)(5)(iii). Commenters are requested to consider the issues noted above. Also, the Commission requests commenters to address whether, if the petition were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CME for this proposed contract.[3]

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the petition and the terms and conditions of the proposed contract, or with request to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on September 21, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–22169 Filed 9–24–87; 8:45 am]

BILLING CODE 6315-01-M

[2] With respect to further possible exemptions of option contracts on futures in which the underlying futures contract has not met the volume requirement test, such petitions for an exemption from § 33.4(a)(5)(iii) will be considered on a case-by-case basis.

[3] The Commission notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for trading during a six-month period, no new option contract month may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

DEPARTMENT OF DEFENSE

Defense Nuclear Agency

Meeting; Scientific Advisory Group on Effects (SAGE)

The Scientific Advisory Group on Effects (SAGE) will meet in closed session October 27 to October 29, 1987 at the Sandia National Laboratory in Albuquerque, New Mexico.

Agenda: October 27 to October 29 (0800–1700): Presentations, Discussions and Executive Sessions on Issues Related to DNA Technology supporting the issue of Hard Threat Kill. The presentations and discussions in the above cited agenda will focus on current and planned activities of the Defense Nuclear Agency (DNA).

Executive sessions will be held for the primary purpose of advising the Director, DNA, as to the adequacy of ongoing and planned activities. All planned presentations, discussions, and executive sessions may include classified defense information; therefore, under the provisions of sections 552b(c)(1) and (c), Title 5, U.S.C., this meeting is closed to the public. Any additional information concerning the meeting may be obtained from: Dorothy Pope, USAF, Scientific Secretary, SAGE, Headquarters, Defense Nuclear Agency, ATTN: DDST, Washington, DC 20305–1000.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 22, 1987.

[FR Doc. 87–22192 Filed 9–24–87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 26, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room

3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 21, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Planning, Budget and Evaluation

Type of Review: NEW
Title: Postsecondary Vocational Education: A Comparison of Outstanding and Typical Programs
Agency Form Number: NA
Frequency: Once only
Affected Public: Individuals or households; non-profit institutions; businesses or other for profit; small businesses or organizations
Reporting Burden:
Responses: 840
Burden Hours: 227
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect data from a selected sample of 32 postsecondary vocational education program case studies. The data will be used by the Department to provide a report to Congress on the characteristics of effective postsecondary vocational education programs.

[FR Doc. 87-22197 Filed 9-24-87; 8:45 am]

BILLING CODE 4000-01-M

[(CFDA No.: 84.060A)]

Notice Inviting Applications for New Awards Under the Indian Education Act, Part A, Formula Grant Program for Fiscal Year 1988

Purpose:

Provides grants to local educational agencies and certain Indian tribes and organizations for projects that meet the special educational and culturally related academic needs of Indian children.

Deadline: February 12, 1988.

Deadline for Intergovernmental Review Comments: April 12, 1988

Applications Available: November 6, 1987.

Available Funds: The President's budget request for this program for fiscal year 1988 was $44,340,000. The Congress has not passed the fiscal year 1988 appropriation for this program. The following estimates are based on the President's request and the number of grants expected to be awarded in fiscal year 1987.

Estimated Range of Awards: $1,127—$1,047,190.

Estimated Average Size of Awards: $40,236.

Estimated Number of Awards: 1,102.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 251; (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For applications or information contact: Julie Lesceux, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, Washington, DC 20202. Telephone: (202) 732-5146.

Program Authority: 20 U.S.C. 241aa-241ff.

Dated: September 21, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-22188 Filed 9-24-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87-654-000, et al.]

Electric Rate and Corporate Regulation Filings; Alabama Power Co., et al.

September 21, 1987.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. ER87-654-000]

Take notice that on September 15, 1987, Alabama Power Company tendered for filing proposed changes in its FPC Electric Tariff, Original Volume No. 1. The proposed changes would decrease revenues from jurisdictional sales and services to reflect the new Federal corporate income tax rate pursuant to the Tax Reform Act of 1986.

Copies of the filing were served upon the public utility's jurisdictional customers taking service under Rate Schedules REA-1 and MUN-1 of the tariff.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Light and Power Company

[Docket Nos. ER85-689-001, ER85-707-001, ER85-720-006]

Take notice that on September 14, 1987, Connecticut Light and Power Company (CL&P) tendered for filing, pursuant to Commission's Order issued July 29, 1987, a refund report. CL&P states that it made refunds on August 28, 1987 to its customers (Town of Wallingford, Second Taxing District of Norwalk and Third Taxing District of Norwalk) with interest accrued through that date for the difference between the Company's originally filed rates and the compliance rates.

This report contains the following:

Attachment A—Monthly billing determinants and revenues at prior, present and settlement rates for the period March 30, 1986 through August 28, 1987.

Attachment B—Computation of the monthly refunds, including interest, for the monthly billings for the period March 30, 1986 through August 28, 1987.

Copies of this filing have been served upon each of CL&P's wholesale customers and to all parties on the Commission's service list.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER87-653-000]

Take notice that on September 14, 1987, Minnesota Power & Light Company (Minnesota Power) tendered for filing an initial rate schedule for transmission service to Northern States Power Company (NSP) in connection with a sale of a forty (40) percent undivided ownership share of the Clay Boswell steam electric generating station Unit No. 4, located in the State of Minnesota, and associated transmission and substation facilities (Boswell 4) and lease of transmission outlet facilities to NSP for transmission capacity of up to 207 megawatts. Minnesota Power and NSP have entered into a Clay Boswell Steam Electric Generating Station, Unit No. 4 Ownership and Operating Agreement (O&O Agreement) which includes a proposed Lease of Boswell 4 Outlet Facilities. The O&O Agreement provides for a three part sale. Thirteen and one-third percent of Minnesota Power & Light Company's ownership of Boswell 4 will be purchased on or about May 1, 1989; another thirteen and one-third percent will be purchased on May 1, 1990; and the remaining thirteen and one-third percent will be purchased on may 1, 1991.

Take further notice that the initial rate schedule filed by Minnesota Power also includes electrical service to NSP for resale of power and energy furnished under an Agreement for Capacity and Energy Sale dated October 9, 1986 between Minnesota Power and NSP providing for a three part sale consisting of approximately 34 megawatts from May 1, 1989 to April 30, 1990, 68 megawatts from May 1, 1990 to April 30, 1991 and 102 megawatts from May 1, 1991 to December 31, 2007; and transmission service to NSP to export such additional power and energy sold by Minnesota Power to NSP based on such Agreement for Capacity and Energy Sale dated October 9, 1986 which includes a proposed Lease of Capacity Sale Outlet Facilities.

Comment date; October 5, 1987, in accordance with Standard paragraph E at the end of this document.

4. Allegheny Power Service Corporation on behalf of Monongahela Power Company, Potomac Edison Company, West Penn Power Company, Virginia Electric and Power Company

[Docket No. ER87-638-000]

Take notice that on September 14, 1987, Allegheny Power Service Corporation on behalf of Monongahela Power Company, Potomac Edison Company, West Penn Power Company (APS Parties), Virginia Electric and Power Company tendered for filing under § 35.13 of the Commission's regulations, a modification dated as of June 1, 1987 to an Interconnection Agreement dated January 1, 1973 between the APS Parties and Virginia Electric and Power Company (VEPCO). The Commission has previously designated the Agreement as VEPCO Schedule No. 99, Monongahela Power Schedule No. 32, West Penn Power Schedule No. 31, and Potomac Edison Schedule No. 33. The proposed Amendment makes the following changes:

Section 1 of the Amendment changes the charge for Other Operating Capacity in Schedule B, Interchange Power and Energy, from 110% of incremental cost to "up to the lesser of out-of-pocket cost plus $0.002, or 110% of out-of-pocket cost".

Section 2 of the Amendment makes the same change for Other Energy in the same schedule.

Section 3 of the Amendment changes the Schedule C Short Term reservation charges from the current $1.05 and $0.85 per kilowatt to "up to $1.777" and "up to $1.55" per kilowatt for the APS Parties and VEPCO, respectively.

Section 4 of the Amendment similarly changes the reservation charge for Short Term Power purchased from another system from the $0.24 to "up to $0.325" when VEPCO is the reserving party and "up to $0.27" when APS is the reserving party; for kilowatts not received, the charges are changed from the current $0.04 per kilowatt to "1/16 of the weekly charge per kilowatt (up to $0.054)" when VEPCO is the reserving party and "1/16 of the weekly charge per kilowatt (up to $0.045)" when APS is the reserving party.

Section 5 of the Amendment changes the Short Term Operating Capacity and Short Term Energy charges from their current fixed values to "up to" those values.

Section 6 of the Amendment changes the Schedule D Limited Term reservation charges from the current $5.50 per kilowatt to "up to $7.70" when VEPCO is the reserving party and from the current $4.50 to "up to $7.85" when APS is the reserving party.

Section 7 of the Amendment changes the Schedule D Limited Term Reservation charge for Limited Term Power purchased from another system from its current $1.00 per kilowatt to "up to $1.40" when VEPCO is the reserving party and "up to $1.40" when APS is the reserving party.

Section 8 of the Amendment inserts "up to" before "the lesser of" in the Schedule D Limited Term Operating Capacity and Energy charges during Limited Term Power reservation periods.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER87-647-000]

Take notice that on September 14, 1987, Northern States Power Company (NSP) tendered for filing the Termination Agreement Between Northern States Power Company and the City of Redwood Falls.

The Termination Agreement cancels the Interconnection and Interchange Agreement between Northern States Power Company and the City of Redwood Falls. The City's electrical requirements are provided by the Southern Minnesota Municipal Power Agency, and therefore, the services provided for under the Interconnection and Interchange Agreement are no longer required.

Northern States Power Company requests the Termination Agreement become effective July 16, 1987, and therefore, requests waiver of the Commission's notice requirements.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. MSU System Services, Inc.

[Docket No. ER87-640-000 thru Docket No. ER87-645-000]

Take notice that on September 14, 1987, MSU System Services, Inc. (SSI) tendered for filing six separate agreements as follows:

(1) Arkansas Power & Light Company letter of notification to Oklahoma Gas and Electric Company, dated September 1, 1987.

(2) Arkansas Power & Light Company letter of notification to the Empire District Electric Company, dated September 1, 1987.

(3) Arkansas Power & Light Company letter of notification to Southwestern Electric Power Company, dated September 1, 1987.

(4) Oklahoma Gas and Electric Company letter of notification to Kansas Gas and Electric Company, dated September 1, 1987.

(5) Southwestern Electric Power Company letter of notification to Public Service Company of Oklahoma, dated September 1, 1987.

(6) Louisiana Power & Light Company, letters of notification to Gulf States Utilities Company and Central Louisiana Electric Company, dated September 1, 1987.

These agreements reduce the Diversity Base Amount under existing

Diversity Capacity Exchange agreements to zero, and waive a requirement for four years advance notice of the reduction. The effective date requested for each filing is the end of the exchange year ending November, 1987.

Comment date: 1October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22135 Filed 9-4-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES87-39-000, et al.]

Electric Rate and Corporate Regulation Filings; Terra Comfort Corp., et al.

Take notice that the following filings have been made with the Commission:

1. Terra Comfort Corporation

[Docket No. ES87-39-000]

September 17, 1987.

Take notice that on September 2, 1987, Terra Comfort Corporation, which proposes to become a public utility company subject to the Federal Power Act, has filed an application under section 204 of the Federal Power Act for authority to issue on or after October 15, 1987, 45,000 shares of common stock with $100 par value which will be issued to its parent, Iowa Southern Inc. The proceeds from issuance of the stock will be used by Terra Comfort Corporation to acquire and install electric generating facilities.

Comment date: October 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Light Company

[Docket No. ER87-652-000]

September 18, 1987.

Take notice that on September 14, 1987, Central Illinois Light Company tendered for filing an executed power coordination agreement with Soyland Power Cooperative, Inc. (Soyland) providing for specified transmission service for Corn Belt Electric Cooperative. Transmission service will be provided for power and energy supplied by Soyland from their electric generating units operated by or interconnected with the electric system of Illinois Power Company. CILCO, with the support of Soyland, under the abbreviated filing requirements of the Commission, requests an effective date of November 14, 1987.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company and Northern States Power Company

[Docket EC87-24-000]

September 18, 1987.

Take notice that on September 14, 1987, Minnesota Power & Light Company (Minnesota Power) and Northern States Power Company (NSP) tendered for filing a Joint Application for:

(i) Authorization for Minnesota Power to sell a 40 percent undivided ownership interest in Clay Boswell Steam Electric Generating Station, Unit No. 4 (Boswell 4) associated transmission and substation facilities located at Bass Brook, Minnesota subject to jurisdiction of the Commission, to NSP,

(ii) Authorization for Minnesota Power to Lease certain transmission outlet facilities to NSP for transmission of power and energy generated by NSP at its portion of Boswell 4,

(iii) Authorization for Minnesota Power to lease certain transmission outlet facilities to NSP for transmission of power and energy generated by Square Butte Electric Cooperative at the Milton R. Young Steam Electric Generating Station, Unit No. 2 resold by Minnesota Power to NSP, and

(iv) Authorization to merge and consolidate these jurisdictional public utility facilities sold and leased by Minnesota Power with the jurisdictional facilities of purchaser and lessee NSP.

This 40 percent ownership interest in Boswell 4 is equal to approximately 207 megawatts of accredited capacity by the Mid-Continent Area Power Pool. Minnesota Power and NSP have entered into a "Clay Boswell Steam Electric Generating Station, Unit No. 4 Ownership and Operating Agreement" (O&O Agreement). The O&O Agreement provides for a three part sale. A 13⅓ percent undivided ownership interest of Boswell 4 will be conveyed on or about May 1, 1989; another 13⅓ percent will be conveyed on May 1, 1990; and the remaining 13⅓ percent will be conveyed on May 1991.

Under the O&O Agreement and a proposed Lease of Boswell 4 Outlet Facilities, Minnesota Power will lease transmission facilities, in amounts commensurate with each increment of the sale, for power and energy generated at NSP's portion of the jointly owned Boswell 4 for transmission to NSP's service territory.

Minnesota Power and NSP have also entered into an "Agreement for Capacity and Energy Sale dated October 9, 1986" (Agreement) under which Minnesota Power will resell approximately 102 megawatts of power and energy purchased from Square Butte Electric Cooperative to NSP in a three part sale in which 8⅓ percent of the power and energy purchased from Square Butte Electric Coorperative's Milton R. Young Steam Electric Unit No. 2 will be resold to NSP from May 1, 1989 to April 30, 1990; 16⅓ percent of such power and energy will be resold to NSP from May 1, 1990 to April 30, 1991; and 24½ percent of such capacity and energy will be resold to NSP from May 1, 1991 to December 31, 2007. Under the Agreement and a proposed lease of Capacity Sale Outlet Facilities, Minnesota Power will lease transmission outlet facilities in capacities commensurate with each increment of the sale, to transmit such energy from Minnesota Power's Arrowhead Transmission Substation near Duluth, Minnesota to NSP's service territory.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Company and Northern States Power Company

[Docket No. EL87-65-000]

September 18, 1987.

Take notice that on September 14, 1987, Minnesota Power & Light Company (MP&L) and Northern States Power Company (NSP) tendered for filing a joint Petition for Declaratory Order. The Petition requests the Commission to determine that MP&L's sale and NSP's purchase of a 40% ownership interest in the Clay Boswell No. 4 generating unit and the sale of capacity and energy equivalent to 24.5% of that produced by the Square Butte Electric Cooperative's Milton R. Young No. 2 generating unit are prudent with respect to MP&L and NSP. The Petition further requests the

Commission to determine that NSP may recover the full purchase price of the Boswell No. 4 ownership interest, including an acquisition adjustment of $31.1 million, and may earn a return on the undepreciated balance of the full purchase price during the period of depreciation; and that NSP's accounting for Boswell No. 4 may reflect the above ratemaking treatment.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER87-646-000]

September 18, 1987.

Take notice that on September 14, 1987, Northern States Power Company (NSP) tendered for filing the Supplement No. 1 to the United States Department of Energy Western Area Power Administration Interconnection Contract with Northern States Power Company (Supplement).

The Supplement terminates Supplement No. 1, clarifies the arrangement for net billing and updates provisions providing for the sale of non-firm energy. The Interconnection Contract is on file with the Commission and is designated as FERC Rate Schedule No. 446.

NSP requests this Supplement become effective on June 1, 1987, and therefore, requests waiver of the Commission's notice requirements.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this document.

6. Northern States Power Company

[Docket No. ER87-649-000]

September 18, 1987.

Take notice that on September 14, 1987, Northern States Power Company (Minnesota) tendered for filing the Supplement No. 1 to the Firm Power Service Resale Agreement between Northern States Power Company (NSP) and the City of Chaska.

The Supplement No. 1 to the Firm Power Service Resale Agreement (Supplement) recognizes changes in the interconnection facilities between NSP and the City of Chaska described in Exhibit 1 of the Firm Power Service Resale Agreement dated September 8, 1983. The Firm Power Service Resale Agreement is on file with the Commission and is designated as FERC Rate Schedule No. 424.

Northern States Power Company requests this Supplement become effective on Marh 11, 1987, and therefore, requests wavier of the Commission's notice requirements.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company

[Docket No. ER87-648-000]

September 18, 1987.

Take notice that on September 14, 1987, Northern States Power Company (Minnesota) tendered for filing the Supplement No. 2 to the Municipal Resale and Transmission Service Agreement between Northern States Power Company and the City of East Grand Forks.

The Supplement No. 2 to the Municipal Resale and Transmission Service Agreement (Supplement) recognizes new interconnection facilities between the Western Area Power Administration and the City of East Grand Forks and necessary adjustments required for billing purposes. The Municipal Resale and Transmission Service Agreement is on file with the Commission and is designated as FERC Rate Schedule No. 387.

Northern States Power Company requests this Supplement become effective on February 9, 1987 and therefore, requests wavier of the Commission's notice requirements.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER87-650-000]

September 18, 1987.

Take notice that on September 14, 1987, Union Electric Company tendered for filing a Wholesale Electric Service Agreement, Transmission Service Agreement, and Transmission Service Transaction 1, each dated August 14, 1987, with the City of Fredericktown, Mo., providing for the sale of electric service and the transmittal of power and energy from other sources.

Comment date: October 5, 1987, in accordance with Standard Paragrapph E at the end of this notice.

9. Pennsylvania Power Company

[Docket No. ER87-651-000]

September 18, 1987.

Take notice that on September 14, 1987, Pennsylvania Power Company (Penn Power) pursuant to 18 CFR 35.12(a)(2)(ii) tendered for filing proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The proposed changes would decrease revenues from jurisdiction sales and service by $368,474.42 or approximately 7.3% based on the 12-month period ending June 30, 1988. The decrease is composed of decreases in base rates and the associated state tax adjustment surcharge effective July 17, 1987. A second decrease in the state tax adjustment surcharge from 4.17% to 3.77% effective September 1, 1987 is also proposed. The effect of the change in base rates and the associated state tax adjustment surcharge results in an annual decrease in future test year revenues of $351,191.04 effective July 17, 1987. The September 1, 1987 decrease in the state tax adjustment surcharge results in an annual decrease in future test year revenues of $17,283.38. The Company also proposes to extend the availability of the Economic Development Rider (Rider III) to December 31, 1987. This change has no effect on revenues. The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77-277-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: October 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22136 Filed 9-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-36-001]

Application for Recertification of Qualifying Status of Cogeneration Facility; Firestone Cogeneration Project, Limited Partnership

September 17, 1987.

On September 4, 1987, The Firestone Cogeneration Project, Limited Partnership (Applicant), of First Oklahoma Tower, Suite 810, 210 W. Park Avenue, Oklahoma City, Oklahoma 73102 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oklahoma City, Oklahoma. The facility will consist of a combustion turbine generating unit, a supplementary fired heat recovery steam generator, and an extraction/condensing steam turbine generating unit. Thermal energy recovered from the facility will be used for tire manufacturing process in the Firestone Tire plant. The primary energy source will be natural gas. The net electrical power production capacity of the facility as originally proposed was to be 103.2 MW.

By order issued December 30, 1985, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility (33 FERC ¶ 62,481).

The recertification is requested due to change of ownership of the facility from The Firestone Cogeneration Joint Venture to The Firestone Cogeneration Project, Limited Partnership (Limited Partnership). The Limited Partnership is a Delaware limited partnership which consists of two general partners, ENIGEN, Inc., and the Firestone Cogeneration Joint Venture, and four limited partners: Energy National, Inc., Prudential Interfunding Corporation, John Hancock Mutual Life Insurance Company and Hydra-Co Enterprises Inc. The net electric power production capacity of the facility will increase to 106.1 MW. Installation of the facility will commence in December 1987. All other facility's characteristics remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22175 Filed 9-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-343-002]

Application For Recertification of Qualified Status of Small Power Production Facility; Foster Wheeler Power Systems, Inc., Mount Carmel Facility

September 18, 1987.

On August 25, 1987, Foster Wheeler Power Systems, Inc. (Applicant), of Perryville Corporate Park, Clinton, New Jersey 08809 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility was originally certified as a qualifying small power production facility on February 27, 1986 (Docket No. QF86-343-000, 34 FERC ¶62,411 (1986)), and as a qualifying cogeneration facility on Apirl 23, 1987 (Docket No. QF86-343-001, 39 FERC ¶61,048 (1987)). The application for recertification changes the address of the owner/operator of the facility and requests that the configuration of the small power production facility be amended from two circulating fluidized bed combustion boilers to one circulating fluidized bed combustion boiler. All other characteristics of the facility remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22176 Filed 9-24-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Meeting; Basic Energy Sciences Advisory Committee

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC)

Date and Time: October 15, 1987, 8:00 a.m.-5:00 p.m.

Place: AT&T Technologies, 1201 S. Hayes St., Arlington, Virginia 22202.

Contact: Louis C. Ianneillo, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, D.C. 20545, Telephone: 301/353/3081.

Purpose of the Committee

To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative Agenda

Briefings and discussions of:

October 15, 1987

—Status of the Superconductivity Panel Report
—Subcommittee Reports
—Discussion of 1987 Basic Energy Sciences Report
—Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the

meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 21, 1987.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 87–22182 Filed 9–24–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3268–1]

Receipt of Application For a Reference Method Determination; Ambient Air Monitoring Reference and Equivalent Methods

Notice is hereby given that on August 28, 1987, the Environmental Protection Agency received an application from Andersen Samplers Incorported, 4215 Wendell Drive, Atlanta, Georgia 30336, to determine if its Sierra Andersen and General Metal Works PM_{10} High Volume Air Sampler Systems should be designated by the Administrator of the EPA as reference methods under 40 CFR Part 53 (40 FR 7049, 41 FR 11255, 52 FR 24727). If, after appropriate technical study, the Administrator determines that these methods should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register.**

Erich Bretthaver,

Acting Assistant Administrator for Research and Development.

[FR Doc. 87–22145 Filed 9–24–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3266–7

Environmental Impact Statements and Regulations; Availability of EPA Comments

This notice announces availability of EPA comments prepared September 7, 1987 through September 11, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–COE–K36092–CA, Rating EC2, Caliente Creek Stream Group, Flood Control Plan, CA. SUMMARY: EPA expressed environmental concerns because the proposed project does not demonstrate compliance with the Section 404(b)(1) Guidelines of the Clean Water Act, which regulates the discharge of dredged or fill material into waters of the United States, including wetlands. EPA stated that the project may have greater wetlands impacts than the draft EIS indicates. EPA further noted concerns with project alternatives, project impact mitigation, and project impacts on water quality and groundwater. FINAL EISs

ERP No. F–BLM–J61046–CO, Gunnison Basin, American Flats and Silverton Planning Units, Wilderness Study Areas, Wilderness Designation, Recommendations, CO. Summary: EPA concurs with the findings of the final EIS and supports the recommendation for inclusion of the designated area into the National Wilderness Preservation System.

ERP No. F–BLM–J67006–CO, Wolf Ridge Nahcolite Solution Mine, Construction and Operation, Piceance Basin, Plan Approval, CO. Summary: EPA's review found the final EIS to be adequate and principal concerns substantially resolved with the expansion of the Water Resources section in the EIS. However, EPA has environmental concerns regarding ground and surface water protection. BLM and EPA will require all practicable permit or lease conditions that are necessary to prevent significant salt loading to surface waters. BLM's detailed analysis will be used by EPA in its underground injection control permit process.

ERP No. F–FHW–F40288–MN, TH–77/I–494 Improvements, TH–77/Cedar Avenue From 70th Street to 86th Street and I–494 from West 12th Avenue to East 34th Avenue, MN. Summary: EPA's comments regarding the draft EIS were adequately addressed in the final EIS.

ERP No. F–FRC–L05195–ID, Salmon River Basin, Fifteen Hydroelectric Projects, Construction, Operation, and Maintenance, Licenses, ID. Summary: EPA expressed environmental objections to the proposed alternative based on detrimental effects to fisheries, water quality, and wetlands. EPA recommended adoption of the less environmentally damaging alternative (Scenario A) with the mitigation measures recommended in the final EIS. Scenario A involved one project that was found to be environmentally acceptable. The other 14 hydroelectric projects had unacceptable adverse effects.

Dated: September 22, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–22272 Filed 9–24–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3266–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed September 14, 1987 through September 18, 1987.

EIS No. 870309, Draft, BLM, COE, AK, Trans Alaska Gas System (TAGS) and Associated Facilities Construction, Prudhoe Bay to Anderson Bay, Right-of-Way Permit, Section 404 and 10 Permits and Special Use Permits, Due: November 10, 1987, Contact: Jules Tileston (907) 267–1268

EIS No. 870310, Draft, COE, TX, Buffalo Bayou and Tributaries, Comprehensive Flood Damage Prevention Study, Harris, Fort Bend and Waller Counties, Due: November 9, 1987, Contact: Charles Harbaugh (409) 766–3044

EIS No. 870311, Draft, IBR, UT, Weber Basin Project, Willard Reservoir Water Change Use, Irrigation to Municipal and Industrial Water Supply Conversion, Davis and Weber Counties, Due: November 16, 1987, Contact: Harold Sersland (801) 524–5580

EIS No. 870312, Draft, AFS, WA, Gifford Pinchot National Forest, Land and Resource Management Plan, Due:

December 31, 1987, Contact: Lloyd DeWerff (206) 696–7552

EIS No. 870313, Final, AFS, ID, UT, Sawtooth National Forest, Land and Resource Management Plan and Wilderness Recommendations, Due: November 9, 1987, Contact: Roland Stoleson (208) 737–3200

EIS No. 870314, Final, COE, WV, Kanawha River Navigation Study, Winfield Locks and Dam, Lock Replacement, Putnam County, Due: October 26, 1987, Contact: Roland Meade (304) 529–5635

EIS No. 870315, Final, COE, NJ, Claremont Terminal Channel Navigation Improvement, Upper New York Bay, Hudson River County, Due: October 26, 1987, Contact: Len Houston (212) 264–4662

EIS No. 870316, DSuppl, COE, CA, Oakland Outer and Inner Harbors, Deep Draft Navigation Improvements, Alcatraz Dredge Material Disposal Site Changed Conditions, Almeda County, Due: November 9, 1987, Contact: Patricia Duff (415) 974–0441

EIS No. 870317, Draft, COE, CA, New San Clemente Project Carmel River Dam Construction, Monterey County, Due: November 24, 1987, Contact: Roger Golden (415) 974–0444

EIS No. 870318, Final, AFS, ID, WA, MT, Idaho Panhandle National Forests, Land and Resource Management Plan, Due: October 26, 1987, Contact: William Morden (208) 765–7223

EIS No. 870319, Final, BLM, NM, Farmington Resource Area Management Plan, Due: October 26, 1987, Contact: Ron Fellows (505) 325–3581

EIS No. 870320, Final, AFS, MT, ID, Kootenai National Forest, Land and Resource Management Plan, Due: October 26, 1987, Contact: James Rathbun (406) 293–6211

EIS No. 870321, Draft, NOA, ATL, MXG, REG, Atlantic, Gulf of Mexico and Caribbean Exclusive Economic Zones Billfish (White and Blue Marlins, Sailfish and the Longbill Spearfish) Fishery Management Plan, Due: November 9, 1987, Contact: William Evans (202) 673–5450

EIS No. 870322, Draft, FHW, IN, East Unit Access Road Construction, I–94 to US 12, US 12 Relocation, US 12 and LaPorte/Porter County Line to US 12 Intersection near Sheridan Avenue, Porter and LaPorte Counties, Due: November 16, 1987, Contact: James Threlkeld (317) 269–7494

EIS No. 870323, Final, UAF, PRO, SEV, Ground Wave Emergency Network (GWEN) Deployment and Land Acquisition, Final Operational Capability, Construction and Operation, Due: October 26, 1987, Contact: William Colmer (617) 271–6116

EIS No. 870324, Draft, USN, AK, Southeast Alaska Acoustic Measurement Facility (SEAFAC) Construction, Establishment, 404 Permit, Back Island, Behm Canal, Ketchikan Gateway Borough, Due: November 10, 1987, Contact: Jeff Thielen (206) 476–5775

Amended Notice

EIS No. 870308, Draft, COE, LA, Louisiana Army Ammunition Plant, Chemical and Industrial Complex, Construction and Operation, Research Development Explosive and High Melt Explosive (RDX/HMX) Expansion Program, Bossier and Webster Parishes, Published FR 9–18–87—Incorrect agency and contact information—EIS was inadvertently filed with EPA—Officially retracted.

Dated: September 22, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–22189 Filed 9–24–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51694; FRL–3268–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of sixty-six such PMNs and provides a summary of each.

DATES: Close of Review Period: P 87–1749, 87–1750, 87–1751, 87–1752, 87–1753, 87–1754, 87–1755, 87–1756, 87–1757, 87–1758, 87–1759, 87–1760, 87–1761, 87–1762, and 87–1763—December 9, 1987.

P 87–1764, 87–1765, 87–1766, 87–1767, 87–1768, 87–1769, and 87–1770—December 12, 1987.

P 87–1771, 87–1772, 87–1773, 87–1774, 87–1775, 87–1776, 87–1777, 87–1778, 87–1779, 87–1780, 87–1781, 87–1782, 87–1783, and 87–1784—December 13, 1987.

P 87–1785, 87–1786, 87–1787, 87–1788, 87–1789, 87–1790, 87–1791, 87–1792, 87–1793, 87–1794, 87–1795, and 87–1796—December 14, 1987.

P 87–1797, 87–1798, 87–1799, 87–1800, 87–1801, 87–1802, 87–1803, 87–1804, 87–1805, 87–1806, 87–1807, 87–1808, 87–1809, 87–1810, 87–1811, 87–1812, 87–1813, and 87–1814—December 15, 1987.

Written comments by:

P 87–1749, 87–1750, 87–1751, 87–1752, 87–1753, 87–1754, 87–1755, 87–1756, 87–1757, 87–1758, 87–1759, 87–1760, 87–1761, 87–1762, and 87–1763—November 9, 1987.

P 87–1764, 87–1765, 87–1766, 87–1767, 87–1768, 87–1769, and 87–1770—November 12, 1987.

P 87–1771, 87–1772, 87–1773, 87–1774, 87–1775, 87–1776, 87–1777, 87–1778, 87–1779, 87–1780, 87–1781, 87–1782, 87–1783, and 87–1784—November 13, 1987.

P 87–1785, 87–1786, 87–1787, 87–1988, 87–1789, 87–1790, 87–1791, 87–1792, 87–1793, 87–1794, 87–1795, and 87–1796—November 14, 1987.

P 87–1797, 87–1798, 87–1799, 87–1800, 87–1801, 87–1802, 87–1803, 87–1804, 87–1805, 87–1806, 87–1807, 87–1808, 87–1809, 87–1810, 87–1811, 87–1812, 87–1813, and 87–1814—November 15, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51694]" and the specific PMN number should be sent: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1749

Manufacturer. Kenrich Petrochemicals, Incorporated.

Chemical. (S) Zirconium IV 2,2–bis(2–propenolatomethyl)butanolato, cyclo di 2,2–(bis 2–propenolatomethyl) butanolato pyrophosphato–0,0.

Use/Production. (S) Industrial coupling agent for polymers; catalyst; and intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: > .5 g/kg.

P 87-1750

Importer. Confidential.
Chemical. (G) Substituted phenylazocarbopolycyclic acid, alkali metal salt.
Use/Import. (S) Industrial paper dye. Import range: Confidential.

P 87-1751

Manufacturer. Confidential.
Chemical. (G) Block aliphatic polyester polyurethane.
Use/Production. (G) Industrially used coating with an open, non-dispersive use. Prod. range: 9,000 to 45,000 kg/yr.

P 87-1752

Manufacturer. Kenrich Petrochemicals, Incorporated.
Chemical. (S) Zirconium IV tetrakis (2,2-bis-2 propenolatomethyl) butanolato.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-1753

Manufacturer. Kenrich Petrochemicals, Incorporated.
Chemical. (S) 4-(2-Phenyl)2-propylphenyl neodecanoate.
Use/Production. (S) Industrial and commercial solvent; intermediate; and plasticizer. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg.

P 87-1754

Importer. M-D Group Incorporated.
Chemical. (S) Sodium 5-nitroguaiacolate.
Use/Import. (S) Commercial and consumer plant and soil auxiliary substance. Import range: 5 to 20 kg/yr.

P 87-1755

Manufacturer. Confidential.
Chemical. (S) Alkyd resin solution.
Use/Production. (S) A medium oil alkyd resin for use in architectural coatings. Prod. range: 228,000 to 1,295,676 kg/yr.

P 87-1756

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.
Toxicity Data. Acute dermal: >2,000 mg/kg; Ames test: Non-mutagenic.

P 87-1757

Manufacturer. Confidential.
Chemical. (G) Molybdate catalyst.
Use/Production. (G) Industrial polymerization catalyst. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer; LC^{T250} 96 hr (Bluegills): >110 mg/l; EC^{T250} 96 hr (Algal): 1.1 mg/l.

P 87-1758

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.
Toxicity Data. Acute dermal: >2,000 mg/kg; Ames test: Non-mutagenic.

P 87-1759

Manufacturer. Confidential.
Chemical. (G) Substituted salicylic acid.
Use/Production. (G) Minor component in paper coatings. Prod. range: Confidential.
Toxicity Data. Ames test: Non-mutagenic.

P 87-1760

Importer. Ricoh Electronics, Incorporated.
Chemical. (S) 4,4' Methylene bis(oxyethylene thio) diphenol.
Use/Import. (G) Site-limited manufacture of office machine paper. Import range: 70,000 kg/yr.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.

P 87-1761

Importer. Yuka-Fine Corporation.
Chemical. (S) Reaction products with 2,6-dimethyl-2,4,6-octatriene and maleic anhydride.
Use/Import. (S) Industrial epoxy curing agent for fiber reinforced plastics. Import range: 1,000 to 10,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Mild, Ames test: Negative.

P 87-1762

Manufacturer. Confidential.
Chemical. (G) Ketimine derivative of polyoxypropylene amines.
Use/Production. (G) Component used in production of elastomer. Prod. range: Confidential.

P 87-1763

Manufacturer. Confidential.
Chemical. (G) Ketimine derivative of polyoxypropylene amines.
Use/Production. (G) Component used in production of elastomer. Prod. range: Confidential.

P 87-1764

Manufacturer. Confidential.
Chemical. (G) Hindered phenol derivative.
Use/Production. (S) Industrial antioxidant for lubricants. Prod. range: Confidential.

P 87-1765

Manufacturer. Confidential.
Chemical. (G) Polyurethane-polysidioxane copolymer.
Use/Production. (G) Low friction or high slip additive to coatings. Open, non-dispersive use. Prod. range: Confidential.

P 87-1766

Manufacturer. Confidential.
Chemical. (G) Trisubstituted dialkyl cycloalkane dialkyl ketal.
Use/Production. (G) Site-limited intermediate that is useful in creating compounds that will ultimately be useful in augmenting or enhancing aroma and perfumed articles or helping to impart fragrance to perfumable articles. Prod. range: Confidential.

P 87-1767

Manufacturer. Disogrin Industries Corporation.
Chemical. (S) Polymer of hexanedioic acid, polymer with 1,2-ethanediol (2,000 mw); hexanedioic acid, polymer with 1,2-ethanediol (3,000 mw); hexanedioic acid, polymer with 1,2-ethanediol (1,000 mw); naphthalene, 1,5-diisocyanato-benzenamine, N,N'-methanetetraylbis(1-methylethyl)-acetic acid; chloro-, sodium salt; water; and silicone, siloxane and 1,4-diazabicyclo [2.2.2] octane.
Use/Production. (S) Site-limited to be molded on site into mechanical goods, i.e., machinery components. Prod. range: 960 to 1,056 kg/yr.

P 87-1768

Manufacturer. ChemDesign Corporation.
Chemical. (G) Esters of diazonaphthoquinone.
Use/Production. (G) Photoimaging chemical for electronic circuits. Prod. range: Confidential.

P 87-1769

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted acetic acid ester.
Use/Production. (G) Resin cross-linker. Prod. range: Confidential.
Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: >2,,000 mg/kg; Irritation: Skin—Severe, Eye—Severe; Inhalation: >152 mg/m^3; Ames test: Mutagenic.

P 87-1770

Manufacturer. American Cyanamid Company.

Chemical. (G) Substituted acetic acid ester.

Use/Production. (G) Resin cross-linker. Prod. range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Servere, Eye—Severe; Inhalation: >152 mg/m^3; Ames test: Mutagenic.

P 87–1771

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (S) 3-(2-Aminoethyl) amino propyl methyl, dimethyl, diphenyl, polysiloxane and dimethyl, methyl 3-(oxiranyl methoxy) propyl polysiloxane.

Use/Import. (S) Coating agent for general purpose. Import range: 500 to 3,000 kg/yr.

P 87–1772

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of hexanedioic acid, polymer with 1,2-ethanediol (2,000 mw); hexananedioic acid, polymer with 1,2-ethanediol (3,000 mw); hexanedioic acid, polymer with 1,2-ethanediol (1,000 mw); benzene, 1,1+-methylene bis(4-isocyanato), benzenamine, N,N'-methanetetraylbis(1-methyl ethyl)-acetic acid, chloro-, sodium salt, water, poly(oxy-], 4-butanediyl), alpha-(aminobutyl)-omega-(4-aminobutoxy)-silicone; and siloxane and 1,4-diazabicyclo [2.2.2] octane.

Use/Production. (S) Site-limited to be molded on site into mechanical goods, i.e., machinery components. Prod. range: 960 to 1,056 kg/yr.

P 87–1773

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1774

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1775

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1776

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1777

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylates and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 87–1778

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate powder coating curing agent.

Use/Production. (S) Powder coating curing agent. Prod. range: Confidential.

P 87–1779

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate powder coating curing agent.

Use/Production. (S) Powder coating curing agent. Prod. range: Confidential.

P 87–1780

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate powder coating curing agent.

Use/Production. (S) Powder coating curing agent. Prod. range: Confidential.

P 87–1781

Importer. Confidential.

Chemical. (G) Styrene-N-butylacrylate copolymer.

Use/Import. (G) Commercial and consumer open, non-dispersive use. Import range: Confidential.

Toxicity Data. Ames test: Non-mutagenic.

P 87–1782

Manufacturer. Confidential.

Chemical. (G) Siloxane dimer.

Use/Production. (G) Siloxane reactant. Prod. range: Confidential.

Toxicity Data. Acute oral: <8.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—irritant.

P 87–1783

Manufacturer. Confidential.

Chemical. (G) Siloxane oligomer.

Use/Production. (G) Reactive siloxane oligomer. Prod. range: Confidential.

Toxicity Data. Acute oral: > 1.8 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

P 87–1784

Manufacturer. Confidential.

Chemical. (G) Vinyl modified nonionic surfactant.

Use/Production. (G) Comonomer for emulsion polymerization. Prod. range: Confidential.

P 87–1785

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) Cuparate (4−)[2[[2,4-dihydroxy-3[[2-hydroxy-5-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo-phenyl]azo]-4,8-napthalene disulfonate] (−6)]-trisodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1786

Importer. T.G. Tomasi Consultants, Ltd.

Chemical. (S) 4,4'-Bis[[5-cholor 3-[2,4 disulfo-5-[N-ethyl-2-oxo-3-carbamido-4-methly-6-hydroxy pyridyl-5-azo]phenylamino] S-triazinylamino]]stilbene 2,2'-disulfonic acid, hexa sodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 200,000 to 800,000 kg/yr.

P 87–1787

Manufacturer. Confidential.

Chemical. (G) Amyl ester.

Use/Production. (S) Industrial solvent. Prod. range: Confidential.

P 87–1788

Manufacturer. Confidential.

Chemical. (G) Polyurethane polymer.

Use/Production. (G) Coatings and adhesives for open, non-dispersive use Prod. range: Confidential.

P 87–1789

Manufacturer. Kenrich Petrochemicals, Incorporated.

Chemical. (S) Methane solfonyl pyrophosphate.

Use/Production. (S) Industrial acid catalyst. Prod. range: Confidential.

Toxicity Data. Acute oral: > 500 mg/kg; Irritation: Skin—Severe; Ames test: Non-mutagenic.

P 87–1790

Manufacturer. Confidential.

Chemical. (G) Polyurethane—polysiloxane copolymer.

Use/Production. (G) Low friction or high slip additive to coatings; open, non-dispersive use. Prod. range: Confidential.

P 87–1791

Manufacturer. Confidential.

Chemical. (G) Bis-imidazolinium.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87–1792

Importer. Confidential.
Chemical. (G) Acrylated polymer.
Use/Import. (G) Acrylated polymer for inks. Import range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

P 87–1793

Importer. Confidential.
Chemical. (G) Organofunctional polysiloxanes.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 87–1794

Importer. Confidential.
Chemical. (G) Organofunctional polysiloxane.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 87–1795

Manufacturer. Milliken and Company.
Chemical. (G) Substituted (polyoxyalkylene) aniline.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 87–1796

Manufacturer. Milliken and Company.
Chemical. (G) Chromophore substituted polyoxyethylene.
Use/Production. (G) Colorant. Prod. range: Confidential.

P 87–1797

Manufacturer. Disogrin Industries Corporation.
Chemical. (G) Polymer of poly[oxy-], 4-butanediyl), alpha-[[(3-isocyanato methyl phenyl)amino]carbonyl]-omega-[[[(3-isocyanatomethyl phenyl)amino]carbonyl]oxy]-; and stantone Brown HCC-5513 Harwick Standard.
Use/Production. (S) Site-limited to be molded on site into wheels, rollers and mechanical part for use in general industrial applications. Prod. range: 7,980 to 8,778 kg/yr.

P 87–1798

Manufacturer. General Electric Company.
Chemical. (G) Alkylester functionalized colloidal silica.
Use/Production. (S) Consumer abrasion resistance treatment for thermoplastic resins. Prod. range: Confidential.

P 87–1799

Importer. Hoechst Celanese Corporation.
Chemical. (G) Modified trioxane copolymer.
Use/Import. (S) Industrial injection, extrusion, compression and flow molding. Import range: 16,000 to 23,000 kg/yr.

P 87–1800

Importer. Nuodex Incorporated.
Chemical. (S) Phenal, 4-isododecyl-.
Use/Import. (S) Industrial additive for lubricants and emulsifiers. Import range: Confidential.
Toxicity Data. Acute oral: 2,200 mg/kg; Irritation: Skin—Strong irritant, Eye—Slight irritant; Ames test: Non-mutagenic.

P 87–1801

Importer. Confidential.
Chemical. (G) Acrylic acid, alkyl ester, polymer with monocarbocyclicalkene.
Use/Import/ (G) Industrial sizing agent. Import range: Confidential.

P 87–1802

Manufacturer. Confidential.
Chemical. (G) Substituted spiro[isobenzofuranxanthenone].
Use/Production. (G) Minor color—forming component in paper coatings. Prod. range: Confidential.

P 87–1803

Manufacturer. Disogrin Industries Corporation.
Chemical. (S) Polymer of hexanedioic acid, polymer with 1,4-butanediol and 1,2-ethanediol; hexanedioic acid; naphthalene, 1,5-diisocyanato-; 1,4-butanediol; and 1,3-propanediol, 2-(hydroxymethyl)-2-methyl.
Use/Production. (G) Site-limited to be molded on site into mechanical parts for use in general industrial applications. i.e., wheels, rollers. Prod. range: 14,438 to 15,882 kg/yr.

P 87–1804

Importer. Hodogaya Chemical (U.S.A.), Incorporated.
Chemical. (S) 3H-Indolium, 2-[[(4-chlorophenyl)methyl hydrazono] methyl]-1-ethyl-3,3-dimethyl-, salt with dodecyl(sulfophenoxy) benzenesulfonic acid (2:1).
Use/Import. (S) Industrial, commercial and consumer ingredient of ball point pen ink. Import range: 1,000 to 1,500 kg/yr.
Toxicity Data. Acute oral: 3.9 g/kg; Irritation: Skin—Slight irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87–1805

Importer. Hodogaya Chemical (U.S.A.), Incorporated.
Chemical. (S) Chromate(3-),bis[3-hydroxy-4-[(2-hydroxy-1-naphthalenyl)azo]-7-nitro-1-naphthalenesulfonate(3-)], trihydrogen, compound with 2-ethyl-hexyl amine and 2-(dodecylamino)ethanol.
Use/Import. (S) Industrial, commercial and consumer ingredient of ball point pen ink. Import range: 1,000 to 1,500 kg/yr.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87–1806

Importer. Hodogaya Chemical (U.S.A.), Incorporated.
Chemical. (S) Chromate(3-), bis [4-[4,5-dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-3-methyl-5-oxo-lH-pyrazol-l-yl]benzensulfonato(3-)]-trihydrogen, compound with 2-(dodecylamino)ethanol (1:3).
Use/Import. (S) Industrial, commercial and consumer ingredient of ball point pen ink. Import range: 1,000 to 1,500 kg/yr.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87–1807

Importer. Hodogaya Chemical (U.S.A.), Incorporated.
Chemical. (S) Xanthylium,9-(2-carboxyphenyl)-3,6-bis(diethylamino), salt with 2(or 5)-dodecyl-5(or 2)-(sulfophenoxy)benzensulfonic acid (2:1).
Use/Import. (S) Industrial, commercial and consumer ingredient of ball point pen ink. Import range: 1,000 to 1,500 kg/yr.
Toxicity Data. Acute oral: 7.2 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87–1808

Manufacturer. Milliken and Company.
Chemical. (G) Chromophore substituted polyoxyethylene.
Use/Production. (G) Colorant. Prod. range: Confidential.

P 87–1809

Importer. Confidential.
Chemical. (G) Polymer of aromatic diisocyanate, alkanols and alkane diols.
Use/Import. (G) Industrial and commercial additive. Import range: 900 to 1,800 kg/yr.

P 87–1810

Manufacturer. Confidential.
Chemical. (G) Substituted aliphatic-terminated poly(dimethylsiloxane).
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1811

Manufacturer. Confidential.
Chemical. (G) Dimethychlorosilane of 5-vinyl-2-norbornene.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87–1812

Manufacturer. Confidential.
Chemical. (G) Cycloaliphatic dicarboxylic acid.
Use/Production. (S) Industrial polyester intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 1,903 mg/kg; Acute dermal: >1,000 mg/kg; Irritation: Skin—Slight irritant, Eye—Moderate irritant.

P 87–1813

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aliphatic easter of the diglycidyl ether of bisphenol A.
Use/Production. (S) Industrial crosslinkable liquid polymer for use in epoxy type coatings, adhesives and structural applications. Prod. range: Confidential.

P 87–1814

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aliphatic ester of the diglycidyl ether of bisphenol A.
Use/Produciton. (S) Industrial crosslinkable liquid polymer for use in epoxy type coatings, adhesives and structural applications. Prod. range: Confidential.

Date: September 21, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87–22149 Filed 9–24–87; 8:45am]

BILLING CODE 6560–50–M

[OPTS–59833; FRL–3268–3

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provide a summary of each.

DATES: Close of Review Period:

Y 87–253 and 87–254, October 4, 1987
Y 87–255, 87–256, 87–257, 87–258, 87–259 and 87–260, October 6, 1987
Y 87–261, October 7, 1987

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–253

Manufacturer. Confidential.
Chemical. (S) 2,2-Dimethyl-1,3-propanediol, Pamolyn 300 tall oil fatty acide 2-ethyl-2-(hydroxymethyl)-1,3-propandiol; 1,3-benzenedicarboxylic acid; tall oil fatty acids; 1,3-dihydro-l,3-dioxo-5-isobenzofurancarboxylic acid.
Use/Production. (S) Industrial polymer used as a major component of a protective coating (paint) formulated for use on metal substrates. Prod. range: 54,975 to 109,950 kg/yr.

Y 87–254

Manufacturer. Confidential.
Chemical. (G) Hydrophobic polyvinyl alcohol copolymer.
Use/Production. (G) Polymer for gas and solvent barrier, hydraulic fluid additive, creping aid and polymeric hot melt adhesive. Prod. range: Confidential.

Y 87–255

Importer. Confidential.
Chemical. (G) Soya alkyd resin.
Use/Import. (G) Coatings. Import range: Confidential.

Y 87–256

Importer. Confidential.
Chemical. (G) Rosin modified alkyd resin.
Use/Import. (G) Coatings. Import range: Confidential.

Y 87–257

Importer. Confidential.
Chemical. (G) Soya alkyd resin.
Use/Import. (G) Coatings. Import range: Confidential.

Y 87–258

Manufacturer. Confidential.
Chemical. (G) Modified coconut fatty acid alkyl polymer.
Use/Production. (G) Polymer component of metal coating formulation. Prod. range: Confidential.

Y 87–259

Manufacturer. C.J. Osborn.
Chemical. (G) Polyester.
Use/Production. (S) Pigmented and clear finishes. Prod. range: Confidential.

Y 87–260

Importer. Confidential.
Chemical. (G) Saturated polyester resin.
Use/Import. (G) Polymeric industrial coating material. Import range: Confidential.

Y 87–261

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Binder for coatings. Prod. range: Confidential.

Date: September 21, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87–22148 Filed 9–24–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3267–9]

Water Pollution Control; Cattaraugus Creek Basin Aquifer System in Cattaraugus, Erie, WY and Allegany Counties, NY; Sole Source Aquifer Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region II, has determined that the Cattaraugus Creek Basin Aquifer System (CCBA), underlying portions of Cattaraugus, Erie, Wyoming, and Allegany Counties, New York, is the sole or principal source of drinking water for the entire townships

of Freedom and Yorkshire; and parts of Arcade, Sardinia, Concord, Ashford, Centerville, Rushford, Farmersville, Machias, Ellicotville, East Otto, Otto, Persia, Collins, Java, Wethersfield and Eagle Townships, and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the Cattaraugus Creek Basin will be subject to EPA review to ensure that these projects are designed and constructed such that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review 1:00 P.M. Eastern Daylight time on October 9, 1987.

ADDRESSES: The date on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water Management, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: John S. Malleck, Office of Ground Water Management, Environmental Protection Agency, Region II at 212–264–5635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h–3(e), Pub. L. 93–523) states:

> (e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On March 9, 1987, the Administrator duly delegated to the Regional Administrator the authority to determine, under section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), that an area has an aquifer which is the sole or principal source of drinking water for the area and which, if contaminated, would create a significant hazard to public health.

On February 28, 1985, EPA received a petition from the Southtown Homeowners Association (Helen Feraldi, Secretary-Treasurer), which petitioned EPA to designate the CCBA a sole source aquifer (SSA). On January 23, 1986 EPA published a notice in the **Federal Register** which served to reprint the petition, announce a public comment period, and to set a public hearing date. A public hearing was conducted on February 25, 1986 and the public was permitted to submit comments and information on the petition until March 25, 1986.

II. Basis for Determination

Among the factors to be considered by the Agency in connection with the designation of an area under section 1424(e) of the SDWA are (1) whether the CCBA is the area's sole or principal source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the following are the findings for the determination noted above:

1. The CCBA currently provides more than 50 percent of the drinking water used by aquifer service area residents. Investigations by the Agency indicate that the CCBA serves as the "sole source" of drinking water for approximately 20,182 persons in the service area, representing 100 percent of the population.

2. There is no existing alternative drinking water source or combination of sources capable of providing 50 percent or more of the drinking water to the designated area, nor is there any available cost effective future source capable of supplying the drinking water demands for the Cattaraugus Creek Basin communities.

3. The CCBA consists of coarse sand and gravel deposits, above and below less permeable glacial till and lacustrine sediments, and fractured shale bedrock. As a result of its highly permeable soil characteristics, the aquifer is susceptible to contamination through its recharge zone from a number of sources including, but not limited to, chemical spills, highway and urban area runoff, septic systems, leaking storage (above and underground) tanks, and landfill leachate. Since ground water contamination can be difficult or sometimes impossible to remediate and since the aforementioned communities rely on the CCBA for drinking water purposes, contamination of the aquifer would pose a significant threat to public health.

III. Description of the Cattaraugus Creek Basin Aquifer System of Cattaraugus, Erie, Wyoming, and Allegany Counties, and its Recharge Zone

The CCBA is composed of permeable sand and gravel deposits above and below lacustrine clay and glacial till, and fractured shale bedrock. The aquifer area is approximately 325 square miles of the southern-most part of the Erie-Niagara River drainage basin in New York State. The designated area in which Federal financially assisted projects will be subject to review is the CCBA in portions of Cattaraugus, Erie, Wyoming, and Allegany Counties. The boundary of both the designated area and aquifer service area is the drainage divide of the Cattaraugus Creek Basin upstream from a point approximately two miles southeast of the Town of Gowanda.

For purposes of this designation, the CCBA is considered to include the entire townships of Freedom and Yorkshire; and parts of Arcade, Sardinia, Concord, Ashford, Centerville, Rushford, Farmersville, Machias, Ellicottville, East Otto, Otto, Persia, Collins, Java, Wethersfield and Eagle Townships. Because the Cattaraugus Creek Basin is covered with permeable sediments, the recharge zone, where water percolates directly to the aquifer, includes the entire areal extent of the CCBA.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public, and various technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Office of Ground Water Management, Room 805, 26 Federal Plaza, New York, New York 10278.

V. Project Review

When EPA publishes this determination for a sole or principal drinking water source, the consequence is that no commitment for Federal financial assistance may be made if the Regional Administrator finds that the Federally-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health (Safe Drinking Water Act Section 1424(e), 42 U.S.C. 300h3(e)). In many cases, these Federally-assisted projects may also be analyzed in an "Environmental Impact Statement" (EIS) under the National Environmental Policy Act (NEPA) 42

U.S.C. 4332(2)(C). All EIS's, as well as any other proposed Federal actions affecting an EPA program or responsibility, are required by Federal law (under the so-called "NEPA/309" process) to be reviewed and commented upon by the EPA Administrator. (42 U.S.C. 7609 required EPA to conduct this review. The "309" in a "NEPA/309" derives from the original source of this general requirement, section 309 of the Clean Air Act).

Therefore, in order to streamline EPA's review of the possible environmental impacts on designated aquifers, when an action is analyzed in an EIS, the two reviews will be consolidated and both authorities will be cited. The EPA review (under the Safe Drinking Water Act) of federally-assisted projects potentially affecting sole or principal source aquifers will be included in the EPA review (under the "NEPA/309" process) of any EIS accompanying the same federally-assisted project. The letter transmitting EPA's comments on the final EIS to the lead agency will be the vehicle for informing the lead agency of EPA's actions under section 1424(e).

VI. Summary and Discussion of Public Comments

Nearly all of the comments received from the public were in favor of the designation. The New York State Department of Environmental Conservation (NYSDEC) expressed opposition, based on the nature and extent of the aquifers, the limits of the designation area, and calculations that less than 50 percent of the population in the petition area is dependent on ground water supplies. The NYSDEC defined the aquifer extent only considering the upper, unconfined aquifer. In addition, the extent of the SSA designation area has been refined since the original petition, and now delineates the actual recharge and streamflow source zone. With its present areal extent, the SSA designation area provides 100 percent of its population with drinking water from ground water resources. Cohen & Lombardo, P.C., representing C.I.D. Landfill, Inc., opposed SSA designation because (1) the CCBA not listed as a "primary" aquifer by the NYSDEC, (2) less than 50 percent of the population is served by the CCBA, (3) the Sardinia aquifer is not contiguous to the other aquifers and should not be included in the designation, and (4) the C.I.D. landfill does not overlay the aquifer, nor does it contaminate the Sardinia aquifer.

The Federal SSA Program, as administered by EPA, is based on criteria independent of any state ground water program; as indicated previously, EPA evaluation indicated that 100 percent of the SSA area population uses ground water from the CCBA for drinking water supplies; the Sardinia aquifer, as well as the Springville aquifer, are both part of the CCBA; and the presence or absence of potential sources of contamination is not a criterion EPA uses when making a SSA designation decision.

The area considered for designation was determined to meet the criteria of an area which depends upon an aquifer for its sole or principal drinking water source and which, if contaminated, would pose a serious threat to the health of the residents of Cattaraugus, Erie, Wyoming, and Allegany Counties.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the Cattaraugus, Erie, Wyoming, and Allegany County areas. The only affected entities will be those area-based businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to publuc health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act as amended at 42 U.S.C. 4321, et seq.

Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs of products and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets.

VIII. Summary

Today's action only affects the CCBA of the Cattaraugus, Erie, Wyoming, and Allegany County areas. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request Federal financial assistance.

Dated: September 3, 1987.

Christopher J. Daggett,

Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 87-22156 Filed 9-24-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0168

Title: Application for Superfund Temporary Relocation Assistance

Abstract: This form is used to document applicant information needed to determine eligibility for, and provide temporary relocation assistance.

Type of Respondents: Individuals or households

Number of Respondents: 500

Burden Hours: 125

Frequency of Recordkeeping Reporting: On occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235, NEOB.

Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,

Director Officer of Administrative Support.

[FR Doc. 87-22124 Filed 9-24-87; 8:45 am]

BILLING CODE 6718-01-M

Meeting; Board of Visitors for the Emergency Management Institute

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeings: December 7-9, 1987.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, MD 21727.

Time: December 7—7:00 p.m. to 9:00 p.m., December 8—8:30 a.m. to 5:00 p.m., December 9—8:30 a.m. to Agenda Completion.

Proposed Agenda: Minutes of August 24-26 Meeting; Preparation of White Paper; Work on Annual Report.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1251) on or before December 10, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Deputy Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 11, 1987.

Caesar A. Roy,

Deputy Associate Director, Training and Fire Programs.

[FR Doc. 87-22126 Filed 9-24-87; 8:45 am]

BILLING CODE 6718-01-M

Meeting; Board of Visitors for the National Fire Academy

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy (NFA).

Dates of Meeting: November 16-17, 1987.

Place: National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, MD 21727.

Time: November 16—8:30 a.m. to 5:00 p.m., November 17—8:30 a.m. to agenda completion.

Proposed Agenda: Old Business; New Business; BOV Visitation to NFA Classes and Facilities Survey.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, MD 21727 (telephone number, 301-447-1123) on or before November 9, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 16, 1987.

Caesar A. Roy,

Deputy Associate Director, Training and Fire Programs.

[FR Doc. 87-22125 Filed 9-24-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Company Engaged in Permissible Nonbanking Activities; First Interstate Bancorp

The organization listed in this notice has applied under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) 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 acquire or control voting securities or assets of a company engaged 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.

The 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 presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than Other 8, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California, and First Interstate Bancorp of Texas, Inc., Los Angeles, California, to acquire Allied Agency, Inc., Houston, Texas, pursuant to section 4(c)(8)(D) of the Bank Holding Company Act. Allied Agency acts as managing general agent for the vendor single interest programs of the subsidiary banks of Allied Bancshares, Inc., Houston, Texas.

Board of Governors of the Federal Reserve System, September 21, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22111 Filed 9-24-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Meetings; Employee Thrift Advisory Council

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., October 13, 1987.

Place: Conference Room 5141-A, General Services Administration Building, 18th and F Streets, NW., Washington, DC.

Status: Open.

Matters to be considered: Approval of the minutes of the July 30, 1987, meeting; Status report on Thrift Savings Plan

participation, soliciting asset mangers, communications to participants and role of the Council, and the annuity request for proposals; Withdrawal regulations; 1988 election periods; Formation of subcommittees; Nondiscrimination; Employees in non-pay status; and Vice-chairman position for the Council.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara on (202) 653–2573.

Dated: September 22, 1987.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 87–22206 Filed 9–24–87; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86D–0380]

Draft Policy Guidance for Regulation of Computer Products; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Draft FDA Policy for the Regulation of Computer Products" prepared by FDA's Center for Devices and Radiological Health (CDRH) The document being made available clarifies how FDA would apply existing statutory requirements to hardware and software computer products marked for medical use.

DATE: Comments by November 24, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for single copies of the draft policy should be sent to Charles Furfine (address below).

FOR FURTHER INFORMATION CONTACT: Charles Furfine, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: FDA is making available for public comment draft policy guidance for the regulation of computer products. The draft policy guidance clarifies how FDA would apply existing statutory requirements to the regulation of computer products (i.e., both hardware and software) when such products meet the definition of a medical device in the Medical Device Amendments of 1976 (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301–392). A device is defined in section 201(h) of the act as "* * * an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is * * * (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, * * * (3) intended to affect the structure or any function of the body of man or other animals." (21 U.S.C. 321(h).)

Under the draft policy, FDA would not regard computer products used only for traditional "library" functions such as storage, retrieval, and dissemination of information—functions traditionally carried out through textbooks and journals—to be medical devices subject to regulation by the agency. Similarly, the policy notes that FDA's device regulations and authorities also would not apply to computer products used for general accounting or communications functions or solely for instructional purposes, rather than to diagnose or treat patients.

When a computer product is a "component, part, or accessory" of a product recongized as a medical device in its own right, the computer component is regulated according to the requirements for the parent device (unless the component of the device is separately classified).

Computer products which are medical devices, and not components, parts, or accessories of other articles which are themselves medical devices, are regulated with the least degree of control necessary to provide reasonable assurance of safety and effectiveness. For example, many software products known as "expert" or "knowledge based" systems that are not used with existing medical devices and that are intended to involve competent human intervention before any impact on human health occurs (e.g., where clinical judgment and experience can be used to check and intepret a system's output) are exempt from registration, listing, premarket notification, and premarket approval requirements. FDA is also not aware of any computer product that is not a component, part, or accessory of another device that would require an approval premarket approval application (PMA) before marketing.

The agency is cognizant of the need to safeguard First Amendment protections and recognizes that, in some cases, it may be difficult to make a clear distinction between software products that perform traditional "book" or "library" functions, and software products that fall within the definition of a medical device under the draft policy, based on their intended use in the diagnosis or management of health-related conditions. FDA believes flexible guidance is necessary for effective implementation of the medical devices law and specifically invites comments on the appropriateness of the approach taken in the draft policy.

Interested persons may, on or before November 24, 1987, submit written comments to the Dockets Management Branch (address above). Two copies of any comments should be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. The draft policy document and comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 21, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–22158 Filed 9–22–87; 3:45 pm]

BILLING CODE 4160–01–M

[Docket No. 87F–0289]

Food Additive Petition; Dow Chemical Co.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of pentaerythritol tetrastearate as an optional adjuvant substance in the manufacture of polycarbonate resin.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3995) has been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 177.1580 *Polycarbonate resins* (21 CFR 177.1580) be amended to provide for the safe use of pentaerythritol tetrastearate as an optional adjuvant substance in the manufacture of polycarbonate resins.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 17, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-22121 Filed 9-24-87; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Meeting; Advisory Committee to the Director

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on November 18-19, 1987, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 8:30 a.m. to 5 p.m. on November 18 and from 8:30 a.m. to approximately 4:30 p.m. on November 19 in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to discussions of "The Role of Biomedical Research in Combating AIDS."

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496-3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22211 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meetings; National Institute of Child Health and Human Development

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for November 1987.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limitted to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the disussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Population Research Committee
Executive Secretary: Dr. A.T. Gregorie, Rm. 6C03, Landow Building, Telephone: 301, 496-1696
Date of Meeting: November 5, 1987
Place of Meeting: Hyatt Regency, Chairman's Board Room, 1 Metro Center, Bethesda, Maryland
Open: November 5, 1987, 8:30 a.m.-10:00 a.m.
Closed: November 5, 1987, 10:00 a.m.-adjournment

Name of Committee: Maternal and Child Health Research Committe
Executive Secretary: Dr. Scott Andres, Rm. 6C08, Landow Building, Telephone: 301, 496-1485
Date of Meeting: November 9-10, 1987
Place of Meeting: Holiday Inn, Pennsylvania Room, 8120 Wisconsin Avenue, Bethesda, Maryland
Open: November 9, 1987, 9:00 a.m.-10:00 a.m.
Closed:
November 9, 1987, 10:00 a.m.-5: p.m.
November 10, 1987, 9:00 a.m.-adjournment

Name of Committee: Mental Retardation Research Committee
Executive Secretary: Dr. Susan Streufert, Rm. 6C08, Landow Building, Telephone: 301, 496-1696
Date of Meeting: November 12, 1987
Place of Meeting: Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland
Open: November 12, 1987; 9:00 a.m.-10:00 a.m.
Closed: November 12, 1987, 10:00 a.m.-adjournment

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No 13.865, Research for Mothers and Children, National Instituties of Health.)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22215 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting Change; National Cancer Institute

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors of the Division of Cancer Etiology, National Cancer Institute, October 22-23, 1987, Building 31, C Wing, Conference Room 10, National Institutes of Health, which was published in the Federal Register on September 3, (52 FR 33475).

The Board originally scheduled for a two day meeting will now be held on October 22 only, from 9 a.m. to adjournment in Building 31, C Wing, Conference Room 10. The meeting will be closed to the public from 9 a.m. to 12 p.m. and will be open to the public from 1 p.m. to adjournment.

Dated: September 21, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22212 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; Division of Cancer Treatment Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, October 1-2, 1987, Building 31, 6th Floor, "C" Wing, Conference Room 10, Bethesda, Maryland 20892.

This meeting will be open to the public on October 1 from 8:30 a.m. to approximately 5:30 p.m., and again on October 2 from 8:00 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 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 October 1 from 5:45 p.m. until recess, for the review, discussion and evaluation of individual programs and projects

conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winfield Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A–52, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated: September 21, 1987

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–22214 Filed 9–24–87; 8:45am]

BILLING CODE 4140–01–M

Meeting; National Library of Medicine

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on November 5–6, 1987, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on November 4 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on November 5 will be open to the public from 8:30 to 9:15 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on November 5 from 9:15 a.m. to 5 p.m., and on November 6, from 8:30 a.m. to adjournment; and the subcommittee meeting on November 4 from 3 to 4 p.m.

These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–22213 Filed 9–24–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; National Library of Medicine, Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on November 16 and 17, 1987, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4 p.m. on November 16 and from 8:30 a.m. to approximately 12 noon on November 17 for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 16, from approximately 4 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Date: September 21, 1987.

Betty J. Beveridge,

NIH Committee Management Officer, NIH.

[FR Doc. 87–22216 Filed 9–24–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; National Institute of Allergy and Infectious Diseases

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology and Transportation Research Committee, National Institute of Allergy and Infectious Diseases, on November 4–5, 1987, in Conference Room 6, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on November 4, to discuss administrative details relating to committee business and for program reveiw. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Allergy and Clinical Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on November 4, and from 8:30 a.m. until adjournment on November 5. These applications, proposals, and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transportation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological

Sciences; 13.856, Microbiology and Infectious Diseases, National Institutes of Health)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22207 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; National Institute of Allergy and Infectious Diseases

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on October 29-31, 1987, in Conference Room 7, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on October 29, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on October 29, and from 8:30 a.m. on October 30 until adjournment on October 31. These applications, 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 proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301-496-7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22210 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting, National Institute of Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on November 12, 1987, Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland. The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. to discuss administrative details or other issues relating to the committee activities as indicated in the notice. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public on November 12 from 9:30 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual research 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.

Further information concerning this meeting may be obtained from Dr. Melvin Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, Room 407, Bethesda, Maryland 20892, (301) 496-7326.

Mrs. Carole Frank, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 1E04, Bethesda, Maryland 20892, 301-496-8273, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22208 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; National Cancer Institute

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 14-16, 1987, Federal Building, Conference Room B1-19, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

This meeting will be open to the public on October 15 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 14, 7:30 p.m. to recess; October 15, 10 a.m. to recess; and October 16, 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7030) will furnish substantive program information.

Dated: September 16, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-22209 Filed 9-24-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Announcement of Draft NTP Technical Reports Projected for Public Peer Review From November 1987 Through February/March 1989

As part of an effort to earlier inform the public and allow interested parties to comment or obtain information on toxicology and carcinogenesis studies prior to public peer review, the National Toxicology Program (NTP) will publish in the **Federal Register** a listing of draft Technical Reports projected for evaluation by the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated ad hoc Panel of Experts (*Peer Review Panel*) during their next four or five meetings (next 12 to 18 months). The first listing covers draft Technical Reports projected for evaluation by the Peer Review Panel during the period from November 1987 through February/March 1989. The listing will be updated with announcements in the **Federal Register** approximately twice a year.

Those interested in having detailed information about any of the studies listed herein or wanting to provide input should contact the responsible NTP staff scientist (Chemical Manager) as early as possible by telephone or by mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The attachment gives draft technical reports of studies listed alphabetically within estimated month of review and includes Chemical Abstracts Service registry numbers, use, routes of administration, species, responsible staff scientists (Chemical Managers) with telephone numbers, and dose levels used in the chronic studies.

Attachment.

Dated: September 21, 1987.

David P. Rall,

Director, National Toxicology Program.

TOXICOLOGY AND CARCINOGENESIS STUDIES CHEMICALS PROJECTED FOR PEER REVIEW

Chemical name/CAS NO.	Use	Route	Species	Chemical manager	NTP TR No.	Exposure Levels
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 11/87						
Benzyl Alcohol, 100-51-6	SOLV	GAV	RM	M. Dieter, 919-541-3368	343	R: 0,200,400, M: 0,100,200 MG/KG
Iodinated Glycerol, 5634-39-9.	PHAR	GAV	RM	J. French, 919-541-7790	340	FR&FM: 0,62,125, MR&MM: 0,125, 250 MG/KG
D-Limonene, 5989-27-5	FOOD	GAV	RM	W. Jameson, 919-541-4096.	347	FR: 0,300,600, MR: 0,75,150, FM: 0,500,1000, MM: 0,250,500 MG/KG
Methyl Dopa Sesquihydrate, 41372-08-1.	PHAR	FEED	RM	J. Dunnick, 919-541-4811.	348	R: 0,3100,6300, M: 0,6300,12500 PPM
Roxarsone, 121-19-7	REAG	FEED	RM	K. Abdo, 919-541-7819	345	R: 0,50,100 M: 0,100,200 PPM
Tetracycline Hydrochloride, 64-75-5.	PHAR	FEED	RM	D. Dietz, 919-541-2272	344	R&M: 0,12500,25000 PPM
Tribromomethane (Bromoform), 75-25-2.	INTR	GAV	RM	RM, 919-B. Melnick, 919-541-4142.	350	R&FM: 0,100,200, MM: 0,50,100 MG/KG
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 03/88						
P-Chloroaniline, 106-47-8.	DYE	GAV	RM	R. Chhabra, 919-541-3386.	351	R: 0,2,6,18, M: 0,3,10,30 MG/KG
2,4-Dichlorophenol, 120-83-2.	INTR	FEED	RM	R. Melnick, 919-541-4142.	353	FR: 0,2500,5000, MR&M: 0,5000, 10000 PPM
Dimethoxane, 828-00-2	PNT	GAV	RM	K. Abdo, 919-541-7819	354	MR: 0,62.5,125, FR: 0,125,250, M: 0,250,500 MG/KG
N,N-Dimethylaniline, 121-69-7.	SOLV	GAV	RM	K. Abdo, 919-541-7819		R: 0,3,30, M: 0,15,30 MG/KG
Diphenhydramine Hydrochloride, 147-24-0.	PHAR	FEED	RM	R. Melnick, 919-541-4142.	355	MR: 0,313,625, FR&M: 0,156,313 PPM
Ethyl Bromide, 74-96-4	INTR	INHAL	RM	J. Roycroft, 919-541-3627.		R&N: 0,100,200,400 PPM
Ethyl Chloride, 75-00-3	INTR	INHAL	RM	J. Roycroft, 919-541-3627.		R&M 0,15000 PPM
Furosemide, 54-31-9	PHAR	FEED	RM	J. Bucher, 919-541-5432		R: 0,350,700, M: 0,700,1400 PPM
Hexachloroethane, 67-72-1.	SOLV	GAV	R	W. Eastin, 919-541-7941		MR: 0,10,20, FR: 0,80,160 MG/KG
Hydrochlorothiazide, 58-93-5.	PHAR	FEED	RM	J. Bucher, 919-541-4532		R: 0,250,500,2000 PPM, M: 0,2500,5000 PPM
8-Methoxypsoralen, 298-81-7.	PHAR	GAV	R	J. Dunnick, 919-541-4811.		R: 0,37.5,75 MG/KG
N-Methylolacrylamide, 924-42-5.	COSM	GAV	RM	J. Bucher, 919-541-4532	352	R: 0,6,12, M: 0,25,50 MG/KG
Ochratoxin A, 303-47-9	NATL	GAV	R	G. Boorman, 919-541-3440.		R: 0,21,70,210 MG/KG
Pentachlorophenol, Dowicide EC-7, 87-86-5.	PEST	FEED	M	E. McConnell, 919-541-3267.	349	M: 0,100,200,600 PPM

TOXICOLOGY AND CARCINOGENESIS STUDIES CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical name/CAS NO.	Use	Route	Species	Chemical manager	NTP TR No.	Exposure Levels
Pentachlorophenol, Technical, 87-86-5.	PEST	FEED	M	E. McConnell, 919-541-3267.	349	M: 0,100,200 PPM
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 07/88						
Benzofuran, 271-89-6	INTR	GAV	RM	R. Irwin, 919-541-3340		FR&MM: 0,60,120, MR: 0,30,60, FM: 0,120,240 MG/KG
Hydroquinone, 123-31-9	REAG	GAV	RM	F. Kari, 919-541-2926		R: 0,25,50, M: 0,50,100 MG/KG
Alpha-Methylbenzyl Alcohol, 98-85-1.	COSM	GAV	RM	M. Dieter, 919-541-3368		R&M: 0,375,750 MB/KG
Nalidixic Acid, 389-08-2	PHAR	FEED	RM	J. French, 919-541-7790		R&M: 0,200,400 PPM
Pentaerythritol Tetranitrate, 78-11-5.	PHAR	FEED	RM	J. Bucher, 919-541-4532		FR: 0,6200,12500, MR&M: 0,25000,50000 PPM
Phenylbutazone, 50-33-9	PHAR	GAV	RM	F. Kari, 919-541-2926		R: 0,50,100, M: 0,150,300 MG/KG
Rhodamine 6G, 989-38-8.	DYE	FEED	RM	J. French, 919-541-7790		R: 0,120,250, FM: 0,500,1000, MM: 0,1000,2000 PPM
Succinic Anhydride, 108-30-5.	INTR	GAV	M	R. Melnick, 919-541-4142.		MM: 0,50,100, FM 0,5,10 MG/KG
Succinic Anhydride, 108-30-5.	INTR	GAV	R	R. Melnick, 919-541-4142.		R: 0,50,100 MG/KG
Tetranitromethane, 509-14-8.	ENVH	INHAL	RM	J. Bucher, 919-541-4532		R: 0,2,5, M: 0,0.5,2 PPM
Toluene (Nitration Grade), 108-88-3.	INTR	INHAL	RM	J. Huff, 919-541-3780		R: 0,600,1200, M: 0,120,600,1200 PPM
Vinyl Cyclohexene Diepoxide, 106-97-6.	INTR	SP	RM	R. Chhabba, 919-541-3386.		R: 0,50,100, M: 0,25,50,100 MG/ML
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 11/88						
Aleyl Glycidyl Ether, 106-92-3.	SOLV	INHAL	RM	G. Boorman, 919-541-3440.		R&M: 0,5,10 PPM
Benzaldehyde, 100-52-7	INTR	GAV	RM	J. Bishop, 919-541-1876		R&MM: 0,200,400, FM: 0,300,600 MG/KG
Chloroacetophenone (CN), 532-27-4.	MLTR	INHAL	RM	R. Melnick, 919-541-4142.		R:),1,2, M: 0,2,4 MG/M3
Chloroacelophenone (CN) 532-27-4.	MLTR	INHAL	RM	R. Melnick 919-541-4142		R: 0,1,2 M: 0,2,4 MG/M3
O-Chlorobenzalmalononitrile (CS), 2698-41-1.	MLTR	INHAL	RM	K. Abdo, 919-541-7819		R: 0,.075,.24,.75, M: 0,.75,1.5 MG/M3
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW 03/89						
D-Carvone, 2244-16-8	COSM	GAV	RM	J. Roycroft, 919-541-3627.		R: 0,175,375, M: 0,375,750 MG/KG
3.3'-Dimethoxybenzidine, 119-90-4.	DYE	WATER	R	J. Mennear, 919-541-4142.		R: 0,80,170,330 PPM
Epinephrine Hydrochloride, 55-31-2.	PHAR	INHAL	RM	J. Roycroft, 919-541-3627.		R: 0,1.5,5.0, M: 0,1.5,3.0 MG/M3
Ethylene Thiourea, 96-45-7.	PEST	FEED	RM	R. Chhabra, 919-541-3386.		R: 0,25,83,250, M: 0,100,333,1000 PPM
Vinyl Toluene, 25013-15-4.	SOLV	INHAL	RM	G. Boorman, 919-541-3440.		R: 0,100,300, M: 0,10,25 PPM

Abbreviations used:
USE Primary Use Category: COSM Cosmetics, DYE Used as or in the Manfuacture of Dyes, Inks and Pigments, ENVH Environmental (Air/Water) Pollutants, FOOD Food and Food Additives, INTR Chemical Intermediate or Catalyst, MLTR Used for military or Policing Purposes, NATL Naturally Occurring Substances, PEST Pesticides, General or Unclassified, PHAR Pharmaceuticals, PNT Paint Ingredient, REAG Laboratory Reagents, SOLV Vehicles and Solvents.
ROUTE Route of Administration: FEED Oral in Feed, GAV Oral, Gavage, INHAL Inhalation, SP Skin Paint, WATER Oral with Water.
SPEC Species: R=Rate, M=Mice.

[FR Doc. 87-22217 Filed 9-24-87; 8:45 am]
BILLING CODE 4140-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Part S is being revised. Part S (last amended at 52 FR 10815 of April 3, 1987) was previously revised to establish

Chapters S1, S2, S3, S4 and S5 to reflect the designation of the Deputy Commissioners for Programs, Operations, Systems, Policy and External Affairs, and Management and Assessment as line officials responsible for directing major organizational components. That same notice deleted the existing chapters of Part S in their entirety. That part is being amended to reflect the insertion of most of the previously existing chapters as subchapters of Chapters S1 through S5.

The changes are as follows: 1. Chapter S1 is amended to include two Subchapters, S1M, the Office of Management, Budget, and Personnel and S1L, the Office of Assessment. Previous Chapter SM, the Office of Management, Budget, and Personnel, should be inserted in its entirety as new subchapter S1M. Previous Chapter SL, the Office of Assessment, should be inserted in its entirety as new Subchapter S1L.

2. Chapter S2 is amended to include two subchapters, S2P, the Office of Central Operations and S2D, the Office of the Regional Commissioner. Previous Chapter SP, the Office of Central Operations, should be inserted in its entirety as new Subchapter S2P.

Previous Chapter SD, the Office of the Regional Commission, should be inserted in its entirety as new Subchapter S2D.

3. Chapter S3 is amended to include six Subchapters: S3H, the Office of Legislative and Regulatory Policy, S3B, the Office of Retirement and Survivors Insurance, S3C, the Office of Disability, S3E, the Office of Supplemental Security Income, S3N, the Office of the Actuary and S3G, the Office of Hearings and Appeals. Previous Chapter SH, the Office of Legislative and Regulatory Policy, should be inserted in its entirety as new Subchapter S3H.

Previous Chapter SV, the Office of Retirement and Survivors Insurance, should be inserted in its entirety as new Subchapter S3B.

Previous Chapter SJ, the Office of Disability, should be inserted in its entirety as new Subchapter S3C.

Previous Chapter SW, the Office of Supplemental Security Income, should be inserted in its entirety as new Subchapter S3E.

Previous Chapter SN, the Office of the Actuary, should be inserted in its entirety as new Subchapter S3N. Previous Chapter SG, the Office of Hearings and Appeals, should be inserted in its entirety as new Subchapter S3G.

4. Chapter S4 is amended to include five Subchapters: S4Y, the Office of Information Systems, S4Q, the Office of Strategic Planning and Integration; S4U, the Office of System Integration, S4B, the Office of System Operations and S4T, the Office of System Requirements.

Previous Chapter SY, the Office of Information Systems, should be inserted in its entirety as new Subchapter S4Y.

Previous Chapter SQ, the Office of Planning, Support and Integration should be retitled as the Office of Strategic Planning and Integration and inserted in its entirety as new Subchapter S4Q.

Previous Chapter SU, the Office of System Integration, should be inserted in its entirety as new Subchapter S4U. Previous Chapter SB, the Office of System Operations, should be inserted in its entirety as new Subchapter S4B.

Previous Chapter ST, the Office of System Requirements should be inserted in its entirely as new Subchapter S4T.

5. Chapter S5 is amended to include two subchapters, S5E, the Office of Governmental Affairs and S5R, the Office of Policy.

Previous Chapter SE, the Office of Governmental Affairs, should be inserted in its entirety as new Subchapter S5E.

Previous Chapter SR, the Office of Policy, should be inserted in its entirety as new Subchapter S5R.

Dated: September 17, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-22137 Filed 9-24-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Establishing Tentative Closing Date for Transmittal of Applications Under Water Resources Research Grant Program for Fiscal Year (FY) 1988

Applications are invited for water research projects under the Water Resources Research Grant Program.

Authority for this program is contained in section 105 of Pub. L. 98-242, Water Resources Research Act of 1984. (42 U.S.C. 10301-10309)

The purpose of this program is to provide matching grants for research concerning any aspect of water resource-related problems deemed to be in the national interest.

Applications may be submitted by water resources research institutes and other qualified educational institutions, private foundations, private firms, individuals, and agencies of State and local governments.

Closing Date for Transmittal of Applications: Applications are tentatively due on or before January 22, 1988. The announcement will state the actual due date for receipt of the applications.

Program Information: This program supports research related to the following general areas of national interest: (1) Aspects of the hydrologic cycle; (2) supply and demand for water; (3) demineralization of saline and other impaired waters; (4) conservation and best use of available supplies of water and methods of increasing such supplies; (5) water reuse; (6) depletion and degradation of groundwater supplies; (7) improvements in the productivity of water when used for agricultural, municipal, or commercial purposes; and (8) the economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems.

Application Forms: The announcement is expected to be available on or about October 12, 1987, and may be obtained by writing to the U.S. Geological Survey, Attn: Melissa Calloway, MS 205C, Branch of Procurement and Contracts, 12201 Sunrise Valley Drive, Reston, VA 22092 and requesting a copy of announcement 7336. All organizations that applied for a FY 1987 award, all Historically Black Colleges and Universities, and all organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the announcement.

Further Information: For further information contact Frank Coley, Branch of Research, Grants, and Contracts, Water Resources Division, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703-648-6810.

(Catalog of Federal Domestic Assistance Number 15.806)

Date: September 15, 1987.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 87-22159 Filed 9-24-87; 8:45 am]

BILLING CODE 4310-3-M

Bureau of Land Management

[NV-930-07-4212-24; N-33613]

Airport Lease; Nevada; Correction

September 11, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction; Notice of Termination of Segregative Effect.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Ben Collins, District Manager, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 388–6403.

SUPPLEMENTARY INFORMATION: FR Doc. 87–20003, appearing in 52 FR 32968 on September 1, 1987, erroneously provided for termination of the segregative effect of the lands described therein and stated that the lands would be open to the operation of the public land laws and mining laws at 10:00 a.m. on October 1, 1987. Said notice is hereby corrected to read that, pursuant to Pub. L. 99–548, October 27, 1986, (100 Stat. 3061), the lands described therein will remain segregated from all forms of entry and appropriation under the public land laws, including the mining laws. Public Law 99–548 also segregates the subject lands from operation of the mineral leasing and geothermal leasing laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87–22178 Filed 9–24–87; 8:45 am]

BILLING CODE 4310–HC–M

[CO–010–87–4133–17]

Road Closure and Restriction To Entry and Use; White River Resource Area, CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of road closure and restriction to entry and use.

SUMMARY: Pursuant to 43 CFR Part 8364 the BLM will close or restrict certain roads located on public lands in the White River Resource Area:

Blue Mountain Area approximately 8.4 miles of road closed and 17.8 miles of road restricted.

Township 4 North, Range 102 West

Sections 7, 8, 17, 18, 19, 20

Township 4 North, Range 103 West

Sections 10, 12, 13, 14, 15, 23, 24

Township 5 North, Range 102 West

Sections 19, 31, 32

Township 5 North, Range 103 West

Sections 24, 25, 26, 35

Certain roads on public land in the above described area will be closed to public access, restricted to use by permit only, or restricted to use by vehicles which are 45 inches or less in width. This road closure and restriction will be in effect for a period from October 1, 1987 to July 15, 1988. All motorized vehicular uses in this area will be restricted to prevent excessive erosion of fragile soils, provide protection of wildlife values and habitat in the area, protect public safety and prevent interference with oil and gas exploration activity in the area. Administrative motorized vehicular access by Federal and State agencies, private landowners within the area and access associated with oil and gas activity may be approved for certain roads by the authorized officer.

DATES: This action is effective October 1, 1987, and will remain in effect until July 15, 1988.

ADDRESSES: Maps showing the location of and information pertaining to the above closures and restrictions will be available at the BLM White River Resource Area Office in Meeker, Colorado; BLM Craig District Office in Craig, Colorado; Dinosaur National Monument Headquarters in Dinosaur, Colorado; and on County Road 16 and the Dinosaur National Monument Access Road.

FOR FURTHER INFORMATION CONTACT: B. Curtis Smith, Area Manager, BLM White River Resource Area, P.O. Box 928, Meeker, Colorado 81641, (303) 878–3601.

Dated: September 14, 1987.

B. Curtis Smith,

Area Manager.

[FR Doc. 87–21774 Filed 9–24–87; 8:45 am]

BILLING CODE 4310–JB–M

[WY–920–07–4111–15; W–75904]

Oil and Gas Lease; Proposed Reinstatement of Terminated Lease in Wyoming

September 18, 1987.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–75904 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–75904 effective May 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–22116 Filed 9–24–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–07–4111–15; W–59219]

Oil and Gas Lease; Proposed Reinstatement of Terminated Lease in Wyoming

September 18, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–59219 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–59219 effective June 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–22117 Filed 9–24–87; 8:45 am]

BILLING CODE 4310–22–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent to Engage in Compensated Intercorporate Hauling Operations; Kraft Inc., et al.

September 22, 1987.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and address of principal office: Kraft, Inc., Kraft Court, Glenview, IL 60025.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

A. A. C. Oils Corp. (Delaware)

B. American Fruit & Produce Co., Inc. (Minnesota)
C. Avoset Corp. (Delaware)
D. Celestial Seasonings, Inc. (Delaware)
E. Celestial Transport, Inc. (Colorado)
F. Central Foods Co. (Delaware)
G. Cheese Analog Corp. (Delaware)
H. Chiffon Corp. (Delaware)
I. Consolidated Distribution Center, Inc. (Delaware)
J. Craig Distributing Company (Missouri)
K. Duracell, Inc. (Delaware)
L. Duracell, International, Inc. (Delaware)
M. Flying Foods International, Inc. (New York)
N. Frostex Foods, Inc. (Texas)
O. Holleb & Company (Illinois)
P. I. Feldman & Sons (Washington, DC)
Q. Mrs. Tucker Corp. (Delaware)
R. Pollio Dairy Products Corporation (New York)
S. Purity Dairy Corp. (Delaware)
T. Stagecoach Express, Inc. (Illinois)
U. Seven Seas Salad Dressing Corp. (Delaware)
V. Texas Food Oils Corp. (Delaware)
W. The All American Gourmet Company (Delaware)
X. Tombstone Pizza Corporation (Wisconsin)
Y. Westman Commission Company (Colorado)

Noreta R. McGee,

Secretary.

[FR Doc. 87-22198 Filed 9-24-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31099]

Railroad Operation; R. Lawrence McCaffrey, Jr.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts R. Lawrence McCaffrey, Jr., from the requirements of 49 U.S.C. 11322 for Mr. McCaffrey, a director of Otter Tail Valley Railroad Company, to become a director of the Kiamichi Railroad Company, Inc., the Maryland and Delaware Railroad Company and the Arkansas and Missouri Railroad Company.

DATES: This exemption will be effective on October 25, 1987. Petitions to stay must be filed by October 5, 1987 and petitions for reconsideration must be filed by October 15, 1987.

ADDRESSES: Send petitions referring to Finance Docket No. 31099 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Karen C. Reed, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing limpaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: September 18, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22199 Filed 9-24-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30883]

Railroad Operations; Soo Line Railroad Co.; and Chicago and North Western Transportation Co.

On May 26, 1987, the Soo Line Railroad Company (Soo) filed a notice of exemption under 49 CFR 1180.2(d)(5) for a joint project with the Chicago and North Western Transportation Company (C&NW) to relocate a line of railroad in Madison, WI. Soo and C&NW each own and operate a line of railroad in Madison.

The joint project involves the following elements:

(1) *Trackage Rights.* Soo will exercise trackage rights, acquired from C&NW pursuant to an agreement dated September 1, 1986, over C&NW's parallel line which is in close proximity to Soo's line. The trackage rights are between C&NW's milepost 138.25 and milepost 140.6 and between C&NW's milepost 140.6 and milepost 79.1. Soo also will exercise trackage rights pursuant to an agreement dated March 24, 1987, over another C&NW parallel line between C&NW's milepost 80.7 and milepost 81.25 within Madison. Once Soo's trackage rights are effective, it will reroute its overhead traffic over the C&NW line, and will continue to serve shippers over the two parallel lines.[1]

(2) *Partial Abandonment.* Soo will reroute its overhead traffic and remove its trackage and equipment from its present lines located between mileposts 166.72 and 32.91 and between mileposts 166.47 and 164.44, a distance of approximately 3.28 miles. Abandonment and relocation of operations by way of the C&NW trackage rights will result in the avoidance of added expenses for maintenance of crossings caused by road improvements by the City of Madison. Soo will refrain from removing all bridges, culverts and structures for a period of 180 days after the effective date of this exemption.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. Accordingly, it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions under 49 U.S.C. 10505 in *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. *See D.T. & I.R.—Trackage Rights*, 363 I.C.C. 878 (1981).

Moreover, in Finance Docket No. 30639, *Louisiana & Ark. Ry. Co.—Trackage Rights Exemption—Illinois C.G. R.R. Co. and New Orleans Term. Co.* (not printed), served April 17, 1985, the abandonment of approximately 6 miles of track was exempted under the provisions of § 1180.2(d)(5) as an incident to a line relocation proposal. Similarly, the facts of this case show that the proposed abandonment is incidental to a line relocation and should be exempted under § 1180.2(d)(5).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). Any employees affected by the proposed abandonment will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

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[1] Soo had previously granted trackage rights to the Wisconsin and Calumet Railroad Company, Inc. (W&C) over the to-be-abandoned trackage. W&C has subsequently acquired substitute trackage rights over one of the same parallel C&NW lines that Soo will be operating over and the trackage rights agreement between Soo and W&C has been canceled. Consequently there will be no adverse effect on W&C as a result of this transaction. W&C has filed a notice of exemption in F.D. 31087 involving relocation of its trackage rights.

Use of this exemption is further conditioned (1) by requiring Soo to consult with the Wisconsin Departments of Transportation and Natural Resources prior to any salvage activities on the line, and (2) by requiring Soo to consult with the District Corps of Army Engineers in the event that its bridges over the Yahara River are to be salvaged.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: September 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen King,

Acting Secretary.

[FR Doc. 87-21844 Filed 9-24-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31087]

Railroad Operations; Wisconsin & Calumet Railroad Co., Inc. and Chicago and North Western Transportation Co.

On August 26, 1987, Wisconsin and Calumet Railroad Company, Inc. (WIC), filed a notice of exemption under 49 CFR 1180.2(d)(5) for WIC's relocation of its operations through acquisition of overhead trackage rights over a line of railroad between Chicago and North Western Transportation Company's ("C&NW") milepost 138.25 and C&NW's milepost 81.25, between C&NW's milepost 81.25 and C&NW's milepost 80.7, and between C&NW's milepost 80.7 and C&NW's milepost 79.7 at Madison, WI.

The joint project here involves the following elements:

(1) *Trackage rights acquisition.* WIC will exercise trackage rights acquired from C&NW pursuant to an agreement dated October 1, 1986, over C&NW's parallel line of railroad which is in close proximity to Soo's line presently hosting WIC's trackage rights. This acquisition is being done in conjunction with the relocation of Soo Line Railroad Company's ("Soo") line in Madison. Under the relocation, Soo will abandon a portion of its line over which WIC currently has trackage rights. Soo's Notice of Exemption has been filed as Finance Docket No. 30883.

(2) *Trackage rights discontinuance.* WIC will reroute its overhead traffic and discontinue use of trackage rights over the to-be-abandoned Soo line between Soo milepost 166.72 and Soo milepost 166.47 and between Soo milepost 166.47 and Soo milepost 166.44 at Madison. These rights were effectively canceled by Soo pursuant to the Soo/WIC agreement effective January 9, 1987.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. Accordingly, it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions under 49 U.S.C. 10505 in *Railroad Consolidation Procedures,* 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981).

Moreover, in Finance Docket No. 30639, *Louisiana & Ark. Ry. Co.—Trackage Rights Exemption—Illinois C.G.R.R. Co. and New Orleans Term. Co.* (not printed), served April 17, 1985, the abandonment of approximately 6 miles of track was exempted under the provisions of § 1180.2(d)(5) as an incident to a line relocation proposal. Similarly, the facts of this case show that the discontinuance is incidental to a line relocation and should be exempted under § 1180.2(d)(5).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980). Any employees affected by the discontinuance will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: September 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 87-21845 Filed 9-24-87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association (RLEA) has requested the imposition of labor protective conditions. As an exemption is sought from the requirements of 49 U.S.C. 11343, such conditions have been routinely imposed.

DEPARTMENT OF JUSTICE

Agency Information Collection Activities Under OMB Review

September 20, 1987.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form and/or supporting documentation is available; (2) the office, board or division of the Department of Justice issuing the form or administering the collection; (3) the title of the form/collection; (4) the agency form number, if any; (5) how often the report must be filled out or the information is to be collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents; (8) an estimate of the total public burden hours associated with the collection; (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry and to the Department's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so advise the OMB reviewer and the Department's Clearance Officer of your intent as early as possible.

The Department of Justice Clearance Officer is: Larry E. Miesse and can be reached on (202) 633-4312.

New Collections

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Guam Visa Waiver Information
(4) I-736
(5) On occasion
(6) Individuals or households. Pub. L. 99-396 provides for certain aliens to be exempted from the nonimmigrant visa requirement is seeking entry into and stay on Guam as a vistor for a maximum of fifteen days provided no potential threat exists

to the welfare, safety or security of the United States, its territories and commonwealths.
(7) 500,000 annual responses, .083 hours burden per response.
(8) 41,500 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Guam Visa Waiver Agreement
(4) I–760
(5) One time
(6) Businesses or other for-profit, non-profit institutions, small businesses or organizations. Pub. L. 99–396 provides for certain aliens to be exempted from the nonimmigrant visa requirement is seeking entry into and stay on Guam as a visitor for a maximum of fifteen days provided no potential threat exists to the welfare, safety or security of the United States, its territories and commonwealths. Form is used by carrier to establish agreement.
(7) 25 annual responses, .083 hours burden per response.
(8) 3 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Revision of a Currently Approved Collection

(1) Larry E. Miesse, (2u2) 633–4312
(2) Office of Juvenile Juistice and Delinquency Prevention, Office of Justice Programs, Department of Justice
(3) Compliance Monitoring Report
(4) N/A
(5) Annually
(6) State or local governments. This monitoring report provides the only measurement of participating State's compliance with the major mandates of the JJDP Act. The reported data is used to determine eligibility for Federal funds, to answer inquiries from the public, and to assist the Congress, OJJDP and the States in planning justice systems improvements.
(7) 52 annual responses, 3 burden hours per response plus 145 hours of annual recordkeeping burden for each respondent.
(8) 7,696 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Bureau of Justice Statistics, Department of Justice
(3) Capital Punishment Report of Inmates Under Sentence of Death
(4) NPS 8, 8A, 8B, 8C, 8L
(5) Annually
(6) State or local governments. This series collects data on the capital punishment statutes, population under a death sentence, and executions in State and Federal correctional institutions. The data are published annually for use by the Bureau of Justice Statistics, the Department of Justice, The Congress, the media and the general public.
(7) 2,196 annual responses, .365 burden hours per response.
(8) 562 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, (202) 633–4312
(2) Bureau of Justice Statistics, Department of Justice
(3) National Crime Survey
(4) NCS 1, 2, 7, 500
(5) Semi-annually
(6) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amount of crime committed against households and individuals throughout the Country.
(7) 296,280 annual responses, .21 burden hours per response.
(8) 62,066 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, (202) 633–4312
(2) Bureau of Justice Statistics, Department of Justice
(3) National Crime Survey
(4) NCS 1, 2, 7, 500
(5) Semi-annually
(6) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amount of crime committed against households and individuals throughout the Country.
(7) 296,280 annual responses, .21 burden hours per response.
(8) 62,066 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Student Status Form
(4) I–721
(5) Quarterly
(6) State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations. Used by educational institutions to confirm or correct Service records regarding aliens believed to be legally in the United States for the purpose of obtaining an education at a specific school.
(7) 40,000 responses, I burden hours per response.
(8) 40,000 estimated total public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application To File Petition for Naturalization
(4) N–400
(5) On occasion.
(6) Individuals or households. Data required to establish petitioner's eligibility for naturalization and to enable designated officers of the Immigration and Naturalization Service to make appropriate recommendations to the Naturalization Court.
(7) 500,000 annual responses, 1 burden hours per response.
(8) 500,000 estimated total public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340
(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application To File Petition for Naturalization on Behalf of Child
(4) N–402
(5) On occasion
(6) Individuals or households. Data required to establish petitioner's eligibility for naturalization to enable designated officers of the Immigration and Naturalization Service to make appropriate recommendations to the Naturalization Court.
(7) 20,000 annual responses, .5 burden hours per response.
(8) 10,000 estimated total public burden hours
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Larry E. Miesse,

Department Clearance Officer.

[FR Doc. 87–22115 Filed 9–24–87; 8:45 am]

BILLING CODE 4410–10–M

Bureau of Prisons

Intent To Prepare Draft Environmental Impact Statement (DEIS); Construction of a Federal Correctional Facility; East Peoria, Tazewell County, IL

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new federal correctional institution with an adjacent satellite prison camp is needed in its system. A 320-acre tract of land at the convergence of Mueller Road and Pinecrest Drive adjacent to the City of East Peoria will be evaluated. The proposal calls for the construction of a 600 to 700 bed facility to house medium security inmates and a 150 to 200 bed camp to house minimum security inmates.

Approximately 80 of the 320 acres would be used for road access, inmate housing, administration and program spaces and services and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of East Peoria. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by:

Kay King, Executive Assistant Administration Division, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 724–3230.

Dated: September 25, 1987.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 87–22065 Filed 9–24–87; 8:45 am]

BILLING CODE 4410–05–M

Intent To Prepare Draft Environmental Impact Statement (DEIS); Construction of Federal Correctional Facility; Manchester, Clay County, KY

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justic, Federal Bureau of Prisons has determined that a new secure 600 to 700 bed correctional institution with an adjacent 150 to 200 bed satellite prison camp is needed in its system. A site is currently being evaluated.

A tract of land totaling 250 acres is required. Of this, approximately 80 acres would be used for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Clay County. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by:

Kay King, Executive Assistant, Administration Division, U.S. Bureau of Prisons, 320 First Street NW., Washington, DC 20534, Telephone: (202) 724–3230.

Dated: September 25, 1987.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 87–22066 Filed 9–24–87; 8:45 am]

BILLING CODE 4410–05–M

Intent To Prepare Draft Environmental Impact Statement (DEIS); Construction of Federal Correctional Facility; Taft, CA

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new federal correctional institution with an adjacent satellite prison camp is needed in its system. A 320-acre tract of land north of the City of Taft will be evaluated. The proposal calls for the construction of a 600 to 700 bed facility to house medium security inmates and a 150 to 200 bed camp to house minimum security inmates.

Approximately 80 of the 320 acres would be used for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location

convenient to the citizens of Taft. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend.

In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by:

Kay King, Executive Assistant
Administration Division, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 724–3230.

Dated: September 25, 1987.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 87–22064 Filed 9–24–87; 8:45 am]

BILLING CODE 4410–05–M

Intent To Prepare Draft Environmental Impact Statement (DEIS); Construction of a Federal Correctional Facility; Three Rivers, TX

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new financial correctional institution with an adjacent satellite prison camp is needed in its system. A 300-acre tract of land west of the community of Three Rivers near the Choke Canyon Reservoir will be evaluated. The proposal calls for the construction of a 600 to 700 bed facility to house medium security inmates and a 150 to 200 bed camp to house minimum security inmates.

Approximately 80 of the 300 acreas would be used for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunties for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Three Rivers, Texas. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by:

Kay King, Executive Assistant
Administration Division, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 724–3230.

Dated: September 25, 1987.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 87–22067 Filed 9–24–87; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–20,048]

General Electric Wiring Device Warwick, Rhode Island; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 31, 1987 in response to a worker petition received on August 31, 1987 which was filed by the International Union of Electrical Workers on behalf of workers at General Electric Wiring Device, Warwick, Rhode Island.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

The petitioners are encouraged to submit a new petition at any time they wish to cover unemployed workers or workers threatened with the loss of their jobs.

Signed at Washington, DC this 17th day of September, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–22177 Filed 9–24–87; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage

determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Georgia:
GA87-24—pp.—270c-270d
GA87-25—pp.—270e-270f
GA87-26—pp.—270g-270h
GA87-27—pp.—270i-270j
GA87-28—pp.—270k-270l
GA87-29—pp.—270m-270n
GA87-30—pp.—270o-270p

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice Choctaw, Clarke, Conecuh, Escambia, Greene, Marengo, Monroe, Pickens, Sumter, Talladega, Washington and Wilcox Counties, Alabama from General Wage Determination Nos. A187-17 and AL87-18 dated January 2, 1987.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize the project determination procedure by submitting a SF-308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, when the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL87-17 (Jan. 2, 1987)—pp. 35-38
AL87-18 (Jan. 2, 1987)—pp. 39-41
AL87-20 (Jan. 2, 1987)—p. 45
Georgia:
GA87-9 (Jan. 2, 1987)—pp. 243-244
GA87-10 (Jan. 2, 1987)—pp. 245-246
GA87-11 (Jan. 2, 1987)—pp. 247-248
GA87-12 (Jan. 2, 1987)—pp. 249-250
Pennsylvania:
PA87-3 (Jan. 2, 1987)—p. 868
PA87-5 (Jan. 2, 1987)—pp. 884-886
PA87-6 (Jan. 2, 1987)—pp. 898-903
PA87-9 (Jan. 2, 1987)—pp. 926-929
PA87-24 (Jan. 2, 1987)—pp. 1012-1013
Virginia: VA87-14 (Jan. 2, 1987)—p. 1156
Listing by Location (index)—pp. xxi-xxii, pp. xxiv-xxvii
Listing by decision (index)—pp. li-lxii

Volume II

Kansas:
KS87-8 (Jan. 2, 1987)—p. 356
New Mexico:
NM87-1 (Jan. 2, 1987)—pp. 690-705
Oklahoma:
OK87-16 (Jan. 2, 1987)—p. 912b
Texas:
TX87-15 (Jan. 2, 1987)—pp. 958-959

Volume III

Colorado:
CO87-4 (Jan. 2, 1987)—p. 119

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC. This 18th Day of September 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-21909 Filed 9-24-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Renewal and Transfer of DOE/NSF Nuclear Science Advisory Committee to the National Science Foundation

Pursuant to the Federal Advisory Committee Act Pub. L. 92-463), the Assistant Director for Mathematical and Physical Sciences has certified that renewal of the DOE/NSF Nuclear Science Advisory Committee and transfer from the Department of Energy to the National Science Foundation is in the public interest in connection with the performance duties imposed upon the National Science Foundation. This determination follows consultation with the Committee Management Secretariat, General Services Administration and is consistent with the Federal Advisory Committee Act and other applicable regulations.

The DOE/NSF Nuclear Science Advisory Committee (NSAC) will provide advice upon request to both the Department of Energy and the National Science Foundation on scientific priorities within the field of basic

nuclear research. Basic nuclear research is understood to encompass experimental and theoretical investigations of the fundamental interactions, properties, and structure of atomic nuclei. NSAC activities will include assessment of and recommendations concerning:

a. Objectives, directions, and development of the field of basic nuclear research;

b. Adequacy of present facilities and the need and relative priority for new facilities;

c. Facility and instrumentation development programs needed to advance the field;

d. Institutional balance of support for optimized scientific productivity and training of nuclear scientists;

e. Relationships of basic nuclear research with other fields of science.

Authority for the DOE/NSF Nuclear Science Advisory Committee shall expire on September 23, 1989 unless formal determination is made that continuance is in the public interest.

September 21, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-22110 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Advisory Panel for Cell Biology

Name: Advisory Panel for Cell Biology.

Date and Time: Wednesday, Thursday, and Friday, October 14, 15, and 16, 1987, from 9:00 a.m. to 5:00 p.m.

Place: Room 642, 1800 G Street NW., Washington, DC. 20550.

Type of Meeting: Closed.

Contact Person: Dr. M. V. Parthasarathy, Program Director, Cell Biology Program, Room 321. Telephone: 202-357-7474.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

September 21, 1987.

M. Rebecca Winkler

Committee Management Officer.

[FR Doc. 87-22106 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Advisory Panel for Developmental Biology

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Developmental Biology.

Date and Time: October 14, 15, 16, 1987, starting at 9:00 a.m. to 5:30 p.m.

Place: State Plaza Hotel 2117 E Street NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Ralph Hecht, Program Director or Dr. Judith Plesset, Assistant Program Director, Developmental Biology Program, Room 321, Telephone 202/357-7989.

Purpose of Advisory Panel: To provide advice and recommendations concerning support of research in developmental biology.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries, and the personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

September 21, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-22107 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

Meeting of DOE/NSF Nuclear Science Advisory Committee

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: October 16, 1987, 12:00 to 2:00 pm.

Place: Conference Room C, Hyatt Regency Hotel, 2 Albany Street, New Brunswick, New Jersey 08901.

Type of Meeting: Open

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda: Report on the budgets and status of the NSF nuclear physics program.

Report on the budgets and status of the DOE nuclear physics program.

Status report on the Subcommittee on Nuclear Theory.

Disposition of the report from the Manpower Subcommittee.

Report of the working group on inflation.

Public comment.

September 21, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-22109 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Social and Developmental Psychology Advisory Panel

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Social and Developmental Psychology.

Date and Time: October 15-16, 1987: 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW. Room 642, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Jean B. Intermaggio, Program Director, Social and Developmental Psychology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9485.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support of research in social and developmental psychology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries, and the personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

September 21, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-22108 Filed 9-24-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237/249]

Environmental Assessment and Finding of No Significant Impact; Commonwealth Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of exemptions from the requirements of Section III.G.1 of Appendix R to 10 CFR Part 50 to the Commonwealth Edison Company (CECo) (the licensee) for the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions from requirements of Section III.G.1 of Appendix R to 10 CFR Part 50 relating to proposed repairs, i.e., pulling of fuses and/or replacing blown fuses, for achieving and maintaining hot shutdown of the plant following certain fire scenarios. The licensee requested exemption from the III.G.1 requirement, that one train of systems needed for hot shutdown be free of fire damage, insofar as the requirement is interpreted as disallowing repairs for achieving and maintaining hot shutdown. these exemptions were determined by the licensee to be necessary at Dresden during a reverification program initiated in response to Commission clarification of Appendix R requirements.

The Need for the Proposed Action

When the reverification program indicated the need for additional modifications, necessary engineering and procurement were required by CECo. Among other things, the licensee proposed an alternate safe shutdown procedure which required that fuses be pulled or blown fuses replaced in order to achieve and maintain hot shutdown.

Environmental Impacts of the Proposed Action

The proposed action is related to the method of achieving and maintaining hot shutdown in case of a fire in certain areas. The exemption would permit certain fuses to be pulled or certain fuses to be replaced. The exemption would be necessary for the implementation of hot shutdown. Thus, fire-related radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. The proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact assocated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with Section III.G.1 of Appendix R to 10 CFR Part 50 requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Dresden Units 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated August 10, 1984 as supplemented March 1, August 9 and September 18, 1985 and January 9, March 12, March 20 and May 30, 1986 and April 14, 1987. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda, Maryland this 18th day of September 1987.

For The Nuclear Regulatory Commission.

Marshall Grotenhuis,

Acting Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V, and Special Projects.

[FR Doc. 87-22181 Filed 9-24-87; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.1, Revision 2, "Use of Borosilicate-Glass Raschig Rings as a Neutron Absorber in Solutions of Fissile Material," describes procedures acceptable to the NRC staff for the prevention of criticality accidents in solutions of fissile material. The guide endorses the revised ANSI/ANS-8.5-1986, "Use of Borosilicate-Glass Raschig Rings as a Neutron Absorber in Solutions of Fissile Material."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 17th day of September 1987.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 87-22180 Filed 9-24-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service, Schedules A, B, and C; Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B,

and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on August 25, 1987 (52 FR 32087). Individual authorities established or revoked under Schedule A, B, or C between August 1, 1987, and August 31, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception was established:

Department of Navy

All positions at the Pacific Missile Range Facility, Barking Sands, Hawaii. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988. Effective July 29, 1987.

The following exception was revoked:

Department of Transportation

Positions at Washington National and Dulles International Airports that were filled before control of the airports was transferred to the Metropolitan Washington Airports Authority. Effective August 3, 1987.

Schedule B

The following exception was established:

Department of Commerce

Up to 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992. Effective August 7, 1987.

Schedule C

The following exceptions were established:

Department of Agriculture

One Private Secretary to the Administrator for Agricultural Marketing Service. Effective August 5, 1987.

One Confidential Assistant to the Administrator, for Animal and Plant Health Inspection Service. Effective August 7, 1987.

One Private Secretary to the Under Secretary for Small Community and Rural Development. Effective August 7, 1987.

One Special Assistant for Agricultural Labor to the Assistant Secretary for Economics. Effective August 10, 1987.

One Special Assistant to the Assistant Secretary for Marketing and Inspection Services. Effective August 17, 1987.

One Private Secretary to the Administrator, for Rural Electrification Administration. Effective August 17, 1987.

Department of Commerce

One Congressional Affairs Officer to the Assistant Director for External Affairs, Minority Business Development Agency. Effective August 8, 1987.

Department of Defense

One Personal and Confidential Assistant to the Assistant Secretary of Defense. Effective August 11, 1987.

One Private Secretary to the Deputy Under Secretary of Defense. Effective August 13, 1987.

One Staff Assistant to the Associate Director, Office of Presidential Personnel. Effective August 14, 1987.

One Speechwriter to the Assistant Secretary of Defense. Effective August 21, 1987.

One Director, Low-Intensity Conflict to the Deputy Assistant Secretary of Defense. Effective August 21, 1987.

Department of Education

One Special Assistant to the Assistant Secretary for Civil Rights. Effective August 10, 1987.

One Secretary's Regional Representative to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective August 11, 1987.

One Executive Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective August 11, 1987.

One Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective August 13, 1987.

One Staff Assistant (Typing) to the Director, Scheduling and Briefing Staff for the Office of the Secretary. Effective August 18, 1987.

One Confidential Assistant to the Chief of Staff and Counselor to the Secretary. Effective August 18, 1987.

One Executive Assistant to the Comptroller. Effective August 21, 1987.

One Confidential Assistant to the Director of Public Affairs. Effective August 21, 1987.

Department of Energy

One Staff Assistant to the Assistant Secretary for Management and Administration. Effective August 3, 1987.

One Legislative Affairs Specialist to the Director, Office of Congressional Affairs. Effective August 11, 1987.

One Staff Assistant to the Special Assistant to the Secretary. Effective August 20, 1987.

One Director, Public Liaison and Intergovernmental Affairs, to the Chairman, Federal Energy Regulatory Commission. Effective August 21, 1987.

One Supervisory Intergovernmental Affairs Specialist to the Director, Office of Communications. Effective August 24, 1987.

Department of Health and Human Services

One Special Assistant to the Director of Intergovernmental Affairs. Effective August 6, 1987.

One Confidential Assistant to the Associate Administrator for External Affairs. Effective August 17, 1987.

One Associate Commissioner for the Children's Bureau to the Commissioner, Administration for Children, Youth and Families. Effective August 20, 1987.

One Associate Commissioner, Head Start Bureau, to the Commissioner, Administration for Children, Youth and Families. Effective August 20, 1987.

One Special Assistant to the Director, Policy Development Staff, Social Security Administration. Effective August 20, 1987.

Department of Housing and Urban Development

One Special Assistant to the General Counsel. Effective August 5, 1987.

One Special Assistant to the Assistant Secretary for Housing. Effective August 7, 1987.

One Confidential Assistant to the President, Government National Mortgage Association. Effective August 7, 1987.

One Executive Assistant to the Deputy Assistant Secretary for policy, Financial Management and Administration, Office of Housing. Effective August 7, 1987.

One Staff Assistant to the Secretary. Effective August 13, 1987.

One Effective August 7, 1987.

One Confidential Assistant to the General Counsel. Effective August 18, 1987.

Department of Interior

One Special Assistant to the Assistant Secretary for Policy, Budget and Administration. Effective August 3, 1987.

One Secretary (Typing) to the Secretary of the Interior. Effective August 5, 1987.

Department of Justice

One Special Assistant to the Assistant Attorney General, Office of Legal Policy. Effective August 1, 1987.

One Special Assistant to the Assistant Attorney General, Civil Division. Effective August 1, 1987.

One Special Assistant to the Assistant Attorney General, Office of Justice Programs. Effective August 1, 1987.

One Social Science Program Manager to the Director, Office for Victims of Crime. Effective August 11, 1987.

One Attorney-Advisor (Special Assistant) to the Assistant Attorney General, Civil Division. Effective August 12, 1987.

One Special Assistant to the Attorney General. Effective August 13, 1987.

Department of Labor

One Executive Assistant to the Assistant Secretary for Labor-Management Standards. Effective August 20, 1987.

Department of State

One Supervisory Protocol Oficer to the Chief of Protocol. Effective August 17, 1987.

One Secretary (Stenography) to the Inspector General. Effective August 21, 1987.

One Special Assistant to the Legal Adviser. Effective August 26, 1987.

Department of Transportation

One Secretary (Stenography) to the Associate Administrator for Policy and International Aviation. Effective August 28, 1987.

One Confidential Assistant to the Administrator. Effective August 28, 1987.

One Intergovernmental Liaison Officer to the Director, Office of Intergovernmental and Consumer Affairs. Effective August 28, 1987.

Department of Treasury

One Travel Clerk to the Deputy Assistant Secretary for Administration. Effective August 7, 1987.

One Confidential Assistant to the Assistant Secretary (Legislative Affairs). Effective August 14, 1987.

One Confidential Assistant to the Assistant Secretary (Public Affairs and Public Liaison). Effective August 14, 1987.

Equal Employment Opportunity Commission

One Director, Legislative Affairs Staff, to the Director, Office of Communications and Legislative Affairs. Effective August 21, 1987.

Federal Home Loan Bank Board

One Assistant to the Board Member. Effective August 11, 1987.

General Services Administration

One Director, Office of the Executive Secretariat to the Administrator. Effective August 11, 1987.

U.S. International Trade Commission

One Staff Assistant to a Commissioner. Effective August 13, 1987.

One Staff Assistant to a Chairman. Effective August 26, 1987.

Pension Benefit Guaranty Corporation

One Staff Assistant to the Executive Director. Effective August 19, 1987.

Securities and Exchange Commission

One Program Specialist to the Regional Administrator in New York. Effective August 13, 1987.

Small Business Administration

One Special Assistant to the Associate Administrator for Business Development. Effective August 13, 1987.

One Special Assistant to the Regional Administrator. Effective August 17, 1987.

Veterans Administration

One Confidential Assistant to the Chief of Staff. Effective August 5, 1987.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–22205 Filed 9–24–87; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24932; File No. SR–CBOE–87–39]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Inc.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b), notice is hereby given that on August 31, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The CBOE proposes a new rule 8.14, which limits the affiliations of a designated primary market-maker (DPM).[1] The rule provides that no person or organization affiliated with a DPM may purchase or sell an option in a DPM's appointment except to reduce or liquidate positions with appropriate identification and floor official approval. The rule provides an exemption from this limitation in guidelines which follow the rule. These guidelines for exemption provide for what is commonly referred to as a "Chinese Wall."

The "Chinese Wall" guidelines call for (i) separate organization of the DPM and the affiliated firm, including separate books and records, separate financial compliance, no common control over the DPM's conduct, and only such general managerial oversight as not to conflict with or compromise the DPM's market maker responsibilities; and (ii) procedures to prevent the use of material non-public corporate or market information to influence the DPM's conduct and to avoid the misuse of DPM market information to influence the affiliated firm's conduct.

The firm seeking exemption is to submit to the Exchange a written statement setting forth: (i) Manner of complying with the foregoing guidelines, (ii) the firm individuals responsible for maintenance and surveillance of the procedures, (iii) that the DPM may not give special information to a broker affiliated with the firm; (iv) that the firm must disclose its affiliation with a DPM if it popularizes a security in which the DPM is registered as such; (v) that the firm will file information and reports required by the Exchange; (vi) that appropriate remedial actions will be taken for a breach of procedure; (vii) the procedures to ensure a separation of firm proprietary clearing activity to assure the "Chinese Wall" is not compromised; and (viii) that no individual associated with the firm may trade as market maker in a security on which the DPM has an appointment.

The firm compliance officer is to be notified if the DPM receives information which the guidelines prohibit, and what action should be taken, including giving up the appointment, or temporarily providing a replacement DPM. The compliance officer is to keep a written record of each such incident, and provide such records to the Exchange

[1] The CBOE DPM program recently approved in Securities Exchange Act Release No. 24934 (September 22, 1987), is published elsewhere in today's issue.

for review. No exemption is effective until granted by the Exchange in writing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change provides for a ninety day effective period for "Chinese Walls" so that member organizations with an integrated business will be able to be associated with designated primary market-makers ("DPM"), with the assurance that there are adequate controls to assure that the DPM will not have access to material non-public corporate or market information which the firm may possess, and to prevent the misuse by a firm of its DPM's non-public market information.

The guidelines provide procedures to be used in temporary DPM appointments where the DPM becomes "contaminated" following a breach of the "Chinese Walls." The guidelines also specify that a firm's procedures should insure that information regarding securities positions, trading activity and margin financing arrangements between the affiliated upstairs firm and the DPM should be available solely to senior management in the firm exercising general managerial oversight of the DPM. Once in place, these procedures will substantially lessen the need for the prohibitions contained in the rules discussed above to the extent they apply to upstairs firms affiliated with DPM's. The restrictions would remain in effect as to the DPM itself.

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 ("Exchange Act") and, in particular, section 6(b)(5) thereof, in that the proposal will enhance enforcement of Exchange rules and the Exchange Act. The rule change will also facilitate the entry of large diversified retail broker-dealers into becoming DPM's on the Exchange floor and in so doing will enhance depth and liquidity in the options market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Exchange Act. In support of its request, the CBOE notes that the proposed rules are very similar to the "Chinese Wall" provisions applicable to specialists at other exchanges. In addition, the CBOE has filed with the Commission a companion filing (File No. SR-CBOE-87-40) that provides for publication for notice and comment of the "Chinese Wall" provisions that would be implemented on a 90 day basis pursuant to this rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 [2] and the rules and regulations thereunder. The proposed "Chinese Wall" provisions are substantially similar to those in place at other exchanges [3] and are designed to ensure that a DPM will not have access to material non-public information possessed by its affiliated firm, and that a firm will not misuse its DPM's non-public information.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The CBOE wants to implement its Modified Trading System as soon as possible. Before appointing a DPM that is affiliated with an "upstairs firm," the CBOE must have adequate "Chinese Wall" provisions in place. The provisions outlined above have been approved for other exchanges and are identical to the standards in file number SR-CBOE-87-40. Until SR-CBOE-87-40 is approved, the interim standards should be sufficient.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [October 16, 1987].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

FR Doc. 87-22194 Filed 9-24-87; 8:45 am]

BILLING CODE 8010-01-M

[2] 15 U.S.C. 78f (1982).

[3] *See* Securities Exchange Act Releases Nos. 23768 (November 3, 1986), 51 FR 41183 (American and New York Stock Exchanges), and 24323 (April 10, 1987), 52 FR 12996 (Philadelphia Stock Exchange).

[Release No. 34-24934; File No. SR-CBOE-87-18, Amendments No. 1 and 2]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On May 4, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to establish a two year Modified Trading System ("MTS") pilot program that will allow the CBOE to assign a Designated Primary Market-Maker ("DPM") in any option class opened for trading at the Exchange after May 1, 1987. On July 21, 1987 the CBOE submitted Amendment

[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1986).

No. 1 to the proposal and submitted Amendment No. 2 on August 14, 1987.

The proposed rule change was noticed in Securities Exchange Act Release No. 24520 (May 27, 1987), 52 FR 21139 (June 4, 1987). No comments were received on the proposed rule change.

I. Introduction

The CBOE currently employs a competing market-maker system of trading on its floor. It is proposing an MTS pilot to determine whether a specialist-type trading system will enhance the CBOE's market-making capabilities in new options products and classes. As explained below, the proposed rule change will permit the CBOE to appoint a DPM, who has powers and responsibilities akin to a specialist, in new products and classes until CBOE determines that trading in the products or classes is sufficient to support a competing market maker system. The Exchange believes the program will increase the depth and liquidity of its markets, create long-term commitments by market-makers to option classes, generate greater flexibility in responding to varying market conditions, provide current quotes in all series, and encourage a continuous commitment to trade all option series. MTS is designed as a two-year pilot program, which should allow sufficient time for the CBOE and the Commission to evaluate the pilot and for the CBOE to determine whether to request permanent approval of the program.

The MTS program may be used in any option class opened for trading after May 1, 1987. Existing options classes and replacements thereof will continue to be traded in the CBOE's competitive market-maker trading system, except in classes in which MTS is authorized by a membership vote.[3]

II. Duties of the DPM

The DPM is a CBOE member who functions in approved classes as a market-maker, floor broker, and Order Book Official ("OBO"). The DPM will be exempt from Rule 8.8, which generally restricts members from acting as a market-maker and as a floor broker on the same business day. In acting as a market-maker, the DPM must fulfill all the obligations of a market-maker in his appointed option class or classes. In acting as a floor broker, and in the place of the OBO in appointed options classes, the DPM must continue to exert due diligence and fulfill all other obligations associated with these functions.[4]

The DPM's responsibilities are set forth in proposed Rule 8.13(c)(1)–(10). In addition to the normal obligations of a floor broker and a market-maker, the DPM is responsible for the dissemination of accurate market quotations and must honor those quotations for up to five contracts (or such other minimum number as set from time to time by the Committee). The DPM also must disseminate the algorithm for AutoQuote,[5] participate in automatic execution systems as applicable, and resolve trading disputes in accordance with Exchange rules. In addition to fulfilling general market-maker obligations under Rule 8.7, a DPM must be present at the trading post throughout every business day.

The proposal also requires the DPM, with respect to trading as a market-maker, to effect trades that correlate generally with the overall trading distribution of each series in an option class. The CBOE believes that the closer this correlation, the more likely the DPM is providing necessary depth and liquidity to the market-place. Whether a DPM's trading distribution is the same as the overall trading distribution in an option class, however, is not dispositive of whether the DPM satisfies his market making obligations. Other factors, such as whether the market-maker is providing proper pricing or sufficient size in quoted markets, will be considered.

The DPM must accord priority to orders he represents as floor broker over his activity as market-maker. He will, however, have the right as market-maker to participate pro rata with the trading crowd in trades that take place at the DPM's principal bid or offer. The DPM may not charge brokerage in any transaction in which he participates as market-maker and is required to disclose book information under Exchange Rule 7.8.

The DPM is limited in effecting stop or stop limit orders which may be in the limit order book or which he represents as floor broker. He only may be party to the election of a stop or stop limit order when the executing transaction is made with approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing sale.[6]

In appointed classes, the DPM will perform all functions of the OBO, pursuant to CBOE Rules 7.3 through 7.10. In appointed options classes, the DPM may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed on the book, and represent such orders as floor broker. The DPM may not, however, represent discretionary orders [7] as floor broker and all orders in the DPM's possession that are eligible to be booked must be booked.

The Exchange continues to be responsible for the maintenance, handling and billing of the book. In this regard, the Exchange will designate and compensate the DPM for serving in the function of OBO. In that function, the DPM shall assure satisfactory levels of staffing. The Exchange may provide personnel to the DPM for handling this function, and may charge the DPM a reasonable fee for their services.

III. Selection and Removal of DPMs

The selection and removal process for DPMs will be conducted by the MTS Appointment Committee ("Committee"). This Committee will be comprised of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine other members to be nominated by the Exchange Nominating Committee and appointed by the Board, whose business functions are as follows: six market-makers, one floor broker not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. The nine appointed Committee Members will have staggered two-year terms so that four or five members' appointments will expire each year. The CBOE expects that the composition of the Committee will assure a balanced approach to the appointment and removal of DPMs.

Any regular member or member organization is eligible for appointment as a DPM. Appointments will be made by the Committee on the basis of its judgment as to the candidate best able to perform the functions of DPM in the subject options class or classes. Factors to be considered include: capital adequacy, experience with trading, willingness to promote the Exchange as

[3] *See* proposed Rule 8.13(a).

[4] *See* CBOE Rules 8.1, 8.2, 8.3 and 8.7.

[5] AutoQuote essentially is a computer algorithm that permits a market-maker to update his quotes in all option series (based on his quote for near-term in-the-money options) automatically to reflect a price change in the underlying security.

[6] *See* proposed Rule 8.13(c)(10).

[7] CBOE Rule 6.75 provides that no floor broker shall be vested with discretion as to: (1) The choice of the class of options to be bought or sold, (2) the number of contracts to be bought or sold or (3) whether any such transaction shall be one of purchase or sale. Floor brokers, however, may be vested with price and time discretion.

a market place,[8] operational capacity, support personnel, history of adherence to Exchange rules and criteria specified as DPM responsibilities, and trading crowd evaluations under Rule 8.12. The Committee also may specify any one or more additional conditions on the appointment concerning any representations made in the application process, including, but not limited to, capital, operations, or personnel.[9] The DPM is obligated promptly to inform the Committee of any material change in financial or operational conditions, or personnel. The appointment may not be transferred without approval of the Committee. The DPM will serve until he is relieved of his obligations by the Committee.

The Committee may, in its discretion, open an option class or classes to a new DPM selection process if, upon review, the Committee determines that a DPM has not performed satisfactorily any condition of his appointment or his designated functions or duties under proposed Rule 8.13(c). The Committee may conduct reviews of appointments at any time, and will do so at least quarterly. Likewise, if a DPM incurs a material financial, operational, or personnel change or, for any reason, becomes ineligible for appointment, a new selection process may be initiated. In addition, if a DPM organization changes its specified nominee and the former nominee requests a new selection process, one will be initiated. The incumbent DPM may apply for appointment in the new selection process.

The Committee has discretion to relieve a DPM of his appointment due to a material financial, operational, or personnel change warranting immediate action. If a DPM has been relieved of his appointment or the appointment otherwise becomes vacant, the Committee has discretion to appoint an interim DPM pending the conclusion of a new DPM selection process. The appointment as interim DPM is not a prejudgment of the new DPM selection process. MTS trading also can be terminated in a particular option class by the Committee, if it decides reversion to the usual Exchange market-maker system is warranted operationally.[10] More specifically, if certain predetermined levels of trading activity are reached, the Committee may decide to discontinue a DPM in a particular class of option. Alternatively, the Committee may determine that, based on all available facts and circumstances, the DPM is unnecessary to facilitate trading. The CBOE does not expect that the alternative "fail-safe" provision will be used frequently.[11]

If the Committee decides to terminate a DPM's appointment for cause or to revert to the market maker system, the terminated DPM will receive a proportionate share of the net book revenues, not to exceed one-half, for any period specified by the Committee up to a maximum of five years. In making this award the Committee will take into account the length of time of DPM service, capital commitment and efforts expended during the DPM appointment.[12]

IV. Hearings and Review of Appointment and Removal Decisions

Each applicant for appointment as a DPM will be provided an opportunity to present any matter which he wishes the Committee to consider in conjunction with the appointment decision. The Committee may require that presentation to be solely or partially in writing, and may require the submission of additional information from an applicant, member, or any person associated with a member. Formal rules of evidence do not apply to these proceedings. The DPM who is the subject of Committee review in conjunction with the termination of the DPM appointment will be so advised and provided an opportunity to present any matter which he wishes the Committee to consider in conjunction with the termination decision.

A DPM relieved of an appointment as a result of material financial, operational or personnel changes warranting immediate action, or a determination by the Committee that trading would be better suited to a market-maker system, is entitled to a review of that decision under the procedures of Chapter XIX of the CBOE's Rules.[13] A DPM relieved of an appointment for failing to perform satisfactorily or for material changes in financial, personnel or operational conditions also is entitled to a review of that decision under the procedures of Chapter XIX of the Exchange Rules. This review, however, is only available if he applies for reappointment and is denied. In any situation in which a DPM is relieved of his appointment for reasons other than volume in the options class reaching a pre-determined level, the Exchange will provide written reasons for the removal.[14]

The Committee may perform all functions of the CBOE's Market Performance Committee under Exchange Rules in respect of reviews and evaluation of the conduct of DPMs in the classes of their DPM appointment, including but not limited to Rules 6.71, 8.1, 8.2, 8.3, 8.7, and 8.12.[15] The process for review of any action taken by the Committee will be the same as if the action had been taken by the Market Performance Committee.

V. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[16] and the rules and regulations thereunder. The Commission believes that the MTS pilot: (1) May enhance the market-making mechanism on the CBOE, thereby improving the markets for listed options on the Exchange; (2) contains specialist-type dutues and responsibilities of DPMs consistent with those of specialists on other options exchanges and consistent with the Exchange Act; and (3) provides adequate due process safeguards in the DPM selection and termination procedures.

First, the Commission believes that the MTS pilot may improve the CBOE's market-making capabilities by creating

[8] Amendment No. 2 to the filing added an interpretation to proposed Rule 8.13 clarifying that promotion of the exchange as a marketplace includes assisting in meeting and educating market participants (and taking the time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to competition in offering competitive markets and competitively priced services, and other like activities. The Commission emphasizes that, in connection with the willingness of a DPM applicant to promote the Exchange as a marketplace, the scope of the CBOE's proposal would not permit the CBOE to weigh against a particular firm its activities in other markets. Thus, a firm's decision to route customer orders to another market or to make markets in CBOE listed options on another exchange or in the over-the-counter market would be irrelevant to the CBOE's review.

[9] Amendment No. 2 also added a policy interpretation requiring a DPM to possess a cash liquid asset position in the amount of $100,000 or in an amount sufficient to assume a position of twenty trading units of each security in which the DPM holds an appointment, whichever amount is greater.

[10] *See* proposed Rule 8.13(b)(7).

[11] *Id.*

[12] The factors to be taken into account in determining a terminated DPM's share of net book revenues were clarified in Amendment No. 1 to the proposed rule change.

[13] Chapter XIX of CBOE Rules provides procedures for hearings and review for persons aggrieved by Exchange action.

[14] Telephone conversation between Fredric Krieger, Associate General Counsel, CBOE, and Howard Kramer, Assistant Director, Division of Market Regulation, SEC, September 11, 1987.

[15] These rules address, in order, Floor Broker Registration, Definition of Market-Makers, Registration, Appointment and Obligations of Market-Makers, and Trading Crowd Evaluations.

[16] 15 U.S.C. 78f (1982).

long-term commitments to option classes. It is difficult to attract market-makers to low volume options classes, as business practicalities attract market-makers to busier posts. A DPM, however, will commit to trading a particular option class and will assume the affirmative obligations of an option specialist. In return for this commitment, the DPM will receive specific incentives such as the authority to act as OBO in the designated class, continued ability to act as a market-maker, and authority to participate as a floor broker in the commission revenues generated from the execution of public customer orders. The result may be increased depth and liquidity in the markets for various options classes, and a greater flexibility in responding to varying market conditions.

Second, a DPM will fulfill the obligations associated with a specialist.[17] In its capacity as a market-maker, a DPM must maintain a fair and orderly market as articulated in CBOE rule 8.7.[18] The DPM is subject to a minimum capital requirement of $100,000, which is consistent with the requirement for options specialists on the American Stock Exchange ("Amex"). The DPM must be present at the trading post throughout the day. The DPM also must assure that disseminated quotes are accurate and that those quotes are honored up to five contracts (or such minimum number as set by the Appointment Committee). In addition, the DPM must determine and disclose to the crowd the formula for automatically updating quotations, and participate at all times in any automated execution system that may be open in an appointed option class. Finally, the DPM must resolve trading disputes (subject to Floor Official review). As agent, the DPM must ensure order book priority and must book all orders eligible to be booked.[19] Further, a DPM must accord priority to orders he represents as floor broker over his activity as market maker, though he may participate pro rata as market-maker with the trading crowd in trades that take place at the DPM's principal bid or offer. The Commission believes these standards are consistent with the maintenance of fair and orderly markets, and the protection of investors.[20]

Third, the Commission believes the due process safeguards incorporated into the appointment and removal provisions of the pilot are sufficient.[21] The composition of the Exchange's DPM Appointment Committee is balanced between management, marketmakers, a floor broker and members doing a public customer business. The two year terms of members are staggered to ensure continuity. In this regard, the composition of the CBOE's committee is consistent with the composition of allocation committees of other exchanges.[22]

DPMs will be selected based on specific factors and will be evaluated based on standards of conduct that are consistent with the ability to uphold his principal and agent responsibilities.[23] An applicant for an appointment as DPM will be provided an opportunity to present any matter he wishes for the committee to consider in conjunction with the appointment decision. The standards upon which a DPM may be removed are similarly well defined and consistent with upholding the DPM's obligations. Moreover, in most circumstances a DPM will be able to rely on a previously established daily contract volume level to determine when his position will be terminated in favor of a competitive market-making system.[24] Finally, the CBOE's procedure provide for full review of appointment and removal decisions under Chapter XIX of the CBOE rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Dated: September 22, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22193 Filed 9-24-87; 8:45 am]

BILLING CODE 8010-01-M

[17] *See, e.g.,* New York Stock Exchange Rule 104 describing Functions of Specialists.

[18] CBOE Rule 8.7 states generally that market-makers transactions should constitute a course of dealings reasonably calculated to contribute to the maintenance of fair and orderly markets. CBOE Rule 8.7(a) also specifically notes that market-makers are prohibited from entering into transactions or making bids or offers that are inconsistent with their obligations to maintain fair and orderly markets. Although the DPMs negative obligation differs from the traditional exchange specialist's negative obligation to effect proprietary trades only to the extent those transactions are reasonably necessary to maintain a fair and orderly market, the Commission believes that the CBOE's specified affirmative obligations for market makers generally, in conjunction with the specific obligations imposed on DPMs by Rule 8.13(c) (1)–(10), provide adequate assurance that DPM proprietary trading will contribute to a fair and orderly market and bring increased depth and liquidity to the market. More specifically, with respect to a class of options in which he holds appointment, a market-maker has a continuous affirmative obligation to engage in dealings for his own account when there exists a lack of price continuity, temporary disparity between supply and demand, or a temporary distortion of price relationships between option contracts of the same class.

[19] *Id. See* Amex Rule No. 171.

[20] In addition, the CBOE will refuse to assign as a DPM an integrated firm until it has approved by the Commission rules requiring adequate procedures separating the DPM from the rest of the firm. *See,* SR-CBOE-87-39 and 40.

[21] Amendment No. 1 to the filing clarified the language of several provisions in this area.

[22] *See, e.g.,* Philadelphia Stock Exchange By-Laws, Section 10-7 describing the composition of the Exchange's Allocation, Evaluation and Securities Committee.

[23] While the CBOE has trading crowd evaluations in which floor brokers evaluate market makers' performance, there is no floor broker questionnaire to evaluate a DPM's agency performance (*e.g.,* the NYSE SPEQ questionnaire). In this regard, however, the CBOE is still obligated to delineate specifically the reasons for relieving a DPW of its appointment in writing. The reasons should be consistent across DPMs, allowing for variance in the specific conditions attached to a particular DPM's appointment, and should not result in unfair discrimination among CBOE members (*See,* Securities Exchange Act Release No. 15827 (May 15, 1979) 44 FR 29778). This is true even though the DPM reappointment process is not a disciplinary action.

[24] An exception to this could occur if the Exchange determined, "considering all the facts and circumstances," that trading in a particular option class would be better accommodated by introduction of a competitive market-maker system without a DPM. The Commission understands that this provision is a "fail-safe" clause to deal with partially unforseen circumstances and that the CBOE does not expect to invoke this clause frequently. In view of these representations, as well as the fact that termination of the MTS trading is subject to further review procedures, the Commission believes it is appropriate for the CBOE to reserve such authority during the pilot. Nevertheless, the Commission expects the CBOE will further define, during the pilot period, the circumstances under which this authority could be invoked.

[25] 15 U.S.C. 78s(b)(2)(1982).

[26] 17 CFR 200.30-3(a)(12)(1986).

[Release No. IC-15996; 812-6756]

Application; BellSouth Capital Funding Corporation

September 21, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: BellSouth Capital Funding Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant, a wholly-owned subsidiary of BellSouth Corporation ("BellSouth"), seeks an order to permit it to engage in financing activities that will provide funds for use by BellSouth in connection with its own diversification and in support of the activities of subsidiaries of BellSouth.

Filing date: The application was filed on June 11, 1987 and amended on September 16, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on their application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Southern Bell Center, 675 West Peachtree Street, NE., Atlanta, Georgia 30375.

Applicant's Representations

1. The Applicant, a Georgia corporation, was incorporated on May 22, 1987, and is a wholly-owned subsidiary of BellSouth Corporation ("BellSouth"). BellSouth is one of seven holding companies (collectively referred to herein as the "RHCs") formed by American Telephone and Telegraph Company pursuant to its Plan of Reorganization (the "Plan") approved by the United States District Court of the District of Columbia (the "Court") in conjunction with the settlement by AT&T and the Department of Justice ("DOJ") of antitrust litigation brought by the DOJ. The settlement is embodied in the Modification of Final Judgment (the "MFJ") agreed to by AT&T and the DOJ and entered by the Court after cetain changes required by the Court had been made.

2. BellSouth was incorporated in 1983 under the laws of the State of Georgia. BellSouth owns South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (the "Telephone Companies"), which provide exchange communication and exchange access services in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky and Louisiana. The Telephone Companies are subject to regulation by public utilities or public service commissions in each of the states in which they operate. In addition, the Telephone Companies are regulated as to interstate matters by the Federal Communications Commission (the "FCC"). BellSouth also engages in other business activities as permitted under the MFJ and, pursuant to waivers obtained thereunder from the Court, through the activities of various subsidiaries, including subsidiaries of the Telephone Companies the operations of which are not subject to regulation by tariff ("Diversified Subsidiaries"). Neither BellSouth nor any of the Diversified Subsidiaries which will obtain financing through the Applicant is an investment company under section 3(a) of the 1940 Act.

3. On December 31, 1986, BellSouth had total assets of $26.2 billion. For the year ended December 31, 1986, BellSouth had net income of approximately $1.6 billion, and revenues of approximately $11.5 billion. In the year ended December 31, 1986, the Telephone Companies declared approximately $1.2 billion in cash dividends payable to BellSouth.

4. The Applicant will raise funds through the offiering and sale of debt securities (collectively, the "Securities") in the United States, European and other overseas markets and, in turn, loan the proceeds of these issuances to BellSouth and the Diversified Subsidiaries. All loans by the Applicant to BellSouth and the Diversified Subsidiaries will bear interest at least equal to that which the Applicant is required to pay to obtain funds through its corresponding borrowings plus a small mark-up sufficient to cover operating costs. Further, the amounts and maturity of these loans will allow the applicant to make timely payments of principal, interest and premium, if any, on the Securities. The Applicant represents that it will not issue voting securities to any person other than BellSouth or a wholly-owned subsidiary of BellSouth, and that it will not hold securities other than as permitted by Rule 3a–5(a)(6).

5. The MFJ limits the lines of business which may be engaged in by the RHCs (or which the Applicant is one). Pursuant to the MFJ, the Court has held that the RHCs may be permitted to engage in certain new competitive ventures (such as many of the activities of the Diversified Subsidiaries) under certain circumstances, so long as any guarantee of obligations owned in Securities issued to finance the activities thereof would not grant recourse against the stock or assets of the Telephone Companies. BellSouth is therefore prohibited from guaranteeing any of the Securities issued by or for the benefit of such Diversified Subsidiaries if the guarantee would permit recourse against the stock or assets of the Telephone Companies.

6. Before Applicant issues any Securities, Bellsouth and the Applicant will enter into a support agreement (The "Support Agreement"). Under the Support Agreement, BellSouth will agree to cause the Applicant to maintain a positive tangible net worth (as determined in accordance with generally accepted accounting principles) and, if the Applicant is unable to pay when due principal, interest or premium, if any, owned by it in connection with the Securities, then Bell-South shall provide funds to the Applicant to assure that the Applicant will be able to pay when due such principal, interest or premium, if any. The Support Agreement will also provide that in the event of any default by BellSouth in meeting its obligations under such Support Agreement, or in the event of default by the Applicant in the timely payment of principal interest or premium, if any, owed on any Securities, holders of Securities or, if applicable a trustee acting on their behalf shall be entitled to proceed directly against BellSouth, so long as no holder of Securities or trustee acting on their behalf will have recourse to or against the stock or assets of the Telephone Companies.

7. The Support Agreement will also provide that either BellSouth or subsidiaries of BellSouth shall own all of the outstanding voting capital stock of the Applicant throughout the term of the Support Agreement; that without the Written consent of all the holders of the then outstanding Securities maturing in more than one year the Support Agreement may not be terminated, or modified or amended in ways less favorable to holders of Securities than the existing agreement; and that it may be terminated only after all outstanding Securities have been retired.

8. Applicant's offerings of Securities are expected to consist of shortterm, intermediate-term and long-term debt securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") or in public offerings of securities registered under the 1933 Act. In the case of public offering of any of its Securities not exempt from the registration requirements of the 1933 Act, the Applicant and BellSouth will, prior to offering such Securities, file a registration statement under the 1933 Act with the Commission and will not sell such Securities until the registration statement is declared effective by the Commission and any related indenture is qualified under the Trust Indenture Act of 1939 to the extent required thereunder. Applicant and BellSouth will comply with the prospectus delivery requirements of the 1933 Act in

connection with the offering and sale of such Securities.

9. In the case of offering of Securities not requiring registration under the 1933 Act, the Applicant will provide each offeree with disclosure materials which will include a descripion of the business of BellSouth and other data of the character customarily supplied in such offerings. In the event of subsequent offering, these materials will be updated at the time thereof to reflect material changes in the financial condition of BellSouth and its subsidiaries, taken as a whole.

10. Prior to any issuance and sale of Applicant's Securities in the United States capital market, such Securities shall have received one of the three highest investment grade ratings pertaining to debt securities from at least one nationally recognized rating organization. No such rating shall be required, however, if the Applicant's counsel opines that an exemption from registration is available with respect to such issue and sale under section 4(2) of the 1933 Act.

Applicant's Legal Conclusion

1. The Applicant was formed as a financing conduit for the diversification activities of BellSouth and the Diversified Subsidiaries of BellSouth and to advance efficient administration and management of financing activities for BellSouth and certain of the Diversified Subsidiaries. The Applicant will meet all requirements of Rule 3a-5 except for the unconditional guarantee requirement. BellSouth's execution and delivery of the Support Agreement provides a functional equivalent to an unconditional guarantee of the securities since the Support Agreement enables purchasers of the securities the right to proceed directly against BellSouth in the event the Applicant fails to meet its obligations, limited only so as to exclude the stock or assets of the Telephone Companies. Despite this limitation, funds available to BellSouth to satisfy any obligation under the Support Agreement will include dividends paid by the Telephone Companies as well as the revenue and assets of BellSouth and the Diversified Subsidiaries. Therefore, the Support Agreement will enable purchasers of the Securities to look ultimately to BellSouth for repayment.

2. Given the limitations of the MFJ and related orders of the Court, BellSouth intends to support the Securities with all legally available assets. By means of the Support Agreement, BellSouth will make available to all holders of the Securities the same assets which would be available to the holders of BellSouth's own debt securities used to fund the Diversified Subsidiaries and thus the holders of the Securities will be in the same position as if BellSouth itself had issued the Securities directly.

3. Granting of the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22195 Filed 9-24-87;8:45am]

BILLING CODE 8010-01-M

[Release No. IC-15993; File No. 812-6810]

Applications for Exemption; Fidelity Standard Life Insurance et al.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: Fidelity Standard Life Insurance Company ("Company"), Fidelity Standard Life Separate Account ("Separate Account") and Security First Financial, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a) and 27(c)(2).

Summary of Applications: Applicants seek an order to permit the Company to deduct from the Separate Account the mortality, expense and distribution risk charges imposed under the group flexible payment deferred variable annuity contracts ("Contracts") funded in the Separate Account.

Filing Date: The application was filed on August 4, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Fidelity Standard Life Insurance Company, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey (202) 272-2067 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (In Maryland (301) 253-4300).

Applicant's Representative

1. The Separate Account was established by the Company pursuant to Delaware law to fund the Contracts. The Separate Account is registered as a unit investment trust under the 1940 Act. A Registration Statement on Form N-4 under the Securities Act of 1933, as amended, has been filed to register the offering of the Contracts. The Separate Account presently consists of three Series, each of which invests solely in the shares of one of three series of the Security First Trust ("Fund").

2. For assuming certain risks under the Contracts, the Company imposes mortality and expense risk charges in the amount of .80% and .45%, respectively, of the average net assets of each Series. Applicants represent that the mortality and expense risk charges cannot be increased under the Contract.

3. The contract has a contingent deferred sales charge that may be deducted upon full or partial surrender from the Separate Account. The charge is based upon a graduated table of charges starting at 7% for purchase payments credited within the calendar year of the surrender and decreasing 1% for each preceding calendar year until the fifth calendar year before surrender when the charge is reduced to 0%. The Company does not anticipate that this sales charge will cover distribution expenses, therefore it is taking a distribution expense risk charge of .10% of net asset value. The contingent deferred sales charge when combined with the distribution expense charge will not exceed 9% of purchase payments.

4. Applicants represent that the mortality and expense risk charges are reasonable in relation to the risks assumed by the Company under the Contracts, are consistent with the protection of investors insofar as they are designed to be competitive while not exposing the Company to undue risk of

loss, and fall within the range of similar charges imposed under competitive variable annuity products.

5. Applicants represent that the mortality and expense risk charges are reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is bad on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates.

6. Applicants represent that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. The Company will maintain at its home office and make available to the Commission upon its request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Company's comparative survey of competitive annuity products.

2. The Company will maintain and make available to the Commission upon request a memorandum setting forth the basis of its conclusion that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

3. The Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b-1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-22171 Filed 9-24-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15992; File No. 812-6311]

Applications for Exemption; Southwestern Life Insurance Co. et al.

September 21, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: Southwestern Life Insurance Company ("Southwestern") and Variable Annuity Fund II Separate Account ("Separate Account").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a) and 27(c)(2).

Summary of Application: Applicants seek an order to permit Southwestern to deduct from the Separate Account the mortality and expense risk charges imposed under the individual deferred fixed benefit annuity contracts ("Contracts") funded in the Separate Account.

Filing Date: The application was filed on February 28, 1986, with amendments thereto on July 15, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on October 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Southwestern Life Insurance Company, 500 North Akard, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey, (202) 272-2067 or Special Counsel Lewis B. Reich, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Separate Account was established by Southwestern pursuant to Texas law to fund the Contracts. The Separate Account is registered as a unit investment trust under the 1940 Act. A Registration Statement on Form N-4 under the Securities Act of 1933, as amended, has been filed to register the offering of the Contracts. The Separate Account presently consists of five Subaccounts, each of which invests solely in the shares of one of the series of The Insurer Series Fund, Inc. ("Fund").

2. For assuming certain risks under the Contracts, Southwestern imposes mortality and expense risk charges in the amount of .85% and .40%, respectively, of the average net assets of each Subaccount. Applicants represent that the mortality and expense risk charges cannot be increased under the Contract.

3. Applicants represent that the mortality and expense risk charges are reasonable in relation to the risks assumed by Southwestern under the Contracts, are consistent with the protection of investors insofar as they are designed to be competitive while not exposing Southwestern to undue risk of loss, and fall within the range of similar charges imposed under competitive variable annuity products.

4. Applicants represent that the mortality and expense risk charges are reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates.

5. Applicants represent that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. Southwestern will maintain at its home office and make available to the Commission upon its request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Southwestern's comparative survey of competitive annuity products.

2. Southwestern will maintain and make available to the Commission upon request a memorandum setting forth the basis of its conclusion that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

3. The Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management

company, formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–22172 Filed 9–24–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S–813]

Application for Increase in Subsidized Sailings Under Contact MA/MSB–417; American President Lines, Ltd.

Notice is hereby given that American President Lines, Ltd. (APL), by letter application of August 28, 1987, has requested amendment of its subsidized service description as set forth in Appendix A of APL's Operating-Differential Subsidy Agreement, Contract MA/MSB–417, to perform 26 additional subsidized sailings annually on either Line A or Line B, or a combination thereof. Along with the letter application, APL submitted a report dated August 21, 1987, by Temple, Barker & Sloan, Inc. (TBS). APL states that the report establishes that service to be performed by APL with the requested increase in sailings is required to help achieve "adequate" U.S.-flag service, both currently and for the foreseeable future.

APL's Appendix A service description describes the Line A—California/Far East service, requiring a minimum/maximum of 72/108 sailings annually, and the Line B—Washington-Oregon/Far East service, requiring a minimum/maximum of 54/80 sailings annually; the aggregate maximum on Lines A and B is 188 sailings annually. APL desires authority to perform 26 additional subsidized sailings on either Line A or Line B, as trade conditions warrant, with an aggregate maximum on Lines A and B of 214 sailings annually. APL asks no increase in its authorized fleet of 23 subsidized vessels, and points out that as a result there would be no increase in operating subsidy beyond that already authorized under its contract.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on October 9, 1987. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Subsidy Board.
Date: September 22, 1987.

James E. Saari,

Secretary.

[FR Doc. 87–22202 Filed 9–24–87; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name; Better Working Environments, Inc.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Better Working Environments, Inc." used by the Better Working Environments, Inc., a corporation organized under the laws of the State of Nevada, located at 3716 Scripps Way, Las Vegas, Nevada 89103.

The application states that the trade name is used in connection with asbestos treatment chemicals including an asbestos penetrating encapsulant and an asbestos removal encapsulant, manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before November 24, 1987.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: September 18, 1987.

John F. Atwood,

Acting Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87–22174 Filed 9–24–87; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 4]

Surety Companies Acceptable on Federal Bonds; Planet Indemnity Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24622 to reflect this addition:

PLANET INDEMNITY COMPANY.
BUSINESS ADDRESS: 8 Greenway Plaza, Suite 1450, Houston, TX 77046.
UNDERWRITING LIMITATION *b*: *$105,000.* SURETY LICENSES *c*: TX.
INCORPORATED IN: Texas.
FEDERAL PROCESS AGENTS *d*.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, telephone (202) 634–2214.

Dated: September 18, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87–22114 Filed 9–24–87; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Meeting; Art Advisory Panel

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held October 21–22, 1987.

FOR FUTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V, 1111 Constitution Avenue, NW., Room 2575, Washington DC 20224, Telephone No. (202) 566–9259, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on October 21–22 in Room 3411 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of materials in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978. (43 FR 52122.)

Lawrence Gibbs,

Commissioner.

[FR Doc. 87–22179 Filed 9–24–87; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

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).

FARM CREDIT ADMINISTRATION

Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 28, 1987, from 2:00 p.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Kirby, Acting Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Farm Credit Administration Board will be closed to the public. The matter to be considered at the meeting is:

1. Legislative Matters.[1]

Dated: September 23, 1987.

Elizabeth A. Kirby,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 87-22313 Filed 9-23-87; 3:53 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Governors will meet in open session at 2:00 p.m. on Tuesday, September 29, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

[1] Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(9).

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

University Federal Savings Bank, an operating non-FDIC-insured savings association located at 6400 Roosevelt Way, N.E., Seattle, Washington, for Federal deposit insurance upon its conversion to a State-chartered stock savings bank with the title "University Savings Bank."

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,091
The Bowery Savings Bank, New York City (Manhattan), New York

Reports of the actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Discussion regarding the issue whether an insured bank that has received assistance from the Federal Deposit Insurance Corporation should be eligible to participate as a bidder in connection with purchase and assumption transactions involving failed banks or as a party to acquire, on an open bank basis, another insured bank with FDIC assistance.

Review of the FDIC staff study entitled "Mandate for Change: Restructuring the Banking Industry."

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: September 22, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-22283 Filed 9-23-87; 1:21 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, September 29, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 522b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Matters relating to the Corporation's audit procedures.

Matters relating to the Corporation's assistance agreement with an insured bank.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 22, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–22284 Filed 9–23–87; 1:22 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:05 a.m. on Tuesday, September 22, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 22, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–22280 Filed 9–23–87; 1:17 pm]

BILLING CODE 6714–01–M

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: None at this time.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

CHANGES IN THE MEETING: The Bank Board Meeting Previously Scheduled to start at 8:00 a.m., has been changed to start at 9:30 a.m., on Friday, October 2, 1987.

Nadine Y. Washington,

Acting Secretary.

No. 13, September 23, 1987.

[FR Doc. 87–22303 Filed 9–23–87 3:10 pm]

BILLING CODE 6720–01–M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 9:30 a.m., Monday, October 5, 1987.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

MATTERS TO BE CONSIDERED: Amendments to regulations concerning uniform accounting standards, a policy statement on troubled debt restructuring, amendments to regulations concerning capital forbearance, and amendments to regulations concerning minimum capital requirements.

John M. Buckley, Jr.

Secretary.

No. 12, September 23, 1987.

[FR Doc. 87–22304 Filed 9–23–87; 3:10 pm]

BILLING CODE 6720–01–M

MERIT SYSTEMS PROTECTION BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 34865, September 15, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, September 23, 1987.

CHANGE IN THE MEETING: Postponed.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Date: September 22, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87–22203 Filed 9–23–87; 8:50 am]

BILLING CODE 7400–01–M

Corrections

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 61003-7137]

Approval of Federal Information Processing Standards Publication 29-2; Interpretation Procedures for Federal Information Processing Standards for Software

Correction

In notice document 87-21095 beginning on page 34696 in the issue of Monday, September 14, 1987, make the following correction:

On page 34697, in the first column, under paragraph 6, in the second line, "(date)" should read "September 14, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0257]

Filing of Food Additive Petition; Ferro Corp.

Correction

In the issue of Thursday, September 17, 1987, on page 35187, a correction to FR Doc.87-20267 appeared. The second paragraph was inaccurate and should have appeared as follows:

In the first column, in **SUPPLEMENTARY INFORMATION**, in the seventh line, "§ 728.2010" should read "§ 178.2010".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8158]

Income Taxes; Tax on Unearned Income of Certain Minor Children

Correction

In rule document 87-20459 beginning on page 33577 in the issue of Friday, September 4, 1987, make the following corrections:

§ 1.1(i)-1T [Corrected]

1. On page 33579, in the third column, in paragraph A-6, in the fourth line, "income" was misspelled.

2. On page 33581, in the second column, in *Example (6)*, in the fourth line, "$69,000" should read "$69,900".

BILLING CODE 1505-01-D

federal register

Friday
September 25, 1987

Part II

Environmental Protection Agency

40 CFR Parts 85 and 600

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 600

[FRL 3176-8]

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is exercising its discretion to revise portions of EPA regulations at 40 CFR 85.1501 et seq., which regulate the importation of nonconforming motor vehicles and motor vehicle engines ("nonconforming vehicles"). EPA also is acting to revise portions of 40 CFR Part 600 specifying the manner in which fuel economy data for nonconforming vehicles are generated. Nonconforming vehicles are ones not conforming with Federal emission requirements at the time of conditional importation. (Excluded from this definition are vehicles entered under EPA-approved catalyst and O_2 sensor control programs.)

Today's action, except for certain specified exceptions, permits only independent commercial importers (ICI) who hold valid certificates of conformity issued by EPA to import nonconforming vehicles. In general, individuals who previously could import a nonconforming vehicle directly now will be required to arrange for importations through certificate holders. Certificate holders will be responsible for assuring that subsequent to importation the vehicles are properly modified and/or tested to comply with emission and other requirements over their useful lives. The certificate holder also will be responsible for recalls, maintenance instructions, emission warranties, and vehicle emission labeling and for compliance with fuel economy requirements.

EPA is also announcing the abolition of its "five model year old personal use" policy which permitted a first-time individual importer to import a nonconforming vehicle over five model years old for his/her own personal use without the need to demonstrate that such vehicle complied with Federal emission standards. Abolition of this policy is needed to eliminate the abuses associated with the policy and the significant numbers of noncomplying vehicles that were being imported under this policy.

The Agency is taking these actions to improve the emissions compliance of these nonconforming vehicles and the administrative efficiency of the imports program. As a separate matter, EPA is considering strengthening its "small volume" certification procedures and intends to publish a Notice of Proposed Rulemaking on that subject at some future date.

DATES: Abolition of the five model year old policy and the provisions of these regulations promulgated today will be effective for vehicles imported beginning on July 1, 1988.

ADDRESSES: Copies of materials relevant to this rulemaking proceeding are contained in public Docket EN-79-9 at the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street, SW., Washington, DC 20460, and are available for review weekdays between 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mary T. Smith, Chief, Manufacturers Programs Branch (202/382-2500) or Claude Magnuson, Chief, Investigation/Imports Section (202/382-2542), Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

A. EPA's Current Regulatory Program

The regulations governing EPA's program providing for the importation of nonconforming vehicles were originally promulgated in 1972 pursuant to the Clean Air Act, as amended 42 U.S.C. 7401 et seq. ("the Act"). Section 203 of the Act prohibits the importation of any new motor vehicle or engine (hereinafter "vehicle") not covered by a certificate of conformity unless it is exempted by the Administrator or otherwise authorized jointly by EPA and U.S. Customs Service (Customs) regulations, 42 U.S.C. 7522. Such regulations must be appropriate to insure that imported nonconforming vehicles will be brought into conformity with the applicable emission standards. The authority to allow importation of nonconforming vehicles is discretionary with EPA and Customs.

The regulatory framework of EPA's current program, contained in EPA regulations at 40 CFR 85.1501 et seq. and in Customs regulations at 19 CFR 12.73, generally permits the conditional importation of a nonconforming vehicle, for 90 days, by any person provided that a bond is posted with Customs and the vehicle is brought into conformity with EPA emission requirements, 40 CFR 85.1504. This may be done by either modifying the vehicle to make it identical to a vehicle certified for sale in the U.S. or by successfully testing the vehicle in accordance with the Federal Test Procedure (FTP) at 40 CFR Part 86. Under the second option, which is more commonly used, some modification is usually necessary before the imported vehicle can pass the FTP (the "modification and testing" approach). These two methods of emissions demonstration have traditionally comprised a little less than one-half of the nonconforming imported vehicles.

Certain exceptions to emissions compliance demonstration are recognized by EPA. These exceptions are discussed in more detail in Parts IV and VI below. Of particular note is the five model year old exception which has traditionally accounted for almost one-half of the nonconforming imports. This enforcement policy permits a first-time individual importer to import one nonconforming vehicle at least five model years old for personal use without demonstrating emissions compliance.

B. Background of EPA's Regulatory Revision Effort

Today's action represents the culmination of a lengthy rulemaking process EPA has undertaken to examine and evaluate revisions to its imports regulations.

The rulemaking process has involved publication of three notices for public comment, each of which proposed various revisions to the imports regulations. The most recent, and the notice providing most of the proposed regulatory language for today's action, was a Supplemental Notice of Proposed Rulemaking (SNPRM) which was issued on September 9, 1985 (50 FR 36838). Numerous written comments were received in response to this notice and two public hearings were held. The two earlier notices were a Notice of Public Workshops (Workshops Notice) issued on November 4, 1983 (48 FR 50902) and a Notice of Proposed Rulemaking (NPRM), issued on June 21, 1980 (45 FR 48812). Many (65) written comments were received in response to the Notice of Public Workshops and two public workshops were held. Over 370 written comments were received in response to the 1980 NPRM and one public hearing was held. EPA has summarized and analyzed all significant comments to these three notices in a document entitled "Summary and Analysis of Comments Pertaining to the Proposed Rulemaking Entitled 'Importation of Motor Vehicles and Motor Vehicle

Engines under the Clean Air Act' " (SAC) and has placed the SAC in the public docket. The basis for EPA's action includes the summary and analysis of comments and EPA's response thereto contained in the SAC. Comments received, together with EPA submitted information in the docket, are referred to throughout this document as "the record."

As explained in previous notices, the lengthy process of rulemaking was undertaken at a time of great change and uncertainty in the Imports program. EPA delayed final action early on in the rulemaking process after consideration of the comments received to the NPRM (see Part V), proposed Congressional revisions to the Act which would have significantly affected the provisions applicable to the importation of nonconforming vehicles, and needed additional analyses. In the interim, EPA made various changes to its enforcement procedures and policies to reduce its resource burden, including allowing first-time importers to import one nonconforming vehicle at least five model years old at time of importation, without having to bring the vehicle into conformity. See, e.g., 48 FR 16485 (April 18, 1983). Since then the rulemaking process has provided EPA with an opportunity to consider various options and issues, the resolution of which has resulted in today's action.

II. Summary Description of Today's Action

By today's action, EPA is exercising its discretion to adopt a program, part of which will be phased-in between 1988 and 1993 which substantially changes both the manner in which nonconforming vehicles can be imported and the manner by which emissions compliance can be demonstrated.[1] EPA has adopted a program that is an outgrowth of several previously proposed options and comments on those options. It provides, with some exceptions, that only independent commercial importers (ICIs) [2] who are certificate holders may import nonconforming vehicles. This program also places other restrictions on imported nonconforming vehicles. In particular, with some exceptions during the phase-in period, it permits nonconforming vehicles less than six original production (OP) years [3] old to be conditionally admitted without bond only if they are subsequently modified and tested, if applicable, so as to be covered by a certificate of conformity. It also allows, beginning in 1988, nonconforming vehicles six OP years old and older to be imported, also without bond, under a more stringent "modification and test" procedure than that existing under the present program. During the phase-in period, some vehicles less than six OP years old may be imported under the new modification/test program. However, the number of such vehicles which may be "modified/tested" decreases each year of the phase-in period until 1993 when all vehicles less than six OP years old (with few exceptions) must be imported under the new certification-based program. Finally, the new program establishes an exemption from emission requirements for vehicles greater than twenty OP years old.

Certain aspects of the previous imports program—including bonded importations by persons other than certificate holders, the current "modification and test" procedure and the "five model year old personal use" exception (*see* Part V)—are abolished; while other parts of the current program involving exemptions and exclusions and the catalyst replacement program are retained with changes. A description of today's action is discussed in more detail in the SAC and in Part IV. below.

Today's action is taken after consideration of a wide variety of regulatory options which were either proposed in the NPRM, the Workshops Notice or the SNPRM, or in comments received in response to these three notices. In summary, these options were—

1. Maintain the current program (with or without some modifications),
2. Prohibit the importation of nonconforming vehicles,
3. Require nonconforming vehicles to be covered by a certificate of conformity prior to entry into the United States,
4. Permit conditional entry of nonconforming vehicles but require them to be covered by a certificate of conformity prior to final entry,
5. Require all vehicles to be covered by a certificate of conformity prior to final entry except for those models whose aggregate volume does not exceed a certain threshold (these would be modified/tested) or
6. Require newer vehicles to be covered by a certificate of conformity prior to final entry and older vehicles to be modified/tested.

Other options considered were essentially the same as above but contained differing personal use exemptions. These options are discussed in more detail in the SAC and in Parts III, IV, and VI below.

III. Rationale for EPA's Decision Not to Continue the Present Regulatory Program

In EPA's view, there are at least six significant problems associated with EPA's current regulatory program for imported nonconforming vehicles which cannot be solved by regulatory amendments while at the same time maintaining the current imports program structure.

(1) Credibility and Effectiveness—Improper Modifications

The first problem is that the "modification and test" part of the program lacks credibility and effectiveness. The record provides very strong evidence that large numbers of the vehicles imported under that procedure either were not, or are not, being modified at all, or have been modified improperly. The problem has two aspects: falsification of data and durability. The first, the falsification of data aspect, concerns the generation and reporting of false information to EPA. The second, the durability aspect, concerns modifications which, although they enable a vehicle to initially conform to Federal emission standards, are not durable over the useful life of the vehicle as required by the Act. Part of this durability problem concerns modifications which are subsequently removed (or otherwise tampered with) due to the fact that they are either perceived as making the vehicle less driveable or that they, in fact, make it less driveable. The other part of the durability problem is faulty system designs or defective components which cause vehicles to deteriorate rapidly in-use.

(a) Falsification of Data

The record confirms EPA's assessment that this aspect is significant, although its actual extent remains controversial and uncertain. The bulk of the data pertaining to falsification of data involves misreporting to EPA by various laboratories (although various data, addressed in Part VI., also exists in connection with the "five model year old" policy). To date, EPA has conducted administrative and/or criminal investigations of six

[1] Revision of these regulations is being done in conjunction with the U.S. Customs Service which will publish its own revised regulations addressing importations of nonconforming vehicles.

[2] The term "independent commercial importer" as used here means an importer who does not have a contractual agreement with an original equipment manufacturer (OEM) to act as its authorized representative for the distribution of motor vehicles and motor vehicle engines into the U. S. market.

[3] For definition of "OP" year, see note 11, infra.

laboratories across the country which have submitted false data. All of these laboratories have been delisted and, thus far, in four of these cases corporate officers and/or laboratory personnel have pleaded guilty to various counts of falsification of data and/or mail fraud.

EPA believes that such falsification of data occurs, in part, because of the difficulty in modifying a vehicle to comply with standards, the expense of the FTP and price competition among the laboratories. This conclusion is supported by the record. For example, one private laboratory commented that barely 10 percent of the modified vehicles pass the FTP the first time and that this figure was as low as 2–3 percent just one year ago. It also stated that many of the vehicles that fail at its facility never return to it for retest yet are subsequently submitted to EPA for admission. The EPA staff have received similar statements from ICI modifiers and laboratories as well as from the California Air Resources Board (CARB).

(b) Non-durable Modifications

The record contains very strong evidence supporting EPA's assessment that many mod/test vehicles are not being properly modified and that most modifications lack durability for five years or 50,000 miles (as required by the Act). Moreover, in spite of requests by EPA, the record is devoid of any mod/test data (except for retests of an EPA/CARB study diesel vehicle and two diesel vehicles reported by a private laboratory, Olson Engineering, Inc.) indicating that mod/test vehicles are durable. While some ICIs did challenge the EPA/CARB study (see below), many ICIs admitted that many vehicles are not being properly modified and that the modifications are not durable.

Various vehicle survey data also indicate that purported modifications are not always being performed. Surveys conducted by five OEMs (Mercedes Benz of North America, Inc. (MBNA); BMW of North America, Inc.; Jaguar Cars, Inc.; National Automobile Dealers Association; and, the Texas Automobile Dealers Association) of nonconforming vehicles appearing at dealerships throughout the United States after admission under the modification/test procedure revealed consistently low rates of emission control parts present on the vehicles. For example, catalyst installation rates ranged from only 55 percent to 75 percent.

The MBNA survey also provided some evidence that many of the vehicles may not be durable. For example, some vehicles were modified with oxidation catalyst systems. In EPA's judgement, many European vehicles [4] modified with oxidation catalysts are not likely to meet current model year standards for their useful lives. In addition, various states, including California, Oregon and Alaska, submitted data to show specific problems with improperly modified vehicles in their states.

The general lack of durability of the modifications is supported by the test results of the joint EPA/CARB testing program, conducted in September and October, 1984. The purpose of the program was to provide information for use in reevaluation of the EPA imports program. The EPA/CARB joint program considered a sample of twenty-seven vehicles that had been imported under the modification/test procedure and alleged to have met emission standards. The vehicles were re-tested in accordance with the FTP by CARB. Twenty-six vehicles failed the emissions tests for at least one pollutant. (The passing vehicle was a diesel vehicle.) In many cases, failures were by substantial margins, even though many of the vehicles had relatively little mileage accumulation. The sample of twenty-seven vehicles tested in the program was originally selected, utilizing statistical sampling techniques according to specified criteria, from a larger number of vehicles which five test laboratories located in Southern California had reported to EPA to be in conformity at the time they were tested by the laboratories. (At the time of retesting, EPA had not approved release of the obligation on the importation bonds for any of the vehicles.) A description of the program and the results obtained were placed in the docket, as well as additional information relating to specifics of procurement and testing sequences of actual vehicles.

Various commenters, including the Automobile Importers Compliance Association (AICA) and International Motors, criticized the procurement methodology and emission test procedures utilized in the EPA/CARB program. Specifically, they said it was unfair that the ICIs for the vehicles in question were not given an opportunity to inspect the vehicles prior to the CARB test nor to be present for the testing. Among other concerns, they noted that the vehicles were tested in an "as is" condition and not set to specifications as are other vehicles tested in EPA's in-use program. In addition, various modifiers and laboratories who had either modified or tested vehicles involved in the study, and who responded to EPA's request for an explanation of the test results, also criticized the methodology and actual conduct of the testing. The methodology criticism was the third most frequent explanation given for the results followed by the presence of tampering and component failure. Except for component failure, EPA disagrees with those criticisms. A detailed analysis of those comments and EPA's positions on various issues raised is contained in a document entitled "Supplementary Information on Joint EPA/CARB program, September-October, 1984: Analysis of Responses by Affected Modifiers and Test Laboratories to EPA Request for Explanation of Program Results" that has been placed in the docket for the rulemaking.

In summary, EPA still is confident that the vehicle procurement and testing procedures were valid and appropriate and that the test results strongly indicate the non-durability of most modifications. Other possible explanations offered by the ICIs for vehicles' failures such as tampering (i.e., removing or disabling emission controls) would simply confirm EPA's conclusion that many mod/test vehicles are not durable. With respect to the criticism that vehicles were not "set to specifications" prior to test, EPA believes testing vehicles in an "as-received" condition is representative of the emissions of the vehicles since none of the vehicles were supplied with such specifications.

Finally, it should be noted that the only data in the record relating to vehicles modified in accordance with certificates held by ICIs include emission re-test results on three vehicles (as tested by one OEM and two ICIs); "certification" emission tests on vehicles of the types not generally imported under the program; and, MBNA survey data on five vehicles covered by ICI certificates. Two of the three vehicles that were re-tested passed or only marginally failed, but in each case, the deterioration factor [5]

[4] Expensive European vehicles comprise more than 99 percent of the vehicles imported under the current regulations (excluding the catalyst replacement provision).

[5] The current small volume certification regulations (40 CFR 86.084–14) provide that a small volume manufacturer must demonstrate compliance on an actual vehicle whose emissions have been stabilized (accumulated mileage may range from zero up to 4,000 miles). A deterioration factor specified by EPA is then applied to the emissions level of the vehicle to project emissions at 50,000 miles. The projected emission rate at 50,000 miles is used to establish compliance. (This procedure is in contrast to large volume certification which requires a 50,000 mile durability demonstration on a prototype vehicle.)

exceeded that assigned in certification. The third vehicle, re-tested by MBNA, showed test results which are the basis of significantly higher deterioration factors than ones assigned in certification. The "certification" tests (on the vehicles mentioned above) showed durability at high mileages. However, some parts were found missing on three of the five vehicles surveyed by MBNA.

(2) Administration of the Program—Excessive Paperwork

The second problem with nearly all aspects of the current EPA program is the extensive resource requirements associated with its administration. Large amounts of paperwork and technical data are required to be submitted for each individual vehicle imported. Such paperwork and technical data must be received, processed, evaluated and then responded to, including recommendations to U.S. Customs concerning releases of the bond [or, in some cases, payment of a mitigated penalty for vehicles that are not brought into conformity]. Also, with the vastly increased volumes of nonconforming vehicles imported annually (from 1500 in 1980 to about 68,000 in 1985), delays are created in the system which then serve to stimulate written and oral inquiries to EPA concerning the review status of particular vehicles. EPA estimates that, in addition to the paperwork associated with compliance demonstration, in 1985, it received approximately 350–400 pieces of correspondence and 1000 telephone inquiries per week concerning nonconforming imported vehicles. Such paperwork and inquiries severely overburden EPA resources which might better be allocated to more productive enforcement activities.

(3) EPA Enforcement

Thirdly, the technical requirements and diffused responsibilities associated with the "modification and test" part of the program pose significant enforcement problems. The problems have two main aspects.

The first aspect is that, from a practical perspective, responsibility for emissions control is diffused among various persons in the chain of commerce making it difficult to have an effective enforcement program. The Act requires the importer to bring the imported nonconforming vehicles into compliance. Yet, under the existing regulations, anyone can be an importer (there are no special requirements); most importers are individuals or businesses who are not generally knowledgeable about emissions compliance and must rely on other entities, such as a modifier that performs the modifications and/or a private emission test laboratory that performs the FTP emissions test. In making its judgements concerning the emissions compliance of a vehicle, under the existing rules, EPA relies on data submitted from test laboratories recognized by EPA as technically capable of performing an FTP. In many cases, however, the laboratories do not perform the actual modifications; they merely conduct the FTP, report the test results, identify the parts only in general terms and attach photographs of such modifications. Often the laboratory claims it is responsible only for the test results and is not responsible for assessing the durability of the modifications. Moreover, there are no special requirements or qualifications for being a modifier. The result is a situation in which there are many opportunities for abuse with each person in the chain disavowing knowledge of, and responsibility for, abuses such as falsification of data, tampering and improper or nondurable modifications. Moreover, the legally responsible party, the importer, is often the person who had the least to do with actually assuring emissions compliance.

The second aspect of EPA's enforcement problem is the presence of large numbers of importers, the majority of which are individuals who import one or two vehicles (as opposed to individual commercial importers), who have limited knowledge and/or information concerning the quality of modifications or emission testing. While normally enforcement against a few violators provides sufficient deterrence to other similarly regulated parties, such an effect is difficult where there are thousands of relatively unknowledgeable persons often operating in virtual isolation from each other. Thus, oversight of the regulation's requirements is very difficult.

(4) Compliance With Other Requirements

The fourth problem with EPA's current program is that it does not effectively ensure that importers comply with various types of manufacturer requirements with which OEMs must comply. By definition under section 216 of the Act, ICIs are considered to be manufacturers. OEMs, viewing this as an equity issue, have argued that the current regulations are unfair because OEMs must bear additional costs in conducting extensive certification programs to demonstrate that their vehicles will meet Federal emission standards for five years or 50,000 miles, and must assure their vehicles comply with such requirements for certified vehicles as emissions warranty and recall provisions under section 207 of the Clean Air Act, submission of Corporate Average Fuel Economy (CAFE) data and payment of "gas guzzler" taxes under the Energy Tax Act of 1978, 26 U.S.C. 4064. OEMs also cited special problems (such as potential product liability and other legal claims and customer relations problems) caused by imported nonconforming vehicles being presented to the OEMs for servicing, due to the fact that either proper service cannot be performed on such vehicles or cannot, because of delays in obtaining parts, be performed in a timely manner.

EPA's assessment of the comments indicates that the current program fails to require adequate demonstrations of compliance with emission requirements and fails to ensure compliance with non-emission requirements (such as gas guzzler tax) by ICIs comparable to that required of OEMs. In the main, this is because of the existing regulatory framework of the program, e.g., many importers are individuals who import for personal use, not manufacturers, and, hence, the assembly line inspection, warranty and recall requirements of the Act do not apply to them.

(5) Complaints From States and Others—Air Quality

The fifth problem is that the program has generated complaints from states and others concerning air quality impacts and interference with air pollution control reduction strategies. In EPA's judgement, there are indications, particularly as reflected in the comments of California, Alaska and Oregon, that EPA's current program does interfere with the implementation of Inspection and Maintenance (I/M) programs in some states, especially those most affected by nonconforming vehicles. This impact is dependent on the nonconforming vehicle importation rates (rates in 1986 are significantly lower than in 1985). While these states and various OEMs argued that such impacts do exist, some other commenters, including the U.S. Small Business Administration, argued that such impacts are negligible. However, EPA agrees with the argument advanced by California concerning the incremental nature of air pollution.[6]

[6] California argues that while any single polluting source—such as an individual vehicle not meeting applicable standards—may not in itself cause significant environmental harm, it contributes an incremental part to the cumulative air quality problem in any particular area.

California has provided an analysis of the impact in Southern California which points to a particular problem in that area.

(6) Exceptions and Enforcement Policies

Finally, the current program features a "five model year old" personal use enforcement policy and other exceptions which themselves pose problems. These problems are discussed below in Part VI.

In summary, the record and EPA's experience with the present program demonstrates the need for more control over the modifications that are made to these nonconforming vehicles to assure proper modification of the vehicles, as well as their durability. Moreover, all requirements (warranty, labeling, recall, etc.) of the Act imposed on other manufacturers should be imposed on commercial importers of nonconforming vehicles to ensure compliance with emission standards over the useful life of the vehicles and to ensure fair treatment for all manufacturers.

The problems associated with the current imports program can only be solved by substantial changes to the present structure. EPA believes that proper oversight can only be accomplished by adopting a program that requires more and more, and ultimately most, vehicles be covered by certificates of conformity. In this way, EPA will review and test the modification designs to be placed on many more nonconforming vehicles before they are imported and modified, thereby resulting in better and more durable designs. EPA also believes that as a result of successful completion of the certification process, this technology will be transferred, in whole or in part, to "modification and test" vehicles that will be permitted to be imported, especially if importation of "mod/test" vehicles is limited to importers that have already obtained at least one certificate.

Limiting importation only to certificate holders will also solve several of the problems associated with the current program. First, the burden of administering the paperwork associated with the imports program will decrease. This, as discussed in Part V, is primarily because today's action replaces the bonding requirement for each vehicle with a fifteen working day hold mechanism and more stringent sanctions. Therefore, additional resources will be available to conduct regular inspections of vehicle modifications to ensure that they are properly performed. Second, selective enforcement will be more effective when the total number of importers is smaller than now. Third, better modification designs are anticipated as a likely result of the certification requirements.

Finally, a provision permitting only commercial importers to import vehicles enables EPA to impose warranty, labeling, recall and other emission compliance and manufacturer responsibilities on importers. The imposition of these requirements further ensures compliance with Federal emission standards for the useful lives of these imported vehicles.

As indicated above, EPA believes that the final program must make substantial changes to the current imports program in order to correct the problems associated with it. Two options were proposed which would modify the present program but keep its basic structure. One was proposed by a representative of ICIs, the Automobile Importers Compliance Association (AICA); the other was by an ICI, Olson Engineering, Inc. EPA believes adoption of either of these two options would be inappropriate for the reasons outlined in the SAC and below.

1. The AICA "Self Policing" Option—In its comments, AICA said that its proposal would address problems of the current program such as durability, excessive EPA paperwork and enforcement. The AICA proposal would change the administrative arrangement of the current program in three ways. First, it would provide for additional requirements for laboratories conducting emissions tests used for compliance determinations. Second, it would provide a "ten day hold" of vehicles at the emission laboratories to allow EPA an opportunity to inspect them and, if needed, require retests. After the "ten day hold" period, automatic releases of the Customs bonds would take place should EPA fail to reject the laboratory's test results. Finally, it proposed a monitoring program through which AICA would supplement EPA laboratory inspections and vehicle retests through its own laboratory inspections and oversight of vehicle testing. This "self policing" program would feature AICA stickers on each vehicle tested and found to be in compliance. AICA re-tests of vehicles resulting in test results different from those submitted to EPA and which showed violation of standards would lead to revocation of the stickers. AICA would report to EPA all test data and sticker revocations. AICA would require a performance bond to be obtained by participating members which would be forfeited to AICA upon revocation. AICA said active EPA enforcement would be a precondition for a successful program. The proposal would also add requirements for driveability tests for vehicles in the monitoring program and for emission warranties for all vehicles. It also would revise the small volume certification regulations.

2. Olson Engineering Proposal—This ICI proposed addressing the problems with the current program through creation of a new entity, responsible to EPA through a license process, that would perform the current EPA activities (and others) with ICIs paying for the service. EPA would establish laboratory approval and testing oversight criteria and perform a review and audit of the licensee's performance. The licensee(s) would periodically review laboratory capability, review test documentation, and provide responses to requests for information. EPA would sign bond releases and remain responsible for other elements of the program that cannot be delegated.

While these proposals contain thoughtful innovations, they do not address effectively the problems of the current program for several reasons. First, they contain no provision for assuring the durability of vehicles. Second, neither proposal adequately addresses the various problems of administration and enforcement outlined above. The two proposals would permit importations by any person, thereby continuing the practice of diffused responsibilities among the various importers, modifiers and emission test laboratories.

The proposals are flawed in other ways as indicated in the SAC. For example, EPA is concerned that the "self policing" feature of AICA's option would be difficult to implement. In fact, an AICA self-policing program similar to that proposed by AICA (called ACEP) presently exists. EPA is aware that there is little participation by ICIs in the program. However, as discussed below, EPA has incorporated in the rule, as proposed in the SNPRM, a "fifteen day hold" concept for vehicles, similar to the provision suggested by AICA.

IV. Rationale for EPA's Decision Not To Prohibit the Importation of Nonconforming Vehicles (SNPRM Option 1)

In addition to having considered, and rejected, proposals to maintain the current program, EPA considered and rejected the idea of completely prohibiting importation of nonconforming vehicles. Option 1 in the Supplemental Notice of Proposed Rulemaking (SNPRM) suggested elimination of the importation of all nonconforming vehicles, except (1) vehicles covered originally by a certificate of conformity, and (2) some

special exemptions (e.g., display exemptions), by abolishing the current regulatory framework and prohibiting ICIs from obtaining certificates of conformity. Elimination of the importation of nonconforming vehicles altogether is, in EPA's view, unnecessary at this time. After careful consideration of all arguments and data received in comments, EPA believes that total elimination of imported nonconforming vehicles is not justified given the sparse data in the record concerning certified vehicles. Furthermore, EPA does not agree with the legal arguments propounded by the commenters supporting prohibition.

As explained in the preamble to the SNPRM, SNPRM Option 1 originally stemmed from comments EPA had received from various OEMs and the State of California in response to the November 4, 1983 Notice of Public Workshops. Comments on the SNPRM indicate that the option is now supported mainly by OEMs. It is explicitly opposed by two OEMs, all ICIs, two Federal agencies and various individuals.

Most of the comments dealt with the following four major issues.

1. Denial of Certification to ICIs Based on the Record

The first issue was whether ICIs as a class should be denied the opportunity to certify because they are unreliable and/or lack knowledge and control over vehicles they modify. Without such control, OEMs argued, it is unlikely that vehicles will be properly modified in accordance with the provisions of a certificate. Various OEMs argued that the data in the record concerning improper modifications (*see* Part III, *supra.*) provide clear evidence of such unreliability and lack of knowledge. They pointed in particular to the various OEM dealer surveys, the results of the joint EPA/CARB program and emission tests of two vehicles covered by certificates of conformity held by ICIs. Some cited the data in the record concerning falsification of data as the basis for arguing that even when ICIs have the requisite knowledge and skill, they will not use it to perform the necessary modifications because they will take advantage of EPA's limited enforcement capability. Thus, they argued, if vehicles are improperly modified and tested under the current EPA program, it is unlikely they will be properly modified under a new EPA program that requires imported vehicles to be modified so as to be covered by a certificate of conformity.

Various ICIs did not dispute the evidence concerning improper modifications but argued that it pertained almost exclusively to the current program which is admittedly flawed and, therefore, is irrelevant to a consideration of a certification program for ICIs.

EPA notes that the data base in the record relates almost entirely to the reliability and knowledge of ICIs is the context of the current "modification/test" program. The data relating to the ability of ICIs to properly produce vehicles under EPA's certification program is too sparse to justify banning all ICIs as a class from certification. EPA believes that reasonable alternatives which are designed to address the deficiencies of the present program should be explored before a complete ban could be considered and that, as discussed above, today's action provides such a reasonable alternative.

Some OEMs also provided information on "running changes" [7] as further evidence of the need to ban the importation of nonconforming vehicles. OEMs argued that ICIs should be banned from certification because of their lack of knowledge of running changes affecting emissions performance. EPA does not believe that lack of knowledge of running changes by ICIs is adequate to justify eliminating the importation of nonconforming vehicles, especially given that there are reasonable alternatives available to address the running change issue. (The issue of how to address running changes in a new program is discussed in Part V, below.)

2. Denial of Certification on Legal Grounds

The second major issue was whether under sections 216(1) or 206 of the Clean Air Act, EPA should prohibit ICIs as a class from obtaining certificates. Various OEMs argued that EPA lacks any legal basis for allowing ICIs to certify. Section 216(1) defines a "manufacturer as a person engaged in the manufacturing or assembling of new motor vehicles . . . or engines, or importing such vehicles or engines for resale, or who acts for or is under the control of any such person [except dealers]. . . ." Despite the explicit inclusion of commercial importers in the definition, some OEMs argued that Congress did not intend that the definition of "manufacturer" in section 216(1) apply to ICIs, but only to entities in the original manufacturer's standard chain of production (other than dealers) that are responsible for the Act's requirements. As such, they argued, the list of entities in the definition of "manufacturer" in section 216(1) includes OEMs' authorized importers but not independent importers. Moreover, two OEMs (MBNA and Associated Ferrari Dealers of America (AFDA)) argued that although the 1965 legislative history of the Motor Vehicle Pollution Control Act, where the present form of section 216(1) first appeared, does not specifically discuss this subsection, there are other indicators in the 1965 legislative history supporting this view. MBNA claimed that the 1965 legislative history refers to the role played by the original manufacturer's normal chain of production in assuring emission compliance, specifically, "[t]he record [Congressional Record of September 24, 1965] has several references to the cooperation of, and duties imposed upon, the automobile industry." [8] Therefore, MBNA argued that the problem of "independent, free-rider entrepreneurs such as grey market importers" was simply not thought of at the time of the Act's adoption and, hence, that ICI's were not meant to be included within the definition of manufacturer in section 216(1).[9]

AFDA also cited similar portions of the legislative history in concluding that Congress intended to impose obligations on the auto industry as it then existed and that Congress neither foresaw the rise of the grey market nor intended its definition of manufacturer to encompass gray marketers.[10]

Furthermore, according to MBNA, the Act's amendments to section 203 in 1970, to give EPA discretion to allow some nonconforming imports, were designed to address only two problems: Original manufacturers who imported old nonconforming cars and individuals who imported new or old nonconforming vehicles for purposes other than sale or resale. The legislative history, it claimed, does not recognize other types of importations. Thus, the 1970 legislative history purportedly also supports the conclusion that Congress never contemplated the importation of nonconforming vehicles by commercial interests other than original manufacturers.

Various OEMs argued that this legal analysis and the data in the record indicate that EPA lacks any basis for

[7] Running changes are those changes in configuration, equipment, calibration and so forth which may be made by a manufacturer in the course of production of a model line or engine family and which may have an effect on vehicle emissions performance.

[8] See MBNA submission to EPA Docket EN 79-9, January 23, 1984, pp. 7-15.

[9] Id. at p. 9.

[10] See AFDA submission to EPA Docket EN-79-9, pp. 14-19.

allowing ICIs to certify. One OEM argued that even if EPA did believe ICIs were manufacturers, there is a legal basis for ignoring that interpretation when an ineffective program has been demonstrated.

One ICI disagreed and argued explictly that section 216 of the Act makes it clear that ICIs are manufacturers and that it has been EPA's practice to recognize this. The SNPRM, according to this ICI, does not contain any justification for EPA to change its view.

EPA still believes that ICIs are manufacturers under section 216(1) of the Act, and, hence, are entitled to apply for certification. Section 216(1) expressly provides that the term "manufacturer" includes "any person engaged in the manufacturing . . . of new motor vehicles or new motor vehicle engines, or *importing such vehicles or engines for resale*, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or . . . engines. . . . (Emphasis added.)

Thus, the statutory language on its face specifically provides that any importer for resale is a manufacturer without regard to whether the importer is independent or an authorized representative of the OEM. The statutory language implicitly provides additional support for this interpretation. The definition includes not only persons manufacturing, assembling, or importing new vehicles, but also persons "who act for or are under the control of any such person in connection with the distribution . . ." of such vehicles. This last category would cover authorized importers who act for or are under the control of the OEMs. Thus, if the specific reference to importers for resale in section 216(1) were limited to authorized importers, as the OEMs suggest, the latter phrase would be superfluous and redundant. EPA does not believe that Congress would have intended such a meaningless redundancy. Accordingly, the reference to importers in the definition must include importers who are *not* authorized representatives of OEMs.

EPA believes that OEM reliance on the 1965 and 1970 legislative history of the Act is weak at best, especially in light of the clear statutory language of section 216(1) of the Act. The sections of 1965 legislative history cited by MBNA are largely focused on the health effects of air pollution and the need for Federal, as opposed to state, regulation to protect auto manufacturers from divergent regulations. There is no emphasis in the cited portions of the legislative history on the structure of the auto industry or on the relevance of the industry's structure to the then-pending legislation. Accordingly, EPA does not find MBNA's reading of these casual references to auto manufacturers as intentionally limiting the reach of the legislation to the typical production chain to be persuasive.

The legislative history cited by AFDA addresses the auto industry's technical knowledge and skill in manufacturing autos with emission control equipment. EPA believes that Congress was addressing a general situation when it spoke of the auto industry's knowledge and skill and was not focusing on the narrow issue of who would equip imported autos with emissions equipment. In summary, EPA believes that the 1965 references to the "auto industry" cited by the OEMs were not intended to carry any special significance regarding the status of importers under section 216 and sheds no light on the meaning of the definition.

EPA also believes that the 1970 legislative history of section 203 cited by MBNA merely acknowledges Congressional concern about the legal importation of slightly-used foreign-built nonconforming vehicles by manufacturers and individuals. At most, this indicates that Congress did not expressly consider the role of independent importers under section 203. It does not, however, lend support to the argument that Congress implicitly intended ICIs to be prohibited from importing nonconforming vehicles, especially when the language of section 216(1) so clearly encompasses them.

3. Denial of Certification to ICIs Since Certification Is Inadequate to Assure Compliance With Standards

The third major issue was whether SNPRM Option 1 should be adopted because it is the only option which provides an adequate regulatory program to meet the requirements of the Act by ensuring compliance of vehicles over their useful lives. One OEM stressed that any option featuring a certification process for ICIs is not appropriate since it assumes an identicality among imported vehicles of the same model such that each vehicle modified to meet the specifications of the certificate will have similarly allowable emissions. The OEM claimed that such similarity cannot exist since there are numerous differences (not always known or of concern to ICIs) among imported vehicles of the same model which may lead to different emission results even if they are similarly modified. Therefore, it argued, none of the options presented were adequate.

However, EPA believes that an imports program relying more and more heavily on the certification process, with the contemplated increased design scrutiny and increased enforcement discussed in Part V, and other improvements in the modification/testing process, will provide an adequate regulatory program and should prevent the problems raised by the OEMs. In addition, the concern over the identicality of models is related to the running change issue and has been adequately addressed in the new program (see discussion in Part V, below).

4. Impacts of Eliminating Nonconforming Vehicles

The fourth major issue concerned the impacts of SNPRM Option 1. Various OEMs argued that SNPRM Option 1 should be adopted since it is the only option resulting in an equitable situation for them. This is because ICIs would be permitted under the certification options proposed by EPA (SNPRM Options 2 and 3) to meet more relaxed (and less expensive) requirements. EPA, they argued, should impose the same burden on all who import vehicles.

One OEM disagreed saying SNPRM Option 1 is unfair to ICIs since it would eliminate them entirely. One ICI and the U.S. Small Business Administration also expressed concern that the ICI businesses would be eliminated unjustifiably.

The U.S. Department of Justice (U.S. DOJ) and one ICI said that SNPRM Option 1 would result in a high cost to consumers since OEMs would no longer have to compete with importers of nonconforming vehicles. U.S. DOJ estimated that it would result in a combined loss of $249 million to United States consumers. (The SAC should be consulted for further information on DOJ's analysis of the impact of this option on consumers, together with that of other options presented in the SNPRM and one OEM's detailed rebuttal.)

EPA believes it is not necessary to address the ICI's and U.S. DOJ's comments in opposition to Option 1 since, for reasons discussed earlier in this section, EPA has chosen not to adopt this option (concerns about the DOJ analysis are contained in the SAC). With respect to the OEM's equity argument, EPA believes that since all ICI models that have to be certified will go through certification procedures applicable to both small volume OEMs and ICI's, equity is assured for certified

vehicles. For the vehicles that use the new stringent "modification and test" procedure, the ICIs are subject to the requirements (discussed in Part V, below) regarding 100 percent testing, the application of deterioration factors (assigned by EPA as in small volume certification), warranties, recall, labeling and maintenance instructions. Thus, the burden on an ICI using this option should be comparable to that of any person who imports under a certificate.

V. Today's Action: EPA's New Regulatory Program for Imported Nonconforming Vehicles

Today's action provides a new regulatory program, part of which will be phased-in between 1988 and 1993, that permits entry to imported nonconforming vehicles while addressing effectively the problems posed by the old program. The new program is an outgrowth of previously proposed options and comments which, with some exceptions during the phase-in period, requires certification for imported vehicles less than six OP years old [11] at the time of importation, but allows importation of vehicles six OP years old or older under an enhanced modification/test program. Requirements imposed on certificate holders for both certified and modification/test vehicles (durability demonstration, recall, warranty, etc.) proposed in SNPRM Option 3 have been incorporated for the most part in this final rule. As discussed in Part 5.C below, during the phase-in period some vehicles less than six OP years old may be imported under the new modification/test program under certain circumstances. However, the number of such vehicles which may be "modified/tested" decreases each year of the phase-in period until 1993 when all vehicles less than six OP years old (with a few exceptions) must be imported under the new certification-based program. Additionally, the new program provides for an exemption from emission requirements for vehicles greater than twenty OP years old. The new program has six major parts.

A. New Imports Program

1. Importations Only by Certificate Holders

The first part of the new program is a provision that permits only ICIs that possess a certificate of conformity from EPA to import nonconforming vehicles [12] (except in cases of exemptions and catalyst retrofit vehicles, see Part V.A.6, below).[13] Certificate holders would bear responsibility not only for performing, within 120 days of entry, all necessary modifications and emissions testing, but also for assuring compliance of the vehicles they import with EPA emission requirements over the useful lives of the vehicles. In effect, this will impose on ICIs the same emission requirements currently imposed on OEMS by the Act.

Today's action does not preclude an individual from importing a vehicle into the U.S. Instead, it requires individuals to arrange for such importations through a certificate holder who will take responsibility for the emissions compliance of the vehicles. These vehicles would be part of the certificate holder's "production line" and the certificate holders would be responsible for complying with all requirements for vehicles which are not actually owned by the certificate holder. A certificate holder must explicitly agree to these requirements as a condition of approval for final admission of the vehicle into the United States.

The provision that only certificate holders may import nonconforming vehicles is a major step in addressing the problems of the old program. First, it focuses responsibilities for importation and for emission control on one entity (the certificate holder) and, thus, will largely eliminate the problem of diffuse responsibilities among various persons under the old program. Second, it assures that there is a responsible entity that will provide emission warranties, maintenance instructions and recall liability and that will properly affix emissions labels and comply with fuel economy requirements. Finally, since the number of regulated persons will significantly decrease under the new program, more effective EPA enforcement is anticipated. All of the above, together with the stringent sanctions applicable to certificate holders in this final rule, are expected to result in more durable modifications, substantial prevention of improper modifications and, hence, better air quality than under the current program.

In comments on the SNPRM, there was objection by several individuals and a few ICIs to this provision. One commenter proposed allowing individuals to import vehicles over two years old (see discussion in Part VI of this and other proposals relating to variants of the option selected for today's action). On the other hand, there was support for this provision among most ICIs, state government agencies and at least two OEMs. For the reasons stated above, EPA believes that the prohibition against importations by individuals is appropriate.

2. New Administrative Requirements

The second part of the program involves certain new administrative requirements that provide for streamlined reporting requirements and a "fifteen day hold" period which, together with the availability of new sanctions, replaces bonding.

For vehicles covered by certificates of conformity and for vehicles entering under the new modification and test provision, EPA has eliminated the requirement for an EPA obligation on the Customs bond pending final admission of a vehicle, and has substituted a "fifteen working day hold" mechanism that is expected to reduce the administrative burden on EPA and Customs. Under this arrangement, each vehicle is required to be stored for a period of fifteen (15) working days following notification to EPA of modification and/or testing to provide the opportunity for EPA confirmatory testing and inspection of vehicles and records. SNPRM Option 3 had proposed retaining the bonding requirement for vehicles entering under the modification and test provision. EPA has eliminated this requirement in this final rule since EPA believes that the "fifteen working day hold" concept, together with the sanctions provided in § 85.1513, are an effective substitute for bonding for these vehicles just as with certified vehicles. The bonding mechanism has been retained for most vehicles entering

[11] For purposes of determining OP year, OP year is the calendar year of original production. The number of original production years a vehicle is old is determined by subtracting the original production year of the vehicle from the calendar year of importation. For example, under the new program, for nonconforming vehicles imported in calendar year 1994: Vehicles originally produced January 1, 1989 and later must be modified in accordance with an ICI's certificate of conformity; vehicles originally produced between January 1, 1974 and December 31, 1988 may be modified in accordance with a certificate or modified/tested; and vehicles which are not otherwise excluded which were originally produced before January 1, 1974 would be entitled to an exemption from demonstrating compliance with emission requirements.

[12] Today's action provides that a nonconforming vehicle includes any vehicle imported by an ICI possessing a valid certificate of conformity but which has not yet been finally admitted under these regulations. Until such final admission, vehicles imported under § 85.1505 are not considered to be covered by a certificate of conformity.

[13] While the Act permits any person to import a vehicle covered by a certificate of conformity, these regulations permit only certificate holders (with a few exceptions) to import nonconforming vehicles. It should be noted that an importer for purposes of these regulations does not necessarily comport with "importer of record" for purposes of the Tariff Act of 1930, as amended. *See* 19 U.S.C. 1484. Under EPA's amended regulations, the importer must be a certificate holder and need not be the owner, purchaser or an authorized Customshouse broker, as provided for in the Tariff Act.

under some special exemptions and catalyst and O_2 sensor equipped vehicles which are not participating in programs approved by the Administrator.

In comments on the SNPRM, there was virtually no objection to the concept of the hold period. While three ICIs commented that the hold period should be shorter (e.g., ten days or three days), as indicated in the SAC, EPA believes that fifteen days is appropriate, given the number of vehicles expected to be imported and the need to provide EPA flexibility and a realistic opportunity to conduct inspections.

Paperwork requirements for reporting compliance of each vehicle to EPA (in the cases of both certified and mod/test vehicles) are streamlined under the new program. When a certificate holder voluntarily imports a nonconforming vehicle, it is required to report this "conditional entry," as before, on a brief form to EPA. When all modifications (and testing, where applicable) are completed, it then submits only a brief application containing information demonstrating that the vehicle has been properly modified and/or tested. The application forms shall be completed in accordance with EPA instructions and are likely to be designed so that they can be read automatically by an optical character reader into EPA's computer. Alternatively, the final rule provides that a certificate holder may choose to submit the data electronically to the EPA computer using a prescribed EPA format. These data then will serve as a tool for use by EPA in inspection/enforcement strategies. Through this new system, the extensive test documentation reporting requirement under the present program is eliminated and, thus, administration and enforcement are facilitated.

3. Requirements for Certified Vehicles Covered by Certificates

The third part of the new imports framework are the requirements imposed on certificate holders for vehicles they import which are intended to be modified and/or tested in accordance with a certificate of conformity. Unlike the present imports program, the EPA small volume certification regulations at 40 CFR 86.084–14—under which most nonconforming vehicles will eventually be certified—involve some "up front" screening for durability problems on a prototype vehicle and require test values to be adjusted using deterioration factors that project emissions over a vehicle's useful life. As indicated in the SNPRM, EPA intends to perform confirmatory tests on prototype vehicles for importers under the new program and to carefully scrutinize vehicle designs before issuing the certificate. Vehicles then imported under the certificate must be modified in accordance with the certificate. This fact alone should greatly facilitate enforcement since instead of having to retest vehicles to determine compliance, as was often necessary under the old "modification and test" method, EPA will be able to inspect many vehicles and check the parts installed against the description in the certification application to determine whether the certificate holder has met its emission responsibilities.

Today's action also imposes a requirement for certificate holders to provide assurance to EPA that vehicles modified in accordance with the provisions of an importer's certificate would not be adversely affected by unknown running changes. The new regulation provides that assurance can be given through successful completion of an FTP test on every third vehicle (with application of a deterioration factor) or presentation to EPA of a statement by the appropriate OEM that the OEM will provide all information concerning running changes to the importer and, at the same time, to EPA. This latter scheme would need prior EPA approval which would not be given unless the importer, among other things, could demonstrate that it had the capability of evaluating the effect of the running changes on emissions. As noted below, EPA has made some relatively minor changes from the language proposed in the SNPRM in this regard.

Furthermore, certificate holders are required to comply with various requirements imposed on OEMs. These include requirements for assembly line inspections, recall, maintenance instructions, warranty, emissions labeling and fuel economy requirements (including fuel economy labeling), and gas guzzler tax. There are also recordkeeping requirements which have been imposed on certificate holders. Most of these requirements are promulgated as described in the preamble to the SNPRM and thus are discussed in detail below only when significant comments were received or changes were made.

Major comments focused on the following: a. Durability/in-use testing, b. configuration control/running changes, c. service availability, d. financial responsibility and e. definition of model year. Additional comments were made on provisions relating to: f. Assembly line inspections, g. recall, h. driveability assurance and i. repair manuals. While EPA received no comments concerning proposed regulations for laboratories, EPA, as explained below, has decided not to issue these regulations.

a. Durability assurance/in-use testing. Many commenters expressed the concern that EPA's small volume certification regulations are an inadequate means of assuring the emissions durability of nonconforming vehicles. OEMs indicated that the assigned deterioration factors used in small volume certification to predict emission performance at 50,000 miles were not appropriate for ICI small volume certification. This is because these assigned deterioration factors are based on 50,000 mile durability tests performed on vehicles with technology purportedly different from that used on nonconforming vehicles. OEMs were also concerned that a requirement for 5000 mile testing permitted by section 206(a) of the Act for small volume manufacturers would not be adequate since catalyst deterioration data showed that it was not necessarily a good predictor of vehicle emissions at 50,000 miles. Many of the OEMs proposed that ICIs should be required to do 50,000 mile durability testing to certify. ICI commenters, on the other hand, argued that the small volume procedures were adequate and appropriate for use by ICIs and that requiring 50,000 mile durability testing of small volume certifiers may not be legal.

Assuming ICIs will qualify for small volume (as opposed to large volume) certification, EPA believes today's action will provide an adequate level of durability assurance for certified vehicles for the following reasons. First, EPA plans to carefully scrutinize vehicle modifications proposed in certification applications and to take aggressive measures where poor modifications are identified which may significantly affect emissions durability. This is expected to result in more durable technology. Second, the final rule, unlike the present program, requires that importers comply with all regulatory requirements imposed on other manufacturers. Third, consolidation of the nonconforming imports industry, (i.e., mergers of ICIs, modifiers and other businesses) and the reduction in paperwork that will likely result from the final rule, will free EPA resources for better enforcement and use of the stringent sanctions available. Fourth, EPA believes that better and more durable technology will likely be developed by a consolidated industry, in contrast to that used by the highly diversified and individualized industry existing under the present program.

Some commenters, including the State of California, urged EPA to impose a new in-use testing requirement to be paid for by ICIs. This would be similar to a requirement imposed by California in its new regulations regarding newly manufactured nonconforming imports. The purpose of the requirement would be to provide an alternative means of durability assurance to compensate for the lack of a 50,000 mile certification testing requirement for small volume ICIs. There was mixed reaction to that concept among commenters. One OEM urged EPA to adopt the concept with the stipulation that a 50,000 mile durability test requirement as a prerequisite for certification also be included. Other commenters expressed doubts about the legality, fairness and practicality of the concept.

EPA believes that while an in-use testing requirement as described by California has some merit, for reasons indicated above, it is not essential to the effectiveness of the new program. For example, EPA already has authority under section 207(c) of the Act to perform in-use testing of any manufacturer's vehicles in the exercise of EPA's recall authority.

Several commenters proposed that an engine mapping[14] requirement be added as a means of durability demonstration. EPA believes that engine mapping is not an adequate means of addressing the durability issue. First, there are no widely accepted procedures for engine mapping. Second, engine maps are developed using a fully warmed-up engine or catalyst and thus thermal transients such as cold start emissions (which contribute substantially to the overall emission levels of a vehicle) do not show up on such maps. Third, engine maps are usually developed using steady-state speeds and loads while real engines in real vehicles operate in a transient fashion. Thus, differing results can be expected for the two situations. Therefore, EPA believes that an engine mapping requirement is not appropriate at this time.

Some OEMs argued that the small volume certification procedures provided for by section 206(a) of the Act could not be utilized by ICIs since legislative history shows that the provision was designed only for small manufacturers who produce vehicles for sale in the U.S. EPA disagrees. As discussed in Part IV above, there is no indication in the legislative history that Congress did not intend section 206(a) to apply to all small volume manufacturers, including eligible ICIs.

Various OEMs commented that all sales of a given make by all ICIs should be aggregated with all U.S. sales of that make by OEMs to determine if any ICI is eligible for small volume status under 40 CFR 86.082–14 (i.e., total sales under 10,000 per year). EPA historically has not required ICIs to aggregate their vehicle sales with respective OEMs for purposes of determining eligibility for small volume certification procedures. EPA believes this practice is still appropriate under the present regulation. As indicated in the preamble to the final rule establishing optional small volume procedures, the intent of the aggregation provision at 40 CFR 86.082–14(b)(2), was to ensure that large volume certification was not circumvented. In particular, the small volume certification rule, published on March 12, 1981 (46 FR 16259), noted that EPA was concerned that a large volume manufacturer would market small numbers of vehicles through many distributors or importers, making each distributor or importer eligible for small volume certification even though the manufacturer would have been ineligible. Such a cooperative arrangement between the ICIs and their OEM counterparts is not the case with ICI importations. Hence, EPA believes that aggregation of their sales was not intended by 40 CFR 86.082–14(b)(2). (However, EPA may consider changes to this requirement in a separate, future, rulemaking pertaining to the small volume certification rules.)

b. Configuration control/running changes. After consideration of all comments on this issue, EPA has decided on two methods by which ICIs could provide assurances to EPA that the emissions of vehicles modified in accordance with the provisions of an ICI's certificate of conformity would not be adversely affected by production or running changes.

First, the certificate holder may present to EPA a statement by the OEM that the OEM will provide to the certificate holder and to EPA all information concerning running changes. When running changes do occur, the certificate holder must assure that a description of the running changes and an assessment of their emissions effects are actually received by EPA. This provision differs slightly from the SNPRM in that it only requires a statement from the OEM, as opposed to an enforceable agreement between the OEM and the certificate holder. The change was made in response to comments from two OEMs that indicated that they would provide to EPA information on running changes. In addition, prior approval of this method must be obtained from EPA in order to ensure that notification of the running changes will be received and that the certificate holder will have the technical expertise to evaluate the emissions effects of the running changes.

The second method requires that an FTP test be conducted on every third vehicle imported under a certificate until a threshold of 300 vehicles is imported (under that certificate) without having to make adjustments or other modifications due to running changes, at which time an FTP test on every fifth vehicle is required. If, at any time, any "running changes" are made to the vehicles by ICIs on their own initiative (as described below) in order to bring their vehicles into compliance, then counting for purposes of determining the 300 figure and testing of every third vehicle will begin again, starting with the first vehicle receiving such changes.

Today's action provides that certificate holders are required to report test failures to EPA. Should a vehicle fail an FTP, the certificate holder may retest the vehicle within five working days subsequent to the first test. Such retest must involve no adjustment of the vehicle (e.g., adjusting the RPM) from the first test other than adjustments of adjustable parameters that, upon inspection, were found to be out of tolerance. (When such an allowable adjustment is made, the parameter may be reset only to the nominal value, but not to any other value within the tolerance band.) Should a second failure occur, then the certificate holder must initiate a running change pursuant to existing 40 CFR 86.084–14(c)(13) that causes the vehicle to meet Federal standards (as demonstrated by passage of an FTP test[15]). In order to be deemed acceptable by EPA, ICI running changes involving adjustments of adjustable vehicle parameters must be changes in the nominal values (i.e., not simply changes to values other than nominal values in the tolerance bands). Such running changes must be reported to EPA but mere reporting (or final admission of vehicles with the running change) will not constitute automatic

[14] Engine mapping is a technique used to make estimates of engine and vehicle performance over complicated driving cycles such as that specified in the FTP. An engine map is analogous to a topographical map of a geographical area. Emissions of the engine are analogous to height on the topographical map while engine speed and engine load are analogous to two directions. Thus, a map of a pollutant from an engine would be lines of constant emissions on an engine speed/load graph.

[15] FTP testing associated with proveout of running changes must be performed at the laboratory which conducted certification testing for the ICI.

approval by EPA of the ICI's running change.

Today's action differs slightly from the SNPRM in various ways. First, it deletes the requirement for emission-related parts identification for each of the vehicles that are not FTP-tested as a means of detecting running changes. One OEM indicated that identical parts numbers are not always a reliable indicator that running changes affecting emissions have not occurred and EPA agrees.

Second, it deletes the SNPRM proposal for 100 percent testing (as an alternative to Method 1 above or Method 2 with a requirement for parts identification for the non-tested vehicles). EPA believes that testing every third (or fifth) vehicle imported provides adequate assurance that running changes do not affect emissions significantly and, hence, 100 percent testing has not been required.

The third way today's action differs from the SNPRM is the provision for a lower percentage (20 percent) of required FTP testing for vehicles imported under any certificate as the volume imported under the certificate exceeds 300 vehicles. Even though the percentage of testing is reduced after the volume of importations under a certificate reaches 300, the total number of vehicles tested by larger volume importers under a certificate is approximately equal to the number of vehicles tested by a lower volume importer. Therefore, the burden of testing is reduced while at the same time the amount of information regarding running changes remains fairly constant.

Most OEMs objected to one or more of the three methods proposed in the SNPRM, calling them "unworkable" and proposed in-use testing or engine mapping as methods of addressing the issue. At least one OEM and various ICIs supported one or more of the methods as did the State of California (who urged this be complemented by in-use testing). Various ICIs supported the notion of testing every third vehicle while others argued for requiring lesser amounts of testing.

EPA does not agree with OEMs who commented that Method 1 is unworkable. For example, EPA is already aware of at least two OEMs who have said they will make information on running changes available. Moreover, ICIs who use this method are required to submit such changes to EPA with an analysis of the change on emissions. Thus, EPA believes that this method will be workable and effective.

EPA acknowledges that the zero mile testing requirements of EPA Methods 2 and 3 do not address the long term effects of running changes. However, no reasonable alternatives exist. Even OEMs are not required to perform durability testing to demonstrate the long term effects of running changes unless they create a new engine family or emission control system. Such a requirement is generally not practical, and, therefore, engineering analysis or judgment often is used. Also, EPA believes neither in-use testing nor engine mapping are appropriate for the reasons discussed above.

c. Service network and warranty. Virtually all OEMs, as well as three state agencies commented that ICIs should be required to provide service outlets to ensure effective warranty and recall and to provide relief for OEM dealers and OEMs from complaints often received at the OEM dealers about nonconforming vehicles. A service network would also obviate the need for "post repair" reimbursements from ICIs for repairs performed by OEM dealers.

There was no clear opposition from ICIs on this issue. One ICI said such a requirement would not be "unreasonable" although it was not needed because the OEM network does an adequate job of servicing the vehicles. Others argued that an ICI dealer structure will evolve naturally anyway.

EPA believes that while a service network requirement may have merit, it should be studied further before being required. There is some evidence in the record that a service network may be a potential outgrowth of a certification-based program which causes consolidation of ICIs. Moreover, the OEM surveys show that servicing is generally available at OEM dealers. EPA, therefore, believes it would be more appropriate to evaluate this issue at a later time.

d. Financial responsibility. OEMs, together with the State of California, which has a requirement of this type in its new ICI regulations, suggested requiring ICI certificate holders to acquire bonds and/or prepaid insurance to cover ICI warranty and recall liability for the useful life of each vehicle. There was no opposition from ICIs regarding this concept even though it was discussed at length in both of the public hearings on the SNPRM.

CARB noted that its own new regulation addressing non-conforming vehicles requires modifiers to post a prepaid surety bond in the amount of $1000 per vehicle to cover its obligation to perform recalls. The bond is refundable at the end of the useful life of the vehicle (i.e., as associated with the CARB program, 5, 7 or 10 years) or when the recall period for an engine family has ended. Alternatively, the modifier can purchase insurance which will cover the modifier's recall obligation and thereby avoid the posting of bonds.

CARB argued that because this industry is composed of small businesses, it is quite likely that a number of firms will fail over time. Without a requirement for a bond or insurance policy to cover warranty and recall repairs, owners of vehicles obtained from firms that are no longer in business would have to bear the warranty costs. Without adequate warranty coverage, tampering is more likely to occur.

Today's action contains a provision for a prepaid insurance policy that, in effect, assures effective warranty coverage. Thus, a bond that is required to be held to assure an effective recall and warranty program is unnecessary and, therefore, should not be made a part of the final rule. Furthermore, as discussed in the preceding part, a service network may be a likely outgrowth of the new program and will help address warranty and recall concerns. Finally, sanctions are available in the new regulation and the Act for failure to properly conduct recalls. Thus, EPA does not believe an additional bonding requirement is necessary at this time.

e. Model year. Various ICIs urged EPA to change its policy regarding model year as it applies to vehicles modified by an ICI pursuant to a certificate of conformity. They argued that the current EPA model year definition unfairly limits the period in which ICIs can sell their vehicles since the certification process for a "new" model cannot even begin until January 1 and will not be completed until at least two months later. Since the certificate is only valid until December 31, the ICIs argued that the "window of importation" is thus limited, at best, to only eight to ten months a year.

EPA believes that the current policy is fairly applied to both OEMs and ICIs and that part of the problem may be due a misunderstanding of the policy.

Section 206(a) of the Act provides that a certificate of conformity may be issued for a period of not more than one year. EPA has interpreted the phrase "one year" to mean one model year which can extend for as long as almost two calendar years. For example, a certificate may be obtained as early as January 2 of the calendar year preceding the calendar year for the named model year and expires by December 31 of the calendar year for which the model year is named (see Advisory Circular No. 6A

(Subject: Duration of Certificates of Conformity and Production Period, September 1, 1972)). EPA will apply this definition equally to OEMs and ICIs.

However, in order to determine whether a particular ICI or OEM vehicle is covered by a certificate of conformity, EPA must look to factors other than the model year [16] designated by the certificate holder. Specifically, EPA must examine the description of the emission prototype vehicle in the certificate holder's application for certification. If the vehicle produced is materially the same as the description in the certification application, then it is covered by the certificate holder's certificate of conformity; if it is not, then the vehicle is not covered.

The decision as to whether an ICI vehicle is covered by the ICI's certificate depends not only on the type of modifications the ICI makes to the OEM vehicle but also on the configuration of the OEM vehicle. This is because changes in the emission systems installed by the ICI or the OEM vehicle as originally manufactured can affect vehicle emissions. In the past, ICI certification applications have contained only a technical description of the ICI's modifications and were devoid of any technical description of the vehicle as originally manufactured by the OEM. Therefore, it was necessary for EPA to determine the production period or model year of the OEM in order to assure that no significant new production changes had been made to the vehicle as originally manufactured which might affect emissions and, hence, certificate coverage.

EPA has found, however, that apparently some European manufacturers have no formal production period and model year is determined in Europe by reference to the date of first registration. Therefore, EPA decided, in accordance with 40 CFR 86.085–2, to designate the European production period (or model year) as the calendar year of original production. Accordingly, to determine whether a particular ICI vehicle is covered by the ICI's certificate of conformity, reference must be made to both the date that the ICI modified the vehicle (which must fall within the ICI's model year or production period stated on the certificate) and the date the vehicle was originally manufactured (which must fall within the same calendar year as the certification prototype was originally manufactured). For example, an ICI can obtain a 1987 EPA certificate of conformity [17] in calendar year 1986 for vehicles produced in Europe in calendar year 1986. This certificate will be valid for vehicles produced in Europe in calendar year 1986 and modified by the ICI through December 31, 1987.

Without more information about the designation of the OEM production period or model year, which has not been supplied during the rulemaking, EPA intends to use the approach outlined above. At present, it is the method best available to determine certificate coverage.

ICIs are incorrect in assuming that EPA's approach to certificate coverage limits ICI production to eight to ten months. As indicated above, a production period can be almost two years.

f. Assembly line inspections. As proposed, EPA is promulgating provisions allowing EPA to inspect and test vehicles imported under the new program which are still under the control of the importer. EPA inspections, as provided in new § 85.1506, could occur at any time during operating hours. Many will focus only on examining records and vehicles while others can be expected to require reasonable numbers of FTP tests. (Such vehicles need not necessarily be ones tested originally by the ICI to satisfy the "one in three" testing requirement.) One ICI commented that the regulation should contain a limitation on the numbers of tests that can be required. As discussed in the SAC, EPA disagrees that more specific criteria are needed.

g. In-use inspections and recall requirements. As proposed, importers under the new program will be subject to recall requirements as provided in new § 85.1508 if EPA determines that a substantial number of an imported model fail to comply with emission standards in-use. One ICI commented that the criterion of "substantial" number of failures upon which to base a recall is too vague. EPA believes that the term "substantial" is appropriate since it is also used in section 207(c) of the Act, which authorizes recalls, and in the existing recall regulations at 40 CFR Part 85, Subpart S.

h. Driveability requirement. The State of California urged EPA to include a driveability requirement to remove the incentive to tamper. However, EPA believes that a specific test is outside the scope of the previous three notices and that no such test is necessary at this time. Furthermore, EPA believes that it can scrutinize vehicle designs for driveability problems as part of the certification process and withhold or deny certification based on driveability concerns. See *Chrysler Corp.* v. *EPA*, 631 F.2d 865 (D.C. Cir 1980), *cert. denied* 449 U.S. 1021.

i. Repair manuals. A few commenters said EPA should require certificate holders to provide repair manuals to owners. This regulation does not do so. EPA does not believe such a requirement is necessary at this time since the regulation provides for maintenance instructions and emission labeling. In addition, the record indicates that there is already availability of servicing at OEM dealers and the potential for more ICI dealer networks. EPA, however, believes it would be more appropriate to reevaluate the issue at a later time.

j. Laboratory requirements. EPA has decided not to adopt the proposed regulatory language in the SNPRM pertaining to requirements for emission laboratories which perform the Federal Test Procedure. EPA believes that a laboratory recognition program is no longer necessary because the responsibility for emission compliance in the new program will rest with the certificate holder. The certificate holder, as such, will be responsible for the validity and reliabilty of all testing performed on its nonconforming vehicles and, hence, should ensure that the laboratory that performs emission tests on its behalf is capable and reliable. As a result, EPA will discontinue maintaining lists of laboratories capable of performing the FTP which must be utilized when submitting test data to EPA. However, EPA may still conduct inspections and correlation testing at laboratories utilized by the ICI for certification testing as has been the practice for laboratories used by OEMs for certification testing.

It should be noted that since EPA clearly intended in the SNPRM that vehicles would be FTP-tested *subsequent* to their importation into the U.S., and not at laboratories outside the U.S., EPA is clarifying the regulation by inserting some explicit language to this effect in new §§ 85.1505(a)(2)(ii) and 85.1509(b)(2).

k. Emission labeling. EPA has clarified and made some minor modifications to the SNPRM provision regarding vehicle labeling. The changes require that the original production year and a vacuum hose diagram be included on the label and will provide valuable repair information to vehicle owners and mechanics.

[16] Here model year is designated only for purposes of determining applicable emission standards and requirements which may vary by model year.

[17] Vehicles produced under this certificate must comply with 1987 emission requirements.

4. Requirements for Vehicles Entering Under the New "Modification and Test" Provision

The fourth major part of the new imports program is the provision that permits vehicles six OP years old or older to be imported by certificate holders, at their option, under a new, more stringent "modification/test" procedure rather than under the certification provision. EPA believes that few vehicle models six OP years old or older are likely to be certified because the relatively smaller number of vehicles of that model likely to be imported would make it impractical or uneconomical to do so (see also discussion in Part VI below). EPA has decided to permit entry of these older vehicles under the revised "modification and test" procedure in part to provide a greater degree of model availability to consumers while still maintaining a primarily certification-based program. Moreover, EPA believes that many of the problems identified with the present program ultimately will be eliminated under this two-tier system given that: The majority of imported nonconforming vehicles are expected to be less than six OP years old, and thus, after the phase-in period, must be certified; during the phase-in period, the percentage of vehicles less than six OP years old that must be certified will increase year by year; the expertise obtained by ICIs in certifying certain models is expected to be transferred to modification and testing of other vehicles; the reduced number of vehicles eligible for modification/testing (both during and after the phase-in period) should decrease the incentive for deliberate abuse of, or risk of negligent noncompliance with, the mod/test requirements; and the new, more stringent mod/test procedures should reduce even further any risk of noncompliance with the emission standards.

EPA has chosen six OP years old as the appropriate vehicle age threshold (with certain exceptions during the phase-in period) for permitting vehicles to be optionally mod/tested after consideration of various age thresholds. EPA believes that, under the current program, a significant drop in the overall volume of mod/test imports occurs at six OP years. This is an indication that at this level certification begins to become unlikely for a number of models. (Based on EPA mod/test import data, vehicles that are six model years old are currently less than thirty-three per cent of those that are five model years old, while thereafter the percentages decrease less dramatically.) While EPA believes this drop currently is heavily influenced by the existence of the five model year old policy (which is abolished by today's action), EPA believes that without this policy the drop-off would result somewhat later (not sooner). Given this uncertainty and the fact that the extra margin of increased model availability afforded by six OP years (as opposed to some higher year threshold) can be accomodated without potentially undermining the ultimate certification program (as discussed earlier), EPA believes six OP years is a reasonable threshold.

Certificate holders with vehicles entering under this provision are required, just as in the case of certified vehicles, to bear responsibility for their compliance with standards over the vehicles' useful lives. They also must meet requirements similar to those imposed for certified vehicles, including special assembly line inspections, recall, maintenance instructions, warranty, emissions labeling and fuel economy requirements (for comments on these requirements, see Part V.A.3, above). Moreover, all vehicles entering under the new modification and test procedure are required to comply with emission standards in effect at the time such vehicles are modified. This requirement ensures consistency with the approach used for certified vehicles. (This will be true as well for vehicles less than six OP years brought in under the modification/test option during the phase-in period.)

Although relatively less durability assurance is provided for "modification and test" vehicles, EPA believes such assurance is sufficient for various reasons. First, as proposed, the new program will permit only certificate holders with clearly defined responsibilities to import these vehicles. As indicated above, this will likely result in a transferral of expertise and technology from certified vehicles to "modification and test" vehicles (both during and after the phase-in period) so that the durability of these vehicles will approximate that of certification vehicles. Second, certificate holders are required to adjust the zero mile emission test results on each vehicle by a deterioration factor assigned by EPA and such adjusted results must comply with standards. (The existing "modification and test" procedure contains no such requirement.) Finally, EPA intends to conduct inspections and retests of these vehicles. As appropriate, when EPA determines that a certificate holder has improperly modified and/or tested any vehicle, or has failed to comply with any applicable provision of the rule, such as the record-keeping and reporting requirements, EPA intends to apply the stringent sanctions provided for in this rule. Such sanctions include revocation or suspension of active certificates, denial of the privileges of certifying vehicles and/or denial of importing "modification and test" vehicles for an appropriate period of time.

The main elements of this option, and the major comments received and EPA changes to requirements proposed in the SNPRM for modification/test vehicles, are indicated below.

a. Vehicles eligible for modification/test. Although modification and testing is prohibited in all cases where a vehicle is less than six OP years old (except during the phase-in period), EPA has determined, in response to a comment provided by the Department of Defense (DOD), that this prohibition on the modification and test provision shall not be applicable in the case of certain vehicles purchased by military and other U.S. Government personnel stationed overseas that meet certain "special circumstances" criteria. DOD was concerned about military personnel who are prohibited from importing U.S. certified vehicles overseas or who are stationed in areas that do not have adequate repair facilities to service U.S. certified vehicles. DOD indicated that if nonconforming vehicles used by these military personnel were not allowed entry into the U.S., these individuals would experience particular hardship under the new rules. EPA agrees. Therefore, for nonconforming vehicles less than six OP years old, owned by military and other U.S. civilian government personnel in the circumstances outlined above, and if there is no ICI certificate which covers that model and OP year, the vehicle will be eligible for entry (through a certificate holder) under the modification and test provision. More specifically, the eligible vehicles are those privately owned vehicles purchased by Federal personnel eligible (under criteria established by those agencies) for shipment of their vehicles at U.S. Government expense in connection with a permanent change of assignment outside the continental U.S. The eligible personnel are those stationed in overseas areas (designated by those agencies) which either prohibit importation of U.S. certified vehicles or which do not have (as determined by those agencies) adequate repair facilities to service U.S. certified vehicles. EPA anticipates that the number of such vehicles imported each year will be small.

The SNPRM asked for comment on how new models should be treated in the final rule. Various OEMs argued that it was inequitable not to limit the importation of new models the first year since OEMs would have to certify these new models but ICIs would be able to import them under a mod/test program. AICA recommended that the mod/test provision not extend to new vehicles but only to those over two years old in order to ensure consistency with the California regulation and also avoid confusion among ICIs. One ICI said new models should be permitted to use a modification/testing procedure since it provides a good way for testing the market for models from countries, such as Portugal, for which the U.S. represents new markets.

As indicated above, EPA has decided ultimately (after the phase-in period) to limit modification/test to all vehicles at least six OP years old. Therefore, the OEM's concern over new models expressed in response to SNPRM Option 3 will be alleviated by the final rule. (See discussion of new models in phase-in period, Part V.C below.) EPA believes that allowing all new models to be imported under the modification/testing option on a permanent basis would greatly reduce the number of vehicles coming in under the certification option, which is the cornerstone of the final imports program. In that event, the long-term benefits expected from primary reliance on the certification option (as already discussed) would fail to materialize.

Finally, the SNPRM asked for comments on whether the modification/testing option should be limited to models *not* on a list of models for which certificates had already been obtained or which were imported in sufficient numbers to make certification economically practical. In light of the decision to limit that option (with exceptions during the phase-in period) to vehicles six or more OP years old, the concept of a "list" is no longer necessary. EPA expects that most of the models that would have been on such a list are or will be newer models that eventually will have to comply with the certification option under the revised final rule. Moreover, the revised final rule will avoid two problems that such a list would have created, namely: (1) What the proper threshold number should be for placing a model on the list; and (2) what to do about models initially placed on the list but which, over time, would be imported in such decreasing numbers that certification would no longer be economical or practical.

b. Model year. Various ICIs objected to EPA's proposal to advance the model year to the date of modification for all mod/test vehicles. AICA argued that EPA lacks statutory authority for this proposal; that nowhere in the Act is it suggested that the Administrator has the authority to discriminate among groups of vehicles within a class in the application of standards. AICA also argued that the method renders certain vehicles, such as carbureted, older vehicles, impossible to import since they cannot be modified to meet present model year standards.

The U.S. Small Business Administration also urged EPA to allow two years old and older cars to meet emission standards applicable to the model year in which they were originally manufactured rather than the year of modification because it is difficult to modify the older cars and, thus, a number would be excluded. USSBA also said the incremental air quality difference between the two requirements would be minimal.

EPA believes it has statutory authority for its approach to vehicle model year for emission compliance purposes. First, section 203(b) gives EPA broad discretion to determine the appropriate terms and conditions for importation of nonconforming vehicles. Moreover, section 202(b)(3) of the Act defines vehicle model year for certified vehicles:

> "Model year" means the manufacturer's annual production period (as determined by the Administrator) which includes January, of such calendar year: Provided, that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

EPA's certification regulations at 40 CFR 86.082–2 contain the same definition.

Presently, for certification purposes, EPA considers an ICI certificate holder's modification process as its production process. Therefore, the approach taken in the SNPRM is consistent with the Act, EPA's certification regulations and prior Agency practice. Moreover, EPA believes that many older vehicles, in particular carbureted models, can be modified to meet present model year standards. EPA bases this judgement, in part, on the fact that a number of engines produced in 1986 have existed in a generic sense since 1968 (with some modifications), the year the first Federal standards went into effect. No commenter provided data that would indicate that a 1968 or later vehicle cannot be successfully modified to meet the new standards.

c. The "P.E." provision. EPA had proposed in the SNPRM that certificate holders' applications for final admission for each mod/test vehicle would require that the attestation that the vehicles are durable be signed by a professional engineer (P.E.) with emission control experience. Various commenters said that the P.E. provision provides little additional benefit. EPA concurs. Thus, EPA has not adopted this provision in today's action.

One commenter, AICA, suggested that a driveability evaluation for modification/test vehicles should be added in lieu of the P.E. provision so that any incentive to remove emission controls would be eliminated. EPA has decided not to impose a driveability evaluation requirement at this time. EPA intends to consider the issue of whether a driveability test for these vehicles is needed as experience is gained in implementing the new imports program.

5. Exemptions and Exclusions

The fifth major part of the new imports program consists of the provisions for ten different types of exemptions and exclusions. With the exception of the twenty OP year exemption, these have been adopted without substantive change from the SNPRM. Significant comments were received on three of them. These comments are summarized below. (The reasons for the elimination of the existing five model year old personal use exception and establishment of a twenty-year-old exemption are discussed in Part VII. below.)

a. Hardship exemptions. Today's action incorporates certain hardship exemptions to cover the following limited situations of severe hardship:

(a) Handicapped individuals who need a special vehicle unavailable in a certified configuration;

(b) Individuals who purchased a vehicle in a foreign country where resale is prohibited upon the departure of such an individual;

(c) Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship; and

(d) Other individuals in similar circumstances that give rise to a severe hardship, as approved by the Administrator.

EPA intends to grant such exemptions only for extraordinary circumstances and expects very few vehicles to qualify. Moreover, EPA requires approval of such exemptions prior to permitting the final admission of vehicles into the United States.

The SNPRM proposed approval prior to conditional admission along with the posting of a bond. EPA believes that given that approval is necessary prior to

entry, the provisions for conditional admission and bonding are unnecessary and, hence, the final rule eliminates them.

The California Air Resources Board (CARB) and the California Department of Justice (Cal Justice) were the only commenters objecting to EPA's proposed scope of coverage for this exemption. CARB said it could support a hardship exemption only for handicapped persons. Cal Justice opposed extending the hardship exemption to immigrants on the grounds that it is not among those specifically listed in section 203(b)(1) of the Act and, therefore, EPA is circumventing (and, therefore, undermining) the purpose of sections 202 and 203 of the Act which is to reduce the levels of vehicle emissions.

As indicated in the SAC, EPA believes it does have authority for this exemption pursuant to section 203(a)(1) of the Act which provides that EPA may promulgate regulations permitting persons to import vehicles not covered by certificates of conformity. No data were presented that indicated past abuse of the exemption. Therefore, EPA will provide for this exemption with the expectation that very few vehicles will qualify and there will be no significant impact on emissions.

EPA has deleted, however, one situation subcategory of the hardship provision proposed in the SNPRM which would have permitted entry to an individual owning a vehicle for some substantial period of time and who did not purchase the vehicle with the intention of importing it into the United States. EPA feels that the potential for abuse associated with this subcategory is too great and that all cases falling within this subcategory are not necessarily hardship situations justifying a blanket exemption. The remaining hardship exemption in this final rule still provides sufficient flexibility for specific cases of hardship within this subcategory.

b. Pre-certification exemption. This final rule provides that ICIs interested in obtaining a pre-certification exemption on a prototype vehicle for the purpose of product development, production method assessment and market promotion must apply to EPA, as required by regulations at 40 CFR 85.1706(b). To qualify as an ICI for purposes of this section, an ICI need not have imported vehicles previously but must have been designated a small volume manufacturer by EPA.

It has been the Agency's experience that while numerous ICIs have requested designation as a "small volume manufacturer," and even more have requested information concerning the small volume certification program, relatively few importers have actually applied for a certificate of conformity. As a result, the Agency is concerned that some ICIs, because of their inexperience with the requirements of the certification process, may apply for the pre-certification exemption with the intention of certifying, and subsequent to importing a number of nonconforming vehicles under the exemption, decide not to pursue certification. EPA is particularly concerned because vehicles so imported might not be exported if they are required to be certified in order to remain in the U.S. Similarly, for vehicles that may be modified and tested, EPA is concerned that vehicles brought in under the exemption might not be brought into conformity under the provision for "modification and testing". Consequently, as proposed, EPA will require a bond for any "pre-certification" vehicle conditionally entered by an ICI which would be forfeited unless (1) a certificate of conformity is issued, (2) the vehicle is eligible for and, in fact, has been modified and tested in accordance with the modification and test provision under § 85.1509 or (3) the vehicle is exported within 180 days from the date of entry. EPA received no comments objecting to the bond provision. Additionally, each ICI could import no more than one vehicle for the purpose of pre-certification for each model of vehicle for which it is seeking certification.

Two ICIs commented that the exemption was too restrictive. One said EPA should determine the number of vehicles allowed under an exemption on a case by case basis while the other said that 10 vehicles would be reasonable. EPA disagrees and has decided to limit the availability to one vehicle for two reasons. First, current small volume procedures require the testing of only one prototype vehicle and, as discussed elsewhere, EPA expects that most importers will apply only for small volume certification. This is in contrast to large volume certification which requires one vehicle for durability testing and several other vehicles to be used as emission data vehicles. Second, EPA is concerned that this exemption could be abused and be used as a means to circumvent the requirements of the present program. Should the requirements for small volume certification change, EPA is willing to reconsider the appropriateness of more than one pre-certification exemption per engine family.

c. Diplomatic and foreign military exemption. The final rule continues EPA's exemption for nonconforming vehicles imported by diplomatic and foreign military personnel. One commenter (California Department of Justice) (Cal Justice) opposed continuation of this exemption. In its opinion, the exemption is unauthorized by the Act since it is not among those specifically listed in section 203(b)(1). The commenter said the exemption was inconsistent with the purpose of sections 202 and 203 of the Act which is to reduce the levels of vehicle emissions. Cal Justice also said it is familiar with abuses in California, whereby members of foreign embassies are engaged in the business of importing and selling vehicles to residents. EPA has retained the exemption under authority of section 203(a)(1) which provides that EPA may promulgate regulations permitting persons to import vehicles not covered by certificates of conformity. Additionally, Cal Justice submitted no specific data indicating abuse of the exemption and EPA has no reason to believe significant abuse has occurred or will occur.

d. Other exemptions and exclusions. Additional comments received on the other proposed exemptions and exclusions are summarized and responded to in the SAC. These exemptions and exclusions are being promulgated as proposed. (See Part VII below for discussion of changes to EPA's enforcement policy.)

Two commenters requested clarification that the final rule was not intended to regulate LPG/LPN powered vehicles or light-duty engines. EPA agrees that this was not the intent of the SNPRM and language has been added to the definition of nonconforming vehicle or engine to clarify the coverage of the final rule.

6. Catalyst and O_2 Sensor-Equipped Vehicles

The sixth part of the new imports program expands the provision in the current imports regulations regarding catalyst-equipped vehicles covered by a certificate of conformity at the time of manufacture which have been driven outside the United States, Canada or Mexico. A proposed requirement to replace the O_2 sensor on O_2 sensor equipped vehicles has been added to take account of more current technology. Moreover, language has been added to include vehicles in the program which had been imported by ICIs and then brought into conformity in accordance with these regulations. The purpose of the regulations is to insure the replacement of catalysts and replacement of O_2 sensors on vehicles which may have been contaminated

with leaded gasoline. This requirement is still deemed necessary because unleaded gasoline is still not widely available outside North America. No comments were received on this proposal.

B. Clarification of Useful Life

The final rule contains a definition of useful life for imported nonconforming vehicles and engines. EPA finds it appropriate to confirm its long-standing interpretation or when useful life begins for imported nonconforming vehicles in light of a recent decision in a criminal case, *U.S.* v. *Strecker, et al.*, No. CR86–95TB (W.D.WA, April 3, 1987), in which the Court found that once an imported nonconforming vehicle is older than five years of age or has accumulated greater than 50,000 miles, it is no longer subject to the emission requirements of the Act.

EPA disagrees with the Court's holding in *Strecker*. EPA's position is that the useful life of an imported nonconforming vehicle or engine begins after modifications and/or tests are performed on the imported vehicle or engine in order to bring it into conformity with Federal emission requirements and after (1) the vehicle or engine is first resold after modification and/or testing, in the case of a vehicle which is owned by the certificate holder; or (2) in the case of a vehicle or engine not owned by the certificate holder, when the certificate holder transfers possession of the vehicle back to the owner after modification and/or test. EPA has applied this interpretation consistently to imported vehicles since the beginning of the nonconforming imports program.

The interpretive definition of useful life for light-duty vehicles contained in § 85.1502(14) of today's rule is consistent with EPA's past practice, as well as with the definitions of "useful life" contained in section 202(d) of the Act and § 86.084–2, in which useful life is defined as "a period of *use*" of five years or 50,000 miles, whichever occurs first. (Emphasis added.) Moreover, it is consistent with EPA's treatment of useful life for vehicles originally built in a U.S.-certified configuration. Under section 216(3) of the Clean Air Act, these vehicles are considered "new" and, hence, their useful lives begin to run, when transfer is made to the first ultimate purchaser, while imported nonconforming vehicles generally are defined as "new" when imported. EPA believes that the statutory definition indicates that Congress expected all "new" vehicles to meet Federal emission standards when *operated in the United States*. Thus, consistent with this expectation, EPA has always considered the useful life of a U.S.-certified vehicle to begin at the time the "new" vehicle is transferred to the ultimate purchaser and the useful life of a new imported nonconforming vehicle to begin when the vehicle is transferred to the ultimate purchaser in the U.S. after modification and/or testing. The Court's ruling in *Strecker*, by contrast, would not fulfill this Congressional expectation since imported vehicles, not otherwise exempted, but beyond five years of age or 50,000 miles at the time of importation, would not be required—according to that Court—to comply with Federal emission standards.

Since EPA believes that the *Strecker* decision is incorrect and inconsistent with the Clean Air Act, EPA will *not* acquiesce in that decision. Instead, EPA will continue to follow its long-standing practice under the current rules and, as of July 1, 1988, under the revised rules.

C. Phase-in Period

EPA believes that it is appropriate to provide for a five year phase-in period for the new program during which certificate holders need not certify certain vehicles less than six OP years old and may, instead, modify and test them under the new, more stringent, modification/test procedures.[18] A phase-in period is appropriate primarily in order to give ICIs, especially the large number of ICIs which are unfamiliar with the certification process, enough lead time to obtain certificates for vehicle models between one and six OP years old.

The regulation during the phase-in period (July 1988–December 1992) provides that vehicles of varying ages less than six OP years old may be modified and tested so long as the certificate holder possesses a "qualifying certificate" for a model of like make (i.e., originally produced by the same OEM) and fuel type (gasoline or diesel). More specifically, the final rule provides that in 1988, the first year the rule is effective, a certificate holder must obtain at least one certificate for a vehicle model originally produced in 1988 or 1987 (qualifying certificate) which then permits the certificate holder to modify/test vehicles originally produced by the OEM in 1983 through 1987 which are of the same make and fuel type as the model for which the qualifying certificate was obtained. The final rule then provides that in 1989, all vehicle models originally produced in 1988 through 1989 must be certified. Modification/test is then available only for vehicles originally produced in 1984 through 1987 so long as they are of the same make and fuel type as the model for which the qualifying certificate was obtained. In each subsequent year of the phase-in, one additional OP model year (the then-current year) is required to be certified and modification/test availability decreases by one OP model year. Thus, as the phase-in period continues, more and more of the less than six OP years old vehicles will need to be certified until, by the end of the phase-in (December 31, 1992), all such newer vehicles will need to be certified.

In each of the subsequent years of the phase-in period, likely only one OP model year of the model needs to be certification tested; all later OP model years of that model required to be certified will likely be certified by means of existing "carry-over" certification procedures. For example, if a 1988 certificate is obtained for a model originally produced in 1987 (or 1988), the certificate holder may obtain (see requirements set forth in Advisory Circular No. 17F) a new 1989 certificate for the version of that model originally produced in 1987 (or 1988) by means of existing carry-over certification procedures. Should carry-over certification be obtained, no new testing is required for previously certified models, merely a short certification application. New testing must be performed only for the OP model year for each new model being certified for the first time (again assuming the requirements for carry-over certification have been met).

This phase-in period eliminates some unnecessary hardships that otherwise would be associated with ICIs having to certify many OP model years of the same model should a final rule contain either no phase-in period or one of lesser duration.[19] These burdens would be especially onerous for ICIs given that (1) most, if not all, are small businesses and (2) the recent significant decrease in importation rates.[20] Moreover, the phase-in program will ensure that a reasonable number of models will continue to be available to consumers while ICI's are becoming familiar with the certification process.

On the other hand, the phase-in scheme would not seriously impede the change from the current (mod/test-based) program to the primarily

[18] Of course, as of July 1, 1988, any ICI holding a valid certificate may modification/test any imported nonconforming vehicle six or more OP years old.

[19] Presently, only a handful of ICIs hold certificates for older models, primarily those originally produced in 1985 and 1986.

[20] In 1986, the importation rate was 36,000 vehicles. In 1985, it was 68,000 vehicles and importations during January 1–May 31, 1987 indicate a 1987 importation rate of 28,000 vehicles.

certification-based program which is the cornerstone of the final rule. In fact, the phase-in program should facilitate a smooth transition since, as the phase-in progresses, EPA expects that an ever-increasing number of certificates will be obtained by ICI's. Thus, by the end of the phase-in period, the ICI's, as a whole, will have obtained substantial experience and expertise in complying with the certification process which should help EPA in administering the new program and in ensuring that the benefits of certification are fully realized.

Moreover, by further limiting the modification/testing of newer vehicles during the phase-in to models of the same make and fuel type as that covered in the "qualifying certificate," EPA intends to assure that ICI's have the experience and capability to correctly install emission control systems which are effective and durable in the modification/test vehicles. Specifically, this limitation will help ensure that the modifier has experience in working with that makes' designs, especially the emission control components and systems. EPA recognizes that certifying one engine family does not necessarily guarantee the capability of the ICI to modify other vehicles made by the same OEM. However, there are basic similarities throughout most OEM product lines in terms of hardware and electronic controls. (For example, Mercedes uses Bosch fuel systems throughout its gasoline product line.) Thus, successfully modifying and certifying vehicles within the same make and fuel type will better assure success in modifying/testing other vehicles of that make and fuel type. Thus, in EPA's judgment, this transitional phase-in program will not only avoid unnecessary and undue disruption of the imports industry, but will also help prevent many of the problems identified with the current program, especially as the phase-in period progresses.

VI. Rationale for not Selecting Other Certification-Based Options

As indicated in the SAC and above, EPA has considered other certification-based options during this rulemaking process. All of these have been discussed and responded to in the SAC. The major certification-based options proposed in the SNPRM and by commenters in response to the SNPRM and the reasons why EPA chose not to adopt them are as follows:

A. SNPRM Option 2

SNPRM Option 2 provided that all vehicles, except for certain specified and narrow exemptions and exclusions, must be imported by certificate holders and that such certificate holders must modify their vehicles in accordance with their certificate of conformity. The final rule adopted today incorporates this requirement by 1993 for vehicles that are less than six OP years old. EPA has chosen not to require certification for vehicles older than five OP years since EPA believes that it is less likely that certiticate holders will obtain certificates for older vehicle models because of the expected relatively small demand for such vehicles in the future.[21] Thus, without some alternative to certification, consumers would not be able to obtain such older models in the United States.

In today's action, EPA has decided to institute a primarily certification-based program, to be phased-in starting in 1988, since it believes that such a program will ensure compliance of both certified and modification/test vehicles. As discussed in more detail in Parts III and IV D above, EPA believes that the more durable and better scrutinized certification designs will be transferred to modification/test vehicles.

EPA does not believe that the number of modification/ test vehicles permitted under the program during and after the phase-in period will undermine the results EPA expects from the final rule's certification-based program. In fact, EPA estimates that approximately seventy-five percent (or more) of vehicles imported under this program will be covered by certificates of conformity by 1993.[22]

B. SNPRM Option 3

As discussed earlier, SNPRM Option 3 also provided for a certification-based program with a provision for the importation of a limited number of modification/test vehicles which would provide an extra measure of model availability. Eligibility for modification/test was to be determined by reference to a list of models "not qualified for modification/test." The proposed list would have included certified models and models whose historic import volumes were at least sixty vehicles.[23] The list was to be issued annually with the possibility of additional vehicle models being added each year.

After full consideration of this list mechanism, however, EPA has decided that the list would have created more administrative problems and confusion than originally anticipated. In particular, EPA is concerned that the complexities of the list could have led to a great deal of confusion as to what was eligible for importation, either because the list was not properly understood or an outdated list was used by the importer. As a result of such confusion, many individuals and ICIs might have purchased vehicles that could not have been imported into the U.S. This would have created obvious problems for the individuals or ICIs, as well as for EPA and U.S. Customs who would have had to explain that the vehicles could not be imported and to ensure that the vehicles were exported or destroyed.

Similarly, EPA is concerned that because of the complexity of the list, SNPRM Option 3, compared with other certification-based options, would have had additional administrative burdens associated with it for both EPA and U.S. Customs. This burden would have been the result of several factors:

(1) A likely increase in persons desiring hardship exemptions for vehicles not qualified for importation but which were purchased because of misunderstandings over what could be imported,

(2) An expected increase in the number and length of public correspondence and phone calls requesting explanations of the list concept and the contents of the list,

(3) Resources necessary to create the list annually, and assure the list was timely distributed to U.S. Customs ports and other interested persons, and

(4) An increase in administrative and enforcement resources necessary to assure that each modification/test vehicle is not a model on the list.

EPA believes that today's action fulfills much of the purpose of SNPRM Option 3 without its complexities and administrative burdens. As indicated above, SNPRM Option 3 was proposed as a means of providing some measure of model availability for vehicles that would likely not be certified. The program to be in place in 1993 also provides additional model availability for certain vehicles which are not

[21] While there was significant demand for certain vehicle models greater than five model years old under EPA's five mode year policy, this demand is expected to substantially decrease with today's newly enacted requirements that certificate holders modify and test, assure durability, offer warranties, etc. For these vehicles. At most, EPA estimates that demand for older vehicles will return to the pre-1981 level (in 1981 EPA instituted the Five model year old policy) of twenty-five percent of the nonconforming import total. The actual number could be lower.

[22] This figure does not account for any vehicles six OP model years old and older which will be covered by certificates of conformity. While certification of these vehicles is not precluded by today's action, EPA expects few of these older vehicles to be certified.

[23] Sixty vehicles was the minimum number of vehicles EPA estimated as needed to make certification economically attractive.

certified. In fact, EPA believes that the final program will result in a somewhat larger percentage of modification/test vehicles being imported than would have been under SNPRM Option 3. In this way, model availability will be somewhat enhanced. Moreover, during the phase-in period, an even larger percentage of modification/test vehicles will be available.

Moreover, the criterion established by this final rule (i.e., vehicle age) to distinguish what vehicles are eligible for modification/test is clearly defined, not variable, and easy to understand and enforce. EPA expects that as a result many fewer individuals and ICIs will purchase vehicles which are ineligible for importation.

Finally, as discussed earlier, the final rule avoids at least two difficult and controversial questions raised by the "listing" proposal—i.e., what number to use as a "threshold" for placement on the list and what to do about listed vehicles no longer imported in sufficient numbers to warrant certification.

C. The "AICA Option"

This option would require certification for vehicles under two years old and allow modification/test for all vehicles over two years old. As with today's action, vehicles would still have to be imported by certificate holders.

AICA argued that its proposal will provide ICI's "flexibility" to continue business operations under the new program while certification is underway. AICA also said that its proposal for limiting the mod/test program to vehicles over two years old would eliminate confusion between the California and Federal programs for ICIs.

AICA noted that its option would not be expected to shift the entire market to mod/test for vehicles over two years old for two reasons. First, much of the demand is for new vehicles. Second, a certificate holder is the only person who could utilize the new modification and test procedure and it would have more incentive than an importer under the current program to obtain a certificate of conformity in order to reduce testing costs.

EPA is concerned that the AICA option, if adopted as a permanent program, would expand the scope of a mod/test program beyond the final (post-1993) program which EPA has adopted today by increasing the incentive to import vehicles over two years old, thereby further increasing the numbers of mod/test vehicles.[24] This could undermine on a long-term basis the effectiveness of this certification-based program and potentially create some of the enforcement problems associated with the current program. For example, using current importation data, EPA estimates that more vehicles would be modified/tested under AICA's option than would be modified in accordance with an ICI certificate of conformity, even given the expected substantial decline in the importation of vehicles five OP years old and older. (See note 22, *supra.*) By contrast, under the final program promulgated today, the number of vehicles imported under the certification procedure is eventually expected to be at least three times greater than the number imported under the revised mod/test procedure.

D. The U.S. Department of Justice Option

U.S. DOJ proposed requiring that each ICI have one certificate as a condition for bringing in *any* other cars using the mod/test procedure with no limitation on the number and types of vehicles which could be imported. Individuals could not import directly but would have to import through a certificate holder.

U.S. DOJ stated that minimal harmful effect on consumers would be achieved by allowing any certificate holder to mod/ test any vehicle so long as it held at least one certificate. In this way, the certification process would serve as a screen to ensure that ICIs have an adequate level of competence and sophistication to properly modify a car. U.S. DOJ argued that the threat of the loss of the certificate would provide leverage to assure compliance.

However, EPA believes that tne DOJ proposal, as a permanent program, would leave open the door for most vehicles to enter under a revised modification and test procedure. Thus, the importance of certification would be substantially diminished in the long run. Once a certificate is issued under the DOJ option, *any* vehicle of *any* make, model or model year, could be modification/tested. This would be similar to retaining a substantial portion of the present program indefinitely with many of its problems and, therefore, the option was not adopted as a long term solution. By contrast, the phase-in program adopted today is a short-term program with substantial restrictions on the types of newer vehicles that a certificate holder may modify/test.

E. U.S. Small Business Administration (USSBA) Option

USSBA agreed with the DOJ proposal but also proposed another option requiring certification for vehicles under two years old which could be imported only by certificate holders. Vehicles over two years old could be mod/tested and imported by anyone. USSBA argued that its proposal would alleviate the disproportionate impact on small business in that it would have the effect of allowing the larger importers to obtain certificates for new vehicles while still allowing smaller importers, modifiers and testers to remain in the market place. Also, this would allow individuals to continue importing and provide some form of personal exemption for military personnel.

For the reasons discussed above regarding the AICA and DOJ proposals, EPA believes that the U.S. SBA proposal would also clearly prevent the long-term benefits of a primarily certification-based program. Moreover, by allowing any individual to import under the mod/test procedure, USSBA's proposal would have even greater adverse effects than AICA's proposal. This is because many of the problems in the old program associated with individual importations would be expected to continue. In fact, the proposal essentially maintains the current program and, therefore, was not adopted.

F. U.S. Senator Rudman

Senator Rudman supported the AICA proposal but also recommended that EPA consider the idea of allowing ICIs to import vehicles for which certificates have already been issued to other ICIs as long as the vehicles are modified in accordance with the certificate. Each ICI would have the same responsibilities as the original certificate holder vis-a-vis the vehicles it imports and modifies but would be spared the expense of certification.

Senator Rudman said the AICA option would grant some short term flexibility and be consistent with California requirements. As a means of lowering importation costs, he proposed that ICIs be able to import and modify in accordance with another ICI's certificate.

Since Senator Rudman endorsed AICA's proposal, EPA's response to that proposal applies. Moreover, EPA believes that his suggestion of allowing some ICIs to circumvent the certification process by using the same technology as those models which have been certified

[24] EPA does not expect the same trend in the final (post-1993) program adopted today since the modification/test program that has been adopted is ultimately limited to much older vehicles and EPA believes that the attractiveness of, and incentive to import, vehicles six or more OP years old will be substantially less than it would be for newer vehicles between two and six OP years old.

by other importers has other problems associated with it. EPA is concerned that focusing responsibility on an entity other than the person holding the certificate for the model imported could result in improper modifications since the entity may lack necessary familiarity with the technology underlying the modifications. For instance, a less durable material might be used by the subsequent ICI or the internal specifications of a part might differ from the original, thus causing an adverse emission impact. Furthermore, the sanction of revoking the certificate for that model based on improper modifications would not be available against someone other than the person holding the certificate for that model.

VII. Rationale for Elimination of "Five Model Year Personal Use" Exceptions Policy

In today's action, EPA has decided to eliminate the "five model year personal use" provision of EPA's enforcement policy under the current program. However, EPA believes that some relaxation of requirements for much older vehicles is appropriate and, therefore, has chosen to exempt from emission compliance vehicles that are greater than twenty OP years old. As explained below, EPA has also considered, but not yet decided whether to eliminate the nonresident provision.

A. Five Year Personal Use Provision

The five model year old personal use policy permitted a first-time individual importer to import one nonconforming vehicle at least five model years old for personal use without a need to demonstrate conformity with Federal emission requirements. EPA originally implemented this enforcement policy in order to reduce the administrative burden on the Agency, particularly the review of test documentation, and to minimize the hardship to private individual importers unfamiliar with the imports requirements. See 48 FR 16485 (April 18, 1983). As a direct result of the establishment of the policy, an increasing percentage and number of five year old vehicles have been imported. Specifically, in 1981 when the policy was inaugurated, about 500 of these vehicles were imported, comprising about 25 percent of all nonconforming imports. In 1985, over 30,000 of these vehicles were imported, comprising almost 50 percent of all nonconforming imports.[25]

EPA is eliminating the policy for two major reasons. First, the policy created a number of serious enforcement problems. The record contains numerous examples of criminal investigations of persons abusing the policy. EPA is aware of other such investigations and believes these investigations represent only a fraction of the actual abuse that exists. As the record discloses, the most common abuse is the falsification of entry documents so that the vehicles appear to have been imported by individuals who are eligible for the policy when in fact the vehicles were actually imported by commercial enterprises. EPA believes that this abuse is difficult to detect and, therefore, cannot easily be controlled by a greater enforcement effort.

Second, the policy potentially poses a threat to air quality. Several states, most notably California, which is most impacted by the importation of these nonconforming vehicles, submitted comments to the record indicating that the increase in the number of these vehicles being imported affects air quality (through the actual emission increases caused by these vehicles) and interferes with Inspection and Maintenance programs (by requiring additional resources needed for handling these vehicles—e.g., answering questions, tracking vehicles—which they argue could be better spent for training and enforcement.)

EPA has received considerable comment on the possible elimination of the "five model year old" policy both in response to the SNPRM and in response to the Workshop Notice. The comments are summarized in the SAC. Comments submitted in response to the SNPRM indicate that the only commenters now expressing support for the policy are individuals, most of whom directly benefit from the policy. They argue that the policy should be continued since it provides an equitable means for car collectors and other individuals to obtain vehicles of their choice at significantly reduced cost without having adverse effects on air quality. A few individuals were concerned that elimination of the policy would hurt small businesses who perform safety modifications on the vehicles since many vehicles would no longer be imported. Various OEMs, on the other hand, expressed opposition to the policy primarily because of adverse effects on new vehicle sales, problems associated with warranty claims and air quality or difficulty in enforcement. Only a few ICIs have commented on this issue, with one opposing the exemption based on air quality considerations. As discussed above, various states have been consistently opposed to the policy.

EPA believes that arguments supporting the retention of the "five model year old" policy are not persuasive. The program adopted today by EPA should provide substantial model availability. The enforcement and air quality problems associated with the retention of the old policy make the elimination of the policy appropriate at this time. (These effects are also discussed in the Regulatory Flexibility Analysis (RFA) which has been placed in the docket.)

The SNPRM also invited comments on whether any personal use exemption based on the age of the vehicle ought to exist and on the appropriate constraints of such exemption. One commenter explicitly supported a ten model year old exemption to benefit collectors. EPA believes this is not appropriate for two reasons. First, EPA statistics indicate that presently over 25 percent of the vehicles being imported under the five model year policy are ten model years old or older. Given EPA's experience with the five model year policy, it is likely that such numbers could increase with a ten model year old exemption. Hence, EPA believes a ten year exemption, even given present importation rates, may pose some of the same enforcement and air quality problems associated with the present policy.

Second, certain exclusions and exemptions based on the age of the vehicles at the time of import are provided for in the final rule and in the Clean Air Act. For example, under sections 203(a)(1) and 216(3) of the Act, the prohibition against importation of nonconforming vehicles applies only to vehicles originally manufactured *after* the effective date of standards which would have been applicable to such vehicles. Given that no such standards existed for light-duty vehicles prior to 1968, a light-duty vehicle originally manufactured prior to January 1, 1968 may be imported by an individual without the need to bring the vehicle into compliance. Also, as indicated above, EPA is establishing an exemption from emission requirements for vehicles greater than twenty OP years old (see discussion in Part VII. B below). Thus, many collectors will be able to import desirable older vehicles.

Many of the individuals commenting on the SNPRM were military and overseas civilian personnel who (together with the U.S. Small Business

[25] EPA does not believe that there would be such an increase in importation of six OP years old or older vehicles (after the phase-in period) under the revised mod/test procedure, since the requirements applicable to such vehicles (in contrast to the prior exemptions of five MY old personal use vehicles) are stringent enough to deter any such increase.

Administration) argued that even if the "five model year old" policy were eliminated, the military should be treated differently. Some proposed that the five model year policy be continued; others proposed that it be extended to them by means of a "grandfather" clause which would extend the policy to military personnel who had already purchased nonconforming vehicles anticipating using the policy at the end of their tour of duty.

These commenters presented three arguments for their position. The first contention was that the "five model year old" policy was originally intended for the military and only has been abused by others. Therefore, its elimination is not justified for the military. The second argument was that the military situation, in which personnel are stationed overseas for years, is a unique one and deserves special treatment or reward by the government; to do otherwise will affect morale. The third argument was that elimination of the provision will impose hardship on this group by requiring them to incur an additional $3000 related to the cost of emission modification or forcing resale in Europe on short notice.

The same arguments were used to support the inclusion of a "grandfather" clause for the military if EPA decided not to retain the five model year old policy for the military.

EPA believes that the reasons for the need for eliminating the five model year policy are equally applicable here. No special treatment appears to be warranted simply because of military status.[26] While some individual military personnel submitted comments objecting to the abolition of the policy, the Department of Defense did not advocate a continuation of the exemption or the inclusion of a grandfather clause in their comments to the rulemaking. Additionally, the abolition of the policy will not go into effect until July 1, 1988, thus permitting military personnel to ship their vehicles back to the U. S. before abolition of the policy takes effect. Moreover, many commenters, who indicated the date of the end of their tour of duty, will not be affected by the policy's elimination because the end of their tour of duty precedes the effective date of the elimination of the policy.

B. Greater Than Twenty OP Years Old Exemption

While EPA has chosen to eliminate the five model year exemption in today's action and has rejected an exemption for ten year old vehicles, it believes that some relief for older vehicles is appropriate. Hence, to the extent that vehicles are not excluded from the Act because they were manufactured prior to the effective date of standards for that vehicle class, EPA has chosen to create an exemption from emission compliance for vehicles that are greater than twenty OP years old. EPA believes an exemption for younger vehicles is not warranted. As indicated in Part VII. A. above, EPA believes that an exemption for much younger vehicles may result in unacceptable numbers of nonconforming vehicles being imported under this exemption. Also, many state Inspection/Maintenance programs regulate vehicles twenty years of age and under. Thus, an exemption for vehicles less than twenty OP years old could lead to increased failures by such vehicles to pass I/M tests, with resulting inconvenience and expense for owners of failed vehicles.

EPA believes, however, that an exemption for vehicles greater than twenty OP years old is particularly appropriate for two reasons. First, EPA expects little conflict with state Inspection/Maintenance programs since most of these programs do not regulate vehicles beyond twenty years of age. In fact, of those states that submitted comments to the docket expressing concerns over the air quality impacts and Inspection/Maintenance problems with the five model year old exemption, only Connecticut regulates vehicles greater than twenty years old (and only for one additional year).

Second, EPA believes that very few vehicles will be imported under this exemption so that overall air quality will not be impacted by this exemption.[27]

EPA has required that the importation of vehicles entitled to this twenty OP year old exemption must be arranged through certificate holders. EPA believes that this provision is appropriate since certificate holders will be knowlegeable about import requirements and can facilitate the importation of these vehicles. Most importantly, EPA believes that certificate holders will be best able to ascertain the date of original production which is determinative of eligibility for the exemption. Additionally, EPA will receive greater assurance of accurate representations of vehicle age given that certificate holders are subject to stringent sanctions under both the Act and these regulations for failing to do so.

C. Nonresident Policy Provision

This enforcement policy permitted nonresidents of the United States to import a nonconforming vehicle for personal use for not more than one year. Vehicles imported under this provision are not permitted to be sold in the United States.

As indicated in the SNPRM, EPA is concerned that vehicles admitted under this exemption are being resold in violation of EPA requirements. EPA lacks the administrative capability to monitor all the vehicles admitted under this exemption and, hence, detect the illegal resale of such vehicles. As shown in the SAC, all commenters agreed with EPA that this policy is being abused and cannot effectively be enforced.

EPA announced in the SNPRM that, for reasons outlined above, it was considering eliminating the provision. Since that time, however, EPA has become aware of two international treaties [28] to which the United States is a signatory that address the movement of vehicles among various countries. EPA is concerned that elimination of the provision may be inconsistent with the intent of the treaties and believes additional time is needed to consider the matter. Moreover, this provision is actually contained in Customs regulations as well as being an EPA policy. Therefore, EPA has decided that it is appropriate to defer final decision on what changes are needed to this provision, pending consultation with Customs, until such time as changes are made to Customs regulations at 19 CFR 12.73 (see note 1, *supra*).

VIII. Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The Agency has prepared a final RFA for this rule, which has been placed in the public docket for this rulemaking.

[26] It should be noted that this policy was not originally intended only for the military.

[27] Given the substantial age of vehicles eligible for the exemption, EPA does not expect that existence of the exemption will create an incentive for persons to import significantly greater numbers of vehicles over twenty OP years old. Also, this exemption will not take effect until older vehicles are no longer entitled to the statutory exclusion based on the original date of manufacture discussed earlier in this notice. (See § 86.1511(e)(1) of today's action.)

[28] Customs Convention on the Temporary Importation of Private Road Vehicles opened for signature June 4, 1954, 8 U.S.T. 2097, T.I.A.S. No. 3943, entered into force December 15, 1957. Convention on the Regulation of Inter-American Automotive Traffic, opened for signature December 15, 1943, 61 Stat. 1129, T.I.A.S. No. 1567, entered into force October 29, 1946.

IX. Economic Impact

Section 3(b) of Executive Order 12291 requires EPA to determine whether a rule it intends to propose or to issue is a major rule and to prepare Regulatory Impact Analyses (RIAs) for all major rules. EPA has determined that this action is not a "major rule" requiring preparation of an RIA since it will not have an annual effect on the economy of $100 million or more. Additionally, it will not result in a major increase in industry costs or prices. Finally, this action will not have a significant adverse effect on industry, competition, employment, investment, productivity, innovation or the ability of domestic businesses to compete with foreign companies since imported vehicles are a small portion of the total number of vehicles sold in the U.S. Therefore, an RIA has not been prepared. Potential economic effects, however, are addressed in the Regulatory Flexibility Analysis prepared in accord with the RFA requirements.

X. OMB Review

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Public Docket EN–79–9 located in EPA's Central Docket Section (LE–131A), 401 M Street, SW., Washington, DC 20460.

XI. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned an OMB control number 2060–0095.

XII. Judicial Review

The final actions described in this notice are made under the authority of sections 203, 206, 207, 208(a), and 301 of the Clean Air Act and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before November 24, 1987. Judicial review may not be obtained in subsequent enforcement proceedings.

List of Subjects

40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Administrative practice and procedure, Fuel economy.

Dated: September 17, 1987.

Lee M. Thomas,

Administrator.

For reasons discussed in the preamble, 40 CFR Part 85, and 40 CFR Part 600 are amended as follows:

PART 85—[AMENDED]

1. Subpart P is revised to read as follows:

Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

Sec.

Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

Authority: Secs. 203, 206, 207, 208(a), and 301(a), Clean Air Act, as amended (42 U.S.C. 7422, 7525, 7541, 7542(a) and 7601(a)).

§ 85.1501 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to motor vehicles and motor vehicle engines which are offered for importation or imported into the United States and for which the Administrator has promulgated regulations under Part 86 prescribing emission standards but which are not covered by certificates of conformity issued under section 206(a) of the Clean Air Act (i.e., which are nonconforming vehicles as defined below), as amended, and Part 86 at the time of conditional importation. Compliance with regulations under this subpart shall not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for importation of motor vehicles and motor vehicle engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth at 19 CFR 12.73.

§ 85.1502 Definitions.

As used in this subpart, all terms not defined herein have the meanings given them in 19 CFR 12.73, in the Clean Air Act, as amended, and elsewhere in Parts 85 and 86 of this chapter.

(1) *Act.* The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(2) *Administrator.* The Administrator of the Environmental Protection Agency.

(3) *Certificate of conformity.* The document issued by the Administrator under section 206(a) of the Act.

(4) *Certificate holder.* The entity in whose name the certificate of conformity for a class of motor vehicles or motor vehicle engines has been issued.

(5) *FTP.* The Federal Test Procedure at Part 86.

(6) *Independent commercial importer (ICI).* An importer who is not an original equipment manufacturer (OEM) (see definition below) or does not have a contractual agreement with an OEM to act as its authorized representative for the distribution of motor vehicles or motor vehicle engines in the U.S. market.

(7) *Model year.* The manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year; *Provided,* That if the manufacturer has no annual production period, the term "model year" shall mean the calendar year in which a vehicle is modified. A certificate holder shall be deemed to have produced a vehicle or engine when the certificate holder has modified the nonconforming vehicle or engine.

(8) *Nonconforming vehicle or engine.* A motor vehicle or motor vehicle engine which is not covered by a certificate of conformity prior to final or conditional importation and which has not been finally admitted into the United States under the provisions of § 85.1505, § 85.1509 or the applicable provisions of § 85.1512. Excluded from this definition are vehicles admitted under provisions of § 85.1512 covering EPA approved manufacturer and U.S. Government

Agency catalyst and O_2 sensor control programs.

(9) *Original equipment manufacturer (OEM).* The entity which originally manufactured the motor vehicle or motor vehicle engine prior to conditional importation.

(10) *Original production (OP) year.* The calendar year in which the motor vehicle or motor vehicle engine was originally produced by the OEM.

(11) *Original production (OP) years old.* The age of a vehicle as determined by subtracting the original production year of the vehicle from the calendar year of importation.

(12) *Running changes.* Those changes in vehicle or engine configuration, equipment or calibration which are made by an OEM or ICI in the course of motor vehicle or motor vehicle engine production.

(13) *United States.* United States includes the Customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

(14) *Useful life.* A period of time/mileage as specified in Part 86 for a nonconforming vehicle which begins at the time of resale (for a motor vehicle or motor vehicle engine owned by the ICI at the time of importation) or release to the owner (for a motor vehicle or motor vehicle engine not owned by the ICI at the time of importation) of the motor vehicle or motor vehicle engine by the ICI after modification and/or test pursuant to § 85.1505 or § 85.1509.

(15) *Working day.* Any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days.

§ 85.1503 General requirements for importation of nonconforming vehicles.

(a) A nonconforming vehicle or engine offered for importation into the United States must be imported by an ICI who is a current holder of a valid certificate of conformity unless an exemption or exclusion is granted by the Administrator under § 85.1511 of this subpart or the vehicle is eligible for entry under § 85.1512.

(b) Final admission shall not be granted unless:

(1) The vehicle or engine is covered by a certificate of conformity issued in the name of the importer under Part 86 and the certificate holder has complied with all requirements of § 85.1505; or

(2) The vehicle or engine is modified and emissions tested in accordance with the provisions of § 85.1509 and the certificate holder has complied with all other requirements of § 85.1509; or

(3) The vehicle or engine is exempted or excluded under § 85.1511; or

(4) The vehicle was covered originally by a certificate of conformity and is otherwise eligible for entry under § 85.1512.

§ 85.1504 Conditional admission.

(a) A motor vehicle or motor vehicle engine offered for importation under § 85.1505, § 85.1509 or § 85.1512 may be conditionally admitted into the United States, but shall be refused final admission unless:

(1) At the time of conditional admission, the importer has submitted to the Administrator a written report that the subject vehicle or engine has been permitted conditional admission pending EPA approval of its application for final admission under § 85.1505, § 85.1509, or § 85.1512. This written report shall contain the following:

(i) Identification of the importer of the vehicle or engine and the importer's address and telephone number;

(ii) Identification of the vehicle or engine owner and the vehicle or engine owner's address, telephone number and taxpayer identification number;

(iii) Identification of the vehicle or engine;

(iv) Information indicating under what provision of these regulations the vehicle or engine is to be imported;

(v) Identification of the place where the subject vehicle or engine will be stored until EPA approval of the importer's application to the Administrator for final admission;

(vi) Authorization for EPA Enforcement Officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder;

(vii) Identification, where applicable, of the certificate by means of which the vehicle is being imported;

(viii) The original production year of the vehicle; and

(ix) Such other information as is deemed necessary by the Administrator.

(b) Such conditional admission shall not be under bond for a vehicle or engine which is imported under § 85.1505 or § 85.1509. A bond will be required for a vehicle or engine imported under applicable provisions of § 85.1512. The period of conditional admission shall not exceed 120 days. During this period, the importer shall store the vehicle or engine at a location where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

§ 85.1505 Final admission of certified vehicles.

(a) A motor vehicle or engine may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator. Such application shall be made either by completing EPA forms or by submitting the data electronically to EPA's computer, in accordance with EPA instructions. Such application shall contain:

(1) The information required in § 85.1504(a);

(2) Information demonstrating that the vehicle or engine has been modified in accordance with a valid certificate of conformity. Such demonstration shall be made in one of the following ways:

(i) Through an attestation by the certificate holder that the vehicle or engine has been modified in accordance with the provisions of the certificate holder's certificate, and presentation to EPA of a statement by the appropriate OEM that the OEM will provide to the certificate holder and to EPA information concerning running changes to the vehicle or engine described in the certificate holder's application for certification, and actual receipt by EPA of notification by the certificate holder of any running changes already implemented by the OEM at the time of application and their effect on emissions; or

(ii) Through an attestation by the certificate holder that the vehicle or engine has been modified in accordance with the provisions of the certificate holder's certificate of conformity and that the certificate holder has conducted an FTP test, at a laboratory within the United States, that demonstrates compliance with Federal emission requirements on every third vehicle or third engine imported under that certificate within 120 days of entry, with sequencing of the tests to be determined by the date of importation of each vehicle or engine. Should the certificate holder have exceeded a threshold of 300 vehicles or engines imported under the certificate without adjustments or other changes in accordance with paragraph (a)(3) of this section, the amount of required FTP testing may be reduced to every fifth vehicle or engine.

In order to make a demonstration under paragraph (a)(2)(i) of this section, a certificate holder must have received permission from the Administrator to do so;

(3) The results of every FTP test which the certificate holder conducted on the vehicle or engine. Should a subject vehicle or engine have failed an FTP at

any time, the following procedures are applicable:

(i) The certificate holder may either:

(A) Conduct one FTP retest that involves no adjustment of the vehicle or engine from the previous test (e.g., adjusting the RPM, timing, air-to-fuel ratio, etc.) other than adjustments to adjustable parameters that, upon inspection, were found to be out of tolerance. When such an allowable adjustment is made, the parameter may be reset only to the specified (i.e., nominal) value (and not any other value within the tolerance band); or

(B) Initiate a change in production (running change) under the provisions of 40 CFR 86.084–14(c)(13) that causes the vehicle to meet Federal emission requirements.

(ii) If the certificate holder chooses to retest in accordance with paragraph (a)(3)(i)(A) of this section:

(A) Such retests must be completed no later than five working days subsequent to the first FTP test;

(B) Should the subject vehicle or engine fail the second FTP, then the certificate holder must initiate a change in production (a running change) under the provisions of 40 CFR 86.084–14(c)(13) that causes the vehicle to meet Federal emission requirements.

(iii) If the certificate holder chooses to initiate a change in production (a running change) under the provisions of 40 CFR 86.084–14(c)(13) that causes the vehicle to meet Federal requirements, changes involving adjustments of adjustable vehicle parameters (e.g., adjusting the RPM, timing, air/fuel ratio) must be changes in the specified (i.e., nominal) values to be deemed acceptable by EPA.

(iv) Production changes made in accordance with this section must be implemented on all subsequent vehicles or engines imported under the certificate after the date of importation of the vehicle or engine which gave rise to the production change.

(v) Commencing with the first vehicle or engine receiving the running change, every third vehicle or engine imported under the certificate must be FTP tested to demonstrate compliance with Federal emission requirements until, as in paragraph(a)(2)(ii) of this section, a threshold of 300 vehicles or engines imported under the certificate is exceeded, at which time the amount of required FTP testing may be reduced to every fifth vehicle or engine.

(vi) Reports concerning these running changes shall be made to both the Manufacturers Operations and Certification Divisions of EPA within ten working days of initiation of the running change. The cause of any failure of an FTP shall be identified, if known;

(4) The applicable deterioration factor;

(5) The FTP results adjusted by the deterioration factor;

(6) Such other information that may be specified by applicable regulations or on the certificate under which the vehicle or engine has been modified in order to assure compliance with requirements of the Act;

(7) All information required under § 85.1510;

(8) An attestation by the certificate holder that the certificate holder is responsible for the vehicle's or engine's compliance with Federal emission requirements, regardless of whether the certificate holder owns the vehicle or engine imported under this section;

(9) The name, address and telephone number of the person who the certificate holder prefers to receive EPA notification under § 85.1505(c); and

(10) Such other information as is deemed necessary by the Administrator.

(b) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle has not been properly modified to be in conformity in all material respects with the description in the application for certification or has not complied with the provisions of § 85.1505(a)(2) or its final FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards.

(c) Except as provided in § 85.1505(b), EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received oral or written notice from EPA to the contrary within 15 working days of the date of EPA's receipt of the certificate holder's application under § 85.1505(a). Such EPA notice shall be made to an employee of the certificate holder. If application is made on EPA forms, the date on a certified mail receipt shall be deemed to be the official date of notification to EPA. If application is made by submitting the data electronically, the date of acceptance by EPA's computer shall be deemed to be the official date of notification to EPA. During this 15 working day period, the vehicle or engine must be stored at a location where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

§ 85.1506 Inspection and testing of imported motor vehicles and engines.

(a) In order to allow the Administrator to determine whether a certificate holder's production vehicles or engines comply with applicable emission requirements or requirements of this subpart, EPA Enforcement Officers are authorized to conduct inspections and/or tests of vehicles or engines imported by the certificate holder. EPA Enforcement Officers shall be admitted during operating hours upon demand and upon presentation of credentials to any of the following:

(1) Any facility where any vehicle or engine imported by the certificate holder under this subpart was or is being modified, tested or stored; and

(2) Any facility where any record or other document relating to modification, testing or storage of the vehicles or engines, or required to be kept by § 85.1507, is located.

EPA may require inspection or retesting of vehicles or engines at the test facility used by the certificate holder or at an EPA-designated testing facility, with transportation and/or testing costs to be borne by the certificate holder.

(b) Upon admission to any facility referred to in paragraph (a) of this section, any EPA Enforcement Officer shall be allowed during operating hours:

(1) To inspect and monitor any part or aspect of activities relating to the certificate holder's modification, testing and/or storage of vehicles or engines imported under this subpart;

(2) To inspect and make copies of any records or documents related to modification, testing and storage of a vehicle or engine, or required by § 85.1507; and

(3) To inspect and photograph any part or aspect of any such vehicle or engine and any component used in the assembly thereof.

(c) Any EPA Enforcement Officer shall be furnished, by those in charge of a facility being inspected, with such reasonable assistance as he/she may request to help him/her discharge any function listed in this subpart. A certificate holder shall cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA (whether or not the certificate holder controls the facility).

(d) The requirements of paragraphs (a), (b) and (c) of this section apply whether or not the certificate holder owns or controls the facility in question. Noncompliance with the requirements of paragraphs (a), (b) and (c) may preclude an informed judgment that vehicles or engines which have been or are being

imported under this subpart by the certificate holder comply with applicable emission requirements or requirements of this subpart. It is the certificate holder's responsibility to make such arrangements as may be necessary to assure compliance with paragraphs (a), (b) and (c) of this section. Failure to do so, or other failure to comply with paragraphs (a), (b) and (c), may result in sanctions as provided for in the Act or § 85.1513(e).

(e) Duly designated Enforcement Officers are authorized to proceed ex parte to seek warrants authorizing the inspection or testing of the motor vehicles or motor vehicle engines described in paragraph (a) of this section whether or not the Enforcement Officer first attempted to seek permission from the certificate holder or facility owner to inspect such motor vehicles or motor vehicle engines.

(f) The results of the Administrator's test under this section shall comprise the official test data for the vehicle or engine for purposes of determining whether the vehicle or engine should be permitted final entry under § 85.1505 or § 85.1509.

(g) For purposes of this section:

(1) "Presentation of Credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(2) Where vehicle stroage areas or facilities are concerned, "operating hours" shall means all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those specified in paragraph (g)(2) of this section are concerned, "operating hours" shall mean all times during which the facility is in operation.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his/her questions.

§ 85.1507 Maintenance of certificate holder's records.

(a) The certificate holder subject to any of the provisions of this subpart shall establish, maintain and retain for six years from the date of entry of a nonconforming vehicle or engine imported by the certificate holder, adequately organized and indexed records, correspondence and other documents relating to the certification, modification, test, purchase, sale, storage, registration and importation of that vehicle or engine, including but not limited to:

(1) The declaration required by 19 CFR 12.73;

(2) Any documents or other written information required by a Federal government agency to be submitted or retained in conjunction with the certification, importation or emission testing of motor vehicles or motor vehicle engines;

(3) All bills of sale, invoices, purchase agreements, purchase orders, principal or agent agreements and correspondence between the certificate holder and the purchaser, of each vehicle or engine, and any agents of the above parties;

(4) Documents providing parts identification data associated with the emission control system installed on each vehicle or engine demonstrating that such emission control system was properly installed on such vehicle or engine;

(5) Documents demonstrating that, where appropriate, each vehicle or engine was emissions tested in accordance with the Federal Test Procedure.

(6) Documents providing evidence that the requirements of § 85.1510 have been met.

(7) Documents providing evidence of compliance with all relevant requirements of the Clean Air Act, the Energy Tax Act of 1978, and the Energy Policy and Conservation Act;

(8) Documents providing evidence of the initiation of the "15 day hold" period for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509;

(9) For vehicles owned by the ICI at the time of importation, documents providing evidence of the date of sale subsequent to importation, together with the name, address and telephone number of the purchaser, for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509;

(10) For vehicles not owned by the ICI at the time of importation, documents providing evidence of the release to the owner subsequent to importation for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509; and

(11) Documents providing evidence of the date of original manufacture of the vehicle or engine.

(b) The certificate holder is responsible for ensuring the maintenance of records required by this section, regardless of whether facilities used by the certificate holder to comply with requirements of this subpart are under the control of the certificate holder.

§ 85.1508 "In Use" inspections and recall requirements.

(a) Vehicles or engines which have been imported, modified and/or FTP tested by a certificate holder pursuant to § 85.1505 or § 85.1509 may be inspected and emission tested by EPA throughout the useful lives of the vehicles or engines.

(b) Certificate holders shall maintain for six years, and provide to EPA upon request, a list of owners of all vehicles or engines imported by the certificate holder under this subpart.

(c) A certificate holder will be notified whenever the Administrator has determined that a substantial number of a class or category of the certificate holder's vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 202 when in actual use throughout their useful lives (as determined under section 202(d)). After such notification, the Recall Regulations at Part 85, Subpart S, shall govern the certificate holder's responsibilities and references to a manfacturer in the Recall Regulations shall apply to the certificate holder.

§ 85.1509 Final admission of modification and test vehicles.

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f), a motor vehicle or motor vehicle engine may be imported under this section by a certificate holder possessing a currently valid certificate of conformity only if:

(1)(i) The vehicle or engine is six OP years old or older; or

(ii) The vehicle was owned, purchased and used overseas by military or civilian employees of the U.S. Government and

(A) An ICI does not hold a currently valid certificate for that particular vehicle; and

(B) The Federal agency employing the owner of such vehicle determines that such owner is stationed in an overseas area which either prohibits the importation of U.S.-certified vehicles or which does not have adequate repair facilities for U.S.-certified vehicles; and

(C) The Federal agency employing the personnel owning such vehicles determines that such vehicles are eligible for shipment to the United States at U.S. Government expense; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(b) In calendar year 1988, a motor vehicle or motor vehicle engine originally produced in calendar years

1983 through 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1987 or 1988 and the make (i.e., the OEM) and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holder's ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(c) In calendar year 1989, a motor vehicle or motor vehicle engine originally produced in calendar years 1984 through 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1988 or 1989 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section,

(d) In calendar year 1990, a motor vehicle or motor vehicle engine originally produced in calendar years 1985 through 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1989 or 1990 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(e) In calendar year 1991, a motor vehicle or motor vehicle engine originally produced in calendar years 1986 and 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1990 or 1991 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(f) In calendar year 1992, a motor vehicle or motor vehicle engine originally produced in calendar year 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar year 1991 or 1992 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(g) A motor vehicle or motor vehicle engine conditionally imported under this section may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator. Such application shall be made either by completing EPA forms or, if the applicant chooses, by submitting the data electronically to EPA's computer, in accordance with EPA instructions. Such application shall contain:

(1) The identification information required in § 85.1504;

(2) An attestation by the certificate holder that the vehicle or engine has been modified and/emission tested in accordance with the FTP at a laboratory within the United States;

(3) The results of any FTP;

(4) The deterioration factor assigned by EPA;

(5) The FTP results adjusted by the deterioration factor;

(6) An attestation by the certificate holder that emission testing and development of fuel economy data as required by § 85.1510 was performed after the vehicle or engine had been modified to conform to Department of Transportation safety standards;

(7) All information required under § 85.1510;

(8) An attestation by the certificate holder that the certificate holder is responsible for the vehicle's or engine's compliance with Federal emission requirements, regardless of whether the certificate holder owns the vehicle or engine imported under this section.

(9) The name, address and telephone number of the person who the certification holder prefers to receive EPA notification under § 85.1509(i).

(10) For any vehicle imported in accordance with paragraphs (b) through (f), an attestation by the certificate holder that the vehicle is of the same make and fuel type as the vehicle covered by a qualifying certificate as described in paragraphs (b) through (f), as applicable.

(11) Such other information as is deemed necessary by the Administrator.

(h) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle's final FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards.

(i) Except as provided in § 85.1509(h), EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received oral or written notice from EPA to the contrary within 15 working days of the date of EPA's receipt of the certificate holder's application under § 85.1509(g). Such EPA notice shall be made to an employee of the certificate holder. If application is made on EPA form, the date of a certified mail receipt shall be deemed to be the official date of notification to EPA. If application is made by submitting the data electronically, the date of acceptance by EPA's computer shall be deemed to be the official date of notification to EPA. During this 15 working day period, the vehicle or engine must be stored at a location where the Administrator will have reasonable access to inspect the vehicle or engine.

(j) EPA list of certificate holders ineligible to import vehicles for modification/test. EPA shall maintain a current list of certificate holders who have been determined to be ineligible to import vehicles or engines under this section. Such determinations shall be made in accordance with the criteria and procedures in § 85.1513(e) of this subpart.

(k) Inspections. Prior to final entry, vehicles or engines imported under this section are subject to special inspections as described in § 85.1506 with these additional provisions:

(1) If a significant number of vehicles imported by a certificate holder fail to comply, in the judgment of the Administrator, with emission requirements upon inspection or retest, or if the certificate holder fails to comply with any provision of these regulations that pertain to vehicles imported pursuant to § 85.1509, the certificate holder may be placed on the

EPA list of certificate holders ineligible to import vehicles under this section as specified in paragraph (j) of this section and § 85.1513(e);

(2) Individual vehicles or engines which fail an FTP retest or inspection must be repaired and retested, as applicable, to demonstrate compliance with emission requirements before final admission.

(3) Unless otherwise specified by EPA, the costs of all retesting under this subsection, including transportation, shall be borne by the certificate holder.

(l) In-Use inspection and testing. Vehicles or engines imported under this section may be tested or inspected by EPA at any time during the vehicle's or engine's useful life in accordance with § 85.1508 (a) and (b). If, in the judgment of the Administrator, a significant number of properly maintained and used vehicles or engines imported by the certificate holder fail to meet emission requirements, the name of the certificate holder may be placed on the EPA list of certificate holders ineligible to import vehicles under the modification/test provision as specified in paragraph (j) of this section and § 85.1513(e).

§ 85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.

The provisions of this section are applicable to all vehicles or engines imported under the provisions of §§ 85.1505 and 85.1509.

(a) *Maintenance Instructions.* (1) The certificate holder shall furnish to the purchaser or to the owner of each vehicle or engine imported under § 85.1505 or § 85.1509 of this section, written instructions for the maintenance and use of the vehicle or engine by the purchaser or owner. Each application for final admission of a vehicle or engine shall provide an attestation that such instructions have been or will be (if the ultimate producer is unknown) furnished to the purchaser or owner of such vehicle or engine at the time of sale or redelivery. The certificate holder shall maintain a record of having furnished such instructions.

(2) For each vehicle or engine imported under § 85.1509, the maintenance and use instructions shall be maintained in a file containing the records for that vehicle or engine.

(3) Such instructions shall not contain requirements more restrictive than those set forth in Part 86 (Maintenance Instructions), and shall be in sufficient detail and clarity that an automotive mechanic of average training and ability can maintain or repair the vehicle or engine.

(4) Certificate holders shall furnish with each vehicle or engine a list of the emission control parts, and emission-related parts added by the certificate holder and the emission control and emission related parts furnished by the OEM.

(b) *Warranties.* (1) Certificate holders shall provide to vehicle or engine owners emission warranties identical to those required by sections 207 (a) and (b) of the Act and 40 CFR Part 85, Subpart V. The warranty period for each vehicle or engine shall commence on the date the vehicle or engine is delivered by the certificate holder to the ultimate purchaser or owner.

(2) Certificate holders shall ensure that these warranties:

(i) Are insured by a prepaid mandatory service insurance policy underwritten by an independent insurance company;

(ii) Are transferable to each successive owner for the periods specified in sections 207 (a) and (b); and

(iii) Provide that in the absence of a certificate holder's facility being reasonably available (i.e., within 50 miles) for performance of warranty repairs, such warranty repairs may be performed anywhere.

(3) Certificate holders shall attest in each application for final admission that such warranties will be or have been provided. Copies of such warranties shall be maintained in a file containing the records for that vehicle or engine.

(c) *Emission labeling.* (1) The certificate holder shall affix a permanent legible label in a readily visible position in the engine compartment. The label shall meet all the requirements of Part 86 and shall contain the following statement "This vehicle or engine was originally produced in (month and year of original production). It has been imported and modified by (certificate holder's name, address and telephone number) to conform to U.S. emission regulations applicable to the (year) model year." If the vehicle or engine is owned by the certificate holder at the time of importation, the label shall also state "this vehicle or engine is warranted for five years or 50,000 miles from the date of purchase, whichever comes first." If the vehicle or engine is not owned by the certificate holder at the time of importation, the label shall state "this vehicle or engine is warranted for five years or 50,000 miles from the date of release to the owner, whichever comes first." For vehicles imported under § 85.1509, the label shall clearly state in bold letters that "this vehicle has not been manufactured under a certificate of conformity but meets EPA air pollution control requirements under a modification/test program." In addition, for all vehicles, the label shall contain the vacuum hose routing diagram applicable to the vehicles.

(2) As part of the application to the Administrator for final admission of each individual vehicle or engine under § 85.1509, the certificate holder shall maintain a copy of such label for each vehicle or engine in a file containing the records for that vehicle or engine. Certificate holders importing under § 85.1505 or § 85.1509 shall attest to compliance with the above labeling requirements in each application for final admission.

(d) *Fuel economy labeling.* (1) The certificate holder shall affix a fuel economy label that complies with the requirements of 40 CFR Part 600, Subpart D.

(2) For purposes of generating the fuel economy data to be incorporated on such label, each vehicle imported under § 85.1509 shall be considered to be a separate model type.

(3) As part of the application to the Administrator for final admission of each individual vehicle or engine imported under § 85.1509, the certificate holder shall maintain a copy of such label for each vehicle or engine in a file containing the records for that vehicle or engine. In each application for final admission of a vehicle or engine under § 85.1505, or § 85.1509, the certificate holder shall attest to compliance with the above labeling requirements.

(e) *Gas guzzler tax.* (1) Certificate holders shall comply with any applicable provisions of the Energy Tax Act of 1978, 26 U.S.C. 4064, for every vehicle imported under § 85.1505 and § 85.1509.

(2) For vehicles not owned by the certificate holder, the certificate holder shall furnish to the vehicle owner applicable IRS forms (currently numbered 720 (Quarterly Federal Excise Tax) and 6197 (Fuel Economy Tax Computation Form)) which relate to the collection of the gas guzzler tax under the Energy Tax Act of 1978, 26 U.S.C. 4064.

(3) As part of the certificate holder's application to EPA for final admission of each vehicle imported under § 85.1509, the certificate holder shall furnish any fuel economy data required by the Energy Tax Act of 1978, 15 U.S.C. 4064.

(f) *Corporate Average Fuel Economy (CAFE).* (1) Certificate holders shall comply with any applicable CAFE requirements of the Energy Policy and Conservation Act, 15 U.S.C. 2001 et seq., and 40 CFR Part 600, for all vehicles imported under § 85.1505 and 85.1509.

§ 85.1511 Exemptions and exclusions.

(a) Individuals, as well as certificate holders, shall be eligible for importing vehicles into the United States under the provisions of this section, unless otherwise specified.

(b) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine entitled to one of the temporary exemptions of this paragraph may be conditionally admitted into the United States if prior written approval for such conditional admission is obtained from the Administrator. Conditional admission shall be under bond. A written request for approval from the Administrator shall contain the identification required in § 85.1504(a)(1) (except for § 85.1504(a)(1)(v)) and information that indicates that the importer is entitled to the exemption. Noncompliance with provisions of this section may result in the forfeiture of the total amount of the bond or exporation of the vehicle or engine. The following temporary exemptions are permitted by this paragraph:

(1) *Exemption for repairs or alterations.* Owners of fleet vehicles or engines may import such vehicles or engines solely for purposes of repairs or alterations. Such vehicles or engines may not be registered or licensed in the United States for use on public roads and highways. They may not be sold or leased in the United States and must be exported upon completion of the repairs or alterations.

(2) *Testing exemption.* Testing vehicles or engines may be imported by any person subject to the requirements of 40 CFR 85.1705 and 85.1708. Test vehicles or engines may be operated on and registered for use on public roads or highways provided that the operation is an integral part of the test. The exemption shall be limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer concerning the vehicle in accordance with § 85.1705(f) for a subsequent one-year period.

(3) *Precertification exemption.* Prototype vehicles for use in applying to EPA for certification may be imported by independent commercial importers subject to applicable provisions of 40 CFR 85.1706 and the following requirements:

(i) No more than one prototype vehicle for each engine family for which an independent commercial importer is seeking certification shall be imported by each independent commercial importer.

(ii) Unless a certificate of conformity is issued for the prototype vehicle, the total amount of the bond shall be forfeited or the vehicle must be exported within 180 days from the date of entry.

(4) *Display exemptions.* (i) Vehicles or engines intended solely for display may be imported subject to the requirements of 40 CFR 85.1707.

(ii) Display vehicles or engines may be imported by any person. Display vehicles or engines may not be sold in the United States and may not be registered or licensed for use on or operated on public roads or highways in the United States, unless an applicable certificate of conformity has been received.

(c) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine may be finally admitted into the United States under this paragraph if prior written approval for such final admission is obtained from the Administrator. Conditional admission of these vehicles is not permitted for the purpose of obtaining written approval from the Administrator. A request for approval shall contain the identification information required in § 85.1504(a)(1) (except for § 85.1504(a)(1)(v)) and information that indicates that the importer is entitled to the exemption or exclusion. The following exemptions or exclusions are permitted by this paragraph:

(1) *National security exemption.* Vehicles may be imported under the national security exemption found at 40 CFR 85.1708. Only persons who are manufacturers may import a vehicle under a national security exemption.

(2) *Hardship exemption.* The Administrator may exempt on a case-by-case basis certain motor vehicles from Federal emission requirements to accommodate unforeseen cases of extreme hardship or extraordinary circumstances. Some examples are as follows:

(i) Handicapped individuals who needs a special vehicle unavailable in a certified configuration;

(ii) Individuals who purchase a vehicle in a foreign country where resale is prohibited upon the departure of such as individual;

(iii) Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship.

(d) Foreign diplomatic and military personnel may import nonconforming vehicles without bond. At the time of admission, the importer shall submit to the Administrator the written report required in § 85.1504(a)(1) (except for information required by § 85.1504(a)(1)(v)). Such vehicles may be be sold in the United States.

(e) *Racing exclusion.* Racing vehicles may be imported by any person provided the vehicles meet one or more of the exclusion criteria specified in 40 CFR § 85.1703. Racing vehicles may not be registered or licensed for use on or operated on public roads and highways in the United States.

(f) *Exclusions/exemptions based on date of original manufacture.* (1) Notwithstanding any other requirements of this subpart, the following motor vehicles or motor vehicle engines are excluded from the requirements of the Act in accordance with section 216(3) of the Act and may be imported by any person:

(i) Gasoline-fueled light-duty vehicles and light-duty trucks originally manufactured prior to January 1, 1968.

(ii) Diesel-fueled light-duty vehicles originally manufactured prior to January 1, 1975.

(iii) Diesel-fueled light-duty trucks originally manufactured prior to January 1, 1976.

(iv) Motorcycles originally manufactured prior to January 1, 1978.

(v) Gasoline-fueled and diesel-fueled heavy-duty engines originally manufactured prior to January 1, 1970.

(2) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine not subject to an exclusion under § 85.1511(f)(1) but greater than twenty OP years old is entitled to an exemption from the requirements of the Act, provided that it is imported into the United States by a certificate holder. At the time of admission, the certificate holder shall submit to the Administrator the written report required in § 85.1504(a)(1) (except for information required by § 85.1504(a)(1)(v)).

(g) Applications for exemptions and exclusions provided for in paragraphs (b) and (c) of this section shall be mailed to: Investigation/Imports Section (EN-340F), Office of Mobile Sources, U.S. Environmental Protection Agency, Washington, DC 20460.

(h) Vehicles conditionally or finally admitted under paragraphs (b)(2), (b)(4), (c)(1), (c)(2), and (f)(2) of this section must still comply with all applicable requirements, if any, of the Energy Tax Act of 1978, the Energy Policy and Conservation Act and any other Federal or state requirements.

§ 85.1512 Admission of catalyst and O_2 sensor-equipped vehicles.

(a) (1) Notwithstanding other provisions of this subpart, any person may conditionally import a vehicle which:

(i) Was covered by a certificate of conformity at the time of original manufacture or had previously been admitted into the United States under § 85.1505 or § 85.1509 (after June 30, 1988).

(ii) Was certified, or previously admitted under § 85.1505 or § 85.1509 (after June 30, 1988), with a catalyst emission control system and/or O_2 sensor;

(iii) Is labeled in accordance with 40 CFR Part 86, Subpart A or, where applicable, § 85.1510(c); and

(iv) Has been driven outside the United States, Canada and Mexico or such other countries as EPA may designate.

(2) Such vehicle must be entered under bond pursuant to 19 CFR 12.73 unless it is included in a catalyst and O_2 sensor control program approved by the Administrator upon such terms as may be deemed appropriate. Catalyst and O_2 sensor programs conducted by manufacturers may be approved each model year.

(b) For the purpose of this section, "catalyst and O_2 sensor control program" means a program instituted and maintained by a manufacturer, or any U.S. Government Agency for the purpose of preservation, replacement, or initial installation of catalytic converters and cleaning and/or replacement of O_2 sensors and, if applicable, restricted fuel filler inlets.

(c) For the purpose of this section, "driven outside the United States, Canada and Mexico" does not include mileage accumulated on vehicles solely under the control of manufacturers of new motor vehicles or engines for the purpose of vehicle testing and adjustment, and preparation for shipment to the United States.

(d) Vehicles conditionally imported pursuant to this section and under bond must be modified in accordance with the certificate of conformity applicable at the time of manufacture. In the case of vehicles previously imported under § 85.1509 or § 85.1504 (prior to July 1, 1988), the replacement catalyst and O_2 sensor, if applicable, must be equivalent (in terms of emission reduction) to the original catalyst and O_2 sensor. Such vehicles may be granted final admission upon application to the Administrator, on forms specified by the Administrator. Such application shall contain the information required in § 85.1504(a)(1) (i) through (v) and shall contain both an attestation by a qualified mechanic that the catalyst has been replaced and the O_2 sensor has been replaced, if necessary, and that both parts are functioning properly, and a copy of the invoice for parts and labor.

§ 85.1513 Prohibited acts; penalties.

(a) The importation of a motor vehicle or motor vehicle engine which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service at 19 CFR 12.73 is prohibited. Failure to comply with this section is a violation of section 203(a)(1) of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of a vehicle shall not:

(1) Operate the vehicle on streets or highways,

(2) Sell or offer the vehicle or engine for sale, or

(3) Store the vehicle on the premises of a dealer.

(c) Any vehicle or engine conditionally admitted pursuant to § 85.1504, § 85.1511 or § 85.1512, and not granted final admission within 120 days of such conditional admission, or within such additional time as the U.S. Customs Service may allow, shall be deemed to be unlawfully imported into the United States in violation of section 203(a)(1) of the Act, unless such vehicle or engine shall have been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. Any vehicles or engines not so delivered shall be subject to seizure by the U.S. Customs Service.

(d) Any importer who violates section 203(a)(1) of the Act is subject to a civil penalty under section 205 of the Act of not more than $10,000 for each vehicle or engine subject to the violation. In addition to the penalty provided in the Act, where applicable, under the exemption provisions of § 85.1511(b), or under § 85.1512, any person or entity who fails to deliver such vehicle or engine to the U.S. Customs Service is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

(e) (1) A certificate holder whose vehicles or engines imported under § 85.1505 or § 85.1509 fail to conform to Federal emission requirements after modification and/or testing under the Federal Test Procedure (FTP) or who fails to comply with applicable provisions of this subpart, may, in addition to any other applicable sanctions and penalties, be subject to any, or all, of the following sanctions:

(i) The certificate holder's currently held certificates of conformity may be revoked or suspended;

(ii) The certificate holder may be deemed ineligible to apply for new certificates for up to 3 years; and

(iii) The certificate holder may be deemed ineligible to import vehicles or engines under § 85.1509 in the future and be placed on a list of certificate holders ineligible to import vehicles or engines under the provisions of § 85.1509.

(2) Grounds for the actions described in paragraph (e)(1) shall include, but not be limited to, the following:

(i) Action or inaction by the certificate holder or the laboratory performing the FTP on behalf of the certificate holder which results in fraudulent, deceitful or grossly inaccurate representation of any fact or condition which affects a vehicle's or engine's eligibility for admission to the U.S. under this subpart;

(ii) Failure of a significant number of vehicles or engines imported to comply with Federal emission requirements upon EPA inspection or retest; or

(iii) Failure by a certificate holder to comply with requirements of this subpart.

(3) The following procedures govern any decision to suspend, revoke, or refuse to issue certificates under this subpart:

(i) When grounds appear to exist for the actions described in paragraph (e)(1), the Administrator shall notify the certificate holder in writing of any intended suspension or revocation of a certificate, proposed ineligibility to apply for new certificates, or intended suspension of eligibility to conduct modification/testing under § 85.1509, and the grounds for such action.

(ii) Except as provided by paragraph (e)(3)(iv) of this section, the certificate holder must take the following actions before the Administrator will consider withdrawing notice of intent to suspend or revoke the certificate holder's certificate or the certificate holder's eligibility to perform modification/testing under § 85.1509:

(A) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicle or engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the certificate holder to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented; or

(B) Demonstrate that the vehicles or engines do in fact comply with applicable regulations in this chapter by retesting such vehicles or engines in accordance with the FTP.

(iii) A certificate holder may request within 15 calendar days of the Administrator's notice of intent to suspend or revoke a certificate holder's eligibility to perform modification/testing or certificate that the Administrator grant such certificate holder a hearing:

(A) As to whether the tests have been properly conducted,

(B) As to any substantial factual issue raised by the Administrator's proposed action.

(iv) If, after the Administrator notifies a certificate holder of his/her intent to suspend or revoke a certificate holder's certificate of conformity or its eligibility to perform modification/testing under § 85.1509 and prior to any final suspension or revocation, the certificate holder demonstrates to the Administrator's satisfaction that the decision to initiate suspension or revocation of the certificate or eligibility to perform modification/testing under § 85.1509 was based on erroneous information, the Administrator will withdraw the notice of intent.

(4) Hearings on suspensions and revocations of certificates of conformity or of eligibility to perform modification/testing under § 85.1509 shall be held in accordance with the following:

(i) Applicability. The procedures prescribed by this section shall apply whenever a certificate holder requests a hearing pursuant to subsection (e)(3)(iii).

(ii) Hearing under paragraph (e)(3)(iii) of this section shall be held in accordance with the procedures outlined in § 88.613, where applicable, provided that where § 86.612 is referred to in § 86.613: Section 86.612(a) is replaced by § 85.1513(d)(2); and § 86.612(i) is replaced by § 85.1513(d)(3)(iii).

(5) When a hearing is requested under this paragraph and it clearly appears from the data or other information contained in the request for a hearing, or submitted at the hearing, that there is no genuine and substantial question of fact with respect to the issue of whether the certificate holder failed to comply with this subpart, the Administrator will enter an order denying the request for a hearing, or terminating the hearing, and suspending or revoking the certificate of conformity or the certificate holder's eligibility to perform modification/testing under § 85.1509.

(6) In lieu of requesting a hearing under paragraph (e)(3)(iii) of this section, a certificate holder may respond in writing to EPA's charges in the notice of intent to suspend or revoke. Such a written response must be received by EPA within 30 days of the date of EPA's notice of intent. No final decision to suspend or revoke will be made before that time.

§ 85.1514 Treatment of confidential information.

(a) Any importer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, an importer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter.

§ 85.1515 Effective dates.

The provisions of this subpart are effective on July 1, 1988.

PART 600—[AMENDED]

2. The authority citation for Part 600 continues to read as follows:

Authority: 15 U.S.C. 2001, 2003, 2005, 2006.

3. 40 CFR 600.007–80 is amended by adding a new paragraph (b)(7) to read as follows:

§ 600.007–80 Vehicle acceptability

* * * * *

(b) * * *

(7) For vehicles imported under § 85.1509 or § 85.1511 (b)(2), (b)(4), (c)(2), (c)(4), or (e)(2) (when applicable) only the following requirements must be met:

(i) For vehicles imported under § 85.1509, a highway fuel economy value must be generated contemporaneously with the emission test used for purposes of demonstrating compliance with § 85.1509. No modifications or adjustments should be made to the vehicles between the highway fuel economy and the FTP emissions test.

(ii) For vehicles imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) or (e)(2) (when applicable) with over 10,000 miles, the equation in § 600.006–86 (g)(1) shall be used as though only 10,000 miles had been accumulated;

(iii) Any required fuel economy testing must take place after any safety modifications are completed for each vehicle as required by regulations of the Department of Transportation.

(iv) Every vehicle imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) or (e)(2) (when applicable) shall be considered a separate type for the purposes of calculating a fuel economy label for a manufacturer's average fuel economy.

4. 40 CFR 600.007–80 is amended by revising paragraph (f) to read as follows:

§ 600.007–80 Vehicle acceptability.

* * * * *

(f) All vehicles used to generate fuel economy data must be covered by a certificate of conformity under Part 86 before:

(1) The data may be used in the calculation of any approved general or specific label value, or

(2) The data will be used in any calculations under Subpart F, except that vehicles imported under § 85.1509 and § 85.1511 need not be covered by a certificate of conformity.

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federal register

Friday
September 25, 1987

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Juvenile Justice Statistics and Systems Development Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Juvenile Justice Statistics and Systems Development Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to establish a Juvenile Justice Statistics and Systems Development Program.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to sections 241 and 224(b)(1) of the Juvenile Justice and Delinquency Prevention Act, as amended, is sponsoring a program to establish a Juvenile Justice Statistics and Systems Development Program. The purpose of this program will be to develop and implement strategies for improving:

- The quality and utility of national and subnational (state and local) statistics on juvenile justice; and,
- Decision making and management information systems within the juvenile justice system.

This effort will assist OJJDP in implementing the recommendations from the Assessment of National Juvenile Justice Statistics. This requires formulating and implementing a program of national and subnational juvenile justice statistics that promotes the development and effective use of statistics for systemwide and individual agency planning and management; policy and program development; and, research and evaluation at the Federal, state and local level. The scope of the program related to improving national and subnational statistics includes Federally-sponsored national surveys of individuals regarding their experience as victims and/or offenders as well as Federally-sponsored administrative surveys that involve the collection of data from local reporting units regarding some aspect of the justice system response to these juveniles.

In addition to performing the tasks related to planning and improving national and subnational statistical networks and products, the recipient will be responsible for:

- Assessing operational juvenile justice agencies' decision making and related management information systems;
- Developing prototypical decision making and related management information systems and promoting the effective use of the information generated by the systems for planning, management and resource allocation development;
- Developing training and technical assistance materials to promote the adoption of the prototypical systems to test sites; and,
- Providing intensive training and technical assistance to implement the prototypes in the test sites.

It is expected that these two tracks: National Statistics and Systems Development, will complement each other and will improve the capability of Federal, state and local, public and private juvenile justice agencies to understand the needs of the juvenile population they serve and as a result more effectively manage their resources for delinquents and other juveniles in need of services.

Eligibility

Applications are invited from public agencies and private not-for-profit organizations which can demonstrate the capability to effectively carry out the mission of the Juvenile Justice Statistics and Systems Development Program to enter into a cooperative agreement with OJJDP. The project period will be four years, with incremental budget periods. OJJDP has allocated up to $1,000,000 for the initial budget period of 24 months. Based on successful completion of the first budget period, several non-competing awards are anticipated. Applicants are encouraged to submit cost-competitive proposals.

DATE: The deadline for receipt of applications is November 9, 1987. For further information contact: Barbara Allen-Hagen, Research and Program Development Division (202/724–5929); or Douglas C. Dodge, Special Emphasis Division (202/724–5914), Office of Juvenile Justice and Delinquency, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

Juvenile Justice Statistics and Systems Development Program

I. Definition

The following definitions are offered to clarify terms and concepts frequently used in this solicitation. Because one of the purposes of this program is to help OJJDP further define the parameters of a national statistical program and a model decision making system(s), these definitions are subject to change.

Juvenile—any person under the age of 18 in the United States (1) who is or may be, for statutorily determined conduct or circumstances (e.g., delinquency noncriminal misbehavior and abuse/neglect), subject to the adjudication and supervision processes of the juvenile court, or (2) who, although not described by criterion (1) above, is under the age of 18 and is either under criminal court jurisdiction or is a victim of a criminal offense.

Juvenile and Criminal Justice System Response—any official action (arrest/taking into custody, filing a petition, detention order, diversion, waiver/transfer, adjudication, disposition, probation order, commitment/placement, release from custody/jurisdiction, etc.) made in response to acts committed by or against a juvenile (delinquency, status offense, or abuse/neglect or criminal victimization) that may come before the juvenile or criminal court for adjudication, disposition or judicial review. These actions may be taken by local and/or state agencies depending on the locus of the authority.

National Juvenile Justices Statistics Program—a series of routinely administered data collection efforts that are designed to produce current, reliable, nationally representative data regarding the extent and nature of juvenile offending and victimization and the juvenile or criminal justice system response.

Subnational Statistics—data routinely gathered on juvenile or criminal justice system response generated or maintained by any local or state agency or organization with the appropriate statutory or delegated authority to perform such a function.

Assessment Recommendation—a series of recommendations contained in a draft document entitled, "The Assessment of National Juvenile Justice Statistics: An Agenda for Action", (hereinafter referred to as "Agenda"), James P. Lynch, April 1987, based on a jointly-sponsored OJJDP/Bureau of Justice Statistics assessment of Federally-sponsored national data collection efforts regarding juveniles as victims and offenders. Copies of this document can be obtained by calling Barbara Allen-Hagen, at 202/724-5929 or Douglas C. Dodge, at (202) 724–5914.

Management Information System (MIS) Prototype—a proposed set (the minimum number) of variables and data elements with standardized definitions for juvenile or criminal justice system

responses that meet local or state agency information needs, as well as national informations system requirements for developing national estimates regarding juvenile justice system response to juvenile victims and offenders. Model or prototype management information systems will be developed for each component agency of the juvenile justice system or, where applicable, the criminal justice system.

Decision Making System Prototype

A systematic approach to decision making which delineates the range of juvenile or criminal justice system responses that can be made by local/state agencies regarding the processing of juveniles through each decision point in the juvenile or criminal justice system from initial contact with law enforcement or referral to juvenile or family court or court of similar jurisdiction through disposition and release from jurisdiction.

II. Introduction and background

Recently OJJDP and the Bureau of Justice Statistics (BJS) undertook the first major assessment of the quality and utility of existing national statistics on juveniles as victims and offenders. The overwhelming conclusion of this assessment was that critical information on the extent and nature of juvenile crime and victimization was seriously deficient for both policy and research purposes. In addition, national, state, and local data on important aspects of the justice system response are fragmented, non-comparable, or non-existent. Further, if significant improvements were to be made, the current inadequacies of the existing system would have to be approached systematically. The product of this effort, "The Assessment of National Juvenile Justice Statistics: An Agenda for Action", outlines a comprehensive series of recommendations for improving the quality, utility and accessibility of data for national, state and local uses. Incorporated in the discussion of the recommendations are steps to be taken to achieve a particular information goal. For national and subnational statistics these steps range from conducting secondary analysis of existing data to initiating new data collection efforts.

There is general consensus that there is a need to improve juvenile justice decision making related to planning, policy and program development and management within and across juvenile justice agency lines. Often decisions are not guided by explicit policies or criteria. These decisions are frequently made in the absence of critical information that is often not available within a single agency or is not shared between agencies. Both of these inadequacies need to be addressed simultaneously for effective management of juvenile justice resources. For example, in order to determine the need for additional detention beds, a jurisdiction needs to specify the policies/screening criteria used to make detention decisions; to identify where the decisions are made; and, to develop information on the number and types of youth detained as well as their lengths of stay. Without this type of information, population projections that may form the basis for expenditure of funds will be flawed. There are a host of basic policy and information needs, such as those identified in the above example, that are common to almost any juvenile justice "system" that should be identified, and, around which a model decision making system(s) should be developed. Therefore, it is necessary to assess decision making policies and procedures, delineating agency-level activities at each critical decision point in juvenile justice system. In addition, the assessment should document agencies' use of currently collected data; and from this assessment develop a prototypical decision making and related complementary management information system(s). The local management information system(s) must be designed to contribute to the development of a national base of information on critical aspects of the juvenile justice system response to juvenile crime and victimization.

The Juvenile Statistics and Systems Development Program is an integral part of the strategy to implement the recommendations to improve national and subnational statistics, as well as to improve the decision making capability of local juvenile justice agencies. The program is being established to guide choices regarding the future direction of national statistics and methods for assisting the development of local decision making and information systems data collection efforts. Finally it will focus on integrating these two activities to ensure that local and state information systems can become the building blocks for a national juvenile justice statistics program. This is the beginning of a long term commitment which is needed to document and monitor trends in the level and nature of delinquency and victimization, as well as the juvenile justice system's response to these problems. One of the major functions of this program will be the dissemination of existing information for policy-making purposes as well as to provide greater access of existing data sets to the research community for policy analysis and program evaluation.

III. Program goals and objectives

There are two major goals of this program:

- To create a national juvenile justice statistics program that is responsive to Federal, state and local information needs; and
- To improve systemwide decision making and management information capabilities of juvenile justice system and component agencies.

A national juvenile justice statistics program must be developed that produces useful and reliable national and subnational statistics on juveniles that inform the public about the extent and nature of juvenile delinquency and victimization, their correlates and consequences, as well as juvenile justice system response to these social problems. This program must yield data on these phenomenon that are useful for policy and program development and evaluation at the Federal, state and local level.

A concurrent goal of this program is to improve the capability of the juvenile justice system and its component agencies to respond to the problems of juvenile crime and victimization, through the development and testing of prototypical decision making and management information systems. The program is designed to promote the understanding and the use of prototypical system wide juvenile justice decison-making policies and practices to assess, monitor and improve the administration of juvenile justice. In addition to supporting systems inprovement, the program also is intended to contribute to building a national statistical system which promotes the effective use of statistics for planning, resource allocation and other juvenile justice system management decisions at the Federal, state and local level.

In order to achieve these goals, a comprehensive program to improve the quality and utility of national and subnational statistics, and decision making must be developed and implemented. The Assessment of National Juvenile Justice Statistics has outlined a broad agenda for making needed improvements in national and subnational statistics. The establishment of the Juvenile Justice Statistics and Systems Development Program is intended to build upon this work. The recipient will be responsible

for providing the necessary technical and substantive resources to achieve the following objectives during the first 24-month phase of the program's operation:

National statistics objectives

- Assist in formulating long-term and short-term plans for systematically improving juvenile statistics, including prioritizing information needs; choosing which Assessment Recommendations to pursue; and carrying out the necessary steps to implement these plans;
- Assess the potential of existing subnational statistical systems/networks for contributing data to a national statistical reporting system; and,
- Develop a strategy for the analysis, publication and dissemination of existing national and subnational data on juveniles and the justice system;

Systems development objectives

- Assess operational juvenile justice agencies' decision making related management information activities, policies, and procedures;
- Develop prototypical decision making systems and complementary management information systems as well as model output reports pertaining to planning, management, resource development and allocation, an intra and inter agency coordination;
- Develop training and technical assistance materials to transfer prototypes;
- Develop and implement a strategy for testing the effectiveness of the prototypical decision making and management information systems; and,
- Determine the feasibility of the building a network of jurisdictions to contribute to a national juvenile justice statistical reporting program on juvenile justice system response.

IV. Program strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases: research, development, demonstration and dissemination. The framework guides the decision making process regarding the funding of future phases of the program.

This program falls within the research and development phases. The purpose of the research phase is to develop new knowledge and to monitor trends to inform and assess policy and program development. The national/subnational statistics objective fall under this phase. The purpose of the development phase is to develop prototypes and, to determine their effectiveness through a testing process, and to disseminate the prototypes to the field. The systems development objectives fall within this phase.

This initiative is designed to evolve along two tracks. The first involves developing strategies to improve the quality and utility of federally-sponsored national data collection efforts, including surveys of individuals regarding their experience as victims and/or offenders as well as administrative surveys that involve the collection data from local reporting units regarding some aspect of the justice system response. The second track involves efforts to improve the quality and utility of state and local decision making and related management information systems. While each track has its defined objectives and expected results, the two tracks are clearly interdependent. Therefore, although the activities of each track require somewhat different skills, strategies and schedules, it is critical that the grantee structure an approach to ensure that the development of the two tracks is closely coordinated and that the results of each track complement the work of the other.

Each track will involve several basic stages of development. As will be described below, it is anticipated that stages one through three of the national statistics track and stages one through three of the systems development track will be completed during the first 24-month project period. Each stage of the process detailed below is designed to result in complete and publishable products, and a dissemination strategy to inform the field of the development of the program and the results and products of each stage.

A project advisory committee, consisting of knowledgeable survey methodologists; statisticians; data users and suppliers; practitioners and experts in juvenile justice policy, systems and resource management will be appointed to provide guidance to the progam in carrying out its functions, reviewing plans, and products. Two subcommittees, supplemented by technical consultants as necessary, should be formed to advise the development of each track.

National Statistics Track

Stage I—Assessment

"During this stage the recipient will review the recommendations of the "Agenda", and other relevant literature, and assist OJJDP in selecting those recommendations that should be adopted and in what priority order they should be pursued. It is anticipated that this will require an intensive process involving the participation of OJJDP, the recipient, and the project advisory board. This stage will also involve preliminary identification of national data system requirements that will inform the development of local management informations system prototypes under the Systems Development Track.

To assist in the prioritization and selection of recommendations to be pursued, the recipient will provide the necessary background information on the resources, technology and agency cooperation that would be required to implement the recommendations. Based on the approval by OJJDP of the first set of recommendations to be adopted, the recipient will identify the steps involved in implementing each selected recommendation. Finally, the recipient will develop a detailed, comprehensive plan for the implementation of the selected recommendations focused on improvement of national and subnational statistics, and on the analysis and dissemination of existing information.

Activities

The major activities of this stage are:

- Establishment and convening of the project advisory committee board;
- Development of an assessment plan specifying the approach for each step of the assessment stage;
- Identification of the national data system information requirements that should be incorporated into the development of the prototype local management information systems under the System Development Track.
- Review of the National Juvenile Justice Statistics Assessment and Prioritization of Recommendations;
- Specifications of the steps required to implement selected recommendations; and,
- Development of a detailed plan to implement the selected national/subnational statistical programs. (It should be recognized that each of the data collection activities which are selected for implementation will likely proceed at a different pace through the next three stages of development, depending on the specific nature of the activity.)

Products

The products to be completed during this stage are:

1. Assessment Plan.
2. Recommendation for prioritization of Statistics Assessment recommendations.
3. Report specifying the resources, technology, agency cooperation, and the

implementation activities for each of the priority recommendations.

4. Recommendations for assessing quality and utility of subnational statistical systems/networks for contributing to national information on juvenile justice system response.

5. Plan for implementing selected national/subnational statistical programs.

6. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage II—Analysis and dissemination

Upon successful completion of stage one, the recipient will conduct those activities in the plan developed during the assessment stage which involve analysis and dissemination of existing national and/or subnational data sets to inform policy and program development. This will involve the development of a dissemination strategy to: (1) Make available to the field statistical information from existing national and subnational data sets; and (2) to examine the utility of existing data sets for addressing selected policy issues.

The first task will be accomplished by preparing a national report on juvenile offending and victimization, which will be updated bi-annually by the program.

The second task will involve the preparation of papers based on analysis of one or more data sets to address particular policy or program issues in juvenile justice. The topics will be selected by OJJDP in consultation with the recipient and the program advisory committee. The analysis will also include an examination of the utility of a particular data set for meeting information needs in the field.

Activities

The major activities of this stage are:

- Development of a plan for the analysis and dissemination activities;
- Selection of topics for issue papers;
- Preparation of a draft and final national report on results of juvenile offending and victimization;
- Preparation of issue papers based on analysis of existing data sets; and,
- Development and implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

(1) Plan for conducting the analysis and dissemination activities;

(2) Draft and final national report on juvenile offending and victimization;

(3) A minimum of three papers on selected policy or program issues;

Stage III—Survey design and feasibility studies

During this stage, the recipient will initiate the design of new data collection activities included in the plan developed during the assessment stage. These may consist of revisions to existing national data collection efforts, or the design and implementation of new efforts. This stage will involve three steps as appropriate. For those data collection efforts that are to be revised, the first step consists of secondary analysis of the relevant national data set. For new data collection initiatives, the first step will consist of evaluating existing data collection efforts and conducting secondary analyses of these, if available, to determine the potential for collecting the desired information through an existing survey mechanism. The second step will be the conduct of *feasibility studies* to develop more definitive information on the viability of particular approaches to data collection for addressing a particular issue.

Third, based upon the results of the secondary analyses and/or feasibility studies, the recipient will prepare a recommendation regarding the viability of the proposed new or revised data collection activity. As appropriate, the recommendation should include a proposed survey design, specifying the substantive, strategic costs and methodological requirements, and projected costs for full implementation of the data collection activity. It must provide an in-depth statement of the rationale for each effort; an articulation of the specific policy, programmatic, and/or research purposes that the particular effort is designed to address; and a justification for the proposed design based on the experience of the secondary analyses phase and/or the feasibility studies.

Should OJJDP choose to implement a new national data collection effort, most likely it will be supported through an interagency agreement, or a competitively awarded cooperative agreement or contract. For the latter options, it is anticipated that the recipient will be excluded from competition. The recipient will however, provide the necessary consultation to assure that the survey(s) is implemented in a manner consistent with the proposed design and the direction of the project advisory board.

Activities

The major activities to be conducted during this stage are:

- Development of a plan for the design of new data collection efforts; including the steps for each effort;
- Conduct of secondary analyses of existing relevant data sets;
- Conduct of feasibility studies;
- Coordination of the design of new national activities with the local systems;
- Preparation of draft and final recommendations for each new data collection effort;
- Development and implementation of a dissemination strategy;

Products

The products to be completed during this stage are:

1. Plan for the design of new data collection efforts;

2. Draft and final recommendations for new data collection efforts; and,

3. Dissemination strategy to inform the field of the development of the program and products of this stage.

Stage IV—Implementation of new data collection efforts

During this stage the recipient will provide methodological advice and oversight of newly initiated data collection efforts. Program staff and consultants who have been involved in the design stage will serve in a consultant capacity to organizations selected to conduct these efforts. The program's Advisory Committee will also review these efforts as appropriate. Additional ongoing activities under this stage include the refinement of plans, re-analysis of relevant data sets for policy or program development purposes, conduct of additional feasibility or pilot tests, as needed, and the production and dissemination of recurring and ad hoc reports resulting from the program's work.

Activities

The major activities of this stage are:

- Development of a plan for implementation of new data collection efforts;
- Technical Assistance to new data collection activities;
- Advisory Committee review of new data collection activities, and on-going OJJDP data collection projects;
- Preparation of reports based on existing and new data collection activities; and,
- Identification of new priorities.

Products

1. Plan for implementation of new data collection efforts.

2. Reports on the status of new data collection activities.

3. Recommendations for new priority areas.

Systems development track

Stage I—Assessment

The recipient will be responsible for designing and conducting an assessment of selected state and local decision making systems; existing management information systems and the current or potential analytical uses of operational data for juvenile justice system management, policy development, planning and evaluation; and the potential of local data collection activities for contributing to a national data collection program on juvenile justice system response. The assessment must be designed to provide OJJDP with specific recommendations for optimal operation of both decision making and complementary management information systems that will be the basis for the prototype development activities occurring in the next stage as well as the development of a strategy for a national program for collection of data on juvenile justice system response.

During this stage the recipient will conduct a review of the literature on juvenile justice decison making policies, procedures and practices at the system as well as the individual agency level, and on management information systems that gather and analyze data that are designed to support decision making activities. Based on the review, and the guidance from the advisory committee and OJJDP, the recipient will develop criteria to select and conduct onsite assessment of existing state and local agency decision making and management information systems.

The assessment will focus on system design and operation, by examining the decision making and information activities of the individual component agencies as well as activities involved in referring youth from one component of the system to another. It will examine who makes decisions regarding the handling of different types of youthful offenders and nonoffenders, what types of decisions are made, and the subsequent resources expended in responding to those decisions. It will also examine the type of information that is collected by component agencies, who collects it, how it is collected, how it is analyzed and how it is used. This will include a review of the purpose and usefulness of output reports generated for use by juvenile justice agencies. In order to monitor trends and to make critical management decisions on an agency and systemwide basis in the areas of planning, policy formulation, program development, resources allocation, research evaluation and budget development and control. Particular attention will be paid to the potential contribution of various management information systems to a national data collection system.

Activities

The major activities of this stage are:

- Convening the project advisory committee;
- Development of an assessment plan specifying the approach for each step of the assessment stage;
- Review of the literature;
- Development of the criteria for site assessment activities;
- Implementation of the site assessment;
- Development of preliminary testing design guidelines;
- Development of recommendations for the national reporting program on juvenile justice system response based on assessment of existing management information systems;
- Development of a draft and final assessment report;
- Development of a dissemination strategy;

Products

The products to be completed during this stage are:

1. Project Advisory Committee Recommendations;
2. Assessment Plan;
3. Literature Review;
4. Criteria for Site Assessment Activities;
5. Recommendations with regard to Preliminary Guideline for Test Design;
6. Preliminary strategy for developing a national reporting program on juvenile justice system response based on local/state reporting units;
7. Draft and Final Assessment Report; and
8. Dissemination strategy to inform the field of the development of the program and products and results of this stage.

Stage II—Prototype Development

Upon successful completion of stage one, the recipient will develop one of more prototypes of a juvenile justice decision making and complementary management information system for implementation at the state and local level. The prototypes will explain how to operationalize and assess agency policy through the implementation of a well-defined decision making system and a supportive management information system. The prototype information will be detailed in operational manuals which contain detailed specifications for the development, implementation and operation of the prototypical state and local decision making and management information systems. The prototypes will describe, for each component agency of the juvenile justice system, how to define policy and implement it through the establishment of decision making criteria, practices and procedures for processing juveniles; and the establishment of a management information system that will provide the information specified by the decision criteria, as well as data on the flow of juveniles through the system.

In developing the prototype management information systems, the requirements of a national data system must be addressed. This must include recommendations regarding: the scope of initial program, sampling issues related to implementation, identification of both incentives and necessary assurances regarding the use and disclosure of data in order to ensure participation in the program, and the identification of specific products or reports that the system would be capable of generating for national purposes.

Because of the need to demonstrate the potential utility of both the decision making model and the management information system, the prototypes must include the identification of the practical uses and potential benefits to an agency as well as to the overall juvenile justice system that may adopt the prototype systems. Model output reports that would result from the implementation of the prototypes should be designed. The recipient will prepare examples of such reports and include those for: planning (e.g., development of population or personnel projections); policy formulation (e.g., establishing criteria for use of secure detention, or for setting dispositional/release guidelines); program development (e.g., determining the need for a urinalysis program to monitor probationers, or the need for runaway shelter); budgeting (e.g., setting per diem rates for contract services, determining juvenile justice system annual expenditures by agency); program and policy evaluation (e.g., determining the effectiveness of jail removal policies and alternatives, or the impact of a truancy reduction program on reported daytime burglaries); and research (e.g., documenting trends in the percentage of personal crimes involving juvenile gangs, or the percentage of violent crimes in which kidnapping of a juvenile was a corollary offense). This will involve identifying necessary decision making activities and corresponding data elements, minimum requirements regarding the data collection procedures, for each use.

Activities

The major activities of this stage are:
- Participation of the Advisory Committee;
- Development of a plan for prototype development;
- Development of the decision making and information system prototypes and related materials;
- Development of recommendations regarding the scope, content and approach to developing a national reporting program on juvenile justice system response based on data generated by the management information system prototypes; and,
- Development of a dissemination strategy.

Products

1. Prototype Development Plan.
2. Dissemination Strategy to inform the field of the development of the program, and the products and results of this stage.
3. Draft and Final Prototype Designs and Operation Manuals.
4. Draft and Final Design for the National Reporting Program on Juvenile Justice System Response.

Stage III Training and technical assistance

While a decision to develop training and technical assistance materials and to test the prototype design(s) will be made during or following the completion of the prototype system development stage, the applicant is expected to explain the methods and approaches that would be employed to implement all of the stages. As noted, funds for this stage will be provided in the initial award period. Funds for the testing stage will be provided through non-competitive continuation awards. In order to ensure the applicant's understanding of the entire development effort, however, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, prototype development, training and technical assistance development, and testing).

Upon successful completion of stage 3 and with the approval of OJJDP, the grantee will transfer the prototype decision making and management information system design(s), including policies and procedures, into a training and technical assistance package. A comprehensive training manual which outlines the major issues that need to be addressed in developing programs for state and local subnational policy level decision makers, and detail program prototypes, must be developed to encourage and facilitate implementation of prototypes. The training manual should be the focal point of the entire training and technical assistance package. The major audience will be policymakers and practitioners involved in resource allocation and program development at the state and local subnational levels. The manual must be designed for a formal training setting, and for independent use in jurisdictions that do not participate in formal training sessions. Therefore, the manual should include a complete description of the decision making prototype and incorporate related policies and procedures to operationalize the prototypes. The manual should contain instructions and supplementary materials for trainers to facilitate presentation, and ensure understanding and successful adaptation and implementation of the prototypes.

Activities

The major activities of this stage are:
- Preparation of a plan for developing the training and technical assistance package;
- Development of the training and technical assistance materials;
- Recruitment and preparation of the training and technical assistance personnel;
- Testing of the training curriculum manual;
- Participation and review by the advisory committee; and,
- Development and implementation of a dissemination strategy which may include workshops or seminars for national and subnational level decision makers.

Products

The products to be completed during this stage are:
1. Plan for the development of the training and technical assistance package;
2. Identification of training and technical assistance personnel;
3. Draft and final training and technical assistance package-including the training curriculum manual and information materials; and,
4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage IV—Prototype implementation and testing

This stage of the program consists of a test, in selected jurisdictions, of the prototypes developed in Stage II. The recipient will be required to assist the OJJDP in developing a solicitation to make awards to test sites. It will also be required to provide intensive training and technical assistance to help test sites implement the decision making and management information system prototypes on an experimental basis. Finally, the grantee will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities

The major activities of this stage are:
- Develop recommendations for a program announcement to select test sites;
- Assist OJJDP in review and selection of test sites;
- Provide intensive training and technical assistance to test sites regarding the implementation of prototypes on an experimental basis;
- Develop procedures for working cooperatively with the program evaluator, particularly in the areas of data collection and feedback; and
- Develop and implement a dissemination strategy.

Products

The major products for this stage are:
1. Recommendations for the program announcement for test sites;
2. Plan for providing training and technical assistance to test sites and,
3. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

V. Dollar amount and duration

A cooperative agreement will be awarded to the successful applicant. The project period is four (4) years. OJJDP has allocated up to $1,000,000 for the first budget period of 24 months: Up to $350,000 allocated for the National Statistics Track, and up to $650,000 is allocated for the System Development Track.

Funds for noncompeting continuation awards within the approved four-year project period may be withheld for justifiable reasons. They include:

(1) There is no continued need for program activity;

(2) The grantee is delinquent in submitting required reports;

(3) Adequate funds of the grantor agency are not available to support the project;

(4) The grantee has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of award;

(5) A grantee's management practices have failed to provide adequate stewardship of grantor agency's funds;

(6) Outstanding audit exceptions have not been cleared; and

(7) Any other reason which indicates that continued funding would not be in the best interest of the Federal government.

VI. Eligibility Requirements

Public agencies and private not-for-profit organizations are eligible to apply to conduct both the National Statistics Track and System Development Track. Private for-profit organizations are eligible to conduct only the National Statistics Track, due to legislative restrictions for different types of discretionary funds. Applicant organizations may choose to submit proposals with other eligible organizations, as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. In order to be eligible for consideration the applicant, together with any co-applicant, must have experience in each of the following areas specified in A–C below.

A. Design, development, or implementation of national or subnational (multi-jurisdictional) data collection efforts regarding crime and delinquency or the criminal or juvenile justice system: or, the maintenance of a data archive for the promotion of secondary analysis of data for research, policy or program evaluation;

B. Applied research or policy analysis regarding crime, delinquency, or the criminal/juvenile justice system; and,

C. The development of decision making and management information systems, and the development and delivery of training and technical assistance to state and local criminal or juvenile justice agencies.

VII. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a Program Narrative (Part IV), a Detailed Budget, and a Budget Narrative. In response to the Part IV requirements of the SF 424 (Program Narrative), all applicants must provide concise responses to the information required in this Section of the solicitation. The Program Narrative Section of the application should not exceed 100 double-spaced pages in length, excluding the budget, the budget narrative and appendices.

In submitting applications which contain more than one applicant organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization must agree to be jointly responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint responsibility with the other co-applicants.

Applications which include sole source contracts for the provision of specific goods or services must include a sole source justification for any procurement in excess of $10,000.

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in Section VII of this solicitation.

1. Organizational Experience

Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section VI above. Applicants must demonstrate how their organizational experience and current capabilities will enable them to achieve the goals and objectives of this initiative. Applicants should highlight significant organizational accomplishments which demonstrate their responsiveness to the needs of the field, reliability in terms of producing quality products in a timely fashion, and having the ability to work effectively with operational justice agencies.

2. Project Staffing

Applicants must provide a list of key personnel responsible for managing and implementing the program. Applicants must present detailed position descriptions, qualifications and selection criteria for each position, whether they are salaried or staff, hired by contractor(s) of the grantee. In addition, if key functions or services are to be provided by consultants on a contractual basis, the applicant must indicate the individuals to be hired for specific tasks, or the specific skills that would be needed to perform these tasks and the means of acquiring them. Resumes must be provided and may be submitted as appendices to the application. Applicants must demonstrate that the proposed staff complement have the requisite background and experience to accomplish the major responsibilities outlined in Section V above. Applicants should highlight significant accomplishments of the proposed staff in relation to their respective roles in the project. In addition, the percentage of each staff person's time committed to the project must be clearly indicated in the budget narrative.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF–424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Assistance, Research and Statistics (OJARS) Accounting System and Financial Capability Questionnaire (OJARS Form 7120/1). Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Strategy and Goals

Applicants must demonstrate their understanding of the goals and objectives of this program by their approach to the program strategy. Specifically applicants must address the following items:

1. Outline the criteria for selecting and procedures for establishing the project advisory board, and describe their role in the Program's operations.

2. Describe the approach to developing the long-term and short-term objectives for improving juvenile justice statistics, including the prioritization of information needs and choices of Agenda recommendations to pursue.

3. Discuss the process for recommending which secondary analyses should be undertaken, their specific purposes, and proposed products and the resources that will be used for conducting them.

4. Outline the basic components of a national report on juvenile offending, victimization and juvenile justice system response; and propose a strategy for dissemination of products related to both the national and subnational data.

5. Discuss the process for recommending which new data collection efforts should be undertaken, the choice of an appropriate design and

methodology and the need for preliminary feasibility or pilot testing. Applicants should also describe how resources will be allocated for carrying out the design work. For purposes of illustration, applicants are requested to apply their proposed process to the design of a hypothetical survey of institutionalized juvenile offenders.

6. Indicate the critical factors that must be considered in developing a design for the implementation of the assessment of national and subnational data collection, and prototypical decision making and management information systems. Also, discuss the potential impediments to and opportunities for establishing a national juvenile justice statistical reporting series on justice system response to juveniles. Indicate how the decision making and local information system prototypes will be coordinated with the design of national statistical systems.

7. Outline the process and criteria for selecting sites for the assessment of decision making and management information systems. Include a preliminary estimate of the number and types of jurisdictions that should be included in the assessment of juvenile justice agencies. Provide a brief discussion of how the assessment would be conducted and what information would be collected.

8. Discuss how the results of the assessment will be utilized to develop prototypes for the decision making and management information systems that improve state/local decision making capabilities and contribute to building a national information system.

9. Describe the basic components of the policies and procedures manual for operationalizing the decision making and management information system prototypes, and the process to be used for their development and finalization. Also, discuss how the efforts of the preceding stages will contribute to the development of a strategy for implementing and testing the prototypes.

10. Discuss the basic approach to disseminating information regarding the decision making and management information system, including potential audiences, primary means of dissemination of products and to communicating with the field regarding the development and testing of the prototypes.

C. Program Implementation Plan

Applicants shall describe how they will allocate the available resources to implement the program.

1. Applicants must develop an implementation plan which addresses the major responsibilities of the grantee described in Section IV. of the solicitation. The plan must include:

a. An annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components related to the National Statistics and Systems Development Tracks and their respective phases.

b. The implementation plan must clearly indicate how staff and other resources (such as consultants, project advisory board) will be utilized for each of the major activities.

c. A concise discussion of the coordination and administration issues related to the program strategy and how the grantee's organizational structure and management strategy would address these issues.

2. Applicants must develop a detailed time-task plan for the first 24 month budget period, clearly identifying major milestones related to each phase. This must include designation of organizational and staff responsibility, and a schedule for the completion of the tasks and products identified in Section IV.

D. Program Budget

Applicants shall provide an 24-month budget with a detailed justification for all costs by object class category as specified in the SF 424. Costs must be reasonable and the bases for these costs must be well documented in the budget narrative. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets and budget narratives for each organization's expenses.

The applicant must also budget for the costs of convening at least four project advisory board meetings during the first budget period.

VIII. Procedures and Criteria for Selection

Applications will be rated based on the extent to which they meet the following weighted criteria. All applications received will be reviewed in terms of their responsiveness to the application requirements set forth in Section VIII. Selection criteria and weights have been developed to guide the applicants in the development of their proposals and the peer reviewers in their evaluation of: the applicant's organizational capability to meet the goals of the project; the quality of the staff and other resources; the soundness, thoroughness and creativity of the applicant's proposed approach to program strategy and implementation issues; the utility of potential products; and the appropriateness and reasonableness of costs in relation to the proposed activities and products. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CRF Part 34, Subpart B, published August 2, 1985, at 50 **Federal Register**, 31366.

A. Organizational Capability (15 Points)

1. The extent and quality of organizational experience and current capability related to: the design, development, or maintenance of national juvenile/criminal justice data; applied research and policy analysis; and program development, training or technical assistance in juvenile or criminal justice, as outlined in Section VI A–C. (10 points)

2. The presence and extent of adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (5 points)

B. Project Staffing (20 Points)

1. The breadth and depth of relevant experience of staff identified to manage and implement the program, including staff to be hired through contracts and/or as consultants. (15 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specifically designated functions. (5 points)

C. Program Goals and Strategy (35 Points)

The applicant's understanding of the program goals, objectives and strategy will be evaluated in terms of the soundness, thoroughness and creativity of their responses to the ten requirements outlined in Section VII. B. Specifically, attention will be paid to: the clarity, feasibility and appropriateness of the responses to each requirement; the understanding of the interdependence of the National Statistics and Systems Developmental Tracks; attention to definitional and measurement issues; the potential utility of products for policy and program development; and, the responsiveness of the proposed dissemination plan to the needs of the field.

D. Implementation Plan (15 Points)

The appropriateness of allocation of resources to accomplish the goals and objectives of the program within the 24 month budget period. Particular attention will be paid to the clarity and reasonableness of the time-task plan which identifies organizational and

individuals' roles and responsibilities for the completion of significant tasks and development of products.

E. Budget (15 Points)

Applicants must include a 24 month-budget with a detailed narrative justifying the costs as specified in Section VII. D. Applications will be rated based on the cost-competitiveness, completeness, reasonableness and appropriateness of the budget in relation to the task to be accomplished.

Applications will be evaluated by a peer review panel. The application which receives the highest total score on the above criteria will be recommendation for funding to the Administrator, OJJDP, provided that required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

IX. Submission of Applications

All applicants responding to the solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to OJJDP by *October 15, 1987.* Such notification should specify: the name of the should specify: applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the co-applicants are to provide the above information. *The submission of this notification is optional.* It is requested to assist OJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and four copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on *November 16, 1987.* Those applications sent by mail should be addressed to Research and Development Program: Juvenile Justice Statistics Resource and Development Program, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531. Hand delivered applications must be taken to the OJJDP, Room 724, 633 Indiana Avenue NW., Washington, DC. between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended: Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subpart C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extend financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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federal register

Friday
September 25, 1987

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Pawnee Montane Skipper (Hesperia leonardus montana); final rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Pawnee Montane Skipper (Hesperia leonardus montana) To Be Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a butterfly, the Pawnee montane skipper (*Hesperia leonardus montana*), to be a threatened species under the authority of the Endangered Species Act of 1973, as amended. Critical habitat is not being designated. This butterfly is restricted to the South Platte River drainage in the Front Range of central Colorado. Its habitat has been impacted by housing and other development activities, construction of roads and an existing dam and reservoir. The proposed Two Forks Reservoir project will eliminate some of this species' range and some individuals of the species. This determination that *Hesperia leonardus montana* is threatened implements the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: The effective date of this rule is October 26, 1987.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office at 134 Union Boulevard, fourth floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Regional Listing Coordinator, Fish and Wildlife Enhancement, Endangered Species Division, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 or telephone 303/236-7398 or FTS 776-7398.

SUPPLEMENTARY INFORMATION:

Background

The Pawnee montane skipper, a member of the Hesperiidae butterfly family, was first described in 1911 as *Pamphila* (*Hesperia*) *pawnee montana* (Skinner 1911). Scott and Stanford (1982) combined two species (*Hesperia pawnee* and *Hesperia leonardus*), retaining the older specific name *leonardus*, and treated the Pawnee montane skipper as *Hesperia leonardus montana*. This subspecies occurs only on the Pikes Peak Granite Formation in the South Platte River drainage system in Colorado. There are two other related subspecies: *Hesperia leonardus leonardus* occurring in the eastern U.S. and Canada, and *Hesperia leonardus pawnee* occurring in the Northern Great Plains. This latter subspecies is not known from the Pikes Peak formation, and its range does not overlap with *Hesperia leonardus montana*. The presence of ventral hind wing spots and its darker color differentiate *Hesperia leonardus montana* from *Hesperia leonardus pawnee* (Scott and Stanford 1982).

An adult Pawnee montane skipper is a small brownish-yellow butterfly, with a wingspan slightly over 1 inch. Small, fulvous (dull brownish-yellow), usually distinct spots occur near the outer margins of the upper surface of the wings, while 1 to 4 distinct brownish to off-white spots occur on the lower (ventral) surface of the wings. The ventral spots are larger on the hind wings and are generally whiter in the female butterflies.

The Pawnee montane skipper is found only in four Colorado counties (Teller, Park, Jefferson, and Douglas) within the South Platte River drainage system along the Front Range of central Colorado. The known range of this skipper has always been very restricted. The range (not all occupied) is roughly 23 miles long and 5 miles wide (Keenan et al. 1986). The portion of the range that appears to be suitable habitat covers about 38 square miles (Environmental Research and Technology (ERT) Company 1986). Suitable habitat occurs in bands along the North and South Forks of the South Platte River and extends a short distance along the South Platte River below the confluence of the two forks. The present habitat configuration allows for an interchange of individuals throughout the habitat. The area occupied by the skipper is managed and/or owned by the U.S. Forest Service (Pike National Forest), U.S. Bureau of Land Management, Denver Water Department, the County of Jefferson, and numerous private individuals.

The skipper's habitat is in a mountainous area characterized by canyons with steep slopes and narrow river valleys. The topography is very steep near the confluence of the North and South Forks of the South Platte River, but is less steep upriver. The soil layer is very unstable and susceptible to landslides (Keenan et al. 1986).

Skippers occur in dry, open, ponderosa pine (*Pinus ponderosa*) woodlands on outcrops of Pikes Peak granite where soils are thin, unstable, and susceptible to water erosion. Woodland slopes inhabited by skippers are moderately steep with a south, west or east aspect. The understory in the pine woodlands is very sparse, with generally less than 30 percent ground cover. Blue grama grass (*Bouteloua gracilis*), the larval food plant, and the prairie gayfeather (*Liatris punctata*), the primary nectar plant, are two necessary components of the ground cover strata. Small clumps of blue grama occur throughout the hot, open slopes inhabited by skippers, but this grass species actually covers a very small part of the surface area (less than 5 percent). Prairie gayfeather occurs in small patches throughout the ponderosa pine woodlands. Skippers are very uncommon in pine woodlands with a tall shrub understory (Keenan et al. 1986) or where young conifers dominate the understory (ERT Company 1986). Even though skippers inhabit dry ponderosa woodlands, they have usually been collected within 1 mile of a stream (Scott 1986).

Pawnee montane skippers emerge as adult butterflies as early as late July, with the males emerging before the females by about a week to ten days. Adults spend most of their short existence feeding and mating. Adult females deposit eggs singly directly on leaves of blue grama grass, which is the only known larval food plant (Scott and Stanford 1982, McGuire 1982, Opler 1986). The species overwinters as larvae, and little is known of the larval and pupal stages. Pupation is generally short (13–23 days) in most butterfly species. The species completes its life cycle (egg to larva to pupa to adult butterfly to egg) annually (Keenan et al. 1986). ERT Company (1986) suggested that adults probably fly until a major killing frost occurs. They also indicated that the phenology of prairie gayfeather, the primary nectar plant, and the pawnee montane skipper are highly synchronous. During 1986, the gayfeather plant began blooming in late July, which coincided with the first observation of adult pawnee montane skippers. The prairie gayfeather was still being used as the preferred nectar source when the last pawnee montane skipper observations were made on September 17.

Although the prairie gayfeather is the most important nectar source for the species, other plants have also been noted as nectar sources for the butterfly. Of the other plants, the musk thistle (*Carduus nutans*) is especially important, particularly along river bottom edges and up some ravines. Female skippers have been seen in large numbers on musk thistle along the South Platte River canyon bottom (Opler 1986). The prairie gayfeather seems to grow in areas subject to disturbance such as

logging or fire, but it appears that the butterfly does not colonize such areas for at least several years following the disturbance. Recently burned or logged areas surveyed in 1986 had low numbers of Pawnee montane skippers (Opler 1986).

The community preferred by the skipper is evidently the northern-most extension of the ponderosa pine/grama grass community, which is documented from southern Colorado and northern New Mexico. However, the preferred nectar plant of the skipper, prairie gayfeather, does not occur in similar habitats to the south. The restricted overlap between the northeastern limit of the ponderosa pine/grama grass community and the southwestern limit of the prairie gayfeather might be a primary factor maintaining the species in this limited/specialized area (Getches 1986).

The elevational range of the species is 6,000–7,500 ft. Studies in 1985 showed that the ratio of male to female skippers was much greater at higher elevations that at lower elevations (32 males: 7 females above 7,100 ft. and 34 males: 20 females below 7,100 ft.; Keenan et al. 1986). In 1986 the Denver Water Department contracted for a study that was designed to determine, among other things, the difference in relative abundance of skippers and prairie gayfeather plants above and below the intended water line (6,575 ft.) of the proposed Two Forks Reservoir. ERT Company (1986) found that the abundance of the gayfeather plant was significantly less above than below the intended waterline, and that adult skipper occurrence and abundance showed a strong association with the presense and abundance of prairie gayfeather. Thus, the densest adult skipper populations occurred below the proposed 6,575 ft. reservoir inundation line, and near the lower boundary of the species' elevational range. The distribution of larvae was not ascertained, so this study could not demonstrate that adult skippers, especially the males, do not disperse outside of (and to higher elevations than) the habitat areas where they are produced.

Construction of an existing dam and reservoir, and road, housing, and other development has destroyed, modified and curtailed the skipper's habitat and range. Future developments, housing, road construction, off-road vehicle use, and the proposed Two Forks reservoir project, along with its associated activities, including recreational development, could further destroy, modify, and curtail the skipper's habitat and range to the extent of endangering the species' survival.

The Pawnee montane skipper was first proposed for Federal listing as endangered on July 3, 1978 (43 FR 28938). The 1978 Amendments to the Endangered Species Act mandated a 2-year limit on finalizing listing proposals. The Service published a notice on March 6, 1979, announcing that certain proposals, including the Pawnee montane skipper proposal, would either be supplemented with regard to their critical habitats or withdrawn. The proposal expired on July 3, 1980, and was then officially withdrawn on September 2, 1980 (45 FR 58171).

Comments were received during the comment period for the 1978 proposal from the U.S. Forest Service, Bureau of Land Management, Bureau of Reclamation, Denver Water Department, The Nature Conservancy, lepidopterists, and private individuals. Comments ranged from being supportive to being opposed to the listing, while some simply provided clarifying information. Some commenters questioned the butterfly's taxonomic status and the accuracy of the distribution information commonly accepted. Scott and Stanford's work (1982) revised and updated the taxonomy, but validated and left unchanged its status as a subspecies eligible for listing, and further searches funded by the Denver Water Department in 1985 and 1986 did not locate the skipper outside the South Platte River drainage. A frequent suggestion in the comments was that the listing was motivated by political rather than biological factors. Those suggesting a political motive claimed that listing advocates only wished to prevent the construction of the Two Forks Dam.

The Service published a review of invertebrate wildlife for listing as endangered or threatened on May 22, 1984 (49 FR 21664), which included the Pawnee montane skipper as a Category 1 species. Category 1 comprises taxa for which the Service has sufficient biological information to support their being proposed to be listed as endangered or threatened. The Butterfly Specialist Group of the International Union for Conservation of Nature and Natural Resources, Species Survival Commission, recommended the Pawnee montane skipper as a high priority for listing in 1985.

A second proposed rule to list the Pawnee montane skipper was published September 25, 1986 (51 FR 34106). Comments received on this second proposal are summarized below.

Summary of Comments and Recommendations

In the September 25, 1986, proposed rule (51 FR 34106) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published on October 13, 20, 27 and November 3, 1986, in the *Rocky Mountain News*, the *Lakewood Sentinel*, and the *Castle Rock Douglas County News Press*. The *Cripple Creek Teller County Times*, and *Fairplay Flume/Park County Republican* published notices October 17, 24, 31, and November 7, 1986, which invited general public comment. No public hearing was requested or held.

During the comment period, 13 comments were received. Of the commenters that stated a position, 7 supported listing and 3 opposed it. Several commenters provided factual information regarding the species; such information has been incorporated, as appropriate, in this final rule. Support for the listing proposal was stated by the Colorado Department of Natural Resources, Environmental Protection Agency, Environmental Defense Fund, International Union for Conservation of Nature and Natural Resources, and three other interested parties. Opposition to listing the species was received from three local agencies: Denver Board of Water Commissioners, Denver Water Department, and Metropolitan Water Providers. Opposing comments concluded, in general, that habitat losses and other perceivable threats are not of sufficient magnitude to warrant listing the skipper as a threatened species, and that present management practices such as restricted public access, off-road vehicle management, and no use of chemical forest pest control measures are adequate safeguards against the foreseeable threats.

Written comments received during the comment period are discussed below. Comments disagreeing with the proposed rule can be summarized under several general issues. Discussion of these issues, and the Service's response to each, follows:

Issue 1: Commenters disagreed with the logic used to arrive at the conclusion that the skipper is a threatened species and maintained that the conclusion was not consistent with the criteria outlined

in section 3 of the Endangered Species Act. They claimed that the Pawnee montane skipper does not warrant listing as a threatened species because projected habitat losses and modifications are not of sufficient magnitude to jeopardize the continued existence of the species. They estimated the skipper habitat that would remain after construction of Two Forks Dam and Reservoir to be approximately 31 square miles, occurring as continuous habitat strips ranging from 0.25 to 1 mile wide that would extend along side slopes of the South Platte River from the vicinity of Oxyoke southward to the inlet of Cheesman Reservoir (approximately 10 miles); along slopes of West Creek (approximately 10 miles); and along the North Fork of the Platte River from Buffalo Creek westward to Cliffdale (approximately 6 miles). They considered all of this remaining habitat to be in excellent condition and largely under the control of the U.S. Forest Service and the Denver Water Department, except in the vicinity of Pine. They indicated that this, taken collectively, should be sufficient habitat to maintain the Pawnee montane skipper indefinitely, even following the construction of the Two Forks Project. They pointed out that the Service had not quantified the likelihood of its endangerment.

Service Response: In using the term "jeopardize the continued existence of the species," this comment confuses a consideration that is made during consultation on listed species (as required by section 7 of the Endangered Species Act) with the criteria used to determine if a species should be listed as threatened or endangered. The definition of a threatened species is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus the Endangered Species Act does not require that the probability of endangerment be estimated numerically, but only that endangerment be likely and foreseeable. In addition to this basic definition, a determination as to whether a species should be listed is based on any one of the five factors listed in Section 4(a)(1) of the Endangered Species Act, and discussed under the "Summary of Factors" section of this rule. Determinations on the factors are made on the basis of the best scientific and commerical data available to the Service. The Service finds that the best available data support the listing of the Pawnee montane skipper as a threatened species.

Cumulative losses and modification of habitat due to continued housing and other development activities, road construction, off-road vehicle use, and the proposed Two Forks project and associated developments, including recreational activities, are of sufficient magnitude to be considered significant to the species's survival. Higher skipper population density and numbers below the proposed Two Forks Reservoir inundation line in the 1986 Pawnee montane skipper census (ERT Company 1986) suggest that the habitat there is better or more productive than habitat above the proposed inundation line, and the possibility remains that dispersal of adult skippers, especially upward dispersal of males, may make the distribution of adults an overestimate of the real distribution of productive habitat. The water barrier created by Two Forks would separate the remaining habitat into two smaller, discontinous portions or "islands." This would increase the chance of population islands being lost to stochastic (random) events, limit skipper movements, and decrease gene flow among population units. Possible microclimatic effects of the proposed reservoir on skipper habitat nearby are unknown, but might occur, and be either deleterious or beneficial.

Issue 2: Some commenters claimed the proposed action falls short of fulfilling the intent of Congress in passing the Endangered Species Act. They noted that the Act empowered the Service to take the necessary steps to protect the ecosystems that support a threatened or endangered species, and that courts have interpreted this language to create an affirmative duty on the part of the agency to preserve the listed species, not to merely avoid elimination of the species. They advised the Service to take the following steps to adequately ensure the perpetuation of this species: (1) List the Pawnee montane skipper as an endangered species, not a threatened species; (2) designate critical habitat for this species; and (3) acquire lands supporting habitat critical to survival of this species.

Service Response: The Pawnee montane skipper is not being listed as an endangered species since existing habitat conditions are such that the species is not currently in danger of extinction. Critical habitat is not being designated because the species is subjected to some collecting pressure and publication of exact locations of the species would increase collecting pressures.

The skipper's habitat is mostly administered/owned by the U.S. Forest Service and the Denver Water Department. The U.S. Bureau of Land Management manages some small holdings within the species' range. Federal agencies are mandated to manage for the conservation (which includes recovery) of listed species. The Denver Water Department will be required to abide by the requirements of the Endangered Species Act if the Two Forks project is approved since the agencies that have authority to issue permits for the project must insure that the project is not likely to jeopardize the continued existence of the species. The Service will prepare a recovery plan for the skipper. Land acquisition and management of such lands for the preservation of the skipper have been identified as potential recovery activities.

Issue 3: Commenters questioned whether recreational development, off-road vehicle use, invasion of exotic plants, pine bark beetle spraying, and collection/vandalism are significant threats to the Pawnee montane skipper as indicated in the proposed rule. They pointed out that Pawnee montane skippers survived earlier logging disturbance, that they still occur in one well-used forest campground, that use of off-road vehicles has been controlled by the Forest Service and areas eroded by use have been closed, that exotic plants have not made serious inroads into the native vegetation of this area, that pest control spraying has not been used, and that there is little reason to expect collection and/or vandalism against this species.

Service Response: These threats were included in the proposal as factors that *may* affect the skipper and that may be expected to increase. The Service agrees that their significance will be difficult to determine and unlikely to equal the significance of the threat of habitat loss or degradation. These items should be considered as a part of the recovery process by land managing agencies in order to insure optimum conditions for the skipper.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Pawnee montane skipper should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be

determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Pawnee montane skipper (*Hesperia leonardus montana*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Pawnee montane skipper occurs in only one restricted area. Past habitat loss or degradation probably occurred when Cheesman Reservoir was constructed and when residential and commercial communities within the skipper's range were developed. No early distribution or range information exists to determine to what extent this may have occurred. The habitat has also been impacted by road construction and housing and other development activities that are anticipated to continue. Some off-road vehicle use occurs within the butterfly's habitat and results in accelerated soil erosion or destruction of skippers and/or their food plants. The land managing agencies have acted to limit this activity, and, taken alone, its impact is minor.

Additionally, construction of the proposed Two Forks Dam and Reservoir and associated roads and recreational facilities, if completed as planned, will result in elimination of individual skippers and portions of the species' habitat. A contractor's estimate of suitable habitat for the skipper lost through inundation directly (ERT Company 1986) is about 22 percent of an estimated 37.9 square miles of suitable habitat. Population estimates made in the 1986 flight season (ERT Company 1986) placed only about 19 percent of the skippers in the inundation zone early in the season when males predominated, but this increased to about 33 percent later, when females were more numerous and the estimated density and total numbers of adult skippers had doubled over the earlier period.

Losses associated with construction activities (roads, access points, maintenance facilities, etc.) and recreational development associated with Two Forks Reservoir or for other purposes could further degrade or even eliminate the habitat of the Pawnee montane skipper beyond the inundation losses. Recreational use of the area would increase, and increased trampling from foot traffic or off-road vehicles could result in the destruction of skippers or the host and nectar plants at certain stages of their life cycles. Residential development within the skipper's range would also be expected to increase if the proposed reservoir is constructed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Collection is not as large a problem for skippers as it is for some butterfly groups. Some collection of this species has occurred, but, to date, it has been primarily for scientific studies. With increased public awareness of its rarity, the Pawnee montane skipper could become more sought after by collectors.

C. *Disease or predation.* Various predators and parasitoids are considered to hold insect populations under "natural control," and several are known to feed on various *Hesperia* butterflies; however, no such agents are believed to pose a serious threat to the species' populations or continued existence. Opler (1986) observed that spiders that frequent *Liatris* plants do prey on Pawnee montane skippers.

D. *The inadequacy of existing regulatory mechanisms.* The Pawnee montane skipper is not presently protected by any State or Federal law. Listing under the Endangered Species Act would provide needed protection through recovery and interagency cooperation provisions.

E. *Other natural or manmade factors affecting its continued existence.* Mountain pine beetle (*Dendroctonus ponderosae*) and spruce bud worm (*Choristoneura occidentalis*) infestations occur within the skipper's habitat. The use of insecticides to control these pests or other pests within the area where the Pawnee montane skipper occurs could result in the loss of skipper individuals or populations. However, insecticides are not presently being applied aerially to control mountain pine beetles or spruce bud worms within the skipper's range. At this time no known losses occur due to insecticides.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Hesperia leonardus montana* as a threatended species. This species fits the definition of threatened better than that of endangered since existing habitat conditions are such that the species is not currently in danger of extinction. The species has a restricted range, and portions of its habitat will be eliminated by the proposed Two Forks Dam and Reservoir and associated facilities. Its habitat has already been impacted by road construction, housing and other development activities. Critical habitat is not being determined for reasons explained in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Collection could become a problem for this species through increased publicity if critical habitat maps were published as part of the listing process. All the involved agencies have been informed of the location of the populations of the Pawnee montane skipper and the importance of protecting this species' habitat. No further notification benefits would accrue from designating critical habitat. Protection of the species' habitat and its proper management will be addressed through the recovery process and through section 7 consultations. Therefore, it would not be prudent to determine critical habitat for the Pawnee montane skipper at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical

habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Pawnee montane skipper occurs on lands administered by the U.S. Forest Service (Pike National Forest) and U.S. Bureau of Land Management. The U.S. Army Corps of Engineers, Forest Service, and Bureau of Land Management are the Federal permitting agencies for Two Forks Reservoir. The Service will work with the three Federal agencies and all other involved parties to achieve protection for the skipper. The section 7 Interagency Regulations (50 CFR 402.10) require each Federal agency to confer with the Service on any action that is likely to jeopardize the continued existence of any proposed species. By letter dated May 4, 1987, the Corps of Engineers requested such a conference on the proposed Two Forks Project.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

ERT Company. 1986. 1986 Pawnee montane skipper field studies. Prepared for the Denver Water Department, Denver, Colorado. November 1986. 40 pp.

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Keenan, L.C., R.E. Stanford, S.L. Ellis, and B. Drummond. 1986. Status report on: Pawnee montane skipper. Prepared for Denver Water Department, Denver, Colorado. February 1986. 49 pp.

McGuire, W.W. 1982. New oviposition and larval host plant records for North American *Hesperia* (Rhopalocera:Hesperiidae). Bulletin of the Allyn Museum, Number 72. 6 pp.

Opler, P.A. 1986. Letter to Fish and Wildlife Service, dated November 6, 1986. U.S. Fish and Wildlife Service, Office of Information Transfer, Fort Collins, Colorado. 2 pp.

Scott, J.A. 1986. Letter to Office of Endangered Species. March 5, 1986. 3 pp.

Scott, J.A. and R.E. Stanford. 1982. Geographic variation and ecology of *Hesperia leonardus* (Hesperiidae). Journal of Research on the Lepidoptera 20(1):18–35.

Skinner, H. 1911. New species or subspecies of North American butterflies. Entomological News 22:412–413.

Author

The primary author of this final rule is Dr. James L. Miller of the Service's Denver Regional Office staff (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend §17.11(h) by adding the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
*	*	*	*	*	*		
Skipper, Pawnee montane	*Hesperia leonardus montana*	U.S.A. (CO)	NA	T	289	NA	NA
*	*	*	*	*	*		

Dated: September 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–22157 Filed 9–24–87; 8:45 am]

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September 25, 1987

Part V

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 630

Uniform System of Accounts and Records and Reporting System:

Clarification of Procedures for Addressing Noncompliance With Reporting Requirements; Final Rule

Changes to Section 15; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 630

[Docket No. 86-E]

Uniform System of Accounts and Records and Reporting System; Clarification of Procedures for Addressing Noncompliance With Reporting Requirements

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule.

SUMMARY: This document implements a number of changes that simplify the language and requirements of the current 49 CFR Part 630 (Uniform System of Accounts and Records and Reporting System) and revises it to conform to the Urban Mass Transportation Act of 1964, as amended (the UMT Act). It restructures Part 630 in order to separate the regulatory requirements of the rule from the descriptive text. It also clarifies UMTA's procedures for Section 15 Reports that are late, incomplete, uncertified, or inaccurate. This final rule continues to require the use of the reporting instructions and records systems currently embodied in the Reference Volumes of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

Because the current edition of the Reference Volumes already governs the Section 15 Reports submitted by transit agencies, and this document updates and streamlines the regulation to clarify procedural requirements, this document does not greatly affect submissions. Overall, the corrections and changes to Part 630 have little substantive effect on the rights and responsibilities of most UMTA grantees or beneficiaries. The revised regulation does, however, more precisely set out how UMTA will enforce the statutory mandate that transit agencies comply with section 15 as a precondition of eligibility to receive section 9 grants.

EFFECTIVE DATE: The revised regulation is effective October 26, 1987, and applies to all section 15 reporting years beginning with 1988. The 1988 reporting year covers local transit agencies fiscal years ending on or between January 1, 1988 and December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Wilson, Chief, Audit Review and Analysis Division, Urban Mass Transportation Administration, 400 Seventh Street, SW., Room 9315, Washington, DC 20590, Telephone (202) 366-1610.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 1986, UMTA issued a Notice of Proposed Rulemaking (NPRM) in the Federal Register (51 FR 17145) which proposed a comprehensive revision of the regulation of the Uniform System of Accounts and Records and Reporting System. Both Systems implement section 15 of the UMT Act which requires applicants and direct beneficiaries of grants under section 9 of the UMT Act to maintain and report uniform financial and operating information. The goals of the proposed revision were to:

- Simplify the rule's structure by separating the procedural requirements from the description of the Uniform System of Accounts and Records and Reporting System;
- Clarify the procedures UMTA will follow in keeping reporting agencies informed of changes and updates to the section 15 requirements; and
- Clarify the procedures UMTA will follow for late, incomplete, uncertified, or inaccurate Section 15 Reports.

In addition to its publication in the Federal Register, UMTA sent the NPRM to every section 15 reporting agency. UMTA received 11 written comments in response to the NPRM. The comments were submitted by 8 transit operating agencies, 1 public transportation authority, 1 state Department of Transportation, and 1 public transit trade organization. In general, each comment supported some of the proposed changes and objected to, raised concerns with, or offered alternatives to some of the others. The comments were carefully considered by UMTA in formulating this final rule.

Additionally, this final rule is set forth in conjunction with UMTA's publication elsewhere in the Federal Register today of a Final Notice that announces several changes to the data submissions for the section 15 Uniform System of Accounts and Records and Reporting System. Those changes are being implemented to streamline data collection, recordkeeping, and reporting requirements by reducing reporting agencies' burdens while improving data reliability.

II. Summary of Changes and Comments

A. Simplication of the Rule's Structure

The NPRM proposed to replace Part 630 with a simpler regulation which would prescribe section 15 procedural requirements and would continue to require the use of the current Uniform System of Accounts and Records and the Reporting System instructions and explanatory documents. The NPRM also proposed that information on the overall structure of the Section 15 Reporting and Accounts and Records Systems be included as Appendix A to Part 630. This restructuring would create a shorter, simpler regulation setting out the procedural requirements for compliance with the Uniform System of Accounts and Records and Reporting System, and a separate, explanatory Appendix that outlines the basic elements and structure of these Systems. As with the existing rule, reporting agencies actually responsible for submitting section 15 reports would need to refer directly to the current Reference Volumes of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System. The general overview in the Appendix would provide sufficient detail to allow a reader to understand the purposes and methodology of the Uniform Accounts and Records and Reporting Systems, but would not provide enough detail for actual completion of a section 15 Report.

While commenters raised issues on specific matters discussed below, they supported this overall simplification and clarification of the procedures, and UMTA essentially has adopted the structure of the rule proposed in the NPRM.

B. Keeping the Uniform Accounts and Records System and the Reporting Instructions and Forms Current

The NPRM generally proposed a continuation of the existing procedures for changing or refining requirements and for keeping reporting agencies current. However, the proposed rule spelled out in more detail the responsibilities of the reporting agencies and UMTA. Reporting agencies would therefore be able to more clearly determine their rights and responsibilities under section 15.

In the definitions section, the NPRM referred to the "current edition" of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System and defined it as the most recently issued edition of the Uniform System of Accounts and Records and Reporting System instructions, as modified by any superseding Circulars or other written modifications, for which reasonable notice has been given. The NPRM defined "reasonable notice," for the purposes described above, to mean the following: Reporting agencies would be responsible for the information and

instructions appearing in the most recent edition of the reporting instructions if the most recent edition had been mailed to them no later than 120 days before their reporting deadline. Similarly, the NPRM proposed that reporting agencies be responsible for incorporating all minor reporting modifications about which they have received notice in writing no later than 30 days before a reporting deadline. Circulars, Manuals, and Reference Volumes will be clearly marked to indicate the documents they supersede and to explain reporting agencies' obligations.

The NPRM proposed to continue to mail copies of each new edition of the Reference Volumes, Circulars, and other reporting revisions to each "section 15 contact person" as identified in he reporting agency's most recent Section 15 Report or New Reporter Letter. Further, the NPRM proposed to publish the **Federal Register** a notice of: (a) Any new editions of the Reference Volumes, and (b) any significant corrections to the system of accounts and records and reporting instructions.

Two of the commenters were in agreement with the proposed changes, while three other commenters expressed concern about the time periods which define "reasonable notice." These commenters indicated that changes, especially significant ones, to the Uniform System of Accounts and Records and Reporting System should be mailed to the reporting agencies before the start of the affected reporting year in order to adequately prepare for such changes. UMTA understands these concerns and intends to continue the practice of issuing any significant changes to the Uniform System of Accounts and Records and Reporting System through **Federal Register** publication. This practice was followed for issuing this rulemaking as well as for issuing the "Final Notice of Changes to the Uniform System of Accounts and Records and Reporting System" published elsewhere in the **Federal Register** today. UMTA plans to continue this practice unless special circumstances such as legislative changes warrant immediate action.

These notifications referenced in the NPRM pertained primarily to those changes which do not require significant adjustments to reporting agencies' data collecting, recording, and reporting procedures. Therefore, UMTA has decided to adopt this change as proposed in the NPRM.

C. Procedures for Late, Incomplete, Uncertified, and Inaccurate Reports

The existing rule provides, in accordance with section 15 of the UMT Act, that "[f]ailure to report * * * data in the manner required * * * will make the designated recipient ineligible to receive * * *" grants. 49 CFR 630.34. The NPRM proposed to clarify the ineligibility determination procedures to ensure that affected parties have adequate notice regarding their reporting responsibilities and the consequences of failure to comply. Specifically, the NPRM proposed to address the problems of submission of late, incomplete, uncertified, and inaccurate Section 15 Reports through the following amendments:

1. Late Reports

The NPRM proposed the following procedures for handling late reports:

- Proposed § 630.6(a) would retain the 120 day deadline (i.e., that reports must be submitted no later than the 120th day after the end of the reporting agency's fiscal year).
- Proposed § 630.6(b) would treat failure to submit a report on time as failure to submit a report under § 630.5, unless the reporting agency has requested and been granted an extension of time to submit its report.
- Proposed § 630.6(c) would grant one request for a 30-day extension for good cause (i.e., for reasons other than the reporting agency's negligence) if UMTA receives the request for extension at least 30 days before the report is due.
- Proposed § 630.6(d) states that a second 30-day extension would be granted at the Administrator's discretion only upon a showing of extraordinary and unforeseeable circumstances that warrant exceptional treatment. This time extension would not be considered if it would delay apportionment of section 9 funds.

As discussed below, failure to report renders a reporting agency ineligible to receive any section 9 grants during an entire Federal fiscal year.

Various comments were submitted about the procedures proposed for handling late reports. Several expressed concern that the procedures would be too severe and objected to withholding funds for late reports. One supported the 120 day deadline while others stated it was not long enough and yet another proposed a grace period after the due date. One comment indicated that a 30 day extension was adequate while another said it was not. Several indicated that the period allowed for requesting the extension should be shorter than 30 days before the due date.

This is a critical issue. Too often in the past the annual publication of the formula apportionments in the **Federal Register** has been delayed because of late, incomplete, or inaccurate submissions, which meant that areas that *had* submitted their data on a timely basis experienced delays in funding availability because of the unresponsiveness of others. UMTA thus believes that the section 15 regulation must provide a precise schedule for the submission of reports in order for UMTA to have validated data to apportion section 9 funds in a timely manner. However, UMTA has considered the comments and concerns expressed and has made the following decisions for the final rule:

- The 120-day deadline for submitting section 15 Reports will be retained (i.e., reports must be submitted not later than the 120th day following the last day of the reporting agency's fiscal year).
- A 15-day grace period following the 120-day deadline will be provided. Reports received by UMTA within the grace period will not be considered late.
- UMTA must receive any request for extension of the time for good cause at least 15 days (instead of the 30 days proposed originally) before the report is due (not counting the grace period).
- The 30-day extension period for good cause will remain as proposed.

2. Incomplete Reports

The NPRM proposed that submission of an incomplete report be treated as failure to submit a report. A complete report was defined as a report containing all required forms listed in the current edition of the Reporting Manual. All forms submitted have to be completed in such a way that UMTA can carry out its data-gathering and analytic functions. While UMTA did not intend to classify a report as incomplete if a question or two is inadvertently omitted or an arithmetic error is uncovered, UMTA would expect a report to reflect a good faith effort on the part of the reporting agency to answer every required question accurately and completely.

Commenters expressing an opinion on incomplete reports were mostly in disagreement with the proposed procedures. Generally, these commenters stated that UMTA should not treat an incomplete report as failure to submit a report. The commenters focused on the submission or non-submission of those section 15 data items which are used to apportion section 9 funds. One commenter stated that the report should be considered complete if at least all section 9 data

items are submitted. Several stated that UMTA had other alternatives for apportioning funds if the data were incomplete or missing. The suggested alternatives included using estimates until the final data are received and withholding funds attributable to only those data items that are missing.

While UMTA understands the concerns expressed, it must establish procedures consistent with the governing statute. Section 15 of the UMT Act specifically states that "* * * the Secretary shall not make any grants under section 5 or section 9 unless the applicant for such grant and any person or organization to receive benefits directly from that grant are each subject to both the reporting system and the uniform system of accounts and records * * *". In order to be in compliance, reporting agencies must submit complete reports. The clear intent of section 15 is to require entities to develop a full range of transit financial and operating statistics, and not just those data items necessary for the apportionment of section 9 funds. Consequently, UMTA has decided to adopt the NPRM language concerning treatment of an incomplete report as failure to submit a report.

Another concern expressed in a couple of comments involved the problems reporting agencies may have in submitting complete or timely data from purchased transportation contractors with less than 50 vehicles operated in maximum service. Data from these contractors are included in reporting agencies' section 15 Reports whereas data from purchased transportation contractors with 50 or more vehicles operated in maximum service are submitted directly to UMTA in separate and complete section 15 Reports. UMTA agrees that the reporting agency cannot always control the timely and complete submission of data by another organization. UMTA has therefore amended its original proposal to have it pertain only to directly-operated services in order not to adversely affect a reporting agency for an action over which it has no control.

3. Failure to Report

The NPRM proposed that failure to submit any report at all, or failure to submit a complete and timely section 15 Report, would render the reporting agency ineligible to receive any section 9 grants during the entire Federal fiscal year for which the section 15 report year data in question are used to apportion section 9 money. This would apply to all reporting agencies regardless of the size of the urbanized areas served by them. However, a reporting agency would be eligible to receive the population/population density apportioned funds for the applicable Federal fiscal year in some future year if a complete report were received by UMTA within 120 days after the original report due date. Moveover, if a report including all data elements were received from a reporting agency serving an urbanized area of over 200,000 inhabitants within that time, an adjustment could be made using the late section 9 data in the succeeding year's apportionment to that urbanized area. If changes in the authorizing statute occurred in the intervening year, a grantee's allocation would of course be subject to any additional restrictions that Congress imposed.

Comments received concerning the failure to report expressed disagreement with UMTA's proposed denial of grants. Several commenters suggested that UMTA use estimates to compute the section 9 apportionment if no data are submitted. Another commenter proposed that withholding of funds should only apply to the submission of the section 9 data items and not to the other data in the section 15 Report. Several indicated that UMTA should only deny the funding affected by the specific data items not submitted. In other words, UMTA should provide the part of the apportionment based on population and population density factors which do not rely on data submissions. One commenter suggested that UMTA deduct a percentage from the previous year's apportionment and then withhold a portion of the apportioned funds until the report is received.

Two comments specifically addressed the 120 day period after the due date for submitting a report for eligibility and adjustment of funds in a succeeding fiscal year; one agreed with the time period and the other stated it was too rigid.

Again, similar to the discussion above regarding incomplete reports, UMTA believes that to be responsive to the precise language and intent of the law, section 9 grants should be denied to those agencies not in compliance with the Uniform System of Accounts and Records and Reporting System. An agency is demonstrating non-compliance with the Reporting System when it does not submit a complete section 15 Report within the required timetable. As noted earlier, a complete report is one which includes all required financial and operating data, not just the few data items used in the section 9 apportionment formula. Consequently, UMTA is implementing the change as originally proposed in the NPRM concerning a reporting agency's ineligibility to receive section 9 grants for failure to submit a report or failure to submit a complete or timely report. The apportionment to the reporting agency's urbanized area will still be made (using population/population density figures and data from other reporting agencies, if any) but the apportionment funding will not be available for grant award to the reporting agency directly from UMTA or through another public agency during the fiscal year of ineligibility. Such ineligibility would not affect a recipient's ability to draw down funds under an already-approved grant, but it would mean that during the year of ineligibility the reporting agency could not receive any new grants either from the current year's apportionment or from carryover funds from previous years' apportionments. In addition, UMTA has modified the proposal which would have allowed an adjustment in the succeeding year for urbanized areas with populations of 200,000 or more if the data were received within 120 days after the original due date. No such adjustment will be made. A reporting agency has ample time to submit the data in a timely fashion and if it does not do so it should not be able to receive grants for a year.

Finally, previous reference to section 5 grants has been deleted since the last possible date of a section 5 grant award was September 30, 1986.

4. Uncertified Reports

The NPRM proposed that if a reporting agency submits an otherwise complete report that has the required certification by the Chief Executive Officer (CEO) but is missing the required section 9 and/or financial certification statements by an independent auditor, the data will be included in the calculation of the urbanized area's section 9 formula apportionment. The CEO in its certification should also commit to obtain the necessary certification(s) from the independent auditor in a timely manner. However, until the validity of the data submitted has been assured through the receipt of the required certification(s) from the independent auditor, the NPRM proposed to withhold release of the section 9 apportionment attributable to the reporting agency's data. UMTA also proposed to make necessary adjustments in a future fiscal year apportionment if as a result of the auditor's certification(s) the data are changed or disputed.

There were very few comments submitted regarding these certification procedures. One commenter disagreed with the procedure of withholding funds

while another suggested withholding only 50 percent of the apportioned funds. UMTA has decided to finalize the rule concerning missing certifications to restrict the reporting agency's eligibility to receive directly or indirectly any section 9 grants until the appropriate certification(s) has (have) been received.

5. Inaccurate Data (Vehicle Revenue Miles)

The NPRM proposed procedures for resolution of possible future disagreements over vehicle revenue mile data. In the past, UMTA has experienced problems verifying this data, particularly in the area of "deadhead miles" —i.e., those miles a vehicle travels when out of service or when there is no reasonable expectation of carrying revenue passengers. Following the close of each reporting year, UMTA proposed to calculate the statistical range for vehicle miles that are vehicle revenue miles for each mode of transportation. UMTA would use these figures to screen the net vehicle revenue miles being reported by each reporting agency for the subsequent reporting year. The figures would not be made public except as described below, and in the ordinary course of compiling mass transportation information.

Upon receipt of a reporting agency's section 15 Report, UMTA would compare the percentage of total vehicle miles that are vehicle revenue miles for each mode reported to UMTA with the previous year's statistical ranges. If a reporting agency's vehicle revenue mile data are on the high side of the statistical range, UMTA would automatically initiate verifiction and calculation procedures as follows:

The Administrator would write directly to the CEO of the reporting agency, informing the CEO that the reporting agency's figure for vehicle revenue miles is too high based on statistical analyses.

The CEO would have ten days to respond and would be advised that a re-certification of the accuracy of the vehicle revenue miles must accompany the transit agency's ultimate submission of documentation. The CEO would be invited to provide UMTA with additional documentation to justify its data. Such documentation might include, among other things, route maps, locations of garages and layover points, maintenance facilities, or ridership data from the garage to the end of the line.

The Administrator would then render a decision on whether the documentation supports the vehicle revenue miles reported. If the documentation does not justify the reported figure, the Administrator would propose a new figure. At that point, the CEO would have ten days to reach agreement with the Administrator on a figure.

If the reporting agency's data do not support the reported vehicle revenue miles and the CEO rejects the Administrator's determination or fails to reach agreement on a new figure within ten working days, UMTA proposes to impute to the reporting agency the vehicle revenue miles figure originally proposed by the Administrator. The Administrator would render the decision in writing, which would constitute a final UMTA action.

Several comments were received on the procedures for resolving disputed vehicle revenue mile data. Questions were raised concerning the use of previous year's data to determine the norm by mode; several suggestions were made for using other factors, such as number of revenue vehicles, geographic size of service area, populations, etc. One commenter suggested that UMTA not implement the procedure since the data are independently certified for accuracy. Still others requested a period longer than 10 days to respond to the Administrator's proposal or asked for a clarification as to when the 10 day period begins.

UMTA has considered these comments and has decided to amend its previous proposal in the NPRM to accommodate some of the concerns raised. UMTA has made the following decisions or clarifications:

- UMTA has added a new finding to the section 9 data certification which attests to the accuracy of the deadhead miles (i.e., the difference between the total vehicle revenue miles and the total vehicle miles).
- UMTA will use a dispute resolution mechanism for vehicle revenue miles only when the section 9 data certification has not been submitted or if the certification questions (but does not dispute or claim a negative finding) the reliability of these data.
- The 10 working day period for responding to the Administrator's new vehicle revenue mile figure has been changed to 15 calendar days. This 15 day period begins on the day the reporting agency receives written notification of the Administrator's decision, and it means 15 calendar days, not business days.
- UMTA will compare the statistical ranges by mode as proposed if the dispute resolution mechanism is used.

6. Negative Certification Findings

The NPRM proposed that if an independent auditor's certification(s) of the section 9 data items indicates that any of the data do not appear accurate or have not been collected and reported in accordance with UMTA's definitions and/or confidence and precision levels, or expresses any other negative finding, such as the lack of documentation or reliable recordkeeping system, then UMTA would enter a zero for the questionable data item(s) for use in computing the section 9 apportionment.

Several commenters suggested that UMTA use a value other than zero for the questionable data items. Others expressed concern that UMTA may misinterpret an independent auditor's recommendation for improvement as a negative finding. UMTA has decided to finalize the rule concerning negative certification findings as proposed. The comments lacked any clear rationale for establishing a value other than zero to use for a questionable data item. UMTA has decided to retain the use of a zero which should motivate careful record-keeping that will save all parties concerned the costly burden of dealing with negative findings.

7. Waiver of Reporting Requirements

The NPRM proposed that waivers would be granted at the discretion of the Administrator only upon a showing that the party seeking a waiver cannot furnish the data required without unreasonable expense and inconvenience. There were no comments submitted on the proposed change. UMTA has decided to finalize the rule as proposed.

III. Appendix

Attached to the revised Part 630 is Appendix A which explains the overall structure of the section 15 Reporting and Accounts Records Systems. This Appendix provides a general overview of the Systems. It is important to emphasize that in the actual preparation of a Report, reporters must use Part 630, the Reporting Manual, and any other materials provided by UMTA. Appendix A describes the required and voluntary levels of reporting and recordkeeping used in both the Reporting and the Accounts and Records Systems. It also describes the use and structure of both the Uniform System of Accounts and Records and the Reporting System. Finally, Appendix A provides a list of required reporting forms in Table 9.

Appendix A also includes a description of the certification by an independent auditor of the section 15 data used to apportion section 9 funds to urbanized areas with a populaton greater than 200,000. UMTA is concerned about the veracity of this data and believes that this certification

is necessary to safeguard against false and erroneous data submission which could inflate a grantee's apportionment. The proposed rule discussed the question whether its provisions were consistent with OMB Circular A-128, "Single Audits of State and Local Governments." The OMB Circular prohibits Federal agencies from adding single audit requirements over and above those required by the Circular. One commenter raised some concern about the cost of the independent certification.

After reviewing this issue UMTA believes the continuation of its practice is not in conflict with the OMB Circular because the certification of operating data by an independent auditor is not mandated as part of the Single Audit Process. While the UMTA regulation requires independent auditors to certify certain transit operating data, the grantee is able to use its own discretion as to how the certification will be obtained from independent auditors. The cost of the certification is an eligible use of grant funds which responds to the cost concern raised by the commenter. Also, since these costs are more significant for small operators, UMTA has removed the independent certification requirement for section 15 reports covering less than 50 vehicles operated in maximum service for all modes.

IV. Regulatory Impacts

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that the economic impact of this regulation is so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. To the extent the new regulation would be more easily understood and more clearly states the basic reporting procedures, it may save small entities time in determining their rights and responsibilities.

C. Environmental Impacts

This final regulation would not adversely affect the environment.

D. Paperwork Reduction Act

The collection of information requirements in the present rule are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35.

These requirements were submitted to and approved by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The OMB approval number is 2132–0008. As the final rule does not affect the approved reporting requirements now required by existing Part 630, UMTA has determined that there are no new information collection requirements.

List of Subjects in 49 CFR Part 630

Mass transportation, Reporting and record keeping requirements, Uniform System of Accounts.

V. Revision of 49 CFR Part 630

Based on the comments received and UMTA experience in administering the section 15 program, UMTA is revising the procedures applicable to the Uniform System of Accounts and Records and Reporting System as set forth below. Accordingly, 49 CFR Chapter VI is amended by revising Part 630 to read as follows:

PART 630—UNIFORM SYSTEM OF ACCOUNTS AND RECORDS AND REPORTING SYSTEM

Sec.

Authority: Sec. 11[illegible], Pub. L. 93–503, 88 Stat. 1573 (49 U.S.C. 1611); secs. 303(a) and 304(c), Pub. L. 97–424, 96 Stat. 2141 (49 U.S.C. 1607); and 49 CFR 1.51.

§ 630.1 Purpose.

The purposes of this part are to prescribe the requirements and procedures necessary for compliance with the Uniform System of Accounts and Records and the Reporting System which are mandated by section 15 of the Urban Mass Transportation Act of 1964 (UMT Act), as amended, 49 U.S.C. 1611, and to set forth the procedures for addressing a reporting agency's failure to comply with these requirements.

§ 630.2 Scope.

These regulations apply to all applicants and beneficiaries of Federal financial assistance under section 9 of the UMT Act (49 U.S.C. 1604 and 1607).

§ 630.3 Definitions.

(a) Except as otherwise provided, terms defined in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), are used in this part as so defined.

(b) Terms defined in the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System are used in this part as so defined.

(c) For purposes of this part:

"Administrator" means the Urban Mass Transportation Administrator or the Administrator's designee.

"Applicant" means an applicant for assistance under section 9 of the UMT Act.

"Assistance" means Federal financial assistance for the acquisition, construction, or operation of public mass transportation services.

"Beneficiary" means any organization operating and delivering urban transit services that receives benefits directly from assistance under section 9 of the UMT Act.

"Chief Executive Officer" means the principal executive in charge of and responsible for the transit or reporting agency.

"Current Edition" of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System means the most recently issued edition of the Reference Volumes, as modified by any Circulars or other written modifications, about which the reporting agency has received reasonable notice. For the Reference Volumes, "reasonable notice" is given for the applicable report if the most recent edition is mailed to the reporting agency at least 120 days before the agency's reporting deadline. For Circulars and other written modifications, "reasonable notice" is given if the reporting agency is mailed the modifications at least 30 days before a reporting deadline. However, UMTA reserves the right to waive these notice requirements in unique cases that require immediate implementation (such as a change in the statute).

"Days" means calendar days.

"Deadhead miles" means the miles a vehicle travels when out of service, i.e., returning to the garage, changing routes, etc., or when there is no reasonable expectation of carrying revenue passengers. The total miles traveled by

revenue vehicles consist of miles traveled when in revenue service *and* these deadhead miles.

"Mass Transportation Agency" or "transit agency" means an agency authorized to transport people by bus, rail, or other conveyance, either publicly or privately owned, and which provides to the public general or special service (but not including school, charter, or sightseeing service) on a regular and continuing, scheduled or unscheduled, basis. Transit agencies are classified according to the mode of transit service operated. A multi-mode transit agency is one operating two or more modes, as such modes are defined in the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

"Metropolitan Planning Organization" means the organization designated by the Governor as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134 (Federal-Aid Highway Planning Requirements) and capable of meeting the requirements of 49 U.S.C. 1607(a) (Urban Mass Transportation Planning Requirements). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

"Reference Volume(s)" means the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records, which is composed of Volume I—General Description; Volume II—Uniform System of Accounts and Records; and Reporting Manual and Sample Forms (All Reporting Levels). These Volumes are subject to periodic revision. Beneficiaries and applicants are responsible for ensuring that they are using the current edition of the Reference Volumes.

"Reporting agency" means the agency required to submit a report under section 15.

"The UMT Act" means the Urban Transportation Act of 1964, as amended. (49 U.S.C. 1601 et seq.)

"Vehicle revenue miles" means the miles a vehicle travels when in revenue service. A transit vehicle is in revenue service only when the vehicle is available to the public and there is reasonable expectation of carrying passengers that either directly pay fares, are subsidized by public policy, or provide payment through some contract arrangement.

§ 630.4 Requirements.

(a) *Uniform System of Accounts and Records.* Each applicant for and direct beneficiary of Federal financial assistance under the UMT Act must comply with the applicable requirements of the section 15 Uniform System of Accounts and Records, as set forth in the current edition of the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," Circulars, and other reference documentation.

(b) *Reporting System.* Each applicant for and direct beneficiary of Federal financial assistance under the UMT Act must comply with the applicable requirements of the section 15 Reporting System, as set forth in the current edition of the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," Circulars, and other reference documentation.

(c) *Copies.* Copies of the referenced documents are available from the Urban Mass Transportation Administration, Office of Grants Management, Audit Reviews and Analysis Division (UGM–13), 400 7th Street SW., Room 9315, Washington, DC 20590. These materials are subject to periodic revision. Revisions of these documents will be mailed to all persons required to comply, and a Notice of any significant change in these materials will be published in the Federal Register.

§ 630.5 Failure to report data.

(a) *Declaration of ineligibility.* Failure to report data in accordance with this Part and the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System will result in the Administrator declaring the reporting agency ineligible to receive directly or indirectly (e.g., a public agency receiving UMTA funds through another public agency rather than directly from UMTA) any section 9 grants during an entire Federal fiscal year. This shall be the fiscal year for which the section 9 apportionment is based, in part, on data from the prior section 15 reporting year for which the agency failed to submit a report. This ineligibility applies to all reporting agencies without regard to the size of the urbanized area served by the reporting agency.

(b) *Notification of ineligibility.* A reporting agency which fails to report data in accordance with this Part shall receive written notification from the Administrator of its ineligibility to receive any section 9 grants in the particular fiscal year.

(c) *Status of ineligibility declaration.* Notification to a reporting agency of its ineligibility for section 9 grants will constitute a final UMTA action.

§ 630.6. Late and incomplete reports.

(a) A report is to be received by UMTA not later than the 120th day following the last day of the reporting agency's fiscal year.

(1) There is an automatic 15 day grace period immediately following the 120 days after the reporting agency's fiscal year in which UMTA will accept receipt of a Section 15 Report without the report being considered late.

(2) Failure to submit the required report by the date due or last day of the grace period will be treated under § 630.5 as failure to report data.

(3) An extension of 30 days after the due date provided for in section 630.6(a) may be requested by a reporting agency. UMTA shall consider such a request only if it is received at least 15 days in advance of the original due date. UMTA shall grant one 30-day extension upon a showing of good cause. Administrative convenience of the reporting agency does not constitute good cause.

(4) A second 30-day extension after the due date provided for in § 630.6(a) will be granted at the Administrator's discretion only where unforseeable circumstances beyond the reporting agency's control have made it impossible to meet the due date. No second extensions will be granted if they would delay the apportionment of formula grants to other grantees.

(b) *Incomplete Reports.* Omissions other than missing auditors' section 9 data certifications and financial certifications.

(1) Submission of a report which does not contain all of the required reporting forms, data, or Chief Executive Officer certification for services directly operated by the reporting agency in substantial conformance with the definitions, procedures, and format requirements set out in the section 15 Uniform System of Accounts and Records and Reporting System shall be treated under § 630.5 as failure to report data.

(2) The Administrator may, at the Administrator's discretion, treat an incomplete report as defined in § 630.6(b)(i) as a request for up to a thirty day extension. The extension will be effective on the date of UMTA's written notification letter to the reporting agency that the report is incomplete. Failure to adequately respond to the issues in UMTA's notification letter within the time frame specified will be treated under § 630.5 as failure to report data.

(3) Submission of a Report with incomplete data or missing forms for services provided under contract to the reporting agency by private or public

carriers shall not be treated under § 630.5 as failure to report data.

(4) Submission of a Report which does not contain the statement from the Metropolitan Planning Organization (MPO) or a late or incomplete MPO statement shall not be treated as failure to report data under § 630.5.

(c) *Incomplete Reports—Auditor Certification.* (1) Submission of an otherwise complete Report that does not contain an independent auditor's certification of the data used to compute section 9 apportionments and of the financial data, if required, but that contains the required certification by the Chief Executive Officer and commitment to obtain the required auditor's certification(s) in a timely manner, will result in the Administrator's including the data in the calculation of the urbanized area's section 9 apportionment but withholding any new grants to the reporting agency until after proper certification(s) has (have) been received and accepted by the Administrator. Reporting agencies should submit reports on time, even if the certifications are not completed or if local activities are underway to resolve auditor disputes of the data reported.

(2) If as a result of the auditor's certification(s) the data are changed or disputed, UMTA shall make necessary adjustments in a future year's apportionment.

§ 630.7 Inaccurate data.

(a) *Vehicle Revenue Miles.* (1) A transit agency's vehicle revenue mile data may be rebuttably presumed to be erroneous if the independent auditor's section 9 data certification is not submitted or if the independent auditor's section 9 data certification questions (without a negative certification finding) the reliability of these data. In such cases, statistical checks to validate these data will be performed for each mode to determine if the data vary by a significant amount on the high side from the previous year's national data set for that mode. The previous year's statistical ranges will be determined by the Administrator for each transit mode for which a Section 15 Report is required to be filed.

(2) If the portion of a reporting agency's total vehicle miles which are considered in revenue service varies significantly on the high side from an analysis of the previous year's data, the Administrator will send written notice to the agency's Chief Executive Officer, notifying the Officer of that fact, and that:

(i) The transit agency's submission has triggered a rebuttable presumption of error and has prompted a request for additional documentation to rebut the presumption;

(ii) The Chief Executive Officer is invited to submit, within 15 days of receipt of the notice, further documentation in support of the vehicle revenue mile data initially submitted. Such documentation:

(A) Must include a re-certification or attestation of accuracy, signed by the Chief Executive Officer, in order to receive consideration; and

(B) May include, for example: Route maps; locations of garages and/or layover points; locations of maintenance facilities; and ridership data covering distances from the garage to the end of the line.

(3) If the Administrator receives additional documentation and re-certification from the Chief Executive Officer within the 15 day time limit, the Administrator will review the documentation and make a determination as to whether the reporting agency has adequately justified the data.

(i) If the Administrator is satisfied that the documentation supports the vehicle revenue mile data, the Administrator will accept the report as submitted and so notify the agency in writing.

(ii) If the Administrator determines that the documentation supports a vehicle revenue mile figure different from that submitted by the reporter, the Administrator will notify the reporter's Chief Executive Officer in a certified letter of the figure the Administrator deems appropriate and will invite the reporting agency to accept the determination.

(4) The Chief Executive Officer will have 15 days from the date of receiving the Administrator's letter to resolve with the Administrator a final figure for vehicle revenue miles. Lacking agreement on a new figure, UMTA will use the figure in the Administrator's letter for section 9 formula purposes.

(i) The figures used for section 9 purposes will also be used in the processing and publishing of the section 15 Annual Report.

(ii) The reporting agency may request that this item be given special attention in the next triennial review of the agency. Should an adjustment be warranted based on that review, this will be accommodated in a future year section 9 apportionment to the extent feasible.

(iii) The use of the vehicle revenue mile figure in the Administrator's letter will constitute a final UMTA action.

(b) *Failure to respond to data validation questions.* UMTA either directly or through a contractor will review each Section 15 Report to verify the reasonableness of the data submitted. If any of the data does not appear reasonable, UMTA or its contractor will notify the reporting agency of this fact and request justification to document the accuracy of the questioned data. Failure of a reporting agency to make a good faith response to this request will be treated under § 630.5 as failure to report data.

§ 630.8 Negative certification findings.

UMTA will enter a zero for use in computing the section 9 apportionment for any questionable data item(s) in a reporting agency's Section 15 Report if the independent auditor's section 9 data certification for that Report indicates that any of the data do not appear accurate or have not been collected and reported in accordance with UMTA's definitions and/or confidence and precision levels, or expresses any other negative finding, such as the lack of adequate documentation or a reliable recordkeeping system.

§ 630.9 Waiver of reporting requirements.

(a) Request for waivers of reporting requirements must be received 60 days before the due date in order to receive consideration.

(b) The Administrator may, at the Administrator's discretion, consider a waiver request or grant a waiver on the Administrator's own initiative not received 60 days in advance if good cause is shown by the requesting party.

(c) Waivers of one or more sections of the reporting requirements may be granted at the discretion of the Administrator on a showing that the party seeking the waiver cannot furnish the data required without unreasonable expense and inconvenience.

§ 630.10 Data adjustments.

Errors in the data used in making the apportionment may be discovered after any particular year's apportionment is completed. If so, UMTA shall make adjustments to correct these errors in a subsequent year's apportionment to the extent feasible.

§ 630.11 Display of OMB control numbers.

All of the information collection requests in this part have been approved by the Office of Management and Budget under control number 2132-0008.

Appendix A to Part 630—Overview and Explanation of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System

A. Introduction

Section 15 of the Urban Mass Transportation Act of 1964, as amended (UMT Act), provides for establishment of two information-gathering analytic systems: A Uniform System of Accounts and Records, and a Reporting System for the collection and dissemination of public mass transportation financial and operating data by uniform categories. The purpose of these two systems is to provide information on which to base public transportation planning and public sector investment decisions. The section 15 program is administered by the Urban Mass Transportation Administration (UMTA).

The Uniform System of Accounts and Records consists of:

- Various categories of accounts and records for classifying financial and operating data;
- Precise definitions as to what data elements are to be included in these categories; and
- Definitions of practices for systematic collection and recording of such information.

While a specific accounting system is recommended for this recordkeeping, it is possible to make a translation from most existing accounting systems to comply with the *Section 15 Reporting System*, which consists of forms and procedures:

- For transmitting data from transit agencies to UMTA;
- For editing and storing the data; and
- For UMTA to report information to various groups.

Under the terms of UMT Act section 15, all applicants for and beneficiaries of Federal assistance under section 9 of the Act (i.e., under the formula grant programs) must comply with the Reporting System and the Uniform System of Accounts and Records in order to be eligible for Federal grants. It should be noted that separate and complete Section 15 Reports must be submitted by or for each purchased transportation service provider that operates 50 or more revenue vehicles for the purchased service during the maximum service period.

B. Purpose of this Appendix

This Appendix presents a general introduction to the structure and operation of the two systems. It is not a detailed set of instructions for completion of a section 15 Report establishment of a System of Accounts and Records. Persons in need of more information should refer to the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System, available from:

Urban Mass Transportation Administration, Office of Grants Management, Audit Review & Analysis Division (UGM–13), 400 Seventh Street SW., Room 9315, Washington, DC 20590, (202) 366–1610

The current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System is composed of:

Volume I—General Description (Jan. 10, 1977)
Volume II—Uniform System of Accounts and Records (Jan. 10, 1977)
Reporting Manual and Sample Forms (All Reporting Levels) (April 1987)

UMTA periodically updates these reference documents or supplements them to revise or clarify section 15 definitions and reporting forms and instructions. Section 630.4 makes clear that reporting agencies must use the most recent edition of the reference documents and reporting forms to comply with the section 15 requirements. UMTA therefore urges local officials to check with UMTA before completing a section 15 Report to avoid unnecessary effors and delays.

C. Special (Reduced) Reporting Requirements

The unique characteristics of certain transportation modes require UMTA to tailor certain information collection and recording requirements and reporting forms to such modes. Until the 1987 report year, there were specific reduced reporting requirements for commuter rail systems and vanpool services.

Thus, reporting agencies that operated commuter rail systems or vanpool services complied with the applicable requirements contained in the reference volumes and special supplementary publications. Copies of these documents are available from UMTA.

D. Required and Voluntary Levels of Reporting and Recordkeeping

UMTA, in close cooperation with the transit industry, developed both systems to be adaptable to the varying sizes of transit agencies. The systems also provide for the varying levels of recordkeeping specificity and complexity that are necessary to accommodate variations in size, local laws, and modes of transport. All transit agencies covered by the section 15 reporting and recordkeeping requirements must maintain at least a minimum level of detail in their Section 15 Reports and Accounts and Records Systems. This minimal level is designated R (or Required). The Uniform Systems set out three additional, and progressively more detailed, levels of reporting and keeping records on revenue and expense data. The most detailed of these levels indicates the subcategories of data that should be aggregated to record each object class or expense function at the other levels and thus serves to define the more aggregated data. The definitions for the required data are consistent with and summarized from those for the more extensive voluntary data. Reporting agencies voluntarily may adopt these levels (or modify them to suit local needs). The three voluntary reporting and recordkeeping levels are designated Level C (least detailed), Level B (next most detailed) and Level A (most detailed).

E. The Uniform System of Accounts and Records

The Uniform System of Accounts and Records consists of a financial accounting and operational recordkeeping system designed for mass transportation manager and planners. Its uniformity permits more thorough and accurate comparisons and analyses of different transit agencies' operating costs and efficiencies than if each had a unique recordkeeping and accounting system. The system establishes various categories of accounts and records for classifying mass transportation operating and financial data, and includes precise definitions of transportation terminology to ensure that all users share a common understanding of how to use and interpret the data collected.

(1) Use of the Accounts and Records System

Beneficiaries of and applicants for Federal assistance are not required to use the Uniform System of Accounts and Records in keeping their own records. If an applicant or beneficiary chooses not to use the System, however, it must nevertheless be able to translate its accounts and records system to the accounts prescribed in the System. The accounting system that the reporter uses must permit preparation of financial and operating data that conforms to the Uniform System directly from its records at the end of the fiscal year, and must be consistent with the following:

(i) The data must have been developed using the accrual basis of accounting. Those transit systems that use cash-basis accounting, in whole or in part, will have to make work sheet

adjustments in their account books to record the data on the accrual basis.

(ii) Reporting agencies must follow or be able to directly translate their system to the accounting treatment specified in the publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System."

(iii) The reporting agency's accounting categories (chart of accounts) must be correctly related, via a clear audit trail, to the accounting categories prescribed in the Uniform System of Accounts and Records and Reporting System.

(2) General Structure of Uniform Accounts and Records System

In the section 15 System, operating expenses incurred by the transit system are classified by mode. The expenses of each mode are recorded in two dimensions:

(i) The type of expenditure (expense object class); and

(ii) The function or activity performed.

The expense object classes are typical of those of most transit accounting systems. Table 1 presents the expense object classes required under section 15. Table 2 is a more detailed list which includes recommended expense object classes that have been developed to assist reporting agencies in implementing the section 15 requirements. Discussion about the remaining tables appears before each table.

Table I—Required Expense Object Classes

Expense Object Classes

501. Labor
- 01 Operators' Salaries and Wages
- 02 Other Salaries and Wages

502. Fringe Benefits
503. Services
504. Materials and Supplies
- 01 Fuel and Lubricants
- 02 Tires and Tubes
- 99 Other Materials and Supplies

505. Utilities
506. Casualty and Liability Costs
507. Taxes
508. Purchased Transportation
- 01 Less Than 50 Vehicles
- 02 50 or More Vehicles

509. Miscellaneous Expense
510. Expense Transfers
511. Interest Expenses
512. Leases and Rentals
513. Depreciation
- 13 Amortization of Intangibles

514. Purchase Lease Payments
515. Related Parties Lease Agreement
516. Other Reconciling Items

Table 2—Recommended Expense Object Classes

Recommended Expense Object Classes

501. Labor [1]
- 01 Operators' Salaries and Wages [1]
- 02 Other Salaries and Wages [1]

502. Fringe Benefits [1]
- 01 FICA or Railroad Retirement
- 02 Pension Plans (including long-term disability insurance)
- 03 Hospital, Medical and Surgical Plans
- 04 Dental Plans
- 05 Life Insurance Plans
- 06 Short-Term Disability Insurance Plans
- 07 Unemployment insurance
- 08 Workmen's Compensation Insurance or Federal Employees Liability Act Contributions
- 09 Sick Leave
- 10 Holiday (including all premiums paid for working on holidays)
- 11 Vacation
- 12 Other Paid Absence (bereavement pay, military pay, jury duty pay, etc.)
- 13 Uniform and Work Clothing Allowances
- 14 Other Fringe Benefits
- 15 Distribution of Fringe Benefits

503. Services [1]
- 01 Management Service Fees
- 02 Advertising Fees
- 03 Professional and Technical Services
- 04 Temporary Help
- 05 Contract Maintenance Services
- 06 Custodial Services
- 07 Security Services
- 99 Other Services

504. Materials and Supplies [1]
- 01 Fuel and Lubricants [1]
- 02 Tires and Tubes [1]
- 99 Other Materials and Supplies [1]

505. Utilities [1]
- 01 Propulsion Power
- 02 Utilities Other Than Propulsion Power

506. Casualty and Liability Costs [1]
- 01 Premiums for Physical Damage Insurance
- 02 Recoveries of Physical Damage Losses
- 03 Premiums for Public Liability and Property Damage Insurance
- 04 Payouts for Uninsured Public Liability and Property Damage Settlements
- 05 Provision for Uninsured Public Liability and Property Damage Settlements
- 06 Payouts for Insured Public Liability and Property Damage Settlements
- 07 Recoveries of Public Liability and Property Damage Settlements
- 08 Premiums for Other Corporate Insurances
- 09 Other Corporate Losses
- 10 Recoveries of Other Corporate Losses

507. Taxes [1]
- 01 Federal Income Tax
- 02 State Income Tax
- 03 Property Tax
- 04 Vehicle Licensing and Registration Fees
- 05 Fuel and Lubricant Taxes
- 06 Electric Power Taxes
- 99 Other Taxes

508. Purchased Transportation [1]
- 01 Less Than 50 Vehicles [1]
- 02 50 or More Vehicles [1]

509. Miscellaneous Expense [1]
- 01 Dues and Subscriptions
- 02 Travel and Meetings
- 03 Bridge, Tunnel and Highway Tolls
- 04 Entertainment Expense
- 05 Charitable Donations
- 06 Fines and Penalties
- 07 Bad Debt Expense
- 08 Advertising/Promotion Media
- 99 Other Miscellaneous Expense

510. Expense Transfers [1]
- 01 Function Reclassifications
- 02 Expense Reclassifications
- 03 Capitalization of Nonoperating Costs

511. Interest Expenses [1]
- 01 Interest on Long-Term Debt Obligations (net of interest capitalized)
- 02 Interest on Short-Term Debt Obligations

512. Leases and Rentals [1]
- 01 Transit Way and Transit Way Structures and Equipment
- 02 Passenger Stations
- 03 Passenger Parking Facilities
- 04 Passenger Revenue Vehicles
- 05 Service Vehicles
- 06 Operating Yards or Stations
- 07 Engine Houses, Car Shops and Garages
- 08 Power Generation and Distribution Facilities
- 09 Revenue Vehicles Movement Control Facilities
- 10 Data Processing Facilities
- 11 Revenue Collection and Processing Facilities
- 12 Other General Administration Facilities

513. Depreciation [1]
- 01 Transit Way and Transit Way Structures and Equipment
- 02 Passenger Stations
- 03 Passenger Parking Facilities
- 04 Passenger Revenue Vehicles
- 05 Service Vehicles
- 06 Operating Yards or Stations
- 07 Engine Houses, Car Shops and Garages
- 08 Power Generation and Distribution Facilities
- 09 Revenue Vehicle Movement Control Facilities
- 10 Data Processing Facilities
- 11 Revenue Collection and Processing Facilities
- 12 Other General Administration Facilities
- 13 Amortization of Intangibles

514. Purchase Lease Payments [1]
515. Related Parties Lease Agreement [1]
516. Other Reconciling Items [1]

[1] Denotes required object classes.

Within each object class, the Uniform System categorizes expenditures by four basic functions: Vehicle operations, vehicle maintenance, non-vehicle maintenance, and general administration. UMTA has developed the four standard functional classifications for uniformity and to enhance the usefulness of the data collected under section 15. They may differ significantly from the

classifications formerly used by transit operators (indeed, they have changed since the inception of the section 15 System), but it is hoped that use of these classifications will, over time, yield useful results.

The four functional classifications are used for recordkeeping and reporting of R- and C-level data. Levels B and A use progressively more detailed breakdowns of each function. Table 3 shows the three levels of functional classifications and how they relate to each other.

TABLE 3.—AGGREGATION OF FUNCTIONS FOR EXPENSE CLASSIFICATIONS

Level A	Level B	Level C and R
011 Transportation Administration	10 Administration of Transportation	010 Vehicle Operations
012 Revenue Vehicle Movement Control		
021 Scheduling of Transportation Operations	020 Scheduling of Transportation Operations	
031 Revenue Vehicle Operation	030 Revenue Vehicle Operation	
041 Maint. Administration—Vehicles	041 Maint. Administration-Vehicles	041 Vehicle Maintenance
051 Servicing Revenue Vehicles	050 Servicing Revenue Vehicles	
061 Insp. & Maint. of Revenue Vehicles	060 Insp. & Maint. of Revenue Vehicles	
062 Accident Repairs of Revenue Vehicles	062 Accident Repairs of Revenue Vehicles	
071 Vandalism Repairs of Revenue Vehicles	070 Vandalism Repairs of Revenue Vehicles	
081 Servicing & Fuel of Service Vehicles	080 Servicing & Fuel of Service Vehicles	
091 Insp. & Maint. of Service Vehicles	090 Insp. & Maint. of Service Vehicles	
042 Maint. Administration—Non-Vehicles	042 Maint. Administration—Non-Vehicles	042 Non-Vehicle Maint.
101 Maint. of Vehicle Movement Control Systems	100 Maint. of Vehicle Movement Control Systems	
111 Maint. of Fare Collection & Counting Equip.	110 Maint. of Fare Collection & Counting Equip.	
121 Maint. of Roadway & Track		
122 Maint. of Structure, Tunnels, & Subways		
123 Maint. of Passenger Stations		
124 Maint. of Operating Station Bldgs, Grounds & Equip.		
125 Maint. of Garage & Shop Bldgs, Grounds & Equip.	120 Maint. of Garage & Shop Bldgs, Grounds & Equip.	
126 Maint. of Communication System		
127 Maint. of Gen. Admin. Bldgs, Grounds & Equip.		
128 Accident Repairs of Bldgs, Grounds & Equip.		
131 Vandalism Repairs of Bldgs, Grounds & Equip.	130 Vandalism Repairs of Bldgs, Grounds & Equip.	
141 Operation & Maint. of Electric Power Facilities	140 Operation & Maint. of Electric Power Facilities	
145 Preliminary Transit System Development	145 Preliminary Transit System Development	160 Gen. Administration
151 Ticketing & Fare Collection	150 Ticketing & Fare Collection	
161 System Security		
165 Injuries & Damages		
166 Safety		
167 Personnel Administration		
168 General Legal Services		
169 General Insurance		
170 Data Processing		
171 Finance & Accounting	160 General Administration	
172 Purchasing & Stores		
173 General Engineering		
174 Real Estate Management		
175 Office Management & Services		
176 General Management		
162 Customer Services		
163 Promotion		
164 Market Research	179 Marketing	
177 Planning		
181 General Function	180 General Function	

Table 4 presents the revenue object classes required under section 15. Table 5 is a more detailed list which includes recommended revenue object classes that have been developed to assist reporting agencies in implementing the section 15 requirements.

Table 4.—Required Revenue Object Classes

Required Revenue Object Classes

401. Passenger Fares for Transit Service
402. Special Transit Fares
403. School Bus Service Revenues
404. Freight Tariffs
405. Charter Service Revenues
406. Auxiliary Transportation Revenues
407. Nontransportation Revenues
408. Taxes Levied Directly by Transit System
409. Local Cash Grants and Reimbursements
410. Local Special Fare Assistance
411. State Cash Grants and Reimbursements
412. State Special Fare Assistance
413. Federal Cash Grants and Reimbursements
430. Contributed Services
440. Subsidy From Other Sectors of Operations

Table 5.—Recommended Revenue Object Classes

Recommended Revenue Object Classes

401. Passenger Fares for Transit Service [1]
  01 Full Adult Fares
  02 Senior Citizen Fares
  03 Student Fares
  04 Child Fares
  05 Handicapped Rider Fares
  06 Park and Ride—Parking Revenues Only
  99 Other Primary Ride Fares
402. Special Transit Fares [1]
  01 Contract Fares for Postmen
  02 Contract Fares for Policemen
  03 Special Route Guarantees
  04 Other Special Contract Transit Fares—State and Local Government
  05 Other Special Contract Transit Fares—Other Sources
  07 Non-Contract Special Service Fares
403. School Bus Service Revenues [1]
  01 Passenger Fares from School Bus Service
404. Freight Tariffs [1]
  01 Hauling Freight
405. Charter Service Revenues [1]
  01 Passenger Fares from Charter Service
406. Auxiliary Transportation Revenues [1]
  01 Station Concessions
  02 Vehicle Concessions
  03 Advertising Services
  04 Automotive Vehicle Ferriage
  99 Other Auxiliary Transportation Revenues
407. Nontransportation Revenues [1]
  01 Sales of Maintenance Services
  02 Rental of Revenue Vehicles
  03 Rental of Buildings and Other Property
  04 Investment Income
  05 Parking Lot Revenue
  99 Other Nontransportation Revenues
408. Taxes Levied Directly by Transit System [1]
  01 Property Tax Revenue
  02 Sales Tax Revenue
  03 Income Tax Revenue
  04 Payroll Tax Revenue
  05 Utility Tax Revenue

[1] Denotes required object classes.

99 Other Tax Revenue
409. Local Cash Grants and Reimbursements [1]
01 General Operating Assistance
02 Special Demonstration Project Assistance—Local Projects
03 Special Demonstration Project Assistance—Local Share for State Projects
04 Special Demonstration Project Assistance—Local Share for UMTA Projects
05 Reimbursement of Taxes Paid
06 Reimbursement of Interest Paid
07 Reimbursement of Transit System Maintenance Costs
08 Reimbursement for Snow Removal Costs
09 Reimbursement of Security Costs
99 Other Financial Assistance
410. Local Special Assistance [1]
01 Handicapped Citizen Fare Assistance
02 Senior Citizen Fare Assistance
03 Student Fare Assistance
99 Other Special Fare Assistance
411. State Cash Grants and Reimbursements [1]
01 General Operating Assistance
03 Special Demonstration Projects Assistance—State Projects
04 Special Demonstration Project Assistance—State Share for UMTA Projects
05 Reimbursement of Taxes Paid
06 Reimbursement of Interest Paid
07 Reimbursement of Transit System Maintenance Costs
09 Reimbursement of Security Costs
99 Other Financial Assistance
412. State Special Fare Assistance [1]
01 Handicapped Citizen Fare Assistance
02 Senior Citizen Fare Assistance
03 Student Fare Assistance
99 Other Special Fare Assistance
413. Federal Cash Grants and Reimbursements [1]
01 General Operating Assistance
04 Special Demonstration Project Assistance
99 Other Financial Assistance
430. Contributed Services [1]
01 State and Local Government
02 Contra Account for Expense
440. Subsidy From Other Sectors of Operations [1]
01 Subsidy from Utility Rates
02 Subsidy from Bridge and Tunnel Tolls
99 Other Subsidies

Table 6 presents the classification for assets, liabilities and capital accounts required under section 15. Table 7 is a more detailed list which includes recommended balance sheet accounts that have been developed to assist reporting agencies in implementing the section 15 requirements.

Table 6.—Required Balance Sheet Object Classes

Required Balance Sheet Object Classes

Assets

101. Cash and Cash Items
102. Receivables
103. Materials and Supplies Inventory
104. Other Current Assets
105. Work in Progress
111. Tangible Transit Operating Property
03 Accumulated Depreciation
112. Tangible Property Other Than for Transit Operations
02 Accumulated Depreciation
121. Intangible Assets
06 Accumulated Amortization
131. Investments
141. Special Funds
151. Other Assets

Liabilities

201. Trade Payables
202. Accrued Payroll Liabilities
203. Accrued Tax Liabilities
204. Short-term Debt
205. Other Current Liabilities
211. Advances Payable
221. Long-Term Debt
231. Estimated Liabilities
241. Deferred Credits

Capital

301. Public (Governmental) Entity Ownership
302. Private Corporation Ownership
303. Private Noncorporate Ownership
304. Grants, Donations and Other Paid-In Capital
305. Accumulated Earnings (Losses)

Table 7.—Recommended Balance Sheet Object Classes

Recommended Balance Sheet Object Classes

Assets

101. Cash and Cash items [1]
01 Cash
02 Working (Imprest) Funds
03 Special Deposits, Interest
04 Special Deposits, Dividends
05 Special Deposits, Other
06 Temporary Cash Investments
102. Receivables [1]
01 Accounts Receivable
02 Notes Receivable
03 Interest and Dividends Receivable
04 Receivables from Associated Companies
05 Receivable Subscriptions to Capital Stock
06 Receivables for Capital Grants
07 Receivables for Operating Assistance
08 Other Receivables
09 Reserve for Uncollectible Accounts
103. Materials and Supplies Inventory [1]
104. Other Current Assets [1]
105. Work in Progress [1]
01 Unbilled Work for Others
02 Capital Projects
111. Tangible Transit Operating Property [1]
01 Property Cost
02 Leased-Out Property Cost
03 Accumulated Depreciation [1]
112. Tangible Property Other Than for Transit Operations [1]
01 Property Cost
02 Accumulated Depreciation [1]
121. Intangible Assets [1]
01 Organization Costs
02 Franchises
03 Patents
04 Goodwill
05 Other Intangible Assets
06 Accumulated Amortization [1]
131. Investments [1]
01 Investments and Advances, Associated Companies
02 Other Investments and Advances
03 Reserve for Revaluation of Investments
141. Special Funds [1]
01 Sinking Funds
02 Capital Asset Funds
03 Insurance Reserve Funds
04 Pension Funds
05 Other Special Funds
151. Other Assets [1]
01 Prepayments
02 Miscellaneous Other Assets

Liabilities

201. Trade Payables [1]
01 Accounts Payable
02 Payables to Associated Companies
202. Accrued Payroll Liabilities [1]
203. Accrued Tax Liabilities [1]
204. Short-Term Debt [1]
01 Notes Payable
02 Matured Equipment and Long-Term Obligations
03 Unmatured Equipment and Long-Term Obligations, Current Portion
04 Matured Interest Payable
05 Accrued Interest Payable
06 Current Pension Liabilities
205. Other Current Liabilities [1]
01 Unredeemed Fares
02 C.O.D.s Unremitted
03 Dividents Declared and Payable
04 Short-Term Construction Liabilities
05 Miscellaneous Other Current Liabilities
211. Advances Payable [1]
01 Advances Payable to Associated Companies
02 Other Advances Payable
221. Long-Term Debt [1]
01 Equipment Obligations
02 Bonds
03 Receivers' and Trustees' Securities
04 Long-Term Construction Liabilities
05 Other Long-Term Obligations
06 Unamortized Debt Discount and Expense
07 Unamortized Premium on Debt
08 Reacquired and Nominally Issued Long-Term Obligations
231. Estimated Liabilities [1]
01 Long-Term Pension Liabilities
02 Uninsured Public Liability and Property Damage Losses
03 Other Estimated Liabilities
241. Deferred Credits [1]

Capital

301. Public (Governmental) Entity Ownership [1]
302. Private Corporation Ownership [1]
01 Preferred Capital Stock
02 Common Capital Stock
03 Premiums and Assessments on Capital Stock
04 Discount on Capital Stock

[1] Denotes required object classes.

05 Commission and Expense on Capital Stock
06 Capital Stock Subscribed
07 Reacquired Securities
08 Nominally Issued Securities
303. Private Noncorporate Ownership [1]
01 Sole Proprietorship Capital
02 Parnership Capital
304. Grants, Donations and Other Paid-In Capital[1]
01 Federal Government Capital Grants
02 State Government Capital Grants
03 Local Government Capital Grants
04 Nongovernmental Donations and Other Paid-in Capital
305. Accumulated Earnings (Losses) [1]
01 Accumulated Earnings (Losses)
02 Dividend Appropriations
03 Restricted Accumulated Earnings

The Uniform System of Accounts and Records also includes collecting and recording of certain operating data elements. The required operating data elements are listed in Table 8.

TABLE 8—Required Operating Data Elements

Basic Information
Transit System Identification
Contractual Relationship Identification
Vehicles (for Directly Operated and Purchased Transportation Services) Operated in and Available for Maximum Service by Mode, Vehicle Type, and Ownership Identification
Supplementary Information
Summary of Statistics Used for the section 9 Apportionment by Mode, Fixed Guideway and Nonfixed Guideway Operations, Type of Service, and Urbanized Area
Service Periods
Revenue Vehicles Maintenance Performance and Energy Consumption
Roadcalls for Mechanical Failure
Roadcalls for Other Reasons
Labor Hours for Inspection and Maintenance
Number of Light Maintenance Facilities
Energy Consumption[1]
Transit Way Mileage
Fixed Guideway Classifications for Rail and Nonrail Modes
Directional Route Miles
Miles of Track
Number of Crossings
Number of Stations
Employee Equivalents
Operating and Capital Employee Equivalents for Labor Classifications
Service Supplied
Number of Vehicles, Trains, and Passenger Cars in Operation
Total Actual Vehicle, and Passenger Car Revenue Miles
Total Scheduled Vehicle, and Passenger Car Revenue Miles
Total Actual Vehicle, Train, and Passenger Car Revenue Miles
Miles of Charter and School Bus Service
Total Actual Vehicle, Train, and Passenger Car Revenue Hours
Total Actual Vehicle, Train, and Passenger Car Hours
Hours of Charter and School Bus Service
Service Consumed
Unlinked Passenger Trips
Passenger Miles (These data must meet prescribed precision and confidence levels only every three years, beginning with the 1987 reporting year, for reporting agencies that serve urbanized areas of less than 500,000 population, or reporting agencies that directly operate 50 of fewer revenue vehicles for all modes in maximum service, or purchased transportation service, i.e., private or public carrier providing transit service under contract to a public agency, *except* those purchased transportation services submitting separate Section 15 Reports)
Service Personnel Classifications
Service Operated and Nonoperated (Days) Classifications
Revenue Vehicle Inventory

[1] Denotes requires object classes.

The definitions for the above expense object classes, functions, revenue object classes, balance sheet object classes, and operating date elements are contained in the Reference Volumes.

F. The Reporting System

(1) The Section 15 Reporting System consists of forms and procedures for transmitting data from transit agencies to UMTA. All beneficiaries of Federal financial assistance must submit the required forms and information in order to allow UMTA to: (1) Store and generate data and information on the Nation's mass transportation systems; and (2) (for urbanized areas of 200,000 or more inhabitants) calculate the apportionment allocations for the section 9 formula grant program. Agencies submitting Section 15 Reports may only submit data for transit services which they directly operate and purchase under contract from public agencies and/or private carriers. Separate and complete Section 15 Reports must be submitted by or for each purchased transportation service provider that operates 50 or more revenue vehicles for the purchased service during the maximum service period. The reporting requirements include the following major segments, which are based on information assembled through the Uniform System of Accounts and Records:

1. Balance sheet
2. Revenue report
3. Expense report
4. Nonfinancial operating data reports
5. Miscellaneous auxiliary questionnaires and subsidiary schedules
6. Data certifications
7. Metropolitan Planning Organization statement

(2) The following Table 9 lists all reporting forms required to be filed (R-Level) by all reporting agencies:

Table 9.—Required-Level Reporting Forms

Basic Information Forms

Transit System Identification Schedule
Contractual Relationship Identification Schedule
Maximum Service Vehicles Summary Schedule—Directly Operated Service
Maximum Service Vehicles Summary Schedule—Purchased Transportation
Supplemental Information Schedule
Section 9 Statistics Summary

Capital Report Forms

Balance Sheet Summary Schedule
Capital Subsidiary Schedule—Sources of Public Capital Assistance

Revenue Report Forms

Revenue Summary Schedule
Revenue Subsidiary Schedule—Sources of Public Assistance

Expense Report Forms

Expenses Classified by Function
Operators Wages Subsidiary Schedule [1]
Fringe Benefits Subsidiary Schedule [1]
Pension Plan Questionnaire[1]

Non-Financial Operating Data Report Forms

Transit System Service Period Schedule
Revenue Vehicle Maintenance Performance and Energy Consumption Schedule
Transit Way Mileage Schedule
Transit System Employee Equivalent Schedule
Transit System Accidents Schedule
Transit System Service Supplied, Service Consumed, Service Personnel and Service Operated Schedule [2]
Revenue Vehicle Inventory Schedule

(3) The Section 15 Reporting System includes several data certification requirements.

(a) Financial Data Certification

Reporting agencies must submit with their Section 15 Report a letter or report signed by an independent public accountant or other responsible independent entity such as a State audit agency. This statement must attest to the conformity, in all material respects,

[1] Reporting agencies with 25 or fewer revenue vehicles for all modes directly operated in maximum service are not required to submit this Form.

[2] Reporting agencies that serve urbanized areas of less than 500,000 population, or reporting agencies in any size urbanized area that directly operate 50 or fewer revenue vehicles for all modes in maximum service, or purchased transportation services (i.e., private or public carriers providing transit service under contract to a public agency) except those purchased transportation services submitting separate Section 15 Reports are required to collect Service Consumed data for passenger miles using statistically valid sampling procedures meeting prescribed precision and confidence levels every third year, beginning with the 1987 reporting year.

of the financial data reporting forms in the Section 15 Report with the Uniform System of Accounts and Records and Reporting System. The letter or report shall also state whether any of the reporting forms do not conform to the section 15 requirements, and describe the discrepancies.

A reporting agency need not submit the above financial data certification if it meets the criteria in either Condition I or Condition II below.

Condition I. The financial data certification requirement is waived until further notice for those reporting agencies that have adopted the Uniform System of Accounts and Records, and have previously submitted a Section 15 Report compiled using the Uniform System of Accounts and Records and certified by an independent auditor. Instead, the CEO shall annually certify that the accounting system from which the Section 15 Report is derived follows the accounting system prescribed by the Section 15 Uniform System of Accounts and Records.

Condition II. The financial data certification requirement is waived until further notice for those reporting agencies that (1) use an internal accounting system other than the accounting system prescribed by the Uniform System of Accounts and Records, (2) use the accrual basis of accounting, (3) directly translate their system and accounting categories, via a clear audit trail, to the accounting treatment and categories specified by the Section 15 Uniform System of Accounts and Records, and (4) have previously submitted a Section 15 Report which was compiled using the same internal accounting system and translation to the Uniform System of Accounts and Records and which was certified by an independent auditor. Instead, the CEO shall annually certify that each of the above four criteria have been met.

UMTA reserves the right to periodically require independent financial data certifications from all section 15 reporting agencies on an as needed basis for reasons such as finding numerous reporting inaccuracies or as the result of implementing substantial changes to the Section 15 Uniform System of Accounts and Records and Reporting System.

A suggested form of a financial data certification letter or report follows:

"In connection with our regular examination of the financial statements of _____, for the year ended _____, on which we have reported separately under date of _____, we have also reviewed the reporting forms listed below and included in the _____ report for the year ended _____, required under section 15 of the Urban Mass Transportation Act, for conformity in all material respects with the requirements of the Urban Mass Transportation Administration as set forth in its applicable Uniform System of Accounts and Records and Reporting System. Our review for this purpose included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We did not make a detailed examination such as would be required to determine that each transaction has been recorded in accordance with the Uniform System of Accounts and Records.

List of Reporting Forms Being Reported Upon

Based on our review, in our opinion, the accompanying reporting forms identified above (except as noted below) conform in all material respects with the accounting requirements of the Urban Mass Transportation Administration as set forth in its applicable Uniform System of Accounts and Records and Reporting System."

(b) Section 9 Data Certification

Certification of the data used to apportion section 9 funds is required for section 15 reports covering 50 or more vehicles operated in maximum service by all modes that are in or serve urbanized areas with populations of 200,000 or more. All section 9 data (directly operated as well as purchased service) in the report will be certified. This section 9 data certification must be signed by an independent auditor. The data used to apportion section 9 funds are: directional route miles, vehicle revenue miles, passenger miles, and operating cost. The certification should discuss the following for *each* item to be used in the section 9 formula allocation:

—Verification that there is a system in place and maintained for recording data in accordance with section 15 definitions. Verify that the correct data are being measured and that there are no systematic errors.

—Verification that there is a system in place to record data on a continuing basis and that the data gethering is an ongoing effort.

—Verification that source documents are available to support the reported data and are maintained for UMTA review and audit for a minimum of 3 years following UMTA's receipt of the Section 15 Report. The data must be fully documented and securely stored.

—Verification that there is a system of internal controls to assure the accuracy of the data collection process and recording system and that reported documents are not altered. Verify that documents are reviewed and signed by a supervisor as required.

—Verification that the data collection methods are those suggested by UMTA, or have been approved by UMTA and/or a statistical expert as being equivalent in assuring quality and precision. Confirm the collection methods documented are being followed.

—Verification that the deadhead miles, computed by taking the difference between the reported "total actual vehicle miles" data and the reported "total actual vehicle revenue miles" data, appear to be accurate.

—Documentation of an analytic review of the reported data to confirm that data are consistent with prior reporting periods and other facts known about agency operations.

—Documentation of the list of specific documents examined and tests performed.

In addition, the section 9 certification should describe (1) the procedures for determining the above attestations and (2) how revenues were handled for purchased transportation, i.e., no revenues were retained by the contractor or that all revenues retained by the contractor were reported on Form 006.

(c) Independence of Certification

The above financial and section 9 data certifications must be made by an independent auditor. UMTA will determine independence by considering the criteria for independence as described in the *Standards For Audit of Governmental Organizations, Programs, Activities, and Functions,* developed by the Comptroller General.

(d) The Chief Executive Officer (CEO) Certification

The CEO of each reporting agency is required to submit a certification with each annual Section 15 Report. The certification must attest:

—To the accuracy of all data contained in the Section 15 Report;

—That all data submitted in the Section 15 Report are in accord with section 15 definitions;

—If applicable, that the reporting agency's accounting system used to derive all data submitted in the Section 15 Report is the Section 15 Uniform System of Accounts and Records and that a Section 15 Report using this system was certified by an independent auditor in a previous report year; and

—If applicable, the fact that the reporting agency's internal accounting system is other than the Uniform System of Accounts and Records, and that its: (i) Accounting system uses the accrual basis of accounting, (ii) accounting system is directly translated, via a clear audit trail, to the accounting treatment and categories specified by the Section

15 Uniform System of Accounts and Records, and (iii) accounting system and direct translation to the Uniform System of Accounts and Records are the same as those certified by an independent auditor in a previous reporting year.

A suggested form of a CEO section 15 certification statement follows:

"I hereby certify to the following concerning the financial and non-financial/operating data submitted in the (name of agency's) Section 15 Report for its fiscal year ending _____:

1. The financial and non-financial/operating data (a) are accurate and truthful records of the financial transactions and operations of the (name of agency) and (b) conform, in all material respects, with the accounting and definitional requirements of the Urban Mass Transportation Administration's (UMTA) Uniform System of Accounts and Records and Reporting System.

2. The verifications below pertain to *each data item* to be used in the section 9 formula allocation. (These data include directional route miles, vehicle revenue miles, passenger miles and operating costs.) Discuss the following for each data item:

a. Verification that there is a system in place for recording data in accordnce with UMTA definitions. Verify that the correct data are being measured (e.g., vehicle revenue miles as opposed to total vehicle miles) and that there are no systematic errors (i.e., all data are recorded).

b. Verification that there is a system to record data on a continuing basis and that data gathering is an ongoing effort.

c. Verification that source documents are available to support the reported data and are maintained for a minimum of three years. The data must be fully documented and securely stored.

d. Verification that there is a system of internal controls to assure the accuracy of the data collection process and recording system and that reported documents are not altered. Verify that documents are reviewed and signed by a supervisor as required.

e. Verification that the data collection methods are those suggested by UMTA or equivalent. Verify that UMTA standards for precision and accuracy are satisfied in that the sampling technique has either been approved by UMTA or in advance of the UMTA approval by a statistical expert serving the agency. Confirm the collection methods documented are being followed.

f. Verification that the data are accurate. Documentation of an analytic review of the reported data to confirm that data are consistent with prior reporting periods and other facts known about agency operations.[1]

3. The accounting system from which this Section 15 Report is derived follows the accounting system prescribed by the Section 15 Uniform System of Accounts and Records. The (name of agency) has adopted the Uniform System of Accounts and Records and has previously submitted a Section 15 Report for its fiscal year ending _____ which was compiled using the Uniform System of Accounts and Records and which contained an independent auditor's section 15 financial data certification signed by (name of independent auditor) and dated _____.[2]

4. The (name of agency)'s internal accounting system is other than the accounting system prescribed by the Uniform System of Accounts and Records but uses the accrual basis of accounting and is directly translated, via a clear audit trail, to the accounting treatment and categories specified by the Section 15 Uniform System of Accounts and Records. The (name of agency) has previously submitted a Section 15 Report for its fiscal year ending _____ which was compiled using the same internal accounting system and translation to the Uniform System of Accounts and Records and which contained an independent auditor's section 15 financial data certification signed by (name of independent auditor) and dated _____.[2]

Signed: _____

Date: _____

(4) All reporting agencies must submit with their annual Section 15 Report a statement from their local Metropolitan Planning Organizations providing the agencies' operational service area square miles and operational service area populations. Rational planning procedures must be used to determine the operational service area and these procedures shall be described in the statement.

Issued on: September 17, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

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BILLING CODE 4910-7-M

[1] Paragraph 2 is applicable only for reporting agencies that are in or serve urbanized areas with populations of 200,000 or more.

[2] Paragraph 3 or 4 may be included for reporting agencies which meet the applicable criteria and in lieu of an independent auditor's financial data certification.

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

[Docket No. 86-F]

Changes to Section 15, Uniform System of Accounts and Records and Reporting System

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final notice of changes to the Uniform System of Accounts and Records and Reporting System.

SUMMARY: In this document, UMTA announces several changes to the Section 15 Uniform System of Accounts and Records and Reporting System. The intent of these changes is to streamline data collection, recordkeeping, and reporting requirements by reducing reporting agencies' burdens while improving data reliability.

EFFECTIVE DATE: These changes are effective October 26, 1987, and apply to all section 15 reporting years beginning with 1988. The 1988 reporting year covers local transit agencies fiscal years ending on or between January 1, 1988 and December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Wilson, Chief, Audit Review and Analysis Division, Office of Grants Management, Urban Mass Transportation Administration, 400 Seventh Street, SW., Room 9315, Washington, DC 20590, (202) 366-1610.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 1986, UMTA issued a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (51 FR 17144) which requested comments on sevewral proposed changes to the Uniform System of Accounts and Records and Reporting System. Both Systems implement section 15 of the Urban Mass Transportation Act of 1964, as amended (UMT Act), which requires applicants and direct beneficiaries of funding under section 9 of the UMT Act to maintain and report uniform financial and operating information.

At the same time UMTA issued another NPRM in the **Federal Register** (51 FR 17145), which proposed a complete revision of the regulation which implements section 15, 49 CFR Part 630. Those changes to the regulation are procedural and are contained in a Final Rule published elsewhere in the **Federal Register** today as a new Part 630.

This document, in contrast, is not a Final Rule, but a Final Notice of Changes, all of which are included in the Reference Volumes, and sometimes also in the Appendix of the new Part 630 if appropriate. "Reference Volume(s)" means the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records, which is composed of Volume I—General Description; Volume II—Uniform System of Accounts and Records; and Reporting Manual and Sample Forms (All Reporting levels). These Volumes describe transit agencies section 15 recordkeeping and reporting requirements and are subject to periodic revision.

In general, the changes published in this document are intended to streamline data collection, recordkeeping, and reporting requirements by reducing reporting agencies' burdens while improving data reliability.

The NPRM proposed seven changes. The comments received and the final decisions made with respect to those changes are summarized below.

II. Summary of Comments and Final Changes

UMTA received 19 written comments in response to the NPRM. Comments were submitted by 15 transit operating agencies, two transportation authorities, one state Department of Transportation, and one public transit trade organization. The comments generally supported the proposed changes.

A. Metropolitan Planning Organization Data

The NPRM proposed to eliminate the requirement that Metropolitan Planning Organizations (MPO) submit user surveys, measures of walking accessibility, and demographic data. Instead of this requirement, the NPRM proposed that each reporting agency submit, along with its annual Section 15 Report, a statement from the local MPO stating the square miles of the reporting agency's service area and its population. Of the comments received, 14 agreed with this proposed change and none disagreed. Substantive comments included a request to clarify the "service area" in terms of legal or operational area and concerns that UMTA should not consider a Section 15 Report as late or incomplete if the MPO statement is not submitted by the due date since the reporting agency cannot control the timely submission of data by another organization.

UMTA has addressed these concerns as follows: First, failure of a reporting agency to submit the MPO statement will not be treated either as a late report or a failure to report data under § 630.5 or § 630.6 of the Final Rule published elsewhere today in the **Federal Register.**

Second, the requirement that MPOs submit user surveys, measures of walking accessibility, and demographic data in current § 630.12(a)(7)(i), is eliminated. In place of this requirement, each reporting agency must submit, along with its annual Section 15 Report, a statement from the local MPO stating the square miles of the reporting agency's operational service area and its population. Finally rational planning procedures must be used to determine the operational service area and these procedures shall be described in the statement. The MPO statement is also described in Appendix A of the new Final Rule and in the Reference Volumes.

B. Service Consumed Data for Twenty-Five or Fewer Vehicles and for Purchased Transportation Services.

The NPRM proposed to elminate the reporting requirement for service consumed (unlinked passenger trip and passenger mile) data for reporting agencies with 25 or fewer revenue vehicles operated in maximum service and for all purchased transportation service (i.e., private or public carriers providing transit service under contract to a public agency). It should be noted that 25 or fewer revenue vehicles "operated in maximum service" refers to all vehicles directly operated by the reporting agency and not to the number of vehicles in each separate mode operated by the agency. Of the comments received, 12 agreed with this proposed change and two disagreed. Major substantive comments concerned: (a) Some confusion as to whether the passenger mile data for the affected agencies may be submitted for use in the section 9 formula allocation; and (b) the impact on the national transit ridership data base as a result of eliminating this data.

UMTA has considered these comments and has decided that for policy reasons it must continue to require the reporting of unlinked passenger trip and passenger mile data from all section 15 reporting agencies. However, in order to reduce the data collection burden, UMTA has decided that it will not require annual statistical sampling for collecting passenger mile data for reporting agencies that serve urbanized areas of less than 500,000 population, or reporting agencies that directly operate 50 or fewer revenue vehicles for all modes in maximum service in any size urbanized area, or purchased transportation services except those purchased transportation

services submitting separate Section 15 Reports. Rather, these agencies will be required to conduct samples on which to estimate passenger miles meeting the required confidence and precision levels once every three years. Data for intermediate years may be estimated using the average trip length factor derived from the sample drawn each third year. UMTA will use intermediate year estimates of passenger mile data in the incentive tier of the section 9 apportionment formula since these agencies represent a very small portion of the incentive tier, i.e., less than 5% of the passenger mile data. The mandatory years for the affected agencies are the 1987 reporting year, 1990 reporting year, 1993 reporting year, etc.

UMTA has made this policy decision because the passenger mile data from .these reporting agencies, while representing about 5% of the national data base, will reduce burden for over half the reporting agencies. Research on the impact this relaxation of statistical sampling requirements has on the accuracy of passenger mile data reported will guide the further extension of this policy.

Therefore, the requirement that passenger mile data be collected using statistically valid sampling procedures meeting prescribed precision and confidence levels is mandatory only every third year for:

- Reporting agencies that serve urbanized areas of less than 500,000 population; or
- Reporting agencies in any size urbanized area that directly operate 50 or fewer revenue vehicles for all modes in maximum service; or
- Purchased transportation services except those purchased transportation services submitting separate Section 15 Reports.

UMTA will allow the use of this passenger mile data in the incentive tier of the section 9 apportionment formula where it is valid and applicable. This change is reflected in the Appendix of the Final Rule which revises Part 630 and in the Reference Volumes.

C. Elimination of Section 5 Reporting Requirements

The NPRM proposed to eliminate the section 5 apportionment factors reporting requirements now set out in Subpart D of Part 630. The section 5 formula grants program has been phased out and replaced with the section 9 program as a result of the 1982 Surface Transportation Assistance Act (STAA). UMTA already has effectively eliminated the reporting requirements of Subpart D through issuance of superseding Circulars; the deletion of Subpart D would simply conform the rule to current UMTA practice.

Of the comments received, 16 agreed with this proposed change and none disagreed. There were no major substantive comments. UMTA has decided to finalize this change as proposed in the NPRM.

D. Capacity Mile Data

The NPRM proposed to eliminate the requirement that Section 15 Reports contain capacity mile data. Of the comments received, 16 agreed with this proposed change and none disagreed. There were no major substantive comments, yet UMTA has reconsidered the elimination of capacity mile data. Since capacity mile data provide important information and have a negligible impact on section 15 reporting costs, UMTA has decided that for internal policy analysis purposes it will continue to require the reporting of capacity mile data. However, since most analyses utilize annual estimates of capacity miles, UMTA has decided to require reporting of capactiy mile data by *annual totals only* and to eliminate the reporting of capacity mile data by the following sparate days of week and times of day: Average weekday a.m. peak, average weekday midday, average weekday p.m. peak, average weekday other, average weekday total, average Saturday total, and average Sunday total. UMTA is considering a better method to measure and define transit utilization and may replace the capacity mile data requirement with an improved data item in the future.

Therefore, the requirement that Section 15 Reports contain capacity mile data by day of week and time of day is eliminated. Capacity mile data are required by annual totals only. This information is currently reported on Forms 406 and 407, entitled "Transit System Service Supplied, Service Consumed, Service Personnel, and Service Operated Schedule (Rail and Non-Rail Modes)" in the reporting manual of the Reference Volumes and will be changed accordingly.

E. Passenger Mile Data by Average Weekday Time Periods Eliminated

The NPRM proposed to eliminate the requirement (also on Forms 406 and 407) that "unlinked passenger trips" and "passenger mile" data be reported separately by the following average weekday time periods: Average weekday a.m. peak, average weekday midday, average weekday p.m. peak, and average weekday other. Instead, UMTA proposed that the reports reflect only the average weekday total, and would continue to include the average Saturday total, average Sunday total, and annual total. Of the comments received, 15 agreed with this proposed change and none disagreed. There were no major substantive comments. UMTA has decided to finalize this change as proposed for passenger mile data only. UMTA has reconsidered the importance of collecting unlinked passenger trip data by average weekday time periods and has decided to keep this reporting requirement. UMTA believes that elimination of these data would reduce the utility of the section 15 data base without achieving significant cost savings for reporting agencies. The data are used to measure the peaking characteristics of demand, to analyze disparities between supply and demand, to identify potential areas for cost savings, to develop efficient pricing policies, and to distribute optimally fleet and labor resources. Since providing average weekday breakdowns of unlinked passenger trip data is not excessively burdensome for reporting agencies and since this information will represent the only source of national time period ridership data, UMTA has decided not to eliminate the collection and reporting of unlinked passenger trip data by separate average weekday time periods.

Therefore, the requirement in Forms 406 and 407 of the reporting manual in the Reference Volumes that "passenger miles" data be reported separately by the following average weekday time period breakdowns is eliminated: Average weekday a.m. peak, average weekday midday, average weekday p.m. peak, and average weekday other.

F. Chief Executive Officer Certification

The NPRM proposed that the Chief Executive Officer (CEO) of each reporting agency be required to submit a certification with each annual Section 15 Report. Of the comments received, 14 agreed with this proposed change and none disagreed. There were no substantive comments submitted. UMTA has decided to finalize this change as proposed with one adjustment to accommodate the revision in a proposed change as described below.

The CEO certification must attest to:

(1) The accuracy of all data contained in the Section 15 Report;

(2) The fact that all data submitted in the Section 15 Report are in accord with section 15 definitions;

(3) If applicable, the fact that the reporting agency's accounting system used to derive all data submitted in the Section 15 Report is the Section 15 Uniform System of Accounts and Records; and

(4) If applicable, the fact that the reporting agency's internal accounting system is other than the Uniform System of Accounts and Records, and (i) its accounting system uses the accrual basis of accounting, (ii) its accounting system is directly translated via a clear audit trail, to the accounting treatment and categories specified by the Section 15 Uniform System of Accounts and Records, and (iii) the reporting agency's accounting system and direct translation to the Uniform System of Accounts and Records are the same as those certified by an independent auditor in a previous reporting year.

The NPRM proposed a suggested form for the certification. The suggested form was modified slightly regarding section 9 data items and is now incorporated in the Appendix of the Final Rule which revises Part 630 and in the Reference Volumes.

G. Financial Data Certification by Independent Auditor

The NPRM proposed to eliminate the annual independent auditor's financial data certification requirement for a reporting agency if it has adopted the Uniform System of Accounts and Records and has previously submitted a Section 15 Report using the Uniform System of Accounts and Records and certified by an independent auditor. Instead, the NPRM proposed that the CEO would annually certify that the accounting system from which the Section 15 Report is derived follows the accounting system prescribed by the Section 15 Uniform System of Accounts and Records. Of the comments received, 13 generally agreed with this proposed change and 1 disagreed. Several suggested that the proposed change should also apply to those transit agencies which are certified as using an accounting system other than the Uniform System of Accounts and Records and yet are able to directly translate their system to the accounting treatment specified in the Section 15 Uniform System of Accounts and Records.

UMTA has considered these comments and has decided that the annual financial data certification requirement from an independent auditor is waived until further notice for those reporting agencies which meet either of the following sets of criteria:

1. The financial data certification requirement from an independent auditor is waived until further notice for a reporting agency that has adopted the Uniform System of Accounts and Records, and has previously submitted a Section 15 Report compiled using the Uniform System of Accounts and Records and certified by an independent auditor. However, the *CEO* must annually certify that the accounting system from which the Section 15 Report is derived follows the accounting system prescribed by the Section 15 Uniform System of Accounts and Records.

2. The financial data certification requirement by an independent auditor is waived until further notice for a reporting agency if it uses an internal accounting system other than the accounting system prescribed by the Uniform System of Accounts and Records if it: (i) Uses the accrual basis of accounting, (ii) can directly translate its system and accounting categories, via a clear audit trail, to the accounting treatment and categories specified by the Section 15 Uniform System of Accounts and Records, and (iii) has previously submitted a Section 15 Report which was compiled using the same internal accounting system and translation to the Uniform System of Accounts and Records and was certified by an independent auditor. However, the CEO must annually certify that each of the above criteria have been met.

Further, UMTA has decided to reserve the right to periodically require independent auditors' financial data certifications from any section 15 reporting agency if there are suspected reporting inaccuracies or in order to see if required substantial changes to the Reference Volumes have been made.

H. Section 9 Data Certification by Independent Auditor

In contrast to the procedures for financial data certification discussed above, it should be noted that the final rule continues the certification of Section 9 data in Section 15 reports covering 50 or more vehicles operated in maximum service by all modes in urbanized areas over 200,000.

Issued on: September 17, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

[FR Doc. 87-21968 Filed 9-24-87; 8:45 am]

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September 25, 1987

Part VI

Department of Transportation

Research and Special Programs Administration

Hazardous Materials; Illinois Fee on Transportation of Spent Nuclear Fuel; Inconsistency Ruling; Wisconsin Electric Power Co. et al.; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-34]

State of Illinois Fee on Transportation of Spent Nuclear Fuel; Inconsistency Ruling; Wisconsin Electric Power Co. et al.

AGENCY: Research and Special Programs Administration; DOT.

ACTION: Decision on appeal.

SUMMARY: In response to the appeals of the Department of Energy, the Wisconsin Electric Power Company and the Electric Utility Companies' Nuclear Transportation Group from the findings made in Inconsistency Ruling No. IR-17 (51 FR 20926; June 9, 1986), that Inconsistency Ruling is affirmed.

EFFECTIVE DATE: September 18, 1987.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel: 202/366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)) expressly preempts any requirement of a state or political subdivision thereof, which is inconsistent with any requirement of the HMTA or the Hazardous Materials Regulations (HHMR), issued thereunder (49 CFR Parts 171-179). Section 107.209 (c) of Title 49, Code of Federal Regulations set forth the following factors which are considered in determining whether a state or political subdivision requirement is inconsistent: (1) Whether compliance with both the state or political subdivision requirement and the HMTA and the HMR is possible (the "dual compliance" test); and (2) the extent to which the state or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings and decisions on appeals of such rulings only address preemption issues under the HMTA and the HMR. They do not address issues of preemption arising under other statutes or under the Commerce Clause of the United States Constitution.

On March 21, 1985, the Wisconsin Electric Power Company (WEPCO) applied for an administrative ruling on the question of whether an Illinois statutory transportation fee of $1,000 per cask of spent nuclear fuel traversing the state is inconsistent with, and thus preempted by, the HMTA or the HMR. The transit fee is part of Illinois' Nuclear Safety Preparedness Program.

II. The Inconsistency Ruling (IR-17)

On June 4, 1986, the Director, Office of Hazardous Materials Transportation (OHMT) issued Inconsistency Ruling 17 (IR-17), which was published at 51 FR 20926 on June 9, 1986. That ruling determined that the Illinois transit fee is not inconsistent with the HMTA or the regulations issued thereunder.

III. The Appeals of IR-17

On September 3, 1986, pursuant to 49 CFR 107.211, appeals of IR-17 were filed with the Administrator of the Research and Special Programs Administration by the Electric Utility Companies' Nuclear Transportation Group (the Group), the Department of Energy (DOE) and Wisconsin Electric Power Company (WEPCO) (which merely adopted and incorporated by reference the Group's brief).

The appellants made the following arguments:

(1) the OHMT allegedly failed to attribute appropriate importance to the potentially substantial cumulative effects of the adoption of escalating fee requirements by many States, including the likelihood that fee that will support practices that DOT has already found to be inconsistent with the HMTA and the OHMT decision allegedly enhances undesirable multiplicity and cannot be reconciled with the decision in IR-15.

(2) OHMT allegedly failed to examine the extent to which Illinois is uniquely burdened with respect to spent fuel shipments and the implications of singling out spent fuel shipments from all other hazardous materials shipments for discriminatory treatment.

(3) OHMT allegedly did not adequately explore the potential for delay inherent in the duplicative and time-consuming Illinois inspection and escort programs, such delay being inconsistent with the provisions of the HMTA and the HM-164 rule on highway routing of radioactive materials.

(4) OHMT's decision allegedly undercuts the ability of the DOE to negotiate appropriate arrangements with states under the Nuclear Waste Policy Act (NWPA).

(5) The Illinois transit fee allegedly fails the "obstacle" test by redirecting, restricting, and delaying shipments of spent fuel, thereby undermining the national transportation safety system carefully developed by DOT.

On September 29, 1986, RSPA published a public notice and invitation to comment on these appeals (51 FR 34527). A correction was published on October 8, 1986 (51 FR 36125). In response, comments were submitted by the City of New York Department of Environmental Protection (DEP), DOE, Duke Power Company, the Environmental Defense Fund (EDF), the Pennsylvania Emergency Management Agency (EMA), the State of Colorado, the State of Illinois, the State of Washington Nuclear Waste Board (NWB), the University of Missouri Research Reactor Facility, and Washington State Senator Sam C. Guess (two comments).

Subsequently, rebuttal comments were filed by DOE, EDF, the Group, the New Mexico Environmental Improvement Division, the State of Illinois, and the Wisconsin Radioactive Waste Review Board.

IV. Decision on Appeal

I have fully considered all of the issues raised in the appeals and the discussion of them in the comments and rebuttal comments. Many of the issues being appealed were discussed exhaustively by the Director of OHMT in IR-17. I will respond only to the specific issues raised on appeal and generally will not reiterate the Ruling's discussions, with all of which I fully concur.

Although all major issues and arguments raised by appellants and other commenters are summarized, I have not responded to or commented on many of those which are irrelevant to my decision. My silence concerning any issue or argument should not be construed as agreement or disagreement with them.

I will discuss and decide each of the issues raised by the Group and DOE and described above in section III.

(1) *The OHMT allegedly failed to attribute appropriate importance to the potentially substantial cumulative effects of the adoption of escalating fee requirements by many States, including the likelihood that fees will support practices that DOT has already found to be inconsistent with the HMTA. The OHMT decision allegedly enhances undesirable multiplicity and cannot be reconciled with decision in IR-15.*

(a) Appellants' Arguments.

The Group argues that IR-17 fails to give adequate consideration to the possibilities of many states imposing fees, their increasing the amounts of the fees, their applying them to types of radioactive materials other than spent

nuclear fuel, and their use of the fees for activities inconsistent with the HMTA. It contends that RSPA must consider the precedential effect of its decision and is not precluded from doing so by Commerce Clause cases cited by other commenters. DOE adds that IR–17 enhances multiplicity and undermines the national transportation scheme as much as the indistinguishable Vermont transit fee which was found inconsistent in IR–15.

The University of Missouri expresses its concerns about the impact of possible $1,000 transit fees in each of six states its casks traverse during routine Missouri-to-South Carolina shipments. Washington State Senator Sam C. Guess observes that within eight to ten years after a single state adopts a restrictive tax or regulation a majority of the states do likewise.

DOE states that Oregon, Colorado, Pennsylvania, and Minnesota have enacted transit fees for spent nuclear fuel and that Washington and Wisconsin are considering similar measures.

Duke Power states that IR–17, "encourages the kind of multiplicity of conflicting state and local regulations which congress had sought to avoid in enacting the HMTA."

(b) Appellees' Arguments

In response, Illinois and Pennsylvania EMA cite *Evansville-Vanderburgh Airport Authority Dist. v. Delta Airlines, Inc.*, 415 U.S. 707 (1972) and *New Hampshire Motor Transport v. Flynn*, 751 F.2d 43 (1st Cir. 1984) for the proposition that the "cumulative effect" analysis is not to be used in determining whether state and local transportation fee systems are preempted by Federal regulation. They contend that the Group's "cumulative effect" argument is speculative, without support and wholly at odds with prevailing law. Similarly, Wisconsin argues that a state regulation cannot be overturned on the basis of speculation concerning regulations other states may adopt.

To the argument that other states will be encouraged by IR–17 to adopt inconsistent regulations, Illinois responds:

> The existence of a validly appropriate and consistent program in Illinois cannot be rendered invalid, inappropriate and inconsistent by virtue of other jurisdictions adopting other, inconsistent programs.

New York City DEP contends that there is no evidence of harmful effects of "cascading" fees on transportation safety and that if there were RSPA could solve the problem with its rulemaking authority.

Colorado argues that the cumulative effect issue is not a cognizable preemption issue and that DOT lacks jurisdiction to consider the issue. EDF adds that the issue of alleged discrimination is irrevelant.

EDF also contends that the absence of a comprehensive Federal program, for inspections and emergency response training sufficient to ensure that all spent fuel shipments arrive safely at their destinations, justifies states' financing their own inspection and escort programs.

(c) Administrator's Decision

The issue in this proceeding is the consistency of Illinois' transit fee with the HMTA and the HMR. Whether other states are likely to adopt similar transit fees is irrevelant to the determination of whether such fees are consistent. The impact of widespread adoption of such fees is a "burden on commerce" issue which would be relevant to Commerce Clause litigation and in waiver-of-preemption proceedings under section 112(b) of the HMNTA (49 App. U.S.C. 1811(b)) but is not relevant in inconsistency proceedings under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). If Illinois' transit fee is consistent in all repects with the HMTA and the HMR, then identical transit fees adopted in other states also are likely to be consistent with the HMTA. Likewise, if Illinois' transit fee is inconsistent with the HMTA or the HMR, then identical transit fees adopted in other states are likely to be similarly inconsistent.

There was an extensive discussion of this issue in IR–17:

> Next, WEPCO argues that if Illinois can impose a transit fee, other jurisdictions can and will do so; and the cumulative effect will be far greater than that of the Illinois requirement alone. To some extent, this echoes language which the Department has used in prior inconsistency rulings. (See e.g.—IR–6, 48 FR 760, 765 "If the approach taken by Covington were deemed an appropriate local activity, it would be no less so for Covington's neighbors * * *"; also IR–10, 49 FR 46645, 46647 ["] * * * if one State may use insurance requirements to deflect interstate carriers of hazardous materials into other jurisdictions, then all States may [do] so.") The Department, however, has never relied on the potential cumulative effect of a requirement as a basis for finding inconsistency. Rather, the Department has used this device to illustrate more effectively the adverse impact of a requirement already found to be inconsistent. In its first inconsistency ruling (IR–1, 43 FR 16954, April 20, 1978), the Department found no Federal requirement under the HMTA with which to compare a New York City transportation ban for inconsistency and acknowledged the great likelihood that other jurisdictions would enact similar restrictions, the cumulative effect of which could seriously impact transportation safety. Because of the potential cumulative effect, the Department announced that it would initiate rulemaking to address the problem. This, and not a finding of inconsistency, was the response to anticipated cumulative effect.

51 FR 20934. I agree with and affirm that language.

Furthermore, IR–15 and IR–17 are not irreconcilable. The virtually identical Vermont transit fee found inconsistent in IR–15 (49 FR 46660; Nov. 27, 1984) was used to fund a state program permeated with requirements found to be inconsistent with the HMTA and the HMR. The transit fee at issue here, conversely, is used to fund a state program which, as found in IR–17 and affirmed below, is consistent with the HMTA and the HMR. As discussed in IR–17, Illinois requires the transporter simply to pay a fee; but Vermont, on the other hand, had a permitting system involving a detailed application, administrative processing by the State and affirmative action by the State to grant written approval, provisions which were inconsistent under the obstacle test. 51 FR 20932.

Therefore, because the multiplicity issue is irrelevant to a determination of inconsistency and IR–15 is distinguishable, I find no merit in appellants' first argument.

(2) *OHMT allegedly failed to examine the extent to which Illinois is uniquely burdened with respect to spent fuel shipments and the implications of singling out spent fuel shipments from all other hazardous materials shipments for discriminatory treatment.*

(a) Appellants' Arguments

The Group contends that there has been no showing that Illinois is unique among the states with respect to the transportation of spent nuclear fuel, and also no justification for imposition of the transit fee on spent fuel but not on other hazardous materials.

DOE argues that Illinois unfairly has singled out radioactive materials transportation, which DOE contends presents risks less than those for other hazardous materials. Duke Power also complains of discrimination against a particular type of hazardous waste transportation.

In support of its position that there is no rational basis for Illinois' singling out radioactive materials for different treatment, the Group quotes IR–15: "On the basis of both shipment frequency and accident history, spent nuclear fuel poses a much lower risk of transportation accident than do any number of common chemicals * * *" 49

FR 46664. It also quotes a Congressional Office of Technology Assessment report on "Transportation of Hazardous Materials," which concluded that "* * * technical evidence and cask performance in service indicate that NRC performance standards yield spent fuel shipping cask design specifications that provide for a very high level of public protection—much greater than that afforded in any other current hazardous materials shipping activity."

(b) Appellees' Arguments

Illinois responds that its "unique" status in terms of exposure to radiological risk is totally irrelevant to the decision; it says that "no analysis of Illinois' uniqueness is required to support IR–17, because the opinion is not based on a finding that Illinois constitutes a 'unique exception' ".

New York City DEP and Pennsylvania EMA contend that Illinois' uniqueness should not be an issue since RSPA has long recognized (citing IR–2, 44 FR 75566 at 75568; Dec. 20, 1979) that states and localities must have flexibility to tailor their emergency response programs to their individual needs.

Illinois' response to the arguments concerning alleged discrimination against radioactive materials transportation is that the state's program rests upon a rational distinction between radioactive waste in particular and hazardous materials generally. It contends that the U.S. Supreme Court has permitted states to establish rational classifications and cites a Federal court decision for the proposition that a "State is not required to address all of the problems inherent in hazardous materials transportation in order for its enactments to be given effect." *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509, 521 (R.I. 1982), aff'd 698 F.2d 559 (1st Cir. 1983). It points out that Federal laws and regulations similarly treat radioactive materials differently than hazardous materials generally.

New York DEP asserts that the issue of which category of materials a state chooses to regulate is immaterial and that the issue is whether the fee itself is consistent with Congress' objectives in enacting the HMTA.

Colorado, on the other hand, turns the appellants' argument around and contends that Illinois' addressing "the unique problems raised by the transportation of nuclear materials" is not unlike the HMR. It says:

> DOT has implicitly, if not explicitly, recognized these problems by mandating specific requirements for radiological materials in the HMR. E.g., Subpart I, Part 173 of 49 C.F.R., and 49 C.F.R. Section 173.825. Rather than being inconsistent with the HMTA or the HMR, Illinois' program furthers its goals.

(c) Administrator's Decision

Illinois' uniqueness and its distinct treatment of spent fuel shipments are both irrelevant to the issue at hand: consistency of Illinois' transit fee with the HMTA and the HMR.

Although exceptional or special circumstances are required to be demonstrated by a state or local government seeking a waiver of preemption for an inconsistent and otherwise preempted requirement, Nonpreemption Determination No. 1 (NPD–1, 50 FR 37308 (Sept. 12, 1985), affirmed 51 FR 47182 (Dec. 30, 1986), there is no such issue or burden in inconsistency proceedings. There is no requirement that Illinois demonstrate exceptional or unique circumstances in order for its requirements to be found consistent with the HMTA and the HMR.

Illinois' selectivity in imposing a transit fee on spent nuclear fuel shipments, while not imposing a similar fee on other hazardous materials shipments, likewise is not a relevant issue in this proceeding. The State uses the fee to support its radioactive materials transportation inspection, escort and emergency response programs, which, as discussed below, are consistent with the HMTA and the HMR.

As numerous commenters aptly indicated, there is ample precedent for separate and more rigorous regulation of the transportation of radioactive materials. For example, Subpart I of Part 173 of the HMR (49 CFR 173.401 *et seq.*) prescribes numerous detailed requirements specifically and solely for the transportation of radioactive materials. These include such requirements as those for radiation level limitations (§ 173.441), thermal limitations (§ 173.442), and contamination control (§ 173.443). In addition, § 173.22 requires shippers of fissile radioactive materials and of Type B or highway route controlled quantity packages of radioactive materials to notify consignees of the dates of shipment and expected arrival of such materials. Section 177.825 specifies general routing requirements for all placarded radioactive materials and a specific routing rule for highway route controlled quantity shipments, such as spent fuel; it also contains specific driver training requirements applicable when highway route controlled quantity radioactive materials are being transported. For shipments of highway route controlled quantities of radioactive materials, the shipper must file with RSPA a route plan (including changes thereto); information on the shipper, carrier and consignee; and a copy of the shipping paper. § 173.22(d). All of these requirements are unique to radioactive materials, some of them unique to the type of radioactive materials regulated by Illinois.

The transportation of radioactive materials is regulated by both RSPA and the NRC, and RSPA's incorporation by reference of many NRC requirements creates a distinctive regulatory regime with respect to their transportation. For example, § 173.22(c) requires the shipper of irradiated reactor fuel to provide physical protection in compliance with a plan established under NRC requirements or equivalent requirements approved by RSPA. Section 177.825(e) allows variation from the requirements of § 177.825 when necessary to meet requirements imposed by the NRC in 10 CFR Part 73. The uniqueness of the regulation of radioactive materials transportation is further demonstrated by the existence of a DOT/NRC Memorandum of Understanding on the subject. In fact, it is probable that the existence of all these unique requirements is a significant reason for the lower risk of accidents involved in the transportation of radioactive materials which was referred to in IR–15 (49 FR 46664) and cited by the Group. Although the existence of these requirements may result in greater Federal preemption of substantive requirements regarding radioactive materials transportation than of hazardous materials transportation generally, their existence does not result in preemption of state requirements which enhance their enforcement. In carrying out its radioactive materials inspection and escort programs in consonance with RSPA's and NRC's regulations, therefore, Illinois is acting in a rational and legal manner.

In summary, neither the uniqueness of radioactive materials transportation in Illinois nor Illinois' treatment of that transportation in a manner distinct from that of other hazardous materials to transportation is relevant to a determination of consistency. These arguments do not demonstrate how any goal of the HMTA or the HMR is being impaired and thus provide no basis for reversal of IR–17.

(3) *OHMT allegedly did not adequately explore the potential for delay inherent in the duplicative and time-consuming Illinois inspection and escort programs, such delay being inconsistent with the provisions of the*

HMTA and the HM–164 rule on highway routing of radioactive materials.

(a) Appellants' Arguments

Both the Group and DOE assert that the Ruling below improperly failed to consider the potential as well as observed delaying effects of Illinois' fee, inspection and escort requirements, as well as the potential delays associated with multiple inspections and escort programs conducted by other states along multi-state routes. DOE says that OHMT has not reconciled how the fee can support time-consuming and duplicative inspections and still not result in delays; it questions the validity of the inspections.

The University of Missouri indicates its shipments experience a delay at each Illinois inspection of 1.5 to 2 hours, or 30% of its scheduled 5-hour transit of Illinois. DOE cites other delayed shipments (including those from Surrey, Virginia) due to delays in the arrival of escorts.

In support of its position, DOE quotes from the preamble to HM–164:

> Lastly, because of the importance of expediting radioactive materials shipments, due to the risk and added normal dose attendant to delay, other forms of State and local regulation that affect motor carriers of radioactive materials should not result in unnecessary delay (see 177.853(a)). A delay is unnecessary unless it is required by an exercise of State and local regulatory authority over a motor vehicle that so clearly supports public health and safety as to justify the safety detriment and burden on commerce caused by the delay (such as in an emergency). 46 F.R. 5315, January 19, 1981.

DOE indicates that Illinois is conducting two inspections of Three Mile Island (TMI) spent waste shipments in addition to five-party inspections at TMI; state inspections in Ohio, Indiana, and Missouri; and destination inspections in Idaho by DOT and DOE. It concludes that the Illinois inspections are duplicative and unnecessary and do not meet the quoted standard. It also argues that the escort requirements carry the potential for forbidden delays.

(b) Appellees' Arguments

Illinois responds that IR–17 properly examined the actual workings of the Illinois program and properly concluded that it does not delay shipments but is consistent with the goals and requirements of the HMTA. It cites a "well established principle of law" that a statute is interpreted in accordance with how it is actually enforced and cites *Jones* v. *Rath Packing Co.*, 430 U.S. 519 (1977) for that proposition. EDF cites an HMTA case for the same principle (*National Tank Truck Carriers, Inc., and Ritter Transportation, Inc.*, v. *City of New York*, 677 F.2d 270, 274 (2d Cir. 1982), *cert. den.* 104 S. Ct. 1403 (1982)).

Illinois also cites a DOE spokesman's public statement that Illinois has "a very effective inspection program."

Wisconsin asserts that appellants' arguments on delay are speculative and essentially are unsupportable contentions that fees supporting state regulatory programs are inconsistent *per se*. In response to the University of Missouri's statements about delays its shipments have experienced, Illinois states that the delays were partially due to failure of those shipments to comply with Federal notification and documentation requirements. It says that these violations were discovered as a result of the Illinois inspection program supported by its transit fee and adds that these types of reasonable delays guarantee compliance with the HMTA's objectives. Similarly, it states that the Surrey, Virginia shipment delays involved shipment documentation problems and discrepancies and "major violations." Illinois cites the following IR–17 language:

> From an examination of the record, it appears that the only highway shipments where movement is restricted in Illinois are those which have been found to be in violation of applicable Federal safety standards. This is not the sort of significant restriction which the Department considers to be inconsistent with the HMTA. Rather, it is precisely the sort of state action which the Department endorses as sound enforcement policy.
>
> 51 FR 20929.

Concerning DOE's assertions that Illinois was conducting two inspections of each TMI shipment, Illinois says that it conducted only a single entry inspection, that the East St. Louis, Illinois inspections were done by Missouri as its entry inspection, and that Illinois provided Missouri with instruments, data and technical health physics assistance. It concludes that "Illinois' cooperation and assistance to another state to ensure safe, speedy, and accurate inspections should not be used to argue that Illinois program causes delay, confusion, and multiplicity."

Pennsylvania EMA also says the "potential delay" argument is speculative. It also contends that the Illinois statute and the possibility of other states' enactment of similar laws create an incentive for DOT and DOE to develop a Federal/state partnership in the area of hazardous materials transportation inspections.

New York City DEP cites 49 CFR 177.853 for the proposition that RSPA is concerned about "unnecessary" delays rather than delays or potential for delays generally. EDF agrees with this conclusion.

New York City DEP compares the Illinois situation with Tucson's 48-hour advance notice for short-lived radioactive materials shipments addressed in IR-16 (50 FR 20872; May 20, 1985) and concludes:

> Unlike short-lived radioactive materials, the nature of spent fuel shipments is such that transporters have ample lead time to arrange for payment of the fee. Moreover, the delay which the Department found does occur—from twenty to sixty minutes—is not disproportionate to other delays such as rest, food, and fuel stops . . . . Consequently, appellant's claim that the OHMT failed to adequately explore the potential for delay inherent in the Illinois inspection and escort program must be rejected.

EDF contends that there is neither evidence that Illinois' transit fee will result in consistently longer shipping times nor that any inspection or escort-related delays are unreasonable. It argues that delays caused by Illinois' inspections and escorts are reasonable and do not conflict with any regulation in the HMR; it adds that inconsistencies must be with actual regulations, not with preamble language or policy statements (such as Appendix A to Part 177).

(c) Administrator's Decision

The delays inherent in Illinois' inspection and escort programs are relevant because the transit fee's consistency depends upon the consistency of the programs it supports. These are not, however, the types of "significant" delays which are inconsistent with the HMTA and the HMR. See Appendix A to 49 CFR Part 177.

I have found nothing in the record indicating that the Illinois programs deviate from the regulatory scheme contemplated by RSPA and NRC. As accurately indicated in IR–17, DOT encourages states to adopt and enforce the HMR under the Cooperative Hazardous Materials Enforcement Development Program (and its predecessor, the State Hazardous Materials Enforcement Development Program), and Illinois' inspection program is an excellent example of carrying out such an effort at the state level. IR–17 also addressed the alleged delays arising out of Illinois' escorts:

> Since the HMR require all shipments of spent fuel to comply with a physical protection plan [49 CFR 173.22(c)] which

provides for escorts capable of communicating with local law enforcement agencies, the operational impact of notifying Illinois of shipment arrival time would not appear to involve any significant transportation delay.

51 FR 20930

There is no evidence of unnecessary or unreasonable delays; to the contrary, the evidence is that the delays have been limited to the times necessary to inspect for violations, to take corrective action concerning violations and to arrange for appropriate escorts. These delays, because they support compliance with Federal regulations, are consistent with the HMTA and the HMR.

In summary, I find that the Illinois fee and the programs it supports do not cause unreasonable or unnecessary delays and thus do not constitute obstacles to the accomplishment of the objectives of the HMTA and the HMR. Therefore, I affirm the findings in IR–17 that the Illinois fee does not result in unreasonable delays in the transportation of spent nuclear fuel in Illinois.

(4) *OHMT's decision allegedly undercuts the ability of the DOE to negotiate appropriate arrangements with states under the Nuclear Waste Policy Act (NWPA).*

(a) Appellants' Arguments

The Group's argument is that IR–17 creates a disincentive for states to cooperate with DOE, DOT, and other states in developing uniform national programs for inspections, escorts, and prenotification. They contend that individual states' inspection and fee programs will result in delays, restrictions and multiplicity constituting obstacles to the accomplishment of the HMTA's objectives. They argue that RSPA should consider the impact of its ruling on DOE's implementation of the NWPA.

DOE adds: "If the Illinois transit fee is allowed to stand, other states would be encouraged to enact similar fees supporting inspection programs, undermining both DOE and DOT's goal of a uniform national enforcement system through a Federal/state partnership." It urges consideration of the potential effect of this ruling on the large number of future shipments under the NWPA.

DOE states that it has executed a cooperative agreement with the Commercial Vehicle Safety Alliance (CVSA) to study inspection and enforcement needs under the NWPA as a first step in developing a national program. It contends that a "national inspection program that eliminates unnecessary duplication would reduce costs while enhancing safety by eliminating the unnecessary delays caused by multiple inspections."

DOE further contends that the NRC's apparent endorsement of Illinois' regulatory program, in NRC's denial of a Wisconsin rulemaking petition, did not constitute endorsement of the Illinois transit fee. DOE also says NRC was not familiar with DOE's experience with its Surrev or TMI shipments.

(b) Appellees' Arguments

Illinois contends that appellants have presented no evidence of actual undercutting of DOE's ability to make arrangements with the states under the NWPA. It points to Illinois' chairmanship of the DOE-funded and CVSA-created High Level Nuclear Waste Task Force to coordinate state activities and establish a uniform inspection and escort program for spent fuel shipments. The State also cites NRC recognition of the Illinois inspection and escort program as providing an added measure of assurance without, apparently, imposing burdensome procedures on licenses and carriers. 51 FR 36824 (Oct. 16, 1986).

Wisconsin and Pennsylvania EMA argue that the appellants' NWPA argument is outside the scope of this proceeding, which is limited to a determination of consistency with the HMTA. Colorado speaks in terms of the issue being outside RSPA's jurisdiction.

Even if this issue were relevant, Pennsylvania EMA contends, Illinois' transit fee would be offset by numerous incentives for states to cooperate with DOE, DOT, and each other in establishing a uniform national progam with respect to inspections, escorts, and prenoticication—sharing of limited resources, elimination of duplication of effort, exchange of information and expertise, and emergency management compacts among the states.

Colorado argues that DOE's contract with CVSA and follow-through cooperation with the states, all following the issuance of IR–17, demonstrate that "DOT's ruling has not and will not affect DOE's ability to negotiate with the states."

Washington NWB contends that appellants' argument is speculative and concerns distantly future matters. It also points out that the NWPA provides: "Nothing in this Act shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste" (42 USC 10108). Thus, the NWB argues, neither the HMTA nor the NWPA gives DOE special authority over this transportation, and the Group's "undercutting of DOE" argument is irrelevant.

(c) Administrator's Decision

Like arguments (1) and (2), the issue of the transit fee's impact on DOE's ability to negotiate with states under the NWPA is irrelevant to a determination of the transit fee's consistency with the HMTA and the HMR. Furthermore, the arguments concerning the alleged effect of the Illinois transit fee on DOE's ability to negotiate with states under the NWPA are speculative and, as such, do not merit consideration in determining the consistency of the Illinois fee with the HMTA and the HMR.

DOE's negotiating ability under the NWPA is not one of the goals or objectives of the HMTA or the HMR which I must consider in making a decision on the transit fee's consistency. Therefore, I find no basis in this argument for reversing any of the findings in IR–17.

(5) *The Illinois transit fee allegedly fails the "obstacle" test by redirecting, restricting, and delaying shipments of spent fuel, thereby undermining the national transportation safety system carefully developed by DOT.*

DOE contends that the Illinois fee fails the "obstacle" test for consistency by redirecting, restricting, and delaying spent fuel shipments. It argues that the Illinois transit fee both restricts and redirects transport and that redirection would be eliminated only if every state enacted an identical fee. The University of Missouri supports the redirection argument; it apparently is going to bypass Illinois because of the costs and delays associated with a transit of Illinois. DOE further contends that Illinois' requirement that the transit fee "shall be paid * * * prior to the movement of such shipments within this State" constitutes a forbidden permit requirement—especially in light of the statement in IR–16 that "the actual language of the law must govern." 50 FR 20872 at 20877 (May 20, 1985).

The Group says that private shippers must either pay the transit fee or risk an enforcement action; they add that the risk of litigation in the sensitive area of radioactive materials transportation constitutes a significant deterrent to shipments through Illinois.

Duke Power cites IR–16 and IR–15 as relevant precedents for a finding of inconsistency and contends that the Illinois fee requirement has the potential effect of redirecting highway shipments of spent fuel "away from preferred routes." It concludes that "the Department of Transportation can encourage coordinated state emergency

preparedness programs without tying such programs to transport fees * * *."

(b) Appellees' Arguments

Pennsylvania EMA says that there is no hard evidence or facts to support this "redirect/restrict/delay" argument.

Illinois asserts that IR–17 finds that rerouting "on a pure cost basis" is not possible because it is not allowed under the HMTA. EDF says that such rerouting is illegal under the HMTA. It further claims that DOE's own shipments through Illinois without its thus far paying the transit fee demonstrate that the fee does not restrict spent fuel shipments.

Concerning the University of Missouri's consideration of rerouting to avoid Illinois, Illinois asserts that such a diversion over a route "not significantly longer" than the one through Illinois would not extend the time in transit and thus is not the type of rerouting which would be occasioned by a prohibited "routing rule." EDF agrees that if Missouri reroutes for permissible reasons, then the transit fee has not caused impermissible rerouting.

EDF contends that DOE's argument that the transit fee redirects transportation is inconsistent with its concerns about the possible enactment of fees by other states, which would make redirection to avoid fees impossible or impractical. EDF says that the only Illinois restrictions are permissible ones, i.e., those prohibiting shipments not in compliance with Federal regulations. It also argues that sophisticated parties like DOE and utility operators of nuclear power plants are not delayed or restricted by the requirement for advance payment of the transit fee.

EDF also argues that DOE's citation of IR–16, for the principle that the law's actual language controls, is not relevant here. In IR–16, a City of Tucson ordinance provided exceptions to its applicability, and the City had instructed its Fire Chief to expand the exceptions; IR–16 stated that the actual language of the ordinance governed. EDF says that IR–16 involved a question of whether legislative intent modified the clear language of the Tucson ordinance, but that the issue here is whether RSPA should consider Illinois' actual interpretation and administration of the statute of DOE's theoretically possible construction of the law.

Although the Illinois inspection and escort programs (as distinguished from the transit fee) are not the subject of this proceeding, Wisconsin contends that they are supported by the fee and are a reasonable exercise of Illinois' emergency response responsibility, a responsibility it says RSPA has recognized in IR–2 (44 FR 75566, 75568; Dec. 20, 1979), IR–8 (49 FR 46637, 46640–1; Nov. 27, 1984), and IR–15 (49 FR 46660, 46662–3; Nov. 27, 1984). Colorado opines that Illinois' inspection and escort program furthers the purposes of the HMTA and the HMR, particularly § 177.825(a).

(c) Administrator's Decision

Along with the "delay" argument in (3) above, this argument goes to the heart of the issue before me. If the Illinois transit fee resulted in unreasonable or unnecessary redirection, restriction, or delay of spent nuclear fuel shipments, it would fail the "obstacle" test and be inconsistent.

In (3) above, I determined that the record does not contain evidence of unreasonable transportation delays engendered by the Illinois programs. Nor does the record reflect unreasonable redirections or restrictions of spent nuclear fuel shipments caused by the Illinois programs funded by the transit fee.

As indicated in the Ruling below, the Tucson ordinance found inconsistent in IR–16 imposed requirements on short-lived radioactive materials shipped upon short notice as contrasted with the Illinois transit fee's applicability solely to long-lived spent nuclear fuel shipments, all of which involve long lead times. IR–16, therefore, is distinguishable with respect to the issue of delay.

Similarly distinguishable is the statement in IR–16 that "the actual language of the law must govern." That statement was made in the context of determining whether the clear language of an ordinance or the alleged *ex post facto* legislative intent controlled. That issue is not present here. In the case at hand, the Illinois requirement that the transit fee "shall be paid . . . prior to the movement of shipments" within Illinois may properly be analyzed in light of its actual application. Illinois has not delayed any shipments because of failure to pay its transit fee.

Unlike the situation in IR–15 (49 FR 46660, Nov. 27, 1984), where the Vermont transit fee and related program were shown to have caused actual diversions around Vermont, there is no showing here of any actual diversions around Illinois. The threatened diversion around Illinois of its highway shipments of spent fuel by the University of Missouri, by virtue of the requirement in § 177.825 to use preferred routes and reduce time in transit, would not be a diversion of such magnitude as to constitute an obstacle to implementation of the HMTA and the HMR.

Furthermore, the types of restrictions involved in the Illinois program do not impose unreasonable burdens on shippers or carriers. They involve submission to state inspections for compliance with Federal or consistent requirements and acceptance of state-provided escorts consistent with NRC's safeguards requirements. Illinois' state-provided escorts and notice requirements related to them, like the front and rear escort requirements considered in IR–14 (49 FR 46656, Nov. 27, 1984), impose no substantial burdens beyond those already required by the HMR (through incorporation of the NRC's safeguards requirements) and thus are consistent with the HMTA and the HMR. They are distinguishable from the requirements for additional or special escorts found inconsistent in IR–11 (49 FR 46647; Nov. 27, 1984), IR–13 (49 FR 46653; Nov. 27, 1984), IR–15(A) (52 FR 13062; Apr. 20, 1987), and IR–18 (52 FR 200; Jan. 2, 1987). Reasonable delays arising out of state inspections for compliance with substantive Federal or consistent state requirements are a necessary concomitant of state enforcement of Federal standards and are presumptively valid.

In conclusion, because of the absence of evidence of unreasonble or unnecessary delays, restrictions, or redirections resulting from the Illinois transit fee or the programs funded by it, I find no basis for determining that the transit fee fails the "obstacle" test or is inconsistent with the HMTA or the HMR. Therefore, I affirm the findings to that effect contained in IR–17.

V. Other Issues

Comments in this case raised two additional issues which need to be addressed because of their potential relevance in future inconsistency cases.

(1) Issue of Required Conflict With the HMTA or the HMR

Colorado contends that appellants cannot now argue that the transit fee is inconsistent with 49 CFR 177.825 because WEPCO failed to identify that rule in its original application for an inconsistency ruling.

It points out that WEPCO alleged that the transit fee is inconsistent with Appendix A to 49 CFR Part 177, which itself is not a regulation but a policy statement. Thus, Colorado contends, WEPCO failed to meet the 49 CFR 107.203(b)(3) requirement to specify either an HMTA or HMR provision with which the challenged provision is inconsistent. It urges that this failure should result in IR–17 being affirmed.

While this procedural objection by Colorado might have had some merit had it been raised in a timely manner, this objection has been waived because it was not raised until after the Director, OHMT had issued an inconsistency ruling comparing the challenged requirement with the HMTA and § 177.825. In any event, the Director, OHMT, had the authority to issue an inconsistency ruling on this matter *sua sponte*—i.e., with no application for same. 49 CFR 107.209(b); see, e.g., IR–12 through IR–15, 49 FR 46650 *et seq.* (Nov. 27, 1984). Therefore, I have considered the merits of appellants' arguments concerning alleged inconsistencies between the Illinois transit fee and § 177.825.

(2) The "Silence Equals Consent" Issue

DEP points out that there is no RSPA rule on transit fees, and it and the New York City DEP contend that RSPA could issue a rule on the issue if it wanted to preempt state and local transit fees. Wisconsin says that in the absence of such a rule there is no basis for arguing that a fee system is inconsistent *per se*.

In opposition, the Group contends that there is a relevant Federal rule and that even if there were not the states would not be free to enact any regulations they desire on the subjects they desire. The Group cite the following language from *State of Wisconsin* v. *Northern States Power Co.* #85 CV 0032 (Dane County Circuit Court, June 6, 1985):

> The State argues that because the DNR order addresses a subject matter not specifically addressed by current federal regulations (the environment) the order is not inconsistent with the federal regulations and no pre-exemption exists. Again, the State deals in semantics. If a State can pass statutes or impose regulations not specifically detailed in present Federal regulations, the States would be free to re-regulate the entire field of hazardous materials transportation. Each State could impose its own requirements, different from the federal requirements and different from each other, and thereby block interstate transportation altogether. In other words, the States could accomplished by "not inconsistent" regulations what federal pre-emption is designed to prohibit. Slip op. at 8–9.

The fact that there is no Federal regulation addressing the same subject as a challenged state or local requirement is not determinative of the issue of that requirement's consistency. In some instances the absence of a specific relevant Federal provision may indicate a Federal intent that state or local requirements may occupy that field. In other cases, however, the absence of a specific relevant Federal provision may reflect a Federal intent that the particular field not be occupied at all. Each individual case must be examined on its own merits. In this instance, the Illinois transit fee has not occupied a field intended to be completely occupied by RSPA; the absence of a transit fee in the HMTA and the HMR does not preclude the Illinois transit fee.

V. Conclusion

For the reasons indicated above and for the reasons set forth in IR–17 itself, I affirm the determination by the Director of the Office of Hazardous Materials Transportation in IR–17 that the transit fee of $1,000 per cask imposed by Illinois Revised Statutes, Chapter 111½, section 4304(7) upon owners of spent nuclear fuel traversing the State of Illinois is consistent with the HMTA and the HMR. This decision does not preclude a contrary ruling in the future if the HMTA or the HMR is amended in a manner rendering such transit fees inconsistent.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on September 18, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87–22128 Filed 9–24–87; 8:45 am]

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federal register

Friday
September 25, 1987

Part VII

The President

Federal Register
Vol. 52, No. 186
Friday, September 25, 1987

Presidential Documents

Title 3—

The President

Proclamation 5706 of September 23, 1987

Emergency Medical Services Week, 1987

By the President of the United States of America

A Proclamation

We can all be extremely proud of and grateful for those who staff our Nation's emergency medical services (EMS). They make a tremendous difference in our land as they save lives and care for the injured and the critically ill. Dedicated physicians, nurses, paramedics, park rangers, fire fighters, law enforcement officers, and countless devoted volunteers form a system that works daily for the safety and well-being of all Americans. Many perform their tasks under severe conditions, and many risk their lives to rescue accident victims; all of them make EMS a national success.

Most of us can tell from personal experience of quick, efficient EMS teams who have saved the lives of people we know and love. Despite these many successes, however, more than 750,000 Americans continue to lose their lives from emergencies each year. That is why EMS teams across our country strive constantly to improve their remarkable lifesaving record. They work to upgrade their training and skills, to find new methods and better equipment, and to establish nationwide standards for EMS training and the delivery of care. Additionally, they work to teach citizens what to do when emergencies confront us in our homes, places of work, or on the street.

We can all recognize, appreciate, encourage, and support our local emergency medical services teams. We can also improve the current EMS system by developing awareness of accident prevention, by following good health practices, and by learning CPR (cardiopulmonary resuscitation). These personal efforts can help make life safer for all of us.

The Congress, by House Joint Resolution 134, has designated the week of September 20 through September 26, 1987, as "National Emergency Medical Services Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 20 through September 26, 1987, as National Emergency Medical Services Week, and I call upon all Americans to participate in appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc 87-22370
Filed 9-24-87; 11:52 am]
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Presidential Documents

Proclamation 5707 of September 23, 1987

Veterans Day, 1987

By the President of the United States of America

A Proclamation

For decades America has paused on the 11th of November, the anniversary of the armistice that concluded World War I, to remember and to honor our veterans of military service. We do so in proud and grateful recognition of the hardships and sacrifices demanded from and faithfully accepted by the millions of men and women who have defended our land in war and in peace.

Our observance of Veterans Day this year, the Bicentennial of the Constitution, reminds us in a special way of the service men and women who have made liberty's cause their own. Our fundamental charter lives on because through the years countless brave Americans have gladly willed to "provide for the common defence." No one is more responsible for securing the "Blessings of Liberty to ourselves and our Posterity" than our veterans. That is why, this November 11 and always, we let veterans know that their service is not forgotten, that their sacrifices are appreciated, and that America salutes its defenders.

In order that we may pay fitting homage to those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Wednesday, November 11, 1987, as Veterans Day. I urge all Americans to recognize the valor and sacrifice of our veterans through appropriate public ceremonies and private prayers. I also call upon Federal, State, and local government officials to display the flag of the United States and to encourage and take part in patriotic activities throughout our country. I invite the business community, churches, schools, unions, civic and fraternal organizations, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Filed 9-24-87; 11:53 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12609 of September 23, 1987

President's Commission on Compensation of Career Federal Executives

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the period within which the President's Commission on Compensation of Career Federal Executives may complete its work, it is hereby ordered that Section 2(b) of Executive Order No. 12592 of April 10, 1987, is amended by striking out "August 1, 1987" and inserting in lieu thereof "February 28, 1988".

Ronald Reagan

THE WHITE HOUSE,
September 23, 1987.

[FR Doc. 87-22372
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