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Contents

Federal Register

Vol. 58, No. 131

Monday, July 12, 1993

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Exposure-dose reconstruction research program, 37487

Agriculture Department
See Forest Service
See Soil Conservation Service

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Elevated blood-lead (PbB) levels surveillance in children, 37489
Specific youth violence interventions evaluation, 37491

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Privacy Act:
System of records, 37460

Consumer Product Safety Commission
RULES
Consumer Product Safety Act:
Cigarette lighter safety standard, 37557
Cigarette lighters, child resistant, 37554
NOTICES
Meetings:
Cigarette Fire Safety Technical Advisory Group, 37470

Defense Department
See Engineers Corps
NOTICES
Agency information collection activities under OMB review, 37470

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Chemical Dependence Associates of Houston, 37505
Cuong, Tran Trong, M.D., 37506
Doell, William E., D.O., 37506
Gillis, David H., M.D., 37507
Osafo, George D., M.D., 37508
Topel, Steven I., M.D., 37509

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements subsequent arrangements, 37475
Natural gas exportation and importation:
Cascade Natural Gas Corp., 37476

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research program—
Pre-freshman enrichment program, 37475

Engineers Corps
RULES
Danger zones and restricted areas:
Definitions, procedural type requirements, etc., 37606

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 37421
South Dakota, 37423
Washington, 37426
PROPOSED RULES
Air programs:
Architectural and Industrial Maintenance Coatings Negotiated Rulemaking Advisory Committee; meetings, 37450
Air quality implementation plans; approval and promulgation; various States, etc.:
Indiana, 37450
Ohio, 37453
NOTICES
Drinking water:
Public water supply supervision program—
Ohio, 37476
Meetings:
Municipal solid waste flow control, 37477
Science Advisory Board, 37479
Pesticide programs:
University of Minnesota—
Nonindigenous microbial pesticide; field test, 37479
ZENECA Ag Products—
Nonindigenous microbial pesticide; field test, 37480
Pesticides; experimental use permits, etc.:
Monsanto Co., 37481

Federal Communications Commission
RULES
Radio frequency devices:
Electromagnetic emissions measurement, intentional and unintentional radiators, 37429
Radio stations; table of assignments:
Pennsylvania, 37431
Wyoming, 37431
PROPOSED RULES
Radio stations; table of assignments:
North Carolina, 37455
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 37481
Applications, hearings, determinations, etc.:
TMC Long Distance et al., 37481

Federal Energy Regulatory Commission
PROPOSED RULES
Natural Gas Policy Act:
Interstate pipeline—
Electronic bulletin boards; uniform standards, 37447
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Boston Edison Co. et al., 37471
Polk Power Partners, L.P., 37474
Environmental statements; availability, etc.:
Minnesota Power Co., 37474
Meetings; Sunshine Act, 37549
Applications, hearings, determinations, etc.:
Black Marlin Pipeline Co., 37475
Northwest Pipeline Corp., 37475

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
San Luis Obispo County, CA, 37545

Federal Maritime Commission
NOTICES
Agreements filed, etc., 37482
Freight forwarder licenses:
Bok Kun Chung et al., 37483
Investigations, hearings, petitions, etc.:
Ocean Tariff Bureau, 37483

Federal Register, Administrative Committee
See Federal Register Office

Federal Register Office
NOTICES
American Institute in Taiwan and Coordinating Council for North American Affairs; agreements, 37535

Federal Trade Commission
NOTICES
Prohibited trade practices:
ASFE, Association of Engineering Firms Practicing in Geosciences, 37483
Audio-Logics, 37484
Audio RX Hearing Aids, 37484
Bay Colony Audiology Center et al., 37484
Brooklyn Audiology Assocs., P.C., et al., 37485
Brown-Potter Hearing Aid Center, 37485
Center for Improved Communications et al., 37485
Conair Corp., 37486
Fone Telecommunications, Inc., 37486
Hearing Care Associates-Arcadia et al., 37486

Fish and Wildlife Service
RULES
Endangered and threatened species:
Apalachicola rosemary, etc. (five Florida plants), 37432
NOTICES
Meetings:
Aquatic Nuisance Species Task Force, 37503

Forest Service
NOTICES
Environmental statements; availability, etc.:
Beaverhead National Forest et al., MT, 37457
Tongass National Forest, AK, 37458

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Exceptional financial need and financial assistance for disadvantaged health professions students programs, 37494
National vaccine injury compensation program:
Petitions received, 37497

Housing and Urban Development Department
PROPOSED RULES
Privacy Act; implementation, 37598
NOTICES
Agency information collection activities under OMB review, 37500
Meetings:
Occupancy Standards in Public and Assisted Housing Task Force; correction, 37501
Privacy Act:
System of records, 37601

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Crow Indian Tribe, 37604

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Professional electric cutting tools from Japan, 37461
Welded stainless steel pipe from Malaysia, 37462
Export trade certificates of review, 37463
Grants and cooperative agreements; availability, etc.:
Special American business internship training program, 37463

International Trade Commission
NOTICES
Import investigations:
Aramid fiber formed of poly para-phenylene terephthalamide from Netherlands, 37503

Interstate Commerce Commission
NOTICES
Environmental statements; availability, etc.:
Boston & Maine Corp. et al., 37504
Railroad operation, acquisition, construction, etc.:
Connecticut Central Railroad Co., 37504
Railroad services abandonment:
Chicago & North Western Transportation Co., 37505

Justice Department
See Drug Enforcement Administration
RULES
Foreign Agents Registration Act:
Fee assessment and collection, 37417

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming, 37502
Environmental statements; availability, etc.:
Beaverhead National Forest et al., MT, 37457
Meetings:
Winnemucca District Multiple Use Advisory Council, 37502

Minerals Management Service
RULES
Royalty management:
Oklahoma; oil and gas product valuation, 37420
NOTICES
Organization, functions, and authority delegations:
Royalty management activities—
New Mexico, 37502

National Archives and Records Administration
See Federal Register Office

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 37550

National Institute of Standards and Technology
NOTICES
Meetings:
Computer System Security and Privacy Advisory Board, 37465

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic swordfish, 37443
PROPOSED RULES
Fishery conservation and management:
South Atlantic shrimp, 37456
NOTICES
Grants and cooperative agreements; availability, etc.:
Antarctic marine ecosystem, projects to provide information on, 37465
Permits:
Foreign fishing, 37470

Nuclear Regulatory Commission
NOTICES
Low-level radioactive waste disposal facilities; revisions to the license application review plan, 37529
Meetings:
Nuclear Waste Advisory Committee, 37529
Applications, hearings, determinations, etc.:
Castle Medical Center, 37530
Georgia Power Co., 37534
Southern California Edison Co. et al., 37534
Virginia Electric & Power Co., 37535

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Kimball International, Inc., et al., 37510
Southwest-Tex Leasing Co., Inc., et al., 37512

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Health Resources and Services Administration

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Performance oriented packaging standards—
Miscellaneous amendments, 37612

Securities and Exchange Commission
RULES
Securities:
Penny stock sales practice and disclosure rules, 37413
PROPOSED RULES
Securities:
Blank check rule; penny stock definition, 37445
NOTICES
Applications, hearings, determinations, etc.:
First Prairie Cash Management et al., 37535
Public utility holding company filings, 37538
Smith Barney, Harris Upham & Co., Inc., 37539
Van Kampen Meritt Trust et al., 37541

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Indian Creek Watershed, CA, 37460

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kansas, 37447
North Dakota, 37449

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Highway Administration
See Research and Special Programs Administration

Treasury Department
NOTICES
Agency information collection activities under OMB review, 37546
Boycotts, international:
Countries requiring cooperation; list, 37546

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 37546, 37547

Separate Parts In This Issue

Part II
Consumer Product Safety Commission, 37554

Part III
Department of Housing and Urban Development, 37598

Part IV
Department of Interior, Bureau of Indian Affairs, 37604

Part V
Department of Army, Engineers Corps, 37606

Part VI
Department of Transportation, Research and Special Programs Administration, 37612

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

16 CFR
1145.....37554
1210.....37557

17 CFR
240.....37413
Proposed Rules:
240.....37445

18 CFR
Proposed Rules:
284.....37447

24 CFR
Proposed Rules:
16.....37598

28 CFR
5.....37417

30 CFR
202.....37420
206.....37420
Proposed Rules:
916.....37447
934.....37449

33 CFR
334.....37606

40 CFR
52 (3 documents).....37421, 37423, 37426
Proposed Rules:
Ch. I.....37450
52 (2 documents).....37450, 37453
81.....37453

47 CFR
2.....37429
15.....37429
73 (2 documents).....37431
Proposed Rules:
73.....37455

49 CFR
Proposed Rules:
171.....37612
172.....37612
173.....37612
174.....37612
177.....37612
179.....37612

50 CFR
17.....37432
630.....37443
Proposed Rules:
659.....37456

Rules and Regulations

Federal Register
Vol. 58, No. 131
Monday, July 12, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–32576]

RIN 3235–AF46

Penny Stock Sales Practice and Disclosure Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to certain rules under the Securities Exchange Act of 1934 ("Exchange Act") that apply to transactions in low-priced securities traded in the non-NASDAQ over-the-counter market. Specifically, the Commission is amending Rule 15c2–6, which makes it unlawful for a broker or dealer to sell or effect the purchase of a "designated security" in a non-exempt transaction, unless the broker or dealer has specifically approved the purchaser's account for transactions in designated securities and received the purchaser's written agreement to the transaction. The amendments conform the definition of "designated security" in Rule 15c2–6 to the definition of "penny stock" in Rule 3a51–1, and, with certain exceptions, replace the transactional exemptions under the rule with the exemptions under Rule 15g–1. For consistency, the amendments also redesignate Rule 15c2–6 as Rule 15g–9. In addition, the Commission is amending Rule 15g–2 and Schedule 15G under the Exchange Act to require broker-dealers to obtain, prior to effecting any transaction in a penny stock, a written acknowledgement from the customer that he or she has received the risk disclosure document required by Rule 15g–2. This requirement will facilitate the ability of the Commission and the self-regulatory organizations to examine for compliance with Rule 15g–2. Finally, the Commission is clarifying the operation of Rule 15g–3, which mandates the disclosure of current quotation prices or similar market information in penny stock transactions.

EFFECTIVE DATES: The amendments to Rule 15c2–6 (§§ 240.15c2–6 and 240.15g–9) and Rule 15g–2 (§ 240.15g–2) under the Exchange Act become effective on August 11, 1993. The amendments to Schedule 15G (§ 240.15g–100) become effective on November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, John M. Ramsay, Deputy Chief Counsel, or Belinda Blaine, Branch Chief, at (202) 504–2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7–10, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 1989, the Commission adopted Rule 15c2–6 under the Exchange Act to address sales practice abuses involving certain speculative low-priced securities being traded in the non-NASDAQ over-the-counter ("OTC") market.[1] The rule, which became effective on January 1, 1990, generally prohibits a broker-dealer from selling to or effecting the purchase of a "designated security" by any person, unless the broker-dealer has approved the purchaser's account for transactions in designated securities and received the purchaser's written agreement to the transaction. In approving an account for transactions in designated securities, a broker-dealer must obtain sufficient information from the customer to make an appropriate suitability determination, provide the customer with a written statement setting forth the basis of the determination, and obtain a signed copy of the suitability statement from the customer.

Subsequent to the adoption of Rule 15c2–6, Congress passed the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Penny Stock Reform Act").[2] The Penny Stock Reform Act mandated that the Commission adopt rules requiring broker-dealers to provide customers with certain trade and market information prior to effecting a transaction in a penny stock. Pursuant to this authority, in April 1992, the Commission adopted Rule 3a51–1, which defines the term "penny stock" to exclude certain categories of equity securities, and Rule 15g–1, which exempts certain transactions from the disclosure requirements of Rules 15g–2 through 15g–6.[3] Rules 15g–2 through 15g–6, which were adopted at the same time, generally require broker-dealers effecting transactions in penny stocks to provide their customers with: a document describing the risks of investing in the penny stock market, information regarding market quotations, if any, information on the compensation of the broker-dealer and salesperson involved in the penny stock transaction, and monthly statements giving the market value of penny stocks held in the customer's account. Like Rule 15c2–6, the Penny Stock Rules are designed to address sales practice abuses and manipulation involving speculative low-priced securities that are traded outside of an organized securities market.

II. Rule 15c2–6

A. Description of the Amendments

In proposing the Penny Stock Rules, the Commission solicited comment on whether Rule 15c2–6 should be amended to be consistent with those rules.[4] In response, several comments urged the Commission to adopt conforming changes to Rule 15c2–6. These comments argued that making the scope of Rule 15c2–6 consistent with the Penny Stock Rules would eliminate costs and facilitate compliance. Accordingly, in April 1992, the Commission published for comment amendments to Rule 15c2–6.[5] The Commission received one comment letter from the National Association of Securities Dealers, Inc. ("NASD"), which reiterated its position that the rules should be harmonized.

---

[1] Securities Exchange Act Release No. 27160 (August 22, 1989), 54 FR 35468.

[2] Public Law 101–429, 104 Stat. 931 (1990).

[3] Securities Exchange Act Release No. 30608 (April 20, 1992), 57 FR 18004 ("Adopting Release"). All of the rules adopted pursuant to the Penny Stock Reform Act are referred to collectively herein as the "Penny Stock Rules."

[4] See Securities Exchange Act Release No. 29093 (April 17, 1991), 56 FR 19165.

[5] Securities Exchange Act Release No. 30610 (April 20, 1992), 57 FR 18046.

In light of these comments, the Commission today is adopting amendments to Rule 15c2–6 that will conform the scope of the rule to the scope of the Penny Stock Rules. Specifically, the amendments replace the definition of "designated security" in paragraph (d)(2) of Rule 15c2–6 with Rule 3a51–1's definition of "penny stock," and, with two significant exceptions, substitute the list of exempt transactions in Rule 15g–1 for the exempt transactions in paragraph (c) of Rule 15c2–6.[6] In addition, for consistency, Rule 15c2–6 has been redesignated as Rule 15g–9.[7] The Commission believes that the reach of Rule 15c2–6 and the Penny Stock Rules generally should be the same because, as noted above, these rules were designed to address abuses in the same market—namely, the non-NASDAQ OTC market for low-priced securities.[8] Moreover, making the scope of Rule 15c2–6 consistent with the Penny Stock Rules will simplify compliance with all of the rules.

1. Definition

Although the definition of "penny stock" is substantially the same as the definition of "designated security," it differs in a few respects.[9] Thus, amended Rule 15c2–6 now covers a slightly different universe of securities transactions.

For example, the definition of "penny stock" in Rule 3a51–1 is similar to the definition of "designated security" in that it contains an exclusion for securities whose issuer has demonstrated net tangible assets of $2 million or more. This exclusion, however, is limited to issuers that have been in operation for at least three years. Issuers that have been in operation for less than three years must have at least $5 million in net tangible assets to be excluded from the definition of "penny stock."[10] In addition to the exclusion based on issuer net tangible assets, however, Rule 3a51–1 includes an alternative exclusion for any security that is issued by an issuer with average revenues of $6 million for the past three years.[11]

Like the definition of "designated security," the definition of "penny stock" excludes any security that is authorized, or approved for authorization upon notice of issuance, for quotation on NASDAQ.[12] It also provides an exclusion for any security that is registered, or approved for registration upon notice of issuance, on a national securities exchange,[13] provided that current price and volume information with respect to transactions in that security is required to be reported and is made available to vendors pursuant to the rules of the national securities exchange. Unlike the analogous exclusion under the definition of "designated security," however, this exclusion is available only for regional exchange-listed securities that actually are purchased or sold through the facilities of the exchange or in a distribution.[14] As the Commission noted in the Adopting Release, the exclusion is limited in order to address Congress' concern that securities that would otherwise be considered penny stocks because they are primarily traded in the non-NASDAQ OTC market, nevertheless may be able to avoid Commission rules solely by registering on an exchange.[15]

Securities with a price of five dollars or more also continue to be outside of the coverage of Rule 15c2–6,[16] but in calculating the price of a security for purposes of the rule, broker-dealers will now be required to exclude the amount of any commission, commission equivalent, or mark-up charged in both agency and principal transactions. Finally, securities issued by a registered investment company and put and call options issued by the Options Clearing Corporation continue to be excluded from the requirements of the rule.[17]

2. Exempt Transactions

(a) Standard Exemptions. Paragraph (c) of Rule 15c2–6 currently provides an exemption for any transaction: (1) In which the price of the security is five dollars or more (including any share of any unit that has an independent exercise or conversion price); (2) in which the purchaser is an accredited investor, as defined in Regulation D under the Securities Act of 1933 ("Securities Act"); (3) that is not recommended by the broker-dealer; and (4) by a broker-dealer who is not acting as a market maker in the designated security and whose commissions, commission equivalents, and mark-ups from transactions in designated securities during a specified period, did not exceed five percent of its total commissions, commission equivalents, and mark-ups from transactions in securities during that period. Rule 15c2–6 also contains an exemption for transactions with established customers, as defined in paragraph (d)(3) of the rule.

With two significant exceptions, described below, these exempt transactions have been replaced with the exemptions under Rule 15g–1.[18] As a result, Rule 15c2–6 as amended no longer exempts transactions with all accredited investors.[19] Instead, the rule

[6] The term "penny stock" also has replaced the term "designated security," which was used solely for purposes of Rule 15c2–6.

[7] This change is being made pursuant to 15 U.S.C. 78*o*(g)(5). As discussed further below, however, Rule 15c2–6 continues to have a different specific purpose than the Penny Stock Rules. See n.23, *infra*.

[8] This market principally consists of securities that are quoted on the NASD's OTC Bulletin Board and in the "pink sheets" published by the National Daily Quotation Service.

[9] For a detailed discussion of Rule 3a51–1 and the rationale for the specific exclusions from the definition of "penny stock," see the Adopting Release.

[10] In the Adopting Release, the Commission stated that the rule imposes a separate higher standard for start-up companies in order to prevent the types of abusive activities that have occurred both prior to and since the adoption of Rule 15c2–6 in August of 1989. 57 FR at 18013.

[11] I.e., revenues of at least $18 million by the end of the three-year period.

[12] The exclusion in Rule 3a51–1(f) is subject to the condition that price and volume information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors of market information pursuant to the rules of the NASD. Last year, the Commission approved a NASD proposal to require members to report to the NASD the execution price and the number of shares of each trade in NASDAQ securities within 90 seconds of execution. Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396. Accordingly, all NASDAQ securities now meet the conditions of the exclusion in Rule 3a51–1(f).

[13] This exclusion is conditioned on the national securities exchange making transaction reports available for at least some securities pursuant to Rule 11Aa3–1 (17 CFR 240.11Aa3–1). Securities that are solely listed on a foreign exchange therefore do not qualify for this exclusion.

[14] "Reported securities," as defined in 17 CFR 240.11Aa3–1(a)(4), are separately excluded from the definition of "penny stock" pursuant to paragraph (a) of Rule 3a51–1, and therefore are not required to meet the conditions set forth in paragraph (e) of the rule. See Adopting Release, 57 FR 18008.

[15] Adopting Release, 57 FR at 18010.

[16] The exemption under paragraph (c)(1) of Rule 15c2–6 for transactions in securities priced at five dollars or more has now become an exclusion from the definition under paragraph (d)(1).

[17] Pursuant to Commission order, options issued by Trans Canada Options, Inc. also are exempt from the provisions of Rule 15c2–6 and the Penny Stock Rules. Securities Exchange Act Release No. 32106 (April 5, 1993).

[18] Moreover, as noted above, the transactional exemption in Rule 15c2–6 for securities priced at five dollars or more has become a definitional exclusion.

[19] The term "individual accredited investor" is defined in 17 CFR 230.501(a) (4), (5), and (6).

As the Commission stated in the Adopting Release, in the absence of price and trading information about particular penny stocks and the penny stock market in general, many affluent individual investors have been convinced through abusive sales practices to purchase penny stocks without sufficiently understanding the risks or the nature of their investment. See Adopting Release, 57 FR at 18016. As amended, Rule 15c2–6 provides a measure of protection to these investors by requiring broker-dealers to determine that the investor, regardless of his or her affluence, is capable of evaluating the risks of investing in speculative low-priced securities. The rule also protects these investors from high pressure sales

includes the Rule 15g–1 exemption for transactions with institutional accredited investors,[20] as well as transactions with the issuer of the penny stock and any director, officer, general partner, or beneficial owner of more than five percent of any class of equity security of the issuer. In addition, the rule continues to provide an exemption for transactions by non-market makers receiving less than five percent of their total sales-related revenue from transactions in low-priced non-NASDAQ OTC securities. This exemption, however, is now based on transactions in "penny stocks," as defined in Rule 3a51–1, rather than transactions in "designated securities," as defined in former Rule 15c2–6(d)(2).[21] Transactions that are not recommended by the broker-dealer also continue to be exempt under Rule 15c2–6.[22]

(b) Exemptions for Established Customers and Private Placements. As noted above, amended Rule 15c2–6 incorporates all of the provisions of Rules 3a51–1 and 15g–1, with two significant exceptions. First, although Rule 15g–1 does not contain an exemption for transactions with established customers of the broker-dealer, this exemption has been retained solely for purposes of Rule 15c2–6. The Commission believes that persons who have previous investment experience in penny stocks or who are familiar with their broker-dealers are less susceptible to high pressure sales tactics and therefore are less in need of the particular protections provided by Rule 15c2–6.[23]

Second, Rule 15g–1 exempts all private offerings; that is, transactions that meet the requirements of Regulation D, or Rules 501 through 508 under the Securities Act,[24] as well as transactions with an issuer not involving any public offering pursuant to section 4(2) of that Act.[25] Although amended Rule 15c2–6 also exempts transactions that meet the requirements of Rules 501 through 503 and Rules 505 through 508, as well as other transactions pursuant to section 4(2) of the Securities Act, it does not exempt transactions that meet the requirements of Rule 504. At the time the Penny Stock Rules were adopted, Rule 504 prohibited the issuer and any person acting on its behalf from offering or selling the securities through general solicitation or advertisements. In addition, securities sold in an offering pursuant to Rule 504 generally were subject to resale restrictions. As a result, the market for those securities was limited and the securities were not a vehicle for the type of high pressure sales tactics that Rule 15c2–6 was designed to address.

Since that time, however, the Rule 504 exemption has been expanded, and all of the restrictions on transferability and general solicitation have been removed.[26] In light of these developments, the Commission believes that the protections provided by Rule 15c2–6 should continue to apply to customers purchasing securities in a Rule 504 offering.[27] Amended Rule 15c2–6(c)(2) therefore excludes all Regulation D offerings, except for those conducted pursuant to Rule 504 under Regulation D of the Securities Act. This limitation is consistent with paragraph (a)(3) of Rule 504, which, because of the history of abuses involving blank check companies, prohibits certain development stage companies from relying on the exemption.

B. Effective Date

The amendments to Rule 15c2–6 become effective on August 11, 1993. The Commission recognizes, however, that broker-dealers currently relying on the *de minimis* exemption for transactions in designated securities may need a period of time after the effective date of the amendments to modify their data retrieval systems in order to determine whether their revenue from penny stock transactions exceeds the five percent level. Broker-dealers therefore will be permitted to calculate their five percent revenue based on transactions in "designated securities," as defined in Rule 15c2–6(d)(2) as of August 22, 1989 (the date on which the rule was adopted), rather than "penny stocks," as defined in Rule 3a51–1, for a period of six months following publication of this release in the **Federal Register**.

III. Penny Stock Rules

A. Amendments to Rule 15g–2 and Schedule 15G

In April 1992, the Commission adopted Rule 15g–2 to implement the provisions of section 15(g)(2) of the Exchange Act.[28] The rule makes it unlawful for a broker-dealer to effect a transaction in a penny stock with or for the account of a customer unless the broker-dealer distributes a risk disclosure document to the customer prior to effecting the customer's first transaction in a penny stock. The risk disclosure document, as set forth in Schedule 15G,[29] defines the term "penny stock," identifies certain risks associated with investing in penny stocks, describes the penny stock market, provides a brief description of a broker-dealer's obligations under the Penny Stock Rules, and informs customers of their rights and remedies under federal and state law.

At the time Rule 15g–2 and Schedule 15G were adopted, the Commission considered whether to implement a recordkeeping requirement that would enable broker-dealers to demonstrate, and regulators to examine for, compliance with the rule. Mindful of the compliance burdens this would impose on broker-dealers, however, the Commission instead determined to solicit further comment on the need for such a requirement.[30]

In response to the Commission's request for comment, the NASD strongly urged the Commission to amend Rule 15g–2. The NASD stated that:

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tactics by requiring broker-dealers to obtain the investor's written consent to the transaction.

[20] The term "institutional accredited investor" is defined in 17 CFR 230.501(a) (1), (2), (3), (7), and (8).

[21] As a result, the new exemption is somewhat broader in that it allows broker-dealers to exclude from their five percent revenue calculation transactions in securities that are priced at five dollars or more. Broker-dealers also may exclude transactions based on the average revenues of the issuer. As discussed above, however, broker-dealers may only exclude from their five percent revenue calculation securities that are issued by an issuer with $2 million in net tangible assets if the issuer has been in business for at least three years.

In addition, broker-dealers now have the option of calculating their revenue over a six-month period, rather than on a monthly basis.

[22] In addition, the rule continues to include a provision giving the Commission the authority to exempt by order any transaction or persons or class of persons from the rule if it determines that an exemption would be consistent with the public interest and the protection of investors. See n.17, *supra*.

[23] In contrast to Rule 15c2–6, which is designed to restrict the use of high pressure sales tactics by broker-dealers, the Penny Stock Rules are intended to provide investors with market and other relevant information with respect to penny stocks. Accordingly, established customers of a broker-dealer may benefit from the disclosures provided pursuant to the Penny Stock Rules.

[24] 17 CFR 230.501 through 230.508.

[25] 15 U.S.C. 77d(2).

[26] The amendments to Rule 504 were adopted as part of the Commission's Small Business Initiative. Under new Rule 504, a public offering of up to $1 million in a 12-month period by a company that is not required to file reports under the Exchange Act is subject only to the antifraud and other civil liability provisions of the federal securities laws. No specific disclosure document is prescribed, and there is no proscription on general solicitation. Moreover, investors purchasing Rule 504 securities receive freely transferable securities. Securities Act Release No. 6949 (July 30, 1992), 57 FR 36442.

[27] Sales to institutional accredited investors, however, are separately exempt from the rule. See discussion, *supra*.

[28] See Adopting Release, 57 FR at 18017.

[29] 17 CFR 240.15g–100.

[30] Adopting Release, 57 FR at 18031.

The [NASD] views the risk disclosure document of Rule 15g–2 as representing the heart of the new Penny Stock Reform Act Rules. In this regard, the NASD believes that the purpose of the Rule would be better served by requiring a broker-dealer to evidence compliance with Rule 15g–2, by way of written verification that the customer has received the document * * *. We believe that [this] simplifies broker-dealer compliance by providing a uniform standard, enhances investor protection, and serves to further harmonize the Penny Stock Disclosure Rules with Rule 15c2–6, a goal sought by the Commission and supported by the NASD.

The Commission therefore is adopting amendments to Rule 15g–2 to require a broker-dealer to obtain a signed and dated acknowledgement from its customer demonstrating that the customer has actually received the required risk disclosure document prior to his or her first transaction in a penny stock. Corresponding amendments also have been made to Schedule 15G to include a brief description of this new requirement.[31]

The requirement to obtain the customer's signature is intended to accomplish two purposes. First, it should serve to emphasize to customers the importance of making an informed and deliberate investment decision. Second, it will enable broker-dealers to demonstrate, and the Commission and the self-regulatory organizations to examine for, compliance with the rule.[32] In this regard, the amended rule requires broker-dealers to maintain a copy of the customer's written acknowledgment for at least three years following the date on which the risk disclosure document was provided to the customer, the first two of which must be in an accessible place.[33]

In order to allow each broker-dealer to determine the most cost effective way of complying with the new requirement, the rule does not specify precisely how the customer's signature must be obtained. A broker-dealer, for example, could provide the customer with two copies of the risk disclosure document; the customer would sign and date one copy and return it to the broker-dealer, while maintaining the other copy for his or her own records. Alternatively, the broker-dealer could send the customer one risk disclosure document with an attached receipt to be signed, dated, and returned to the broker-dealer. This receipt could accompany the suitability statement and written agreement required by Rule 15c2–6.

The amendments to Rule 15g–2 apply only to customers of a broker-dealer that have not received, and that were not required to have received, the risk disclosure document as of August 11, 1993. Accordingly, broker-dealers will not be required to obtain a signature from customers that already have received the risk disclosure document in the past year, but will be required to do so for customers entering into a penny stock transaction after August 11, 1993, who have not yet received the document from the broker-dealer that is effecting the transaction.

B. Validation Procedures Under Rule 15g–3

Rule 15g–3 makes it unlawful for a broker-dealer to effect a non-exempt transaction in a penny stock without first disclosing and subsequently confirming to the customer current quotation prices or similar market information for the penny stock. The rule sets forth different procedures for the disclosure of quotations in principal transactions, on the one hand, and agency and riskless principal transactions on the other.[34]

For transactions effected on a principal basis (other than on a riskless principal basis), Rule 15g–3 requires the broker-dealer to provide the inside bid and offer quotations for a penny stock appearing on a Qualifying Electronic Quotation System, as defined in the rule.[35] If this quotation information is unavailable, the broker-dealer must disclose its own bid and offer quotes in the stock to the customer, provided that it can validate those quotes; that is, the broker-dealer must disclose its own quotes if: (1) The broker-dealer has effected at least three *bona fide* interdealer transactions consistently at its bid or offer prices over the previous five business days, (2) no less than 75% of these transactions have occurred consistently at such quotes, and (3) the broker-dealer reasonably believes that such quotes accurately reflect the prices at which it is prepared to trade with other dealers.

Under this validation procedure, the broker-dealer must disclose to the customer both its bid and offer quotations for a penny stock. Accordingly, if the dealer cannot validate its quotes, the rule specifies that the dealer must state that it has not traded consistently at its quotes, and it must disclose the price at which it last purchased the penny stock from, or sold the penny stock to, another dealer in a *bona fide* transaction.

Although the procedures for disclosure are clear when both sides of the trade can be validated, and when neither side of the trade can be validated, there has been some confusion as to the procedures for disclosure when a dealer is able to validate one side of the trade, but not the other. The Commission wishes to clarify that, consistent with the language of the rule, in those instances the dealer must disclose the validated quote, and then follow the procedures set forth in subparagraph (a)(2)(i)(C) of Rule 15g–3 for the side of the trade that cannot be validated.[36] In other words, the broker-dealer must state that it has not consistently effected interdealer purchases or sales of the penny stock at its quotation for the unvalidated side of the trade, and disclose to the customer the price at which it last purchased the penny stock from, or sold the penny stock to, another dealer in a *bona fide* transaction.

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act[37] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that the conforming amendments to Rule 15c2–6 and the amendments to Rule 15g–2 and Schedule 15G will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[38] regarding the amendments. The FRFA indicates that

[31] Specifically, the Schedule has been revised to include the following statement: "Your broker-dealer is required to obtain your signature to show that you have received this statement before your first trade in a penny stock. You are urged to read this statement before signing and before making a purchase or sale of a penny stock." In order to allow sufficient time for broker-dealers to reprint the document, the amendments to Schedule 15G do not become effective until November 1, 1993.

[32] In the Adopting Release, the Commission stated that: "compliance with the rule may be monitored by review of the broker-dealer's internal procedures, and, if necessary, by contacting the clients of the broker-dealer." 57 FR at 18019. This process, however, has proved to be cumbersome and time-consuming.

[33] See 17 CFR 240.17a–4(b).

[34] For a complete description of Rule 15g–3, see Adopting Release, 57 FR at 18019.

[35] See 17 CFR 240.15g–3(c)(5).

[36] To the extent that footnote 125 in the Adopting Release is inconsistent with this interpretation, it no longer applies.

[37] 15 U.S.C. 78w(a)(2).

[38] 5 U.S.C. 603.

the amendments will eliminate some of the existing costs imposed on small broker-dealers and small issuers. A copy of the FRFA may be obtained from Belinda Blaine, Branch Chief, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7–10, Washington, DC 20549, (202) 504–2418.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Amendments

In accordance with the foregoing, part 240 of chapter II of title 17 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

§§ 240.15c2–6 [Redesignated as § 240.15g–9]

2. By redesignating § 240.15c2–6 as § 240.15g–9, and reserving § 240.15c2–6.

3.By revising § 240.15g–2 to read as follows:

§ 240.15g–2 Risk disclosure document relating to the penny stock market.

(a) It shall be unlawful for a broker or dealer to effect a transaction in any penny stock for or with the account of a customer unless, prior to effecting such transaction, the broker or dealer has furnished to the customer a document containing the information set forth in Schedule 15G, 17 CFR 240.15g–100, and has obtained from the customer a manually signed and dated written acknowledgement of receipt of the document.

(b) The broker or dealer shall preserve, as part of its records, a copy of the written acknowledgment required by paragraph (a) of this section for the period specified in 17 CFR 240.17a–4(b) of this chapter.

4. In newly redesignated § 240.15g–9, by amending paragraphs (a) introductory text (two places), (a)(2)(ii), and (b)(3)(ii) by removing the words "designated security" and in their place adding the words "penny stock," and by removing the words "designated securities" and in their place adding the words "penny stocks" in paragraphs (a)(2)(i), (b) introductory text, and (b)(2) in two places; and by revising paragraphs (c) and (d) to read as follows:

§ 240.15g–9 Sales practice requirements for certain low-priced securities.

* * * * *

(c) For purposes of this section, the following transactions shall be exempt:

(1) Transactions that are exempt under 17 CFR 240.15g–1 (a), (b), (d), (e), and (f).

(2) Transactions that meet the requirements of 17 CFR 230.505 or 230.506 (including, where applicable, the requirements of 17 CFR 230.501 through 230.503, and 17 CFR 230.507 through 230.508), or transactions with an issuer not involving any public offering pursuant to section 4(2) of the Securities Act of 1933.

(3) Transactions in which the purchaser is an established customer of the broker or dealer.

(d) For purposes of this section:

(1) The term *penny stock* shall have the same meaning as in 17 CFR 240.3a51–1.

(2) The term *established customer* shall mean any person for whom the broker or dealer, or a clearing broker on behalf of such broker or dealer, carries an account, and who in such account:

(i) Has effected a securities transaction, or made a deposit of funds or securities, more than one year previously; or

(ii) Has made three purchases of penny stocks that occurred on separate days and involved different issuers.

5. By amending § 240.15g–100 by revising the first paragraph after the section heading "Important Information on Penny Stocks" to read as follows:

§ 240.15g–100 Schedule 15G—Information to be included in the document distributed pursuant to 17 CFR 240.15g–2.

Schedule 15G

* * * * *

Important Information on Penny Stocks

This statement is required by the U.S. Securities and Exchange Commission (SEC) and contains important information on penny stocks. Your broker-dealer is required to obtain your signature to show that you have received this statement before your first trade in a penny stock. You are urged to read this statement before signing and before making a purchase or sale of a penny stock.

* * * * *

By the Commission.

Dated: July 2, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16299 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 5

[AG Order No. 1757–93]

Fees Under the Foreign Agents Registration Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is implementing a statutory requirement that the Department assess and collect fees for registrations required by, and other services provided pursuant to, the Foreign Agents Registration Act (Act). This rule establishes the initial fees and delegates authority to the Assistant Attorney General for the Criminal Division to adjust those fees from time to time to recover the costs of operating the Registration Unit. The rule also revises the circumstances in which the Criminal Division will review proposed conduct of any present or prospective agent of a foreign principal and state its present enforcement intentions under the Act.

The rule also allows registrants to file an original and two copies of documents required to be filed under the Act rather than multiple originals. The rule increases the cost of copies of documents filed under the Act provided to the public to fifty cents per page. This change reflects the increased cost to the Department of producing the copies. The rule establishes fees to cover the cost of personnel and computer time for research requests and the cost to the public for a copy of the periodic report to the Congress. In addition, the rule provides for the administrative termination of registrations when the registrant is no longer able to file a final statement.

EFFECTIVE DATE: August 11, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph E. Clarkson, Chief, Registration Unit, Internal Security Section, Criminal Division, United States Department of Justice, 1400 New York Avenue, NW., room 9300, Washington, DC 20530, telephone (202) 514–1216, facsimile (202) 514–2836. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the Act, 22 U.S.C. 611–621, agents of foreign principals are required to register with the Department of Justice. Title I of Public Law 102–395 requires the Attorney General to establish and collect fees to recover the cost of administering the Registration Unit.

The Registration Unit accepts the filing of required registration statements, administers the registration

process and makes available to the public the registration statements. The fees imposed by this rule are designed to recover the costs of the Registration Unit from the registrants, prospective registrants, and public users of the documents filed, and relieve taxpayers of the burden of supporting this function.

The fees are determined by calculating the costs of the operation and administration of the Registration Unit and allocating those costs between requests for statements of the enforcement posture of the Department, initial, supplemental and final registration statements, and other filings, copies and services. The costs will change over time to reflect the workload of the Registration Unit. Accordingly, the Assistant Attorney General is authorized to change these fees from time to time to reflect the current costs of operating and administering the Registration Unit and to recover those costs from registrants and public users of these services.

The rule also lessens the burden on registrants in meeting the filing requirements of the Act by allowing them to file copies of registration statements rather than multiple originals. It also will enable the Department to terminate registrations when the registrant is unable to file the appropriate forms.

In FR Doc. 92–31400 (57 FR 62274, December 30, 1992), The Department of Justice published a Notice of Proposed Rulemaking for public notice and comment. Twenty-seven written comments were received within the period provided for comment. In response to four comments received, the requirement that payments must be made by certified or cashier's check or postal money order has been dropped, and the schedule of registration fees has been revised to eliminate some ambiguity in the original rule as a result of three of the comments received. Four commentators suggested that the fees be waived for so called *pro bono* representation of foreign clients. This idea was rejected because in the context of the Act uncompensated representation rarely meets the criteria of true *pro bono* representation. Most often it is provided in the anticipation of future compensation employment. However, a provision has been added to allow the waiver of the registration fees, either in whole or in part, in instances where an individual registrant can demonstrate an inability to pay the fee in its entirely. Two commentators urged that inquiries made as to the applicability of the Act be treated as confidential, and paragraph (m) has been added to § 5.2 to codify the fact that inquiries made under this rule will be treated as confidential and exempt from disclosure. This reflects the Department's policy. While none of the comments challenged the principle of fees for registration, approximately half the commentators criticized either the amount of the fees or the way that they are apportioned. The amount of the fees is dictated by the Congressional mandate that the administration of the Act be self-supporting, and the Department believes that the method of apportioning the cost by the number of foreign principals is the most equitable. Other minor revisions in the wording of the rules, not affecting their meaning, have been made to improve their clarity.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does it have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 28 CFR Part 5

Aliens, Foreign relations, Reporting and recordkeeping requirements, Security measures.

Accordingly, part 5 of title 28 of the Code of Federal Regulations is amended as follows:

PART 5—ADMINISTRATION AND ENFORCEMENT OF THE FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

1. The authority citation for Part 5 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; Section 1, 56 Stat. 248, 257 (22 U.S.C. 620); title I, Pub. L. 102–395, 106 Stat. 1828, 1831 (22 U.S.C. 612 note).

2. Section 5.2 is revised to read as follows:

§ 5.2 Inquiries concerning application of the Act.

(a) *General.* Any present or prospective agent of a foreign principal, or the agent's attorney, may request from the Assistant Attorney General a statement of the present enforcement intentions of the Department of Justice under the Act with respect to any presently contemplated activity, course of conduct, expenditure, receipt of money or thing of value, or transaction, and specifically with respect to whether the same requires registration and disclosure pursuant to the Act, or is excluded from coverage or exempted from registration and disclosure under any provision of the Act.

(b) *Anonymous, hypothetical, non-party and ex post facto review requests excluded.* The entire transaction which is the subject of the review request must be an actual, as opposed to hypothetical, transaction and involve disclosed, as opposed to anonymous, agents and principals. Review requests must be submitted by a party to the transaction or the party's attorney, and have no application to a party that does not join in the request. A review request may not involve only past conduct.

(c) *Fee.* All requests for statements of the Department's present enforcement intentions must be accompanied by a non-refundable filing fee submitted in accordance with § 5.5.

(d) *Address.* A review request must be submitted in writing to the Assistant Attorney General, Criminal Division, Attention: Chief, Registration Unit. The mailing address is 1400 New York Avenue, NW., room 9300, Washington, DC 20530.

(e) *Contents.* A review request shall be specific and contain in detail all relevant and material information bearing on the actual activity, course of conduct, expenditure, receipt of money or thing of value, or transaction for which review is requested. There is no prescribed format for the request, but each request must include:

(1) The identity(ies) of the agent(s) and foreign principal(s) involved;

(2) The nature of the agent's activities for or in the interest of the foreign principal;

(3) A copy of the existing or proposed written contract with the foreign principal or a full description of the terms and conditions of each existing or proposed oral agreement; and

(4) The applicable statutory or regulatory basis for the exemption or exclusion claimed.

(f) *Certification.* If the requesting party is an individual, the review request must be signed by the prospective or current agent, or, if the requesting party is not an individual, the review request must be signed on behalf of each requesting party by an officer, a director, a person performing the functions of an officer or a director of, or an attorney for, the requesting party. Each such person signing the review request must certify that the review request contains a true, correct and complete disclosure with respect to the proposed conduct.

(g) *Additional information.* Each party shall provide any additional information or documents the Criminal Division may thereafter request in order to review a matter. Any information furnished orally shall be confirmed

promptly in writing, signed by the same person who signed the initial review request and certified to be a true, correct and complete disclosure of the requested information.

(h) *Outcomes.* After submission of a review request, the Criminal Division, in its discretion, may state its present enforcement intention under the Act with respect to the proposed conduct; may decline to state its present enforcement intention; or, if circumstances warrant, may take such other position or initiate such other action as it considers appropriate. Any requesting party or parties may withdraw a review request at any time. The Criminal Division remains free, however, to submit such comments to the requesting party or parties as it deems appropriate. Failure to take action after receipt of a review request, documents or information, whether submitted pursuant to this procedure or otherwise, shall not in any way limit or stop the Criminal Division from taking any action at such time thereafter as it deems appropriate. The Criminal Division reserves the right to retain any review request, document or information submitted to it under this procedure or otherwise and to use any such request, document or information for any governmental purpose.

(i) *Time for response.* The Criminal Division shall respond to any review request within 30 days after receipt of the review request and of any requested additional information and documents.

(j) *Written decisions only.* The requesting party or parties may rely only upon a written Foreign Agents Registration Act review letter signed by the Assistant Attorney General or his delegate.

(k) *Effect of review letter.* Each review letter can be relied upon by the requesting party or parties to the extent the disclosure was accurate and complete and to the extent the disclosure continues accurately and completely to reflect circumstances after the date of issuance of the review letter.

(l) *Compliance.* Neither the submission of a review request, nor its pendency, shall in any way alter the responsibility of the party or parties to comply with the Act.

(m) *Confidentiality.* Any written material submitted pursuant to a request made under this section shall be treated as confidential and shall be exempt from disclosure.

3. Section 5.3 is amended by removing the word "duplicate" from the first sentence and adding the word "triplicate" in its place, and adding after the first sentence, a sentence that reads "An original document and two duplicates meeting the requirements of Rule 1001(4), Federal Rules of Evidence (28 U.S.C. Appendix), shall be deemed to meet this requirement.".

4. Section 5.5 is added to read as follows:

§ 5.5 Registration fees.

(a) A registrant shall pay a registration fee with each initial registration statement filed under § 5.200 and each supplemental registration statement under § 5.203 at the time such registration statement is filed. The registration fee may be paid by cash or by check or money order made payable to "FARA Registration Unit". The Registration Unit, in its discretion, may require that the fee be paid by a certified or cashier's check or by a United States Postal money order.

(b) Payment of fees shall accompany any order for copies or request for information, and all applicable fees shall be collected before copies or information will be made available. Payment may be made by cash or by check or money order made payable to "FARA Registration Unit". The Registration Unit, in its discretion, may require that the fee be paid by a certified or cashier's check or by a United States Postal money order.

(c) Registration fees shall be waived in whole or in part, as appropriate, in the case of any individual person required to register under the Act who has demonstrated to the satisfaction of the Registration Unit that he or she is financially unable to pay the fees in their entirety. An individual seeking to avail himself or herself of this provision shall file with the registration statement a declaration made in compliance with section 1746 of title 28, United States Code, setting forth the information required by Form 4, Federal Rules of Appellate Procedure (28 U.S.C. Appendix).

(d) The fees shall be as follows:

(1) For initial registration statements (including an Exhibit A for one foreign principal) under § 5.200: $305.00;

(2) For supplemental registration statements under § 5.203: $305.00 per foreign principal;

(3) For Exhibit A under § 5.201(a)(1): $305.00 per foreign principal not currently reported under § 5.200 or § 5.203;

(4) For Exhibit B under § 5.201(a)(2): no fee;

(5) For Exhibits C and D (no forms) under § 5.201: no fee;

(6) For short-form registration statements under § 5.202: no fee;

(7) For amendments under § 5.204; no fee;

(8) For statements of present enforcement intentions under § 5.2: $96.00 per review request;

(9) For each quarter hour of search time under § 5.601: $4.00;

(10) For copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, under § 5.601: fifty cents ($.50) per copy of each page of the material requested;

(11) For copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, produced by computer, such as tapes or printouts, under § 5.601: actual direct cost of producing the copy, including the apportionable salary costs; and

(12) For computer searches of records through the use of existing programming: Direct actual costs, including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request and the salary costs apportionable to the search.

(e) The cost of delivery of any document by the Registration Unit by any means other than ordinary mail shall be charged to the requester at a rate sufficient to cover the expense to the Registration Unit.

(f) The Assistant Attorney General is hereby authorized to adjust the fees established by this section from time to time to reflect and recover the costs of the administration of the Registration Unit under the Act.

(g) Fees collected under this provision shall be available for the support of the Registration Unit.

(h) Notwithstanding § 5.3, no document required to be filed under the Act shall be deemed to have been filed unless it is accompanied by the applicable fee except as provided by paragraph (c) of this section.

5. Section 5.205 is amended by adding a new paragraph (d) to read as follows:

§ 5.205 Termination of registration.

* * * * *

(d) Registration under the Act may be terminated upon a finding that the registrant is unable to file the appropriate forms to terminate the registration as a result of the death, disability, or dissolution of the registrant or where the requirements of the Act cannot be fulfilled by a continuation of the registration.

6. Section 5.601 is revised to read as follows:

§ 5.601 Copies of records and information available.

(a) Copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, may be obtained from the Registration Unit upon payment of a fee as prescribed in § 5.5.

(b) Information as to the fee to be charged for copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, or research into and information therefrom, and the time required for the preparation of such documents or information may be obtained upon request to the Registration Unit. Fee rates are established in § 5.5.

(c) The Registration Unit may, in its discretion, conduct computer searches of records through the use of existing programming upon written request. Information as to the fee for the conduct of such computer searches, and the time required to conduct such computer searches, may be obtained upon request to the Registration Unit. A written request for computer searches of records shall include a deposit in the amount specified by the Registration Unit, which shall be the Registration Unit's estimate of the actual fees. The Registration Unit is not required to alter or develop programming to conduct a search. Fee rates are established in § 5.5.

7. Section 5.1101 is added to read as follows:

§ 5.1101 Copies of the Report of the Attorney General.

Copies of the Report of the Attorney General to the Congress on the Administration of the Foreign Agents Registration Act of 1938, as amended, shall be sold to the public by the Registration Unit, as available, at a charge not less than the actual cost of production and distribution.

Dated: June 28, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–16021 Filed 7–9–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Valuation of Communitized Oil and Gas Production From Federal and Indian Leases in the State of Oklahoma

AGENCY: Minerals Management Service, Interior.

ACTION: Policy statement.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) hereby gives notice that provisions of Oklahoma Senate Bill No. 168 regarding royalty payments on oil or gas leases located in the State of Oklahoma do not apply to Federal and Indian leases that are committed to communitization agreements. For purposes of determining royalties on these leases, production must be valued in accordance with MMS' oil and gas valuation regulations at 30 CFR parts 202 and 206.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cobb, Minerals Management Service, Royalty Management Program, Valuation and Standards Division, Oil and Gas Valuation Branch, P.O. Box 25165, Mail Stop 3922, Denver, Colorado, 80225–0165, telephone (303) 275–7245.

SUPPLEMENTARY INFORMATION:

I. Background

Oklahoma Senate Bill No. 168, which becomes effective July 1, 1993, is the latest doctrine that has evolved from *Shell Oil Company* v. *Corporation Commission* (Okl., 389 P.2d 951 (1964)). The decision in that case, commonly known as the Blanchard Decision, governs the payment of royalties for oil and gas produced from leases committed to communitization agreements located in the State of Oklahoma. The major elements of Senate Bill No. 168 provide that:

- Working interest owners taking and selling gas production pay royalties (royalty share) to a "royalty pool" which is shared by all royalty owners in the agreement. The value of gas production for purposes of payments to the royalty pool is based on each lessee's sales proceeds and the terms of their lease royalty clauses;
- Royalty owners receive a royalty payment from the royalty pool, based on their lease royalty interest, within 90 days after the last day of the month of production; and
- Disbursements from the royalty pool to each royalty owner be performed primarily by the agreement operator. However, working interest owners may elect to pay royalties directly to the royalty owners.

Senate Bill No. 168 also contains special provisions regarding "Subsequently Created Interests" (SCI's) that are contained in certain leases in Oklahoma. SCI's are interests carved from a working interest other than a royalty interest, such as an overriding royalty interest. SCI's are not subject to the principal royalty provisions of Senate Bill No. 168.

II. MMS Requirements for Valuing Communitized Production

Because of the potential impact of the provisions of Senate Bill No. 168 on the payment of royalties on Federal and Indian leases that are committed to communitization agreements, MMS sponsored a meeting on March 5, 1993, at the Oklahoma State Capitol Building to discuss the relationship between the bill and Federal and Indian royalty requirements. Attendees at the meeting represented royalty owners, State agencies, major oil and gas companies, independents, and the Indian community. Attendees were advised that:

- The value of a Federal or Indian lease entitled share for royalty purposes is to be determined solely based on Federal or Indian lease terms and applicable regulations and not on the basis of a royalty pool where each contributing working interest owner uses its respective lease terms or other guidance to value its royalty share;
- The value of Federal and Indian production is to be based on no less than the gross proceeds accruing to the lessee; and
- The payment of royalties for Federal and Indian production is due no later than the end of the month following the month of production.

As discussed at the meeting, regulations governing the valuation of Federal and Indian communitized production differ substantially from the provisions of Senate Bill No. 168. The major differences are discussed below.

(a) The valuation of communitized production attributable to Federal or Indian leases is governed primarily by the regulations at 30 CFR 202.100 (1992) for oil and 30 CFR 202.150 (1992) for gas. Similar to Senate Bill No. 168, the principal requirement for valuing Federal and Indian communitized production is that royalty is due on the full share of production attributable to the Federal or Indian lease under the terms of agreement (also referred to as the allocated share of production to which the lease is entitled, or "lease entitled share").

The actual value for royalty purposes of the lease entitled share is determined under 30 CFR part 206 (1992). For production taken and sold by the lessee, the circumstances involved in the disposition of that production control the valuation under 30 CFR part 206. When the lessee takes less than the lease entitled share of production, the value of the portion not taken will also be determined under 30 CFR part 206 by the circumstances involved in the actual disposition of that portion by other taking lessees. That is, the valuation of the entire Federal or Indian lease entitled share is determined based on the actual disposition (e.g., sales) of production by the taking lessee under 30 CFR part 206. For gas under Senate Bill No. 168, each taking lessee's lease terms govern the valuation of the royalty share contributed to the royalty pool, from which the Federal and Indian royalty proceeds would be derived. Therefore, the value of Federal and Indian communitized gas production under the provisions of Senate Bill No. 168 would not be determined entirely in accordance with 30 CFR part 206.

(b) The use of Senate Bill No. 168 for valuing communitized gas production could nullify MMS' long standing requirement that value for royalty purposes be no less than the gross proceeds accruing to the lessee under its sales contract. Value of gas under the bill is determined on the basis of the gross proceeds paid to all working interest owners taking gas regardless of whether-or-not the Federal or Indian lessee takes and sells its lease entitled share.

(c) Valuation based on royalty pooling under Senate Bill No. 168 may violate standard Indian lease terms requiring that value be determined by considering the major portion of like-quality production from the same field or area.

(d) Royalty pooling under Senate Bill No. 168 may be inconsistent with dual accounting requirements specified in most Indian leases.

(e) Other inconsistencies between Senate Bill No. 168 and applicable regulations lie in the areas of timely receipt of, and responsibility for, royalty payments. Standard Federal and Indian lease documents and MMS regulations at 30 CFR 210.52 (1992) both require that royalty reports and payments be received by MMS by the end of the month following the month of production. Under Senate Bill No. 168, royalty payments may not be due until 90 days after the month of production. Under Senate Bill No. 168, the agreement operator is responsible for the disbursement of royalties to the royalty interest owners upon receipt of the royalty proceeds from the selling parties. For Federal or Indian leases, lessees, or their designated payors, are responsible for accurate and timely royalty payments.

III. MMS Policy

Because of the substantial differences between Senate Bill No. 168 and requirements relative to Federal and Indian oil and gas leases, as discussed above, MMS is giving notice that it will not accept royalties that are based on values less than those required under applicable lease terms and MMS regulations. Federal and Indian payors must continue to comply with the terms of their leases and the regulations at 30 CFR parts 202 and 206 for valuing and paying royalties for communitized production in Oklahoma that are otherwise subject to Senate Bill No. 168.

The MMS published a similar notice in the **Federal Register** on December 2, 1985 (50 FR 49465), advising royalty payors that MMS would not accept royalties for Federal and Indian leases in Oklahoma that were calculated in accordance with the Blanchard Decision. In that Notice, MMS advised payors that they must follow Federal and Indian lease terms and applicable MMS regulations to determine royalty value.

Although Federal and Indian royalty interests are not deemed SCI's under Senate Bill No. 168, MMS understands that treating the Federal and Indian royalty interests as such under the bill would both satisfy the bill's royalty pooling obligations and allow Federal or Indian payors to comply with their lease terms and MMS' royalty requirements. Under the SCI's methodology, Federal and Indian lessors would not share in the royalty pool and their royalty interests would be excluded in the computation of contributions to the royalty pool. However, Federal and Indian working interest owners may still be required to pay a royalty portion into the royalty pool under Oklahoma law. In any case, the procedures for determining the Federal and Indian lessees' royalty pooling obligations under the SCI's methodology, and their associated liabilities under Senate Bill No. 168, are outside the scope of this Notice. Federal and Indian lessees should contact their industry trade organizations, such as the Council of Petroleum Accountants Societies, the Mid-Continent Oil & Gas Association, the National Association of Division Order Analysts, or the Oklahoma Independent Petroleum Association, for further information regarding SCI's under Senate Bill No. 168.

Any inquiries regarding this Notice or the payment of Federal and Indian royalties for communitized production in the State of Oklahoma should be sent to the address identified above.

Dated: July 2, 1993.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 93–16393 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 12–5–5809; FRL–4674–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing limited approvals and limited disapprovals of four rule revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 28, 1992, October 1, 1992 and December 7, 1992. The revisions to the California SIP concern rules from the Bay Area Air Quality Management District (BAAQMD) and the San Diego County Air Pollution Control District (SDCAPCD). This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from can and coil coating operations, marine vessel coating operations, and graphic arts sources. Thus, EPA is finalizing limited approvals of these revisions into the California SIP under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. EPA is also finalizing limited disapprovals of these rules under provisions of the CAA cited above because these rules contain deficiencies, and as a result, do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to

impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on August 11, 1993.

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

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

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095.

Bay Area Air Quality Management District, 939 Ellis Street San Francisco, CA 94102.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1992, in 57 FR 44528, EPA proposed granting limited approval and limited disapproval of BAAQMD's Regulation 8, Rule 11 (Rule 8–11), Metal Container, Closure and Coil Coating, into the California SIP. On October 1, 1992, in 57 FR 45358, EPA proposed granting limited approval and limited disapproval of SDCAPCD's Rule 67.16, Graphic Arts, into the California SIP. On December 7, 1992, in 57 FR 57715, EPA proposed granting limited approval and limited disapproval of BAAQMD's Regulation 8, Rule 43 (Rule 8–43), Surface Coating of Marine Vessels, and SDCAPCD's Rule 67.18, Marine Coating Operations, into the California SIP. BAAQMD adopted Rule 8–11 on September 20, 1989, and Rule 8–43 on June 20, 1990. SDCAPCD adopted Rule 67.18 on July 3, 1990, and Rule 67.16 on May 21, 1991. The California Air Resources Board (ARB) submitted BAAQMD Rule 8–11 to EPA on December 31, 1990. The ARB submitted BAAQMD Rule 8–43 and SDCAPCD Rule 67.18 to EPA on April 5, 1991. The ARB submitted SDCAPCD Rule 67.16 to EPA on May 30, 1991. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their Reasonably Available Control Technology rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the notices of proposed rulemaking (NPRs) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRs. EPA is today finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. A detailed discussion of the rule provisions and evaluations has been provided in the NPRs and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated June 10, 1992, for SDCAPCD Rule 67.16; September 8, 1992, for BAAQMD Rule 8–11; and October 27, 1992, for BAAQMD Rule 8–43 and SDCAPCD Rule 67.18).

Response to Public Comments

A 30-day public comment period was provided in each of the above referenced NPRs. EPA received one comment letter on Rule 8–11 from the BAAQMD. EPA has evaluated BAAQMD's comments and a summary of the comments and EPA's responses are set forth below.

Comment: BAAQMD commented that EPA's review and disapproval of Method 30 has not been a matter of public record. The BAAQMD's letter states, "At last contact, EPA staff requested additional information to help evaluate Method 30, and considerable data * * * was provided. There has been no notification or contact by EPA regarding this method since that time." The letter also states that EPA Method 24 is technically incorrect for nonheatset inks, that OAQPS staff has recognized this, and that the American Society for Testing and Materials (ASTM) is incorporating Method 30 as the approved standard for measuring the VOC content of nonheatset inks.

Response: EPA regrets that the BAAQMD was not notified sooner of EPA's determination regarding Method 30. A November 17, 1992, letter transmitted EPA review of several BAAQMD test methods, including Method 30, to the BAAQMD. This letter contained EPA's disapproval of Method 30. EPA believes that EPA Method 24 is the correct method to use for measuring the VOC content of nonheatset inks and OAQPS recommends that Method 24 be used for this purpose. In addition, ASTM incorporation of Method 30 does not confer nor imply EPA approval of the test method. EPA has documented why it finds this method unacceptable, and this documentation is included in the docket to this rulemaking.

Additional Comments: The BAAQMD also commented on several minor issues discussed in the TSD for Rule 8–11. The BAAQMD believes that the value of 4.3 pounds/gallon, which exceeds the CTG limit for VOC content of interior body spray and two piece can exterior end coating, is not deficient because the applicable limit, per Regulation 1, is 510 grams/liter, which meets the CTG limit. The BAAQMD also believes that Sections 302, 304, and 305 of Rule 8–11 do not require a capture efficiency test method because BAAQMD Method ST–7, as amended, is used to determine equivalency.

Response: EPA agrees that the applicable limit for interior body spray and two piece can exterior end coating is 510 grams/liter and that the simultaneous listing of 4.3 pounds/gallon is not a serious deficiency. However, EPA continues to request that the limit be revised to the CTG limit of 4.2 pounds/gallon. EPA has determined that Method ST–7 is not acceptable for use with incinerators or other combustion devices that may be used as control equipment for can and coil coating operations.

EPA's review of amended Method ST–7 was transmitted to the district on November 17, 1992 (documentation as to why EPA finds this method unacceptable is also included in the docket to this rulemaking). And while it is true that ST–7 contains a procedure for determining equivalency between VOC limits and capture and control efficiency, BAAQMD Rule 8–11 remains unenforceable because EPA has not approved test method ST–7 into the SIP.

EPA Action

EPA is today finalizing limited approvals and limited disapprovals of the above-referenced rules. The limited approval of these rules is being finalized

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

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

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

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 23, 1993.

Harry Seraydarian,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (182)(i)(B)(*5*), (183)(i)(A)(*9*), (183)(i)(F), and (185)(i)(B)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(B) * * *

(*5*) Amended Regulation 8, Rule 11, adopted on September 20, 1989.

* * * * *

(183) * * *

(i) * * *

(A) * * *

(*9*) Amended Rule 67.18, adopted on July 3, 1990.

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(F) Bay Area Air Quality Management District.

(*1*) Amended Regulation 8, Rule 43, adopted on June 20, 1990.

* * * * *

(185) * * *

(i) * * *

(B) * * *

(*4*) Amended Rule 67.16, adopted on May 21, 1991.

* * * * *

[FR Doc. 93–16455 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[SD1–1–5755; FRL–4666–4]

Approval and Promulgation of State Implementation Plans; South Dakota; PM–10 New Source Review and Emergency Episode Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On September 25, 1991, the designee of the Governor of South Dakota submitted revisions to the State Implementation Plan (SIP). Revisions were made to Article 74:26, Air Pollution Control Program, which consisted of the following: Amendments to the New Source Review (NSR) regulations to be consistent with the July 1, 1989 version of subpart I of 40 CFR part 51, revisions to the emergency episode plans for PM–10, adoption of PM–10 ambient standards and methods of measurement, revisions to the variance provision prohibiting the granting of variances in nonattainment areas, and revisions to the State's operating permit program.

The revisions to Article 74:26 were made as called for in the State's PM–10 Group II Committal SIP, which was submitted by the State on July 12, 1988 and approved by EPA on October 5, 1990, as well as to correct other NSR deficiencies that had been previously identified by EPA. EPA reviewed the submittal and found the revisions to be consistent with federal policy and regulations, with the exception of the variance provision found in Chapter 74:26:01:31.01. The State's variance provision was found to be inconsistent with section 110(i) of the Clean Air Act (CAA), as amended. On November 2, 1992, EPA proposed to approve the regulatory revisions in Article 74:26, and EPA proposed to disapprove the variance provision. (EPA mistakenly listed Chapter 74:26:01:30 in November 2, 1992 Federal Register notice as the variance provision which EPA was proposing to disapprove. The correct citation for the variance provision is Chapter 74:26:01:31.01.) No comments were received pursuant to these proposed actions. Therefore, EPA is proceeding with its approval of the revisions to Article 74:26 and its

disapproval of the variance provision in Chapter 74:26:01:31.01.

EFFECTIVE DATE: This rule will become effective on August 11, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405

South Dakota Department of Water and Natural Resources, Division of Environmental Regulation, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181

Jerry Kurtzweg, ANR 443, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background of Revisions

On July 1, 1987, EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for particulate matter 10 microns or less in size (PM–10) (see 52 FR 24634). As a result, states were required to revise their SIPs to attain and maintain the new PM–10 NAAQS. To implement the new SIP requirements, all areas of the country were divided into three groups, based on the area's probability for violating the PM–10 NAAQS. In South Dakota, the Rapid City area was classified as a Group II area (moderate probability of violating the PM–10 NAAQS), while the rest of the State was classified as a Group III area (low probability of violating the PM–10 NAAQS).

On July 12, 1988, the State submitted a Committal SIP for the Rapid City Group II PM–10 area. In that submittal, the State committed to ambient air monitoring for PM–10 and to revising its NSR regulations to trigger preconstruction review for PM–10, revise their emergency episode plans for PM–10, and adopt the PM–10 NAAQS. On October 5, 1990, EPA approved the State's Group II Committal SIP (55 FR 40831). However, because EPA had previously identified numerous deficiencies in the State's NSR regulations, the State committed to revise its NSR regulations to be consistent with federal requirements as part of EPA's approval of the Group II Committal SIP.

II. Evaluation of Submittal

The State subsequently adopted revisions to Article 74:26 addressing the NSR deficiencies and the other PM–10 Group II area SIP elements, along with other "housekeeping" revisions, and submitted the revised regulations to EPA for SIP approval on September 25, 1991. The submittal also included revisions to the State's New Source Performance Standards (NSPS) and Emission Standards for Asbestos Air Pollutants in Article 74:26, Standards of Performance for Municipal Waste Combustors in Chapter 74:26:26, and provisions for Disposal of Medical Waste in Article 74:35. EPA will take action on the NSPS and asbestos revisions in a separate notice. On February 10, 1992, the State withdrew Chapter 74:26:26, because a revised Chapter 74:26:26 would be submitted for SIP approval at a later date.

EPA initially reviewed the submittal for administrative and technical completeness. After receiving additional information from the State, EPA notified the State on December 2, 1991, that the submittal of Article 74:26 was administratively and technically complete. However, in that letter, EPA returned Article 74:35 as incomplete, because the State did not provide any response to the numerous public comments received pursuant to the proposed adoption of the medical waste disposal regulations.

On January 16, 1992, EPA notified the State of its technical adequacy review of the State submittal. EPA had the following concerns with the State submittal:

(1) The definition of "potential to emit" in Chapter 74:26:01:03 seemed to have potentially different interpretations. The definition could have been interpreted to imply that physical and operational limitations on the capacity of the source to emit did not have to be federally enforceable to be considered part of the potential to emit of the source. To verify that the definition was being interpreted consistent with the federal definition, EPA requested an interpretation from the State Attorney General.

(2) The State's variance procedure was not consistent with the requirements of the CAA. Section 110(i) of the CAA prohibits any action which modifies any requirement of an applicable SIP from being taken with respect to a stationary source by a state or the Administrator of EPA. EPA had previously required the State to revise its variance provision to prohibit the granting of variances in nonattainment areas. However, since many states, including South Dakota, have included numerous other requirements in their SIPs that apply regardless of the nonattainment status of an area, EPA determined that an approvable variance provision must prohibit the granting of any variance modifying any requirement of an applicable implementation plan in any affected area of the State, with respect to stationary sources. EPA recommended that the State withdraw its variance provision from this SIP submittal.

(3) In this submittal, the State also submitted revisions to its operating permit program, which was previously approved in the SIP. However, because of the new title V requirements of the CAA added in the 1990 Amendments, EPA believed that the submittal should be reviewed in accordance with the requirements of title V. Since the State's operating permit regulations did not meet the requirements of title V, EPA recommended that the State withdraw its operating permit provisions from this submittal.

EPA also included an attachment of deficiencies that were currently considered to be minor and requested a commitment from the State to address these other deficiencies during the next round of revisions to the State's NSR regulations.

The State responded to EPA's concerns in a February 10, 1992 letter by stating that it would address EPA's comments during the next round of revisions to Article 74:26. However, the State did not provide the requested Attorney General's opinion on the definition of "potential to emit," nor did the State withdraw its variance provision or its operating permit provisions from the SIP submittal.

EPA responded to the State in a March 26, 1992 letter. In that letter, EPA clarified its concerns regarding the definition of "potential to emit" and again requested a letter of interpretation from the State Attorney General, the State Air Director, or an attorney from the State air pollution agency. EPA also reiterated its concerns regarding the State's variance provision and recommended that the State withdraw the provision, or EPA would disapprove it. Lastly, EPA rescinded its condition that the State's operating permit program meet the requirements for a title V operating permit program at this time. Instead, EPA would apply the requirements of the June 28, 1989 Federal Register notice, in which a revised definition of "federally enforceable" was promulgated to include operating permits issued under an EPA-approved program (54 FR 27285). There were several requirements

listed in the June 28, 1989 Federal Register notice which state operating permit programs had to satisfy, if the permits issued pursuant to the State program were to be considered federally enforceable. Although South Dakota's operating permit regulations did not specifically contain all of the requirements, EPA determined that the State-issued operating permits could be considered federally enforceable, if the State abided by the requirements in the June 28, 1989 notice when issuing the operating permits. Therefore, no additional revisions to the State's operating permit provisions are required for EPA approval at this time. However, the State must revise its operating permit program to meet the requirements of title V of the CAA and submit the revision to EPA within the time-frame established in the CAA. EPA issued rules establishing the minimum requirements of state operating permit programs (57 FR 32250, July 21, 1992), and today's action in no way obviates the State's obligation to submit an operating permit program consistent with those rules.

On April 14, 1992, a staff attorney from the South Dakota Department of Environment and Natural Resources responded with the State's interpretation of the definition of "potential to emit." EPA's review found the State's interpretation to be consistent with the federal definition. However, the State did not withdraw the variance provision from this SIP submittal.

On November 2, 1992 (57 FR 49437), EPA proposed approval of the revisions to Article 74:26 and proposed disapproval of the State's variance provision. (EPA mistakenly listed Chapter 74:26:01:30 in November 2, 1992 Federal Register notice as the variance provision which EPA was proposing to disapprove. The correct citation for the variance provision is Chapter 74:26:01:31.01.) No comments were received on the proposed actions. Therefore, EPA is proceeding with its final approval of the revisions to Article 74:26 and its final disapproval of the State's variance provision in Chapter 74:26:01:31.01.

EPA would also like to clarify in this notice that in the definition of "federally enforceable" in Chapter 74:26:01:01(21) of the State's regulations, the term "administrator" is interpreted by EPA and the State to be the administrator of EPA. This clarification is necessary because the State has defined the term "administrator" in Chapter 74:26:01:01(2) to mean the Secretary of the Department of Water and Natural Resources. The State will correct this discrepancy during the next round of revisions to its regulations. In February, 1993, the State adopted regulatory revisions which, among other things, clarifies that the term "administrator" in the definition of "federally enforceable" means the administrator of EPA.

Final Action

EPA is approving the revisions to Article 74:26 which were submitted by the designee of the Governor of South Dakota on September 25, 1991. The revisions were made to correct deficiencies in the State's NSR regulations, to adopt the Group II requirements for protection of the PM–10 NAAQS, and to address other "housekeeping" revisions in the State's operating permit provisions.[1]

EPA is also disapproving the revisions to the State's variance provision in Chapter 74:26:01:31.01. Section 110(i) of the CAA prohibits any state or EPA from granting a variance from any requirement of a SIP with respect to a stationary source. Although the revision to the State's variance provision would strengthen the SIP by prohibiting the granting of variances in nonattainment areas, the revision will have little or no effect in South Dakota because the only current nonattainment area in the State is designated nonattainment for total suspended particulate (TSP). (See 40 CFR 81.342.) Such designations remain in place for implementing the particulate matter increments, measured in terms of TSP. (See section 107(d)(4)(B) of the CAA.) Therefore, because the revision will not provide adequate restrictions on variances, EPA is disapproving the revisions to the variance provision as inconsistent with section 110(i) of the CAA, as amended.

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 3, 1993.

Jack W. McGraw,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(14) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(14) On September 25, 1991, the designee of the Governor of South Dakota submitted revisions to the plan for new source review, operating permits, and the PM–10 Group II requirements.

(i) Incorporation by reference

(A) Revisions to the Air Pollution Control Program, Sections 74:26:01–74:26:08, effective May 13, 1991.

(ii) Additional material

(A) Letter dated April 14, 1992 from the South Dakota Department of

[1] The 1990 CAAA made significant changes to the planning requirements applicable to areas designated nonattainment for PM–10 and to the NSR program generally. See e.g., 57 FR 13498 (April 16, 1992) & 57 FR 18070 (April 28, 1992). The State of South Dakota has no nonattainment planning requirements currently due under the CAA, and EPA therefore has not reviewed the SIP revision approved today for consistency with these changes to the CAA. Thus, today's action has no bearing on the State's obligation to submit any nonattainment planning requirements that the State becomes subject to in the future or the approvability of any such submission.

Environment and Natural Resources to EPA.

3. A new § 52.2183 is added as follows:

§ 52.2183 Variance provision.

The revisions to the variance provisions in Chapter 74:26:01:31.01 of the South Dakota Air Pollution Control Program, which were submitted by the Governor's designee on September 25, 1991, are disapproved because they are inconsistent with section 110(i) of the Clean Air Act, which prohibits any state or EPA from granting a variance from any requirement of an applicable implementation plan with respect to a stationary source.

[FR Doc. 93–16467 Filed 7–9–93; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 52

[WA 2–1–5407; FRL–4676–1]

Approval and Promulgation of Designation of Areas for Air Quality Planning Purposes; Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving the revisions to the State of Washington Implementation Plans which were submitted on May 14, 1991 by the Washington Department of Ecology (WDOE). The purpose of these revisions is to bring about attainment of the national ambient air quality standards for volatile organic compound emissions from stationary sources in ozone nonattainment areas in a timely manner, as required by the Clean Air Act. This action to approve this plan permits EPA the authority to enforce the adopted requirements.

EFFECTIVE DATE: September 10, 1993.

ADDRESSES: Written comments should by addressed to: Montel Livingston, SIP Manager, Air Programs Branch (AT–082), United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Air Programs Branch, Environmental Protection Agency, Docket #WA2–1–5407, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101; Oregon Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Michael J. Lidgard, Air Programs Branch (AT–082), United States Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, (206) 553–4233.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 172(a)(2) and (b)(3) of the Clean Air Act of 1977 required sources of volatile organic compound (VOC) emissions to install, at a minimum, reasonably available control technology (RACT) in order to reduce emissions of this pollutant. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). EPA has developed Control Techniques Guidelines (CTG) for the purpose of informing state and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from various categories of sources. Each CTG contains recommendations to the states of what EPA calls the "presumptive norm" for RACT. This general statement of Agency policy is based on EPA's evaluation of the capabilities and problems associated with control technologies currently used by facilities within individual source categories. EPA has recommended that the states adopt requirements consistent with the presumptive norm level.

On June 2, 1988, former EPA Regional Administrator Robie Russell notified Washington Department of Ecology (WDOE) by letter that the ozone State Implementation Plan (SIP) for nonattainment areas was substantially inadequate to provide for timely attainment of the national ambient air quality standards (NAAQS) under section 110(a)(2)(H) of the Clean Air Act. In that letter, EPA identified specific actions needed to correct deficiencies in WDOE regulations representing RACT for sources of VOC emissions.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required, by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Vancouver part of the Portland, Oregon-Vancouver, Washington nonattainment area is classified as marginal.[2] Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On May 14, 1991, WDOE submitted amendments to Washington Administrative Code (WAC) chapter 173–490, "Emission Standards and Controls for Sources Emitting Volatile Compounds," and WAC 173–400, "General Regulations for Air Pollution Sources," as revisions to the Washington SIP. This Notice is to propose approval of the amendments to chapter 173–490. The section below provides a brief summary of the changes in chapter 173–490.

A number of sections of chapter 173–400 are necessary to implement and enforce the standards of chapter 173–490. Parts of chapter 173–400 were revised specifically to address deficiencies raised in the EPA SIP call of 1988. Since chapter 173–400 applies to all pollutants and sources, it has been processed under a separate EPA action. However, the revisions to chapter 173–400, in part, address the deficiencies cited by EPA in Washington's VOC rules, and relevant revisions to the chapter 173–400 are also discussed below. Chapter 173–400 was approved on January 15, 1993 (58 FR 4578).

II. Today's Action

In this action, EPA is approving the revision to the Washington State Implementation Plan submitted on May 14, 1991 as an amendment. The revision

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[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[2] Vancouver, WA retained its designation of nonattainment and was classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694.

for WAC chapter 173–490, "Emission Standards and Controls for Sources Emitting Volatile Compounds" meets all of the applicable requirements of the Act as determined by EPA.

III. Response to Comments

EPA received no comments on its April 19, 1993 (58 FR 21133–21135) Federal Register proposal of chapter 173–490 WAC "Emission Standards and Controls for Sources Emitting Volatile Compounds" as a revision.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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

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

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 25, 1993.

Charles Findley,

Acting Regional Administrator.

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

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(39) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(39) On May 14, 1991, the Director of the Department of Ecology submitted revisions to the State of Washington Implementation plans for volatile organic compound emissions (WAC 173–490 "Emission Standards and Controls for Sources Emitting Volatile Compounds") attainment from stationary sources in ozone nonattainment areas.

(i) Incorporation by reference.

(A) May 14, 1991 letter from Washington Department of Ecology to EPA Region 10 submitting the VOC nonattainment area state implementation plan for Washington.

(B) WAC 173–490 "Emission Standards and Controls for Sources Emitting Volatile Compounds" as adopted on February 19, 1991 and became effective on March 22, 1991.

3. Section 52.2479 is revised to read as follows:

§ 52.2479 Contents of the federally approved, state submitted implementation plan.

The following sections of the Washington State Implementation Plan for Compliance with Requirements of the Federal Clean Air Act (as adopted on the dates indicated) have been approved and are part of the current federally-approved, state-submitted implementation plan.

Washington State Implementation Plan for Compliance With Requirements of the Federal Clean Air Act

WAC 173–400 General Regulations for Air Pollution Sources

Section 010 Policy and purpose (3/22/91)
Section 020 Applicability (3/22/91)
Section 030 Definitions (3/22/91)
Section 040 General standards for maximum emissions (except -040(1) (c) and (d); -040(2); -040(4); and the second paragraph of -040(6)) (3/22/91)
Section 050 Emission standards for combustion and incineration units (except for the exception provision in -050(3)) (3/22/91)
Section 060 Emission standards for general process units (3/22/91)
Section 070 Emission standards for certain source categories (except -070(7)) (3/22/91)
Section 100 Registration (3/22/91)
Section 105 Records, monitoring and reporting (3/22/91)
Section 110 New source review (NSR) (3/22/91)
Section 151 Retrofit requirements for visibility protection (3/22/91)
Section 161 Compliance schedules (3/22/91)
Section 171 Public involvement (3/22/91)
Section 190 Requirements for nonattainment areas (3/22/91)
Section 200 Creditable stack height and dispersion techniques (3/22/91)
Section 205 Adjustment for atmospheric conditions (3/22/91)
Section 210 Emission requirements for prior jurisdictions (3/22/91)
Section 220 Requirements for board members (3/22/91)
Section 230 Regulatory actions (3/22/91)
Section 240 Criminal penalties (3/22/91)
Section 250 Appeals (3/22/91)
Section 260 Conflict of interest (3/22/91)

WAC 173–402 Civil Sanctions Under Washington Clean Air Act (6/24/80)

WAC 173–405 Kraft Pulp Mills

Section 012 Statement of purpose (3/22/91)
Section 021 Definitions (3/22/91)

Section 040 Emission standards (except -040(1)(b), -040(1)(c), -040(3)(b), -040(3)(c), -040(4), -040(7), -040(8), and -040(9)) (3/22/91)
Section 045 Creditable stack height and dispersion techniques (3/22/91)
Section 061 More restrictive emission standards (3/22/91)
Section 072 Monitoring requirements (except -072(2)) (3/22/91)
Section 077 Report of startup, shutdown, breakdown or upset conditions (3/22/91)
Section 078 Emission inventory (3/22/91)
Section 086 New source review (NSR) (3/22/91)
Section 087 Prevention of significant deterioration (PSD) (3/22/91)
Section 091 Special studies (3/22/91)

WAC 173–410 Sulfite Pulping Mills

Section 012 Statement of Purpose (3/22/91)
Section 021 Definitions (3/22/91)
Section 040 Emission standards (except for the exception provision in -040(3) and -040(5)) (3/22/91)
Section 045 Creditable stack height and dispersion techniques (3/22/91)
Section 062 Monitoring requirements (3/22/91)
Section 067 Report of startup, shutdown, breakdown or upset conditions (3/22/91)
Section 071 Emission inventory (3/22/91)
Section 086 New source review (NSR) (3/22/91)
Section 087 Prevention of significant deterioration (PSD) (3/22/91)
Section 100 Special studies (3/22/91)

WAC 173–415 Primary Aluminum Plants

Section 010 Statement of purpose (3/22/91)
Section 020 Definitions (except -020(1) and (2)) (3/22/91)
Section 030 Emission standards (except -030(1) and -030(3)(b)) (3/22/91)
Section 045 Creditable stack height and dispersion techniques (3/22/91)
Section 050 New source review (NSR) (3/22/91)
Section 051 Prevention of significant deterioration (PSD) (3/22/91)
Section 060 Monitoring and reporting (except -060(1) (a), (b) and (d)) (3/22/91)
Section 070 Report of startup, shutdown, breakdown or upset conditions (3/22/91)
Section 080 Emission inventory (3/22/91)

WAC 173–420 State Jurisdiction Over Motor Vehicles (3/29/77)

WAC 173–422 Motor Vehicle Emission Inspection (12/31/81)

WAC 173–425 Open Burning

Section 010 Purpose (10/18/90)
Section 020 Applicability (10/18/90)
Section 030 Definitions (10/18/90)
Section 036 Curtailment during episodes or impaired air quality (10/18/90)
Section 045 Prohibited materials (10/18/90)
Section 055 Exceptions (10/18/90)
Section 065 Residential open burning (10/18/90)
Section 075 Commercial open burning (10/18/90)
Section 085 Agricultural open burning (10/18/90)
Section 095 No burn area designation (10/18/90)
Section 100 Delegation of agricultural open burning program (10/18/90)
Section 115 Land clearing projects (10/18/90)
Section 120 Department of natural resources—smoke management plan (10/18/90)
Section 130 Notice of violation (10/18/90)
Section 140 Remedies (10/18/90)

WAC 173–430 Burning of Field and Forage and Turf Grasses Grown for Seed

Section 010 Purpose (10/18/90)
Section 020 Definitions (10/18/90)
Section 030 Permits, conditions and restrictions (10/18/90)
Section 040 Mobile field burners (10/18/90)
Section 050 Other approvals (10/18/90)
Section 060 Study of alternatives (10/18/90)
Section 070 Fees (10/18/90)
Section 080 Certification of alternatives (10/18/90)

WAC 173–433 Solid Fuel Burning Device Standards

Section 010 Purpose (10/18/90)
Section 020 Applicability (10/18/90)
Section 030 Definitions (10/18/90)
Section 100 Emission performance standards (10/18/90)
Section 110 Opacity standards (10/18/90)
Section 120 Prohibited fuel types (10/18/90)
Section 130 General emission standards (10/18/90)
Section 150 Curtailment (10/18/90)
Section 170 Retail sales fee (10/18/90)
Section 200 Regulatory actions and penalties (10/18/90)

WAC 173–434 Solid Waste Incinerator Facilities

Section 010 Purpose (10/18/90)
Section 020 Applicability (10/18/90)
Section 030 Definitions (10/18/90)
Section 050 New source review (NSR) (10/18/90)
Section 070 Prevention of significant deterioration (PSD) (10/18/90)
Section 090 Operation and maintenance plan (10/18/90)
Section 100 Requirement for BACT (10/18/90)
Section 130 Emission standards (except -130(2)) (10/18/90)
Section 160 Design and operation (10/18/90)
Section 170 Monitoring and reporting (10/18/90)
Section 190 Changes in operation (10/18/90)
Section 200 Emission inventory (10/18/90)
Section 210 Special studies (10/18/90)

WAC 173–435 Emergency Episode Plan

Section 010 Purpose (1/3/89)
Section 015 Significant harm levels (1/3/89)
Section 020 Definitions (1/3/89)
Section 030 Episode stage criteria (1/3/89)
Section 040 Source emission reduction plans (1/3/89)
Section 050 Action procedures (1/3/89)
Section 060 Enforcement (1/3/89)
Section 070 Sampling sites, equipment and methods (except -070(1)) (1/3/89)

WAC 173–440 Sensitive Areas

Section 010 Purpose (10/18/90)
Section 020 Applicability (10/18/90)
Section 030 Definitions (10/18/90)
Section 040 Sensitive areas designated (10/18/90)
Section 100 Standards (10/18/90)
Section 900 Appendix A—Map (10/18/90)

WAC 173–470 Ambient Air Quality Standards for Particulate Matter

Section 010 Purpose (1/3/89)
Section 020 Applicability (1/3/89)
Section 030 Definitions (1/3/89)
Section 100 Ambient air quality standards (1/3/89)
Section 160 Reporting of data (1/3/89)

WAC 173–490 Emission Standards and Controls for Sources Emitting Volatile Organic Compounds

Section 010 Purpose (2/19/91)
Section 020 Definitions (2/19/91)
Section 025 General Applicability (2/19/91)
Section 030 Registration and Reporting (2/19/91)
Section 040 Requirements (2/19/91)
Section 070 Schedule of Control Dates (repealed 2/19/91)
Section 071 Alternative Schedule of Control Dates (repealed 2/19/91)
Section 080 Exceptions (2/19/91)
Section 090 New Source Review (2/19/91)
Section 120 Compliance Schedules (repealed 2/19/91)
Section 130 Regulatory Actions (repealed 2/19/91)
Section 135 Criminal Penalties (repealed 2/19/91)
Section 140 Appeals (repealed 2/19/91)
Section 200 Petroleum Refinery Equipment Leaks (2/19/91)
Section 201 Petroleum Liquid Storage In External Floating Roof Tanks (2/19/91)
Section 202 Leaks from Gasoline Transport Tanks and Vapor Collection Systems (2/19/91)
Section 203 Perchloroethylene Dry Cleaning Systems (2/19/91)
Section 204 Graphic Arts Systems (2/19/91)
Section 205 Surface Coating of Miscellaneous Metal Parts and Products (2/19/91)
Section 207 Surface Coating of Flatwood Paneling (2/19/91)
Section 208 Aerospace Assembly and Component Coating Operations (2/19/91)

WAC 463–39 General Regulations for Air Pollution Sources

Section 010 Purpose (7/23/79)
Section 020 Applicability (7/23/79)
Section 030 Definitions (except (4), (7), (10), (24), (25), (30), (35), (36)) (7/23/79)
Section 040 General Standards for Maximum Permissible Emissions (except introductory paragraph) (7/23/79)
Section 050 Minimum Emission Standards for Combustion and Incineration Sources (7/23/79)
Section 060 Minimum Emission Standards for General Process Sources (7/23/79)
Section 080 Compliance Schedules (7/23/79)
Section 100 Registration (7/23/79)

Section 110 New Source Review (except (1), the first two sentences of (3)(b),(3)(c), (3)(d), (3)(e)) (7/23/79)
Section 120 Monitoring and Special Report (7/23/79)
Section 130 Regulatory Actions (7/23/79)
Section 135 Criminal Penalties (7/23/79)
Section 150 Variance (7/23/79)
Section 170 Conflict of Interest (7/23/79)

Puget Sound Air Pollution Control Authority—Regulation I

Article 1 Policy, Short Title & Definitions (except 1.07(s), 1.07(rr) and 1.07(xx) (12/74)
Article 1.07(s) General Definitions, "Facility" (10/11/83)
Article 1.07(rr) General Definitions, "Source" (10/11/83)
Article 1.07(xx) General Definitions, "Volatile Organic Compound" (10/11/83)
Article 3 General Provisions (12/74)
Article 6 Notices of Construction and Orders of Approval (except 6.07(b)(7) and 6.08) (12/74)
Article 6.07(b)(7) Issuance of Approval or Order (10/11/83)
Article 6.08 Special Conditions for New Air Contaminant Sources Which Will Significantly Impact A NonAttainment Area (10/11/83)
Article 9.02 Outdoor Fires (6/13/73)
Article 9.02A (6/20/74)
Article 9.03 Emission of Air Contaminant: Visual Standard (1/77)
Article 9.04 Deposition of Particulate Matter (1/77)
Article 9.05 Incinerator Burning (1/77)
Article 9.06 Refuse Burning Equipment: Time Restriction (1/77)
Article 9.07(c) Emission of Sulfur Dioxide (8/12/70)
Article 9.07(d) Emission of Sulfur Dioxide (1/77)
Article 9.07(e) Emission of Sulfur Dioxide (1/77)
Article 9.09 Emission of Particulate Matter: Weight Rate Standard (1/77)

Puget Sound Air Pollution Control Authority—Regulation II

Article 1 Purpose, Policy, Short Title and Definitions (except 1.02) (4/8/82)
Article 1, Section 1.02 Policy (12/13/84)
Article 2 Volatile Organic Compound Emission Standards Group 1 (except 2.13) (4/8/82)
Article 2, Section 2.13 Schedule of Control Dates (12/13/84)
Article 3 Volatile Organic Compound Emission Standards—Group 2 (except 3.11) (4/8/82)
Article 3, Section 3.11 Schedule of Compliance Dates (12/13/84)
Article 4 General Provisions (except 4.02) (4/8/82)
Article 4, Section 4.02 Scope, Registration, Reporting and Notice of Construction (12/13/84)

Northwest Air Pollution Authority—Regulations

Section 455.11 Particulate Matter Standard (8/9/78)

Spokane Country Air Pollution Control Authority—Regulation II

Article IV, Section 4.01 Particulate Emissions—Grain Loading Restrictions (1/6/75)

[FR Doc. 93–16362 Filed 7–9–93; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[GEN Docket No. 89–116, 89–117 and 89–118, FCC 93–261]

Procedure for Measuring Electromagnetic Emissions From Intentional and Unintentional Radiators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action incorporates into the FCC Rules by reference the American National Standards Institute's (ANSI) test procedure C63.4–1992 as the standard the Commission will use for measuring electromagnetic emissions from intentional and unintentional radiators, including digital devices, regulated under part 15 of the FCC Rules. C63.4–1992 will be used instead of TP–3, TP–4, and TP–6, the test procedures proposed in the Notices of Proposed Rule Making (*NPRMs*) in this proceeding. This new procedure is a revision of ANSI test procedure C63.4–1991, incorporating additional instructions specific to the testing of intentional and unintentional radiators. C63.4–1992 also includes new criteria for site attenuation in a measurement facility description filing required by Part 2 of the FCC Rules.

EFFECTIVE DATE: August 11, 1993. The incorporation by reference of ANSI C63.4–1992 listed in the regulations was approved by the Director of the Federal Register as of August 11, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh L. Van Tuyl, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD, 21046, (301) 725–1585, extension 221.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*R&O*) in General Dockets 89–116, 89–117 and 89–118, adopted May 13, 1993, and released June 24, 1993. The full text of this *R&O*, including the Final Regulatory Flexibility Analysis, 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 contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. This Report and Order amends part 15 of the rules to incorporate by reference ANSI C63.4–1992 as the procedure to be used by the Commission for performing radio-noise emission measurements on intentional and unintentional radiators, including digital devices. Consistent with the actions we have taken earlier with regard to digital devices, there are three sections of ANSI C63.4–1992 that we are not adopting in determining compliance of devices with the FCC Rules. We are not adopting section 5.7, which specifies the use of an artificial hand when measuring hand-held equipment. We believe that the use of an artificial hand adds complexity to testing, and there is insufficient evidence to show that it allows an accurate or repeatable measurement of the emission levels from a device. We also will not accept absorbing clamp measurements as a substitute for measuring radiated emissions as provided in Section 9. The Commission's limits are based on measurements of radiated emissions. There is no evidence to show that the results obtained with an absorbing clamp can be correlated with radiated emissions from electronic equipment. Finally, we are not allowing the relaxation of the limits for "click" or short duration emissions as provided in section 14. Short duration emissions can produce as much nuisance to radio communications as continuous emissions.

2. Currently the Commission requires the filing of a measurement facility description pursuant to Section 2.948 of the Rules, including measurements of site attenuation showing compliance with the horizontal test site attenuation values specified in FCC Office of Engineering and Technology Bulletin 55 (OET 55). ANSI C63.4–1992 contains vertical site attenuation measurement requirements as well as the horizontal site attenuation measurement requirements contained in OET 55. We are requiring site attenuation data to be taken pursuant to C63.4–1992.

3. We recognize that a time period is needed for transition to the new measurement procedure and test site requirements. We are implementing the use of C63.4–1992 for equipment authorizations other than digital devices filed on or after June 1, 1995. Digital devices are still subject to the May 1,

1994 transition date set forth in General Docket 89–44.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, these rules will not have a significant economic impact on a substantial number of small entities because it provides guidance and procedures consistent with the needs of industry.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to the approval of the Office of Management and Budget as prescribed by the Act.

6. Accordingly, it is ordered that under the authority contained in sections 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303, part 2 and part 15 of the Commission's Rules and Regulations *Are Amended* as set forth below. These rules are effective August 11, 1993. *It is further ordered* that this proceeding is *Terminated.*

List of Subjects

47 CFR Part 2

Communications equipment, Incorporation by reference, Radio, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Computer technology, Incorporation by reference, Radio, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission

Donna R. Searcy,

Secretary.

Amendatory Text

Part 2 of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r) and 307, unless otherwise noted.

2. Section 2.948 is amended by revising paragraph (b)(8) to read as follows:

§ 2.948 Description of measurement facilities.

* * * * *

(b) * * *

(8) A plot of site attenuation data.

(i) For a measurement facility that will be used for testing radiated emissions from a digital device on or after May 1, 1994, or for testing intentional and other unintentional radiators authorized under Part 15 of the rules on or after June 1, 1995, the site attenuation data shall be taken pursuant to the procedures contained in Sections 5.4.6 through 5.5 of the following procedure: American National Standards Institute (ANSI) C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on July 17, 1992 as document number SH15180. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of ANSI C63.4–1992 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of ANSI C63.4–1992 may be inspected at the following locations:

(A) Federal Communications Commission, 2025 M Street, NW., Office of Engineering and Technology (Room 7317), Washington, DC 20554,

(B) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, or

(C) Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(ii) For a measurement facility that will be used for testing radiated emissions from a digital device prior to May 1, 1994, or from intentional and other unintentional radiators authorized under Part 15 prior to June 1, 1995, or from devices authorized under Part 18 of the rules, the site attenuation data shall be taken pursuant to either ANSI C63.4–1992, Sections 5.4.6 through 5.5, or FCC/OET Bulletin 55.

(iii) This requirement does not apply to equipment that is not measured on an open field test site.

* * * * *

Part 15 of title 47 of the Code of Federal Regulations is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r), 304 and 307.

2. Paragraph (a) of § 15.31 is revised to read as follows:

§ 15.31 Measurement standards.

(a) The following measurement procedures are used by the Commission to determine compliance with the technical requirements in this Part. Except where noted, copies of these procedures are available from the Commission's current duplicating contractor whose name and address are available from the Commission's Consumer Assistance Office at 202–632–7000.

(1) FCC/OET MP–1: FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers. Note: This procedure may be used only for testing devices for which verification is obtained, or for which an application for equipment authorization is filed before June 1, 1995. For compliance testing of these devices after that date, see paragraph (a)(6) of this section.

(2) FCC/OET MP–2: Measurement of UHF Noise Figures of TV Receivers.

(3) FCC/OET MP–3: FCC Methods of Measurements of Output Signal Level, Output Terminal Conducted Spurious Emissions, Transfer Switch Characteristics, and Radio Noise Emissions from TV Interface Devices. Note: This procedure may be used only for testing devices for which verification is obtained, or for which an application for equipment authorization is filed before June 1, 1995. For compliance testing of these devices after that date, see paragraph (a)(6) of this section.

(4) FCC/OET MP–4 (1987): FCC Procedure for Measuring RF Emissions from Computing Devices. Note: This procedure may be used only for testing digital devices for which verification is obtained, or for which an application for equipment authorization is filed before May 1, 1994. For compliance testing of digital devices on or after May 1, 1994, see paragraph (a)(6) of this section.

(5) FCC/OET MP–9: FCC Procedure for Measuring Cable Television Switch Isolation. Note: This procedure may be used only for testing devices for which verification is obtained, or for which an application for equipment authorization is filed before June 1, 1995. For compliance testing of these devices after that date, see paragraph (a)(6) of this section.

(6) Digital devices for which verification is obtained, or for which an application for equipment authorization is filed on or after May 1, 1994, and intentional and other unintentional

radiators for which verification is obtained, or for which an application for equipment authorization is filed on or after June 1, 1995 are to be measured for compliance using the following procedure excluding § 5.7, Section 9 and Section 14: American National Standards Institute (ANSI) C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on July 17, 1992, as document number SH15180. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The Commission encourages the use of this procedure for testing digital devices, intentional radiators, and other unintentional radiators as soon as practical. Copies of ANSI C63.4–1992 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of C63.4–1992 may be inspected during normal business hours at the following locations:

(i) Federal Communications Commission, 2025 M Street, NW., Office of Engineering and Technology (Room 7317), Washington, DC 20554,

(ii) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, or

(iii) Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

[FR Doc. 93–16460 Filed 7–9–93; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–314; RM–8142]

Radio Broadcasting Services; Oliver, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Humes Broadcasting Corporation, substitutes Channel 235B1 for Channel 235A at Oliver, Pennsylvania, and modifies Station WASP–FM's construction permit to specify operation on the higher class channel. *See* 58 Fed. Reg. 5823, January 21, 1993. Channel 235B1 can be allotted to Oliver in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) east, at coordinates North Latitude 39–55–15 and West Longitude 79–34–12, to accommodate petitioner's desired transmitter site. Canadian concurrence has been received since Oliver is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–314, adopted June 18, 1993, and released July 7, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (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 under Pennsylvania, is amended by removing Channel 235A and adding Channel 235B1 at Oliver.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–16416 Filed 7–9–93; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–20; RM–8177]

Radio Broadcasting Services; Cheyenne, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jackalope Broadcasting, allots Channel 285A at Cheyenne, Wyoming, as its fourth local FM transmission service. See 58 FR 11206, February 24, 1993. Channel 285A can be allotted to Cheyenne in compliance with the Commission's minimum distance separation requirements at city reference coordinates without the imposition of a site restriction. The coordinates for Channel 285A at Cheyenne are North Latitude 41°08′18″ and West Longitude 104°48′48″. In addition, we make an editorial amendment to show Channel 264C1 in lieu of Channel 265C1 at Cheyenne. With this action, this proceeding is terminated.

DATES: Effective August 23, 1993. The window period for filing applications for Channel 285A at Cheyenne, Wyoming, will open on August 24, 1993, and close on September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–20, adopted June 24, 1993, and released July 7, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 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, Inc., (202) 857–3800, 2100 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 under Wyoming, is amended by adding Channel 285A at Cheyenne, and by removing Channel 265C1 and adding Channel 264C1 at Cheyenne.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–16415 Filed 7–9–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Endangered or Threatened Status for Five Florida Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines four Florida plant species to be endangered species, and one to be a threatened species, pursuant to the Endangered Species Act of 1973 (Act), as amended. The four species determined to be endangered are: *Conradina glabra* (Apalachicola rosemary) of Liberty County, threatened by habitat modification; *Conradina brevifolia* (short-leaved rosemary) of Highlands and Polk Counties, threatened by habitat destruction for agricultural or residential purposes; *Conradina etonia* (Etonia rosemary) of Putnam County, threatened by residential development; and *Cucurbita okeechobeensis* ssp. *okeechobeensis* (Okeechobee gourd) of the southern shore of Lake Okeechobee in Palm Beach County, threatened by vegetation management measures and the consequences of water level management. The Service determines threatened status for *Pinguicula ionantha* (Godfrey's butterwort), native to four counties in the Florida panhandle. It is threatened by habitat degradation due to lack of prescribed fire and shading by planted pines. This rule implements the protection and recovery provisions afforded by the Act for the five species.

EFFECTIVE DATE: August 11, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904–232–2580).

SUPPLEMENTARY INFORMATION:

Background

Discussion of the Three Conradina Species

Conradina (minty rosemary) is a genus of minty-aromatic shrubs belonging to the mint family (Lamiaceae) that resemble the herb rosemary (*Rosmarinus officinalis*), native to the Mediterranean region. *Conradina* is characterized by dense hairs appressed or matted on the under surfaces of the leaves, and by the flower's corolla tube, which is sharply bent above the middle, rather than straight or gently curved (Shinners 1962).

The genus *Conradina* consists of six allopatric species, i.e., the ranges of the species do not overlap (Kral and McCartney 1991). The most widespread and variable species is *Conradina canescens* of the Florida panhandle, southern Alabama, and southern Mississippi. This species occurs on dry sand soils on coastal dunes, in sand scrub vegetation, and in dry longleaf pinelands. The other five species have more restricted geographic distributions and are considerably less variable (Gray 1965).

Conradina verticillata (Cumberland rosemary) is native to north-central Tennessee. It was federally listed as a threatened species in the Federal Register of November 29, 1991 (56 FR 60937).

Conradina grandiflora (large-flowered rosemary) is native to scrub vegetation near Florida's Atlantic coast from Daytona Beach south to Miami, as well as inland near Orlando and in Okeechobee County. Despite measures to protect the federally threatened Florida scrub jay that occurs in the same scrub vegetation, habitat of *Conradina grandiflora* is being lost to development, and Federal listing of *Conradina grandiflora* is probably warranted, but was not proposed with the other species of *Conradina* because other listing actions were of higher priority.

The three other species of *Conradina*—*Conradina glabra* (Apalachicola rosemary), *Conradina brevifolia* (short-leaved rosemary), and *Conradina etonia* (Etonia rosemary)—are subjects of this rule.

Conradina glabra is restricted to Liberty County, Florida, west of Tallahassee near the Apalachicola River (Gray 1965; Schultz 1987, citing personal communication from Wilson Baker; and S. Gatewood, The Nature Conservancy, Tallahassee, pers. comm. 1991). Plants collected from Santa Rosa County near Milton, northeast of Pensacola (by S.C. Hood in 1949) were assigned to this species by Shinners (1962). Gray (1965) searched the Milton area for *Conradina glabra* without finding it. Later, Godfrey (1988) found plants assignable to *C. glabra* north of Milton, in Blackwater State Forest. The Blackwater Forest plants are within the geographic range of the widespread, variable *Conradina canescens* and, except for being glabrous, the Santa Rosa County plants resemble *Conradina canescens* more than *C. glabra*. In 1989, Elaine Luna was studying the taxonomy and distribution of *Conradina glabra*, but results are not yet available (D. White, Florida Natural Areas Inventory, memo, October 1989; R. Hilsenbeck, Florida Natural Areas Inventory, *in litt.*, 1991). Kral and McCartney (1991) implicitly assign the Blackwater plants to *C. canescens*. Godfrey (1988) corrects an erroneous report by Godfrey and Ward (1979) that "most collections (of *C. glabra*) have been made in or near the Apalachicola National Forest" in Franklin County, Florida. The plant does not occur in the National Forest or Franklin County.

Conradina glabra occurs in an area of several square miles near State Road 12 and County Road 271, northeast of Bristol, Liberty County. The area is a gently undulating upland, originally with longleaf pine-wiregrass vegetation, dissected by ravines of the Sweetwater Creek system, which drain westward to the Apalachicola River. Parts of the Apalachicola ravines are incorporated in public and private nature preserves that protect rich hardwood forests with the narrowly endemic Florida torreya (*Torreya taxifolia*) and Florida yew (*Taxus floridana*). Heads of ravines, called steepheads, have slopes that are undermined by groundwater seeping into the ravine bottom, causing the slopes to gradually slump, carrying the vegetation with it. At least one steephead shrub, Florida yew, appears to be adapted to slowly moving down the slopes (Redmond 1984, cited in Platt and Schwarz 1990), and *Conradina glabra* may sometimes be carried into ravines. "Many older *Conradina* shrubs occur at the edge of the ravine and even extend a short distance down into open areas of the ravine; younger *Conradina* plants have become established in the barren, exposed soil adjacent to the pines and often extend into the pine stand. This suggests that *C. glabra* is able to compete effectively in open, newly exposed areas but is unable to compete in closed stands of mixed hardwoods or pines. This species probably features significantly in secondary plant succession in the area, much of which is frequently subjected to burning." (Gray 1965). Wilson Baker (pers. comm. cited in Schultz 1987) suggested that *Conradina* spread from the ravine edges into newly planted pine plantations on the uplands during the 1950's. Kral (1983) considered *Conradina glabra* to have inhabited the grassy understory of the upland longleaf pine-wiregrass vegetation before pine

plantations were developed, as well as steephead edges. Kral thought that *Conradina glabra* was increasing in slash pine plantations, along with another woody mint, *Calamintha dentata*. However, Kral thought it "premature to state that this will be a stable system" because the planted slash pine had not thrived, the plantations were probably more open than had been intended, and that if the slash pines matured, they might provide "more shade and more competition than is good for the *Conradina*". Most of the slash pine was cut in 1987 and replanted to sand pine (S. Gatewood, The Nature Conservancy, *in litt.*, 1987). *Conradina glabra* currently "is found on road edges, in planted pine plantations and along their cleared edges, and along the edges of the ravines" (Baker, pers. comm., in Schultz 1987).

At the present time, there are four distinct natural colonies of *Conradina glabra* on land owned by a forest products company and on public road rights-of-way. A fifth, artificial colony is being created a short distance from the plant's native range, on similar ravine edges, in the Apalachicola Bluffs and Ravines Preserve, owned by The Nature Conservancy (S. Gatewood, The Nature Conservancy, pers. comm., 1991).

Conradina glabra was named as a distinct species by Shinners (1962), a treatment that was upheld by Gray (1965). The plant had first been collected in 1931, and Small (1933, p. 1167) mentioned the specimen without assigning a name. *Conradina glabra* is a much-branched shrub up to 2 meters tall. Kral (1983) noted that it is "often clonal" and Wilson Baker (pers. comm. cited in Schultz 1987) thinks the species may spread by rhizomes; however, Dr. Ann Johnson (Florida Natural Areas Inventory) has noted that woody mints, including *Conradina brevifolia* and *Calamintha ashei*, are killed by fire and come back from seed. Regrowth from rhizomes has never been observed. She suggests that some excavation of roots of *Conradina glabra* should be performed to confirm that it is rhizomatous, rather than simply tending to occur in a clumped distribution pattern.

The branches of *Conradina glabra* are spreading or upright. The leaves are evergreen, opposite, with additional leaves in short shoots in the axils giving the appearance of fascicles. The leaves are needle-like, "very similar to the needles of fir" (Kral 1983, p. 949). The leaves are hairless on the upper surface—the only species of *Conradina* for which this is the case. The flowers are usually in groups of 2 or 3. The calyx and corolla are two-lipped. The corolla is 1.5–2.0 centimeters (cm) long, from its base to the tip of its longest lobe, with a slender corolla tube that is straight for about 5 millimeters (mm) long, then bends sharply downward to form a funnel-shaped throat 5 mm long, then widens out into upper and lower lips. The outside of the tube and throat are white, with the lobes and lips lavender blue at the tips. The lower lip of the corolla is three-lobed, with a band of purple dots extending along its inner side. The four stamens are paired. Many flowers are male sterile. In extreme cases, the stamens are "grossly malformed, being petaloid in shape, texture, and color. A less bizarre manifestation of male sterility is that in which only aborted pollen grains are contained in anthers that appear completely normal" (Gray 1965). Male sterility may be the result of inbreeding and homozygosity (Gray 1965). The plant is illustrated in Godfrey (1988).

Conradina brevifolia (short-leaved rosemary) inhabits sand pine scrub vegetation on the Lake Wales Ridge in Polk and Highlands Counties, Florida. Scrub vegetation on the ridge is typically dominated by evergreen scrub oaks and other shrubs, with sand pine and open areas with herbs and small shrubs. This vegetation has many endemic species, including 13 plants federally listed as endangered or threatened, the federally threatened Florida scrub jay (*Aphelocoma coerulescens coerulescens*), and two threatened lizards (blue-tailed mole skink and sand skink). *Conradina brevifolia* has a very restricted geographic distribution within the Lake Wales Ridge, occurring only in about 30 scrubs whose combined areas total less than 6,000 acres (Christman 1988). As such, it is one of the most narrowly distributed of the Lake Wales Ridge endemic plants. The plant is protected on Lake Arbuckle State Forest and on land currently owned by The Nature Conservancy at Saddle Blanket Lakes. This 568-acre tract is the nucleus of a planned 878-acre State acquisition. Further State, Federal, and private land purchases are contemplated in the area, including the proposed Lake Wales Ridge National Wildlife Refuge.

Conradina brevifolia was described as a new species by Shinners (1962). It is similar to *C. canescens* but has shorter leaves: the larger leaves on well-developed flowering branches are 6.0–8.2 mm long, mostly shorter than the internodes, versus 7.0–20 mm long, mostly longer than the internodes for *C. canescens*. *Conradina brevifolia* also tends to have more flowers per axil than *C. canescens*: 1 to 6 per axil versus 1 to 3. Gray (1965) made it clear that *C. brevifolia*, like *C. glabra*, is morphologically not strongly differentiated from, and is less variable than, *C. canescens*. Gray (1965), Wunderlin et al. (1980), Kral (1983), and Kral and McCartney (1991) have upheld *C. brevifolia* as a distinct species. Wunderlin (1982) includes *C. brevifolia* in *Conradina canescens*, without noting *C. brevifolia* as a synonym, and DeLaney and Wunderlin (1989) follow this practice.

Conradina etonia (Etonia rosemary) is known from only two sites near Etonia Creek, northeast of Florahome, Putnam County, northeastern Florida. It occurs in Florida scrub vegetation with sand pine and shrubby evergreen oaks. Scrub in this area is the northeastern range limit for several plant species of Florida scrub, including silk bay (*Persea humilis*), sand holly (*Ilex cumulicola*), *Garberia heterophylla*, and the scrub palmetto (*Sabal etonia*), which is named for this area but does not occur in the immediate vicinity of *Conradina etonia* (Kral and McCartney 1991; S. Christman, Florida Dept. of Natural Resources, pers. comm., 1991). The threatened Florida scrub jay occurs in the same habitat as *Conradina etonia*. The sites where this plant is known to occur are privately owned and are subdivided for residential development, or have been approved for such development.

Conradina etonia was discovered in 1990 and promptly described as a new species (Kral and McCartney 1991). It is similar to *Conradina grandiflora* in general habit of growth, and the flowers of both species are large and quite similar in appearance. However, the leaves of *Conradina etonia* are distinctly broader than those of *C. grandiflora* and have lateral veins that are clearly visible on the under surface, a feature that is seen in no other species of *Conradina*. The pubescence of the leaves and much of the rest of the plant is also quite different between the two species. Kral and McCartney (1991) are convinced "that *Conradina etonia* could well be the best marked species in a genus whose species differ mostly in very fine characters." They express hope that further searches of scrub vegetation in northeastern Florida may turn up more localities for *Conradina etonia* and that some intermediates between it and *C. grandiflora* might be found; they mention a specimen of *C. grandiflora* from south of Daytona Beach whose new shoots have a downiness similar to that of *C. etonia*. However, the extent of sand pine scrub suitable for *Conradina etonia* is limited and it is botanically reasonably well explored, primarily by Robert McCartney, with other visits by

Steven Christman, Robert Godfrey, and Robert Kral.

Discussion of Cucurbita Okeechobeensis ssp. Okeechobeensis

Cucurbita okeechobeensis ssp. *okeechobeensis* (Okeechobee gourd) is an annual, fibrous-rooted, high-climbing vine with tendrils, belonging to the gourd family (Cucurbitaceae). Its leaf blades are heart-to-kidney shaped, with 5–7 shallow, angular lobes and irregularly serrated margins (*C. o. martinezii* has more regularly serrated margins) (Walters and Decker-Walters 1993). Young leaves are covered with soft hairs. The cream colored flowers are bell-shaped, with the corolla 6–7 cm (2–3 in) long; they can be distinguished from flowers of *C. o. martinezii* (Martinez gourd) by the presence of dense pubescence (hairs) on the hypanthium (the tube formed by the fused bases of the petals and sepals) of the male flower and on the ovary of the female flower. The gourd is globular or slightly oblong, light green with 10 indistinct stripes, and hard shelled with bitter flesh. The seeds are gray-green and flat (Small 1930, Tatje 1980, Walters and Decker-Walters 1991).

Merrill (1944) and Harper (1958) speculated that William Bartram saw the Okeechobee gourd on the St. Johns River in northern Florida, but archeological study of seed remains indicates that another wild cucurbit (*Cucurbita pepo* ssp. *ovifera* var. *texana*) was present in the watershed until the 18th century, so Bartram did not necessarily see the Okeechobee gourd (Decker and Newsom 1988). Harshberger (1914) mentioned lianas in the pond apple (*Annona glabra*) hammocks along the south shore of Lake Okeechobee, including "a kind of gourd". Small saw and/or collected the Okeechobee gourd in 1913 and 1917, and he found it to be locally common in the Okeechobee pond apple forests, but at least 95 percent of this habitat had already been destroyed by 1930 when he named the gourd *Pepo okeechobeensis* (Small 1922, 1930).

Bailey (1930) transferred the Okeechobee gourd to the genus *Cucurbita*, which includes pumpkins, squashes, and gourds. In a subsequent publication, Bailey (1943) described two new gourd species, *Cucurbita martinezii* and *Cucurbita lundelliana* (Martinez and Lundell gourds, respectively). These two gourds were proven to be closely related to *C. okeechobeensis* (Rhodes et al. 1968, Bemis et al. 1970). The Okeechobee, Martinez, and Lundell gourds are the only members of the genus *Cucurbita* with small gray-green seeds, but the former two are the only species of *Cucurbita* with cream-colored corollas (all others are bright yellow). The Martinez gourd occurs in Mexico near the Gulf coast in the states of Veracruz, Tamaulipas, eastern San Luis Potosí, and Puebla, as well as in northern Oaxaca and Chiapas. The high-climbing vines grow at forest edges, along streams, and as a weed in coffee and citrus plantations. *Cucurbita lundelliana* is restricted to the limestone plains of Yucatan in Mexico, Belize, and Guatemala, as well as Honduras (Walters and Decker-Walters 1991).

Robinson and Puchalski (1980) re-examined the herbarium specimens Bailey had used or made from cultivated material, as well as more recent specimens, available cultivated material, and information on morphology, crossability, disease resistance, and isozymes (including their own work). They showed that the morphological distinctions Bailey had made between *C. okeechobeensis* and *C. martinezii* were incorrect, that the two taxa seemed indistinguishable, and that they should be assigned to the same species.

Previously, Filov (1966) had recognized the similarity between the Okeechobee and Martinez gourds, referring to them as varieties, with the Martinez gourd called *Cucurbita okeechobeensis* var. *martinezii*. However, this new combination of names by Filov failed to meet the requirements of the International Code of Botanical Nomenclature because neither Small's original name for the plant nor Small's nor Bailey's publications were cited.

Andres and Nabhan (1988) recognized the Okeechobee gourd and the Martinez gourd as geographical subspecies, based on a survey of 10 enzyme systems; the two taxa appeared distinct for one of the 10 systems. They also found that the Martinez and the Lundell gourd were identical for that one system. R.W. Robinson (*in litt.* 1988) rejected the idea of establishing a subspecies on the basis of a single allelic difference. The Service, agreeing with Robinson's assessment, took the position that until further systematic study showed otherwise, the Okeechobee gourd in Florida could not reasonably be considered distinct from the widespread Martinez gourd, and was consequently ineligible for Federal listing.

In 1990, the Service helped fund a field and systematic survey of the gourd sponsored by the Center for Plant Conservation and conducted by Terrence W. Walters and Deena Decker-Walters, experts on the systematics of *Cucurbita*. The new study coincided with a severe drought that lowered the level of Lake Okeechobee, exposing bare ground that provided optimal germination and growing conditions for the Okeechobee gourd. As a result, searches for the gourd by Walters and Decker-Walters were highly successful.

The systematic study by Walters and Decker-Walters analyzed morphological, phenological (time of flowering and fruiting) characters and isozyme characters. They found that *Cucurbita lundelliana* is morphologically distinct from the other two taxa (as other taxonomists had found). There is a general lack of morphological discontinuities between the Okeechobee and Martinez gourds, except that the two can be reliably distinguished by the presence of pubescence on the male hypanthium and female ovary in the case of the former. The isozyme analysis by Walters and Decker-Walters surveyed 10 enzyme systems, revealing 40 alleles at 20 loci. The analysis showed substantial genetic diversity within *C. lundelliana*—more than exists within the Okeechobee and Martinez gourds, if they are considered a single species. Walters and Decker-Walters confirmed the report of Andres and Nabhan (1988) that plants of *Cucurbita okeechobeensis* from all the known sites for the species are fixed for a unique allele at one locus, while the other two taxa are fixed for another allele.

Walters and Decker-Walters conclude that *C. lundelliana* is an older, genetically more diverse species than the other two, and that the Lundell gourd exhibits a closer relationship to the Martinez gourd than to the Okeechobee gourd. For the most part, the alleles present in the Okeechobee gourd are a subset of those present in the Martinez gourd, although the two taxa can readily be distinguished. Using the methods of Nei (1981) and Sarich (1977), Walters and Decker-Walters calculated an estimated time since divergence between the Okeechobee and Martinez gourds around 450,000 years ago. While these calculations must be interpreted cautiously, they suggest that the former is more likely a remnant population from a time when its ancestors had a continuous distribution around the periphery of the Gulf of Mexico, rather than a recent immigrant to Florida that floated across the Gulf of Mexico or was deliberately introduced by Native Americans.

Overall, Walters and Decker-Walters found that *C. lundelliana* was distinct, to an extent typical of full species, from the other two taxa, and that the Okeechobee and Martinez gourds should be considered distinct at the subspecies level. Following the rules of botanical nomenclature, Walters and

Decker-Walters will apply the name *Cucurbita okeechobeensis* to both the Okeechobee and Martinez gourds, with the Okeechobee gourd becoming subspecies *okeechobeensis* (Walters and Decker-Walters 1993), following the suggestion of Andres and Nabhan (1988).

Okeechobee gourd persisted around Indian villages with the Seminole pumpkin, *Cucurbita moschata* (Small 1930). The Seminole pumpkin, with edible flesh, had been an important food crop, while the extremely bitter flesh of the Okeechobee gourd precludes its use for food, although the seeds are edible and nutritious, and the flesh has detergent properties (Robinson and Puchalski 1980). Okeechobee gourd may have been used as "the fruit of [the Martinez gourd] was, at least until the recent past, as a ball or rattle, a utensil such as a small ceremonial cup, or for its detergent quality" (Andres and Nabhan 1988). The Seminole pumpkin is still cultivated in Florida, and may have been confused with the Okeechobee gourd by Avery and Loope (1980). Morton's (1975) suggestion that the Seminole pumpkin may be a derivative of the Okeechobee gourd is not supported by systematists (Bailey 1930, Andres and Nabhan 1988).

Cucurbita okeechobeensis ssp. *martinezii* is currently used as a source of disease resistance for summer squash, pumpkins, and gourds (*C. pepo*) (T. Andres, Cornell Univ., pers. comm., 1987). It and *C. o.* ssp. *okeechobeensis* are resistant to cucumber mosaic virus, powdery mildew, bean yellow mosaic virus, tobacco ringspot virus, tomato ringspot virus, and squash mosaic virus (Robinson 1980). Both of these wild gourds represent germplasm that can be used in breeding economically valuable cultivated members of the Cucurbitaceae family (Esquinas-Alcazar and Gulick 1983), and both of these wild gourds are maintained in cultivation for this purpose. Additionally, the Okeechobee gourd has in its leaves, roots, and fruits, the richest content of cucurbitacins in the genus. These bitter chemicals render the fruits inedible, if not poisonous, to humans, but are attractive to southern corn rootworm and striped cucumber beetle, so cucurbitacin-rich plants could be used to lure these pests away from crops (G. Nabhan, Desert Botanical Garden, *in litt.*, 1988).

The Okeechobee gourd was collected or observed infrequently after 1930; in 1941, it was found on Observation Island in Lake Okeechobee, Glades County. This mile-long island, covered with Australian pine, is accessible only by helicopter or airboat and lies within the critical habitat of the federally endangered snail kite (*Rostrhamus sociabilis plumbeus*). R.W. Robinson (*in litt.* 1987) failed to relocate the gourd on Observation Island in 1984 or 1987. W.M. Buswell, in a 1943 letter to Bailey, reported the gourd from the east side of the lake, about five miles north of the St. Lucie Canal. Hanna and Hanna (1946) mentioned the gourd, which "grows profusely in heavy tangled woods." A search of 22 sites on or near the southern shores of Lake Okeechobee (Tatje 1980) failed to find the gourd, but a 1981 search turned up the gourd in some of the same areas: lake, levee, and canal banks at Kreamer and Torry Islands in Lake Okeechobee near Belle Glade (Florida Natural Areas Inventory data). In 1965, it was seen north of Homestead in an agricultural area of Dade County (Florida Natural Areas Inventory data). A population on a disturbed roadside north of Andytown, Broward County, was discovered in 1978 and destroyed by road construction the next year (Tatje 1980). The plant was not observed until recently by personnel of the South Florida Water Management District, which manages much of the potential habitat in and near Lake Okeechobee (W. Dineen, South Florida Water Mgt. Distr., pers. comm., 1986). U.S. Army Corps of Engineers personnel (M. Mingea, USACOE, *in litt.*, 1992) are familiar with the gourd, and Florida Game and Fresh Water Fish Commission personnel report (pers. comm. 1992) a site for the gourd in Glades County near Fisheating Bay on spoil ridges and willows.

Gary Paul Nabhan (*in litt.* 1987; 1988) and Jono Miller searched for Okeechobee gourd in March 1987. They found three gourds in a small remnant stand of small pond apples, many of them apparently in decline, with dead branches. The stand was inundated in 1.5–2 feet of water with the lake at 15.2–15.3 feet above mean sea level (lake level provided by Mr. Walt Dineen, South Florida Water Management District). Nabhan noted that the gourd seemed to need the natural trellises of pond apple branches, although the pond apple persists at some sites where gourds have not been seen, including Ritta Island on the south side of the lake. Nabhan suggested that remnant pond apple stands could be managed to encourage both pond apples and gourds, possibly by erecting low levees to provide exposed bare ground where gourd seeds can germinate during winter low water. Gourd vines had last been seen in 1981, when a drought caused the lake to drop to its lowest recorded level of 9.75 feet (Florida Natural Areas Inventory).

In winter and early spring of 1990–91, during a drought when Lake Okeechobee's level was about 12 feet, Walters and Decker-Walters (1991) found 50 gourds at Nabhan's site, and 10 other population sites. Gourd plants were found climbing on pond apple trees, and, more abundantly, on elderberries and other woody plants, including papaya. Gourds also sprawled across herbaceous plants—something Nabhan had looked for but not seen. Walters and Decker-Walters and Nabhan suggested that Okeechobee gourds disperse by floating in canals; they provided evidence that marsh rabbits are the main terrestrial dispersal agent. They saw a rabbit gnawing on a green gourd and saw gnawed and broken gourds in animal nests, presumably made by marsh rabbits.

Okeechobee gourd seeds germinate readily on alligator nests, where water-dispersed gourds wash up on shores with warm soil, full sun, and no competition from other plants. The seeds germinate in early spring during the dry season, when the lake level is low. Seedlings do not tolerate water-soaked soils for extended periods of time. By the rainy season, the vines have climbed shrubs, avoiding complete inundation as the lake rises. Walters and Decker-Walters conclude that "for the gourd to maintain viable healthy populations, fluctuations in lake level are necessary. High lake levels facilitate gourd dispersal and inundate and destroy aggressive weeds in local habitats. As lake levels decrease, the cleared open habitats allow the quickly germinating Okeechobee gourd seeds to sprout and begin climbing before they have to compete with other pioneer species."

Discussion of Pinguicula Ionantha

Pinguicula ionantha (Godfrey's butterwort or violet-flowered butterwort) is a member of the bladderwort family (Lentibulariaceae), a small family of carnivorous plants closely related to the snapdragon family (Scrophulariaceae). *Pinguicula ionantha* has a rosette of fleshy, oblong, bright green leaves that are rounded at their tips, with only the edges rolled upward. The rosette is about 15 cm (6 in) across. The upper surfaces of the leaves are covered with short glandular hairs that capture insects. The flowers are on leafless stalks (scapes) about 10–15 cm (4–6 in) tall. When a flower is fully open, its corolla is about 2 cm (almost 1 in) across. The five corolla lobes are pale violet to white. The throat of the corolla and the corolla tube are deeper

violet with dark violet veins. The corolla has a spur 4–5 mm (0.2 in) long that is yellow to olive.

Pinguicula ionantha is one of three *Pinguicula* species in the southeastern United States whose leaves are usually submerged and are relatively flat, rather than rolled up around the edges. The other two species are *Pinguicula primuliflora*, whose flowers have a differently shaped and colored corolla, and *Pinguicula planifolia*, which has red to reddish leaves and much narrower corolla lobes. All three species are endemic to northwestern Florida (Kral 1983). *Pinguicula ionantha* was not described as a distinct species until 1961, partly because the complex flowers and fleshy leaves of butterworts make poor herbarium specimens, partly because the species is rare (Godfrey and Stripling 1961, Godfrey and Wooten 1981, Wood and Godfrey 1957).

The geographic range of *Pinguicula ionantha* is in the Florida panhandle near the Gulf coast between Tallahassee and Panama City (Godfrey and Wooten 1981, Florida Natural Areas Inventory (FNAI) 1989). The FNAI database has 20 element occurrences (a technical term in Heritage program methodology) for this plant, representing herbarium specimens collected since 1956 and reliable sightings. Eight occurrences that date from before 1970 have not been seen since. Twelve occurrences are from 1980–1990. Four occurrences are in the Apalachicola National Forest in Liberty County (within the National Forest, the FNAI follows a practice of defining "occurrences" along compartment boundaries, which often results in more occurrences being recorded than would be the case on private land). A summary by Thomas Gibson of data available from herbaria (assembled in the late 1970's) showed the following number of sites by county: Bay 3, Franklin 4, Gulf 1, Liberty 2, for a total of 10 sites. Gibson defined sites as separated by at least 3 miles.

An extensive field survey for potentially threatened and endangered plants in the range of *Pinguicula ionantha* (FNAI 1989) located only one new site for this plant. Reports by Donald Schnell (*in litt.* 1990) and comments in Kral (1983), Thomas Gibson (*in litt.*, ca. 1978), and Loran Anderson (*in* FNAI 1989), show that *Pinguicula ionantha* is locally abundant in Apalachicola National Forest and is (or was until recently) locally abundant elsewhere. A survey for this butterwort during its flowering season could provide more detailed information on its status, but the available data are sufficient to proceed with listing.

Pinguicula ionantha inhabits seepage bogs on gentle slopes, deep quagmire bogs, ditches, and depressions in grassy pine flatwoods and grassy savannahs. It often occurs in shallow standing water. The most similar species, *Pinguicula primulifolia*, occurs in the same geographic area, but it often occupies a somewhat different habitat, occurring in flowing water and shaded areas. The habitat difference provided a clue to Godfrey and Stripling (1961) that the two species were distinct. Another endemic butterwort species, *Pinguicula planifolia*, occurs with *Pinguicula ionantha* at one site. In Franklin County, *Pinguicula ionantha* occurs at a savannah with a particularly rich flora, including *Macbridea alba* (white birds-in-a-nest) and *Scutellaria floridana* (Florida skullcap), both federally listed as threatened species.

Savannahs (i.e., grass-sedge bogs or wet prairies) (Frost et al. 1986) are nearly treeless and shrubless and have rich floras of grasses, sedges, and herbs. Savannah vegetation, grassy seepage bogs, and the grassy understory of flatwoods (largely wiregrass, *Aristida stricta*) are maintained by frequent, low-intensity fires. Lightning fires tend to occur during the growing season, and the region's history of fire-setting (and suppression) by humans is long and complex. The frequency and season of fire is important to the plant species that make up the vegetation, but fire effects can be subtle and more research is needed if fire management is to be applied scientifically to conserving the native flora (Robbins and Myers in preparation, Clewell 1986). Savannahs resembling those of the Apalachicola area occur in the Cape Fear region of North Carolina (Walker and Peet 1985) and in coastal Alabama and Mississippi (Norquist 1984).

Savannahs and related vegetation are commercially valueless unless they are planted to pine trees or converted to pasture or farmland. To prepare savannahs for planting pines, bedding and other mechanical methods are employed, which may be destructive to native herbs (Kral 1983). After site preparation, and for the first few years after a new crop of pines is planted, surviving native herbs often prosper (FNAI 1989 includes examples). One occurrence for *Pinguicula ionantha* in the FNAI database is from "bedded slash pine/pond cypress scrubby woods. Troughs between beds holding water. Intact *Aristida* groundcover." As the young pines grow large enough to cast shade, many understory grasses and herbs, including *Pinguicula ionantha*, are adversely affected (Kral 1983). Clewell (1986, p. 402) considered it "unlikely that many (pine) plantations will continue to support significant remnants of the original ground cover", and that because most ground cover plants reproduce slowly, there is little reason to expect them to be able to recolonize pine plantations from which they are extirpated; as a result, Clewell called the conversion of native pinelands to commercial pine plantations "an irreversible and irretrievable loss of habitat".

Savannah herbs, including *Pinguicula ionantha*, often persist under powerlines and on road rights-of-way. The permanence of such semi-artificial habitats is uncertain.

Lack of prescribed fire or prescribed fire during the dormant season is detrimental to much of the pineland and savannah flora (Robbins and Myers in prep.; Platt *et al.* 1988). In recent years, liability problems strongly discouraged private landowners in Florida from applying prescribed fire; the Florida legislature passed a prescribed burning bill in 1990 intended to encourage the responsible use of fire. Increasing interest in growing season burning by researchers and public land managers may influence some private landowners.

In the absence of frequent fire, titi (*Cyrilla racemiflora* and *Cliftonia monophylla*) invades savannahs and seepage bogs, creating thickets that exclude grasses and herbs, including *Pinguicula ionantha*. Titi encroachment into these habitats is so extensive that the Forest Service plans to reclaim 35,000 acres of titi for pine timber production (National Forests in Florida 1985).

Populations of *Pinguicula ionantha* fluctuate in size. A site at Carrabelle where Dr. Godfrey saw *Pinguicula ionantha* in abundance in 1990 seemingly had none in 1991. Such changes mean that long-term changes in abundance of this plant are probably difficult to assess.

Previous Federal Action

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. In these documents, *Conradina glabra*, *Conradina brevifolia*, and *Pinguicula*

ionantha were included as endangered species and *Cucurbita okeechobeensis* as a threatened species. On June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine some 1,700 U.S. vascular plant species recommended by the Smithsonian report (including *Conradina glabra*, *Conradina brevifolia*, and *Pinguicula ionantha*) to be endangered species pursuant to Section 4 of the Act. This proposal was withdrawn in 1979 (44 FR 12382).

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Conradina glabra*, *Conradina brevifolia*, and *Pinguicula ionantha* as category 1 candidates (taxa for which the Service currently has on file substantial data on biological vulnerability and threats to support proposing to list them as endangered or threatened species). *Cucurbita okeechobeensis* was included as a category 2 candidate (a taxon for which data in the Service's possession indicates listing is possibly appropriate).

A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed *Conradina glabra*, *Conradina brevifolia*, and *Pinguicula ionantha* to category 2 candidates. A notice of review published September 27, 1985 (50 FR 39526) retained all four species as category 2 candidates.

A notice of review published February 21, 1990 (55 FR 6184) made several changes. *Conradina glabra* was returned to category 1, based on new information developed by the Florida Natural Areas Inventory. *Pinguicula ionantha* was returned to category 1, based on field work conducted by Loran Anderson, Wilson Baker, and Angus Gholson in the Apalachicola National Forest in 1987 (D. White, FNAI, *in litt.*, 1990) and outside the National Forest in 1988 (FNAI 1989). *Cucurbita okeechobeensis* was changed to Category 3B (a category for plants with names that, on the basis of current taxonomic understanding, does not represent a distinct taxon meeting the Act's definition of "species"). The change came after the Service concurred with comments by Richard W. Robinson (New York State Agricultural Experiment Station, *in litt.*, 1988), a specialist in the genus, who did not support the recognition of a taxonomic distinction between the Florida and Mexican plants of *Cucurbita okeechobeensis*. Gary Paul Nabhan (Desert Botanical Garden, Phoenix, *in litt.*, 1988 and pers. comm.) and other specialists in *Cucurbita* had urged proceeding with listing. The taxonomic questions that prevented listing have been answered by Walters and Decker-Walters (1993).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Conradina glabra*, *Conradina brevifolia*, *Cucurbita okeechobeensis* (*C. o.* ssp. *okeechobeensis*, since Walters and Decker-Walters 1993), and *Pinguicula ionantha* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1989, the Service found that the petitioned listing of these species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of proposals to list these species, published on May 20, 1992, constituted the final petition findings for *Conradina glabra*, *Conradina brevifolia*, *Cucurbita okeechobeensis* (*C. o.* ssp. *okeechobeensis*, since Walters and Decker-Walters 1993), and *Pinguicula ionantha*.

Because *Conradina etonia* was described as a new species in 1991, it has not been covered by a notice of review or by the petition process, although Dr. Steven Christman (Florida Dept. Natural Resources, pers. comm., 1991) suggested emergency listing of the newly-described plant.

Summary of Comments and Recommendations

In the May 20 proposed rules (57 FR 21369, 21377, and 21381) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of final rules. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Palatka Daily News, Putnam County (June 5, 1992), the Highlander, Lake Wales, Polk County (June 6), The Star, Port St. Joe (June 4); the Apalachicola Times (June 4); the Calhoun County Record, Blountstown (June 4); the News-Herald, Panama City (June 8), and in the Palm Beach Post (June 7). A public hearing was held on September 16, 1992 (advertised in the Orlando Sentinel on August 23, 1992). The comment period closed September 28, 1992.

The public hearing was attended by eight persons, of whom six made statements. Two speakers opposed immediate listing of the Okeechobee gourd, preferring further study of its distribution and abundance, one opposed listing, and three supported immediate listing. Approximately 31 letters or phone calls commented on the proposals or provided information (several letters were sent twice, and several commenters sent more than one letter).

Support for all five proposed listings came from the Florida Natural Areas Inventory; the Florida Native Plant Society; and the Center for Plant Conservation. The State of Florida's Clearinghouse in the Governor's office stated that the proposals are consistent with State plans, programs, procedures, and objectives. The Florida Department of Agriculture and Consumer Services, Division of Plant Industry supported the proposed listings and pointed out that the proposals' wording failed to reflect a recent change in Florida Regulated Plant Index; the change is incorporated in the final rule.

Three commenters supported the listing of all three *Conradina* mints. In a fourth letter, an ecologist commented on the idea that *Conradina glabra* may be rhizomatous; that comment is incorporated in the text.

Two botanists and a medical doctor who are experts on carnivorous plants commented in support of the proposal to list *Pinguicula ionantha* (Godfrey's butterwort). One provided site-specific confirmation of threats to the plant. Another pointed out a useful reference, and a third provided information on trade that is incorporated in the final rule.

The U.S. Forest Service concurred in listing of *Pinguicula ionantha*, noting that bedding and planting for slash pine is a serious threat to this plant, and that no present or planned activities in the Apalachicola National Forest threaten this plant. For good measure, the Forest Service concurred with the proposal to list *Conradina glabra*, on grounds that this plant might occur in the Forest.

Eight letters supported the proposal to list the Okeechobee gourd as an endangered species. Two letters urged designation of critical habitat. Six of the letters were from botanists, economic botanists, botanical garden curators, and a plant breeder specializing in squashes. The plant breeder suggested a correction to the proposal's description of leaf lobing and serration in the Okeechobee and Martinez gourds. This has been done with the assistance of Dr. Terrence Walters. A botanist emphasized the threat to this plant from the proliferation of exotic plant species at the edges of Lake Okeechobee. A

botanical garden curator who has cultivated and collected Okeechobee gourd provided additional documentation of searches for the gourd at Lake Okeechobee and information on his experiences in cultivating the gourd in a semi-natural setting. An economic botanist who is familiar with the gourd in its native habitat pointed out that the listing proposal should not have applied the term "population" for each collection site; the sites probably represent only a single population. One commenter doubted the report that Okeechobee gourd plants survived although inundated in 1.5–2 feet of water (Nabhan 1988); another commenter noted that cultivated Okeechobee gourd plants in a semi-natural environment succumb to flooding. The U.S. Army Corps of Engineers commented that they are familiar with the localities where the gourd occurs and will take every step necessary to insure its survival.

The Florida Sugar Cane League opposed immediate listing of the Okeechobee gourd, arguing that detailed, multi-year surveys of its distribution and abundance are needed to properly appraise its status. An agricultural scientist who has been familiar with the Okeechobee gourd for over 35 years concurred with the Sugar Cane League, raised a number of additional questions about the proposal, and opposed its listing.

Specific issues raised by the comments are listed below with the Service's response to each:

Issue 1: Because the Service's proposal is based on incomplete information, the identification and evaluation of the natural or manmade factors that may affect the gourd's continued existence may not be complete nor accurate. One commenter added that the proposal and the literature cited contained misleading statements and incorporate what may be anecdotal information. There is no evidence that the Okeechobee gourd was restricted to pond apple forests or even that there is sufficient sunlight for its seeds to germinate in such forests. Searches for the gourd were inadequate: Tatje (1980) searched only unpromising areas, while Nabhan (1988) cannot be considered scientific literature because it is polemical and fails to cite references. None of the surveyors sought information that could be provided by knowledgeable local residents. Walters and Decker-Walters (1991) conducted their searches at the wrong times of year (March was early for this spring-germinating species, and January and February could have been late to find live gourd plants). Surveys for vines and fruit in early to midsummer would be more appropriate.

Service Response: The proposal noted that Okeechobee gourd probably met the current standards for Federal listing as an endangered or threatened species by the early 1930's due to destruction of its habitat. As noted in the proposal, early observers of the lake saw the gourd in pond apple forests. Its population biology in such forests is unknown because the forests no longer exist. Walters and Decker-Walters (1991) noted that alligator nests and other bare, sunny areas appear to be important germination sites.

Tatje's (1980) survey was a part of a comprehensive survey of endangered plants of southern Florida conducted by Dr. Daniel Austin of Florida Atlantic University. His examination of the rim of Lake Okeechobee was reasonable, based on the existence of herbarium specimens from the lake margin. R.W. Robinson searched for the gourd in 1984 and 1987, obtaining guidance from local residents and visiting Observation Island by airboat (R.W. Robinson, *in litt.*, 1987). Nabhan (1988) and Miller spent a great deal of time searching for the Okeechobee gourd, aided by a visit to the South Florida Water Management District and by boaters' reports of gourd sightings. They even placed "wanted" posters for the gourd at boat launching sites (Nabhan, *in litt.*, 1987). Walters and his collaborators conducted their survey with the written permission of the Water Management District. The Florida Game and Fresh Water Fish Commission provided airboat transportation. Richard Moyroud (*in litt.*, 1992, commenting on the proposal) has also spent considerable time searching for the Okeechobee gourd, partly with Walters and Decker-Walters. The survey by Walters and Decker-Walters was intended primarily to obtain germ plasm for a taxonomic assessment, not to exhaustively search the potential range of the gourd. Electrophoretic examination of cultivated material of Okeechobee gourd had shown little genetic variability (Andres and Nabhan 1988), and the study by Walters and Decker-Walters has not revealed more.

Issue 2: Two commenters noted that more thorough, systematic, probably multi-year surveys of the Okeechobee gourd will be needed to ensure its survival. The gourd has persisted along the lake's margins without Federal protection, so why not delay listing until after the surveys are done?

Service Response: The Service finds that the best available information indicates that the Okeechobee gourd is in danger of extinction throughout all or a significant portion of its range, thereby meeting the Act's definition of an endangered species (see following section).

Issue 3: Listing the Okeechobee gourd as an endangered or threatened species may not offer any protection to the species in addition to that already provided by Florida law because the protection against "take" that the Endangered Species Act provides for animals does not extend to plants (section 9(a)(2)). In addition, the proposal's failure to determine critical habitat for the Okeechobee gourd leaves the species unprotected from Federal government actions because only critical habitat is protected under the Act's section 7 consultation requirements for Federal agency actions; undesignated habitat is unprotected.

Service Response: Under section 9 of the Act, plants located on lands under Federal jurisdiction are protected from taking. Additionally, endangered plants are protected from malicious damage or destruction on Federal lands, as well as the removal, cutting, digging up, damaging, or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. The consultation requirements of section 7 of the Act, which provide protection with respect to Federal government activities, apply to endangered and threatened plants with or without critical habitat. In absence of critical habitat, Federal agencies must still insure, under section 7(a)(2), that their actions are not likely to jeopardize the continued existence of endangered or threatened species. In addition to the protection of section 7(a)(2) and section 9, section 7(a)(1) provides that Federal agencies "shall * * * utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act."

Issue 4: There is no support for the proposal's allegation that the Okeechobee gourd was abundant in the 1920's; the failure of local historian Lawrence Will (1964) to mention the gourd indicates that it was not important.

Service Response: The Okeechobee gourd's status today (and its future prospects) are more important than its past. The final rule provides some additional historical information on Okeechobee gourd.

Issue 5: Statements about lake levels in the proposal are inaccurate. The Service should have relied on primary records available from the Corps of

Engineers or the South Florida Water Management District.

Service Response: This issue was raised by an individual, not by the affected agencies. It would appear difficult to improve on Johnson's (1974) account of the history of attempts to manage the level of Lake Okeechobee, which is cited by a Water Management District survey of the lake's history (Pesnell and Brown 1977).

Issue 6: The proposal's statement that the gourd wasn't collected often after 1930 and similar statements in Walter and Decker-Walters (1991) are baseless. The plant has been frequently seen, just not noted by botanists.

Service Response: Because the Okeechobee gourd is a member of an economically important genus, there has been considerable interest over the years in collecting this species, and specimens have been obtained by J.H. Davis, Erdman West, John Beckner, and Donovan Correll, who were hard-working, persistent collectors. Given this level of interest, it is significant that a very rare species like *Spigelia gentianoides* is better represented than the gourd in Florida herbaria. The Okeechobee gourd is obviously persisting without human assistance, but it is by no means an abundant plant, and genetic test results suggest little genetic variation.

Issue 7: How did Walters and Decker-Walters (1991) analyze phenological characters? Why did they examine fewer specimens for some characters than from others and fail to utilize all the plant material they collected?

Service Response: Phenological and other characters were measured from plants grown from seed at Fairchild Tropical Garden. The gourd trellis at Fairchild was a large facility, but it could accommodate only a limited number of these large plants. As a result, characters that require adult plants were measured from fewer plants than characters taken from seeds or seedlings.

Issue 8: Andres and Nabhan (1988) provided no valid statement on the rarity of Okeechobee gourd.

Service Response: The paper is cited with respect to the gourd's systematics, not its rarity.

Issue 9: Why was Small (1918) cited? This paper didn't mention the Okeechobee gourd.

Service Response: This paper was cited in Walters and Decker-Walters (1991) but not in the proposal. John Kunkel Small observed and collected the species on trips he reported in the 1918 paper.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Conradina glabra*, *Conradina brevifolia*, *Conradina etonia*, and *Cucurbita okeechobeensis* ssp. *okeechobeensis* (Okeechobee gourd) should be classified as endangered species, and *Pinquicula ionantha* 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 were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Conradina glabra* Shinners (Apalachicola rosemary), *Conradina brevifolia* Shinners (short-leaved rosemary), *Conradina etonia* Kral & McCartney (Etonia rosemary), *Cucurbita okeechobeensis* ssp. *okeechobeensis* (= *Pepo okeechobeensis* Small) (Okeechobee gourd), and *Pinquicula ionantha* Godfrey (Godfrey's butterwort), are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range

Conradina Species

Conradina glabra is a narrowly distributed species that was originally restricted to a specialized habitat, the edges of steephead ravines and possibly also to upland longleaf pine-wiregrass vegetation. The plant appears to require full sunlight or light shade. Planted pine trees are likely, by the time they mature, to produce dense shade that could kill this species. Another possible problem in planted pine stands is that sand pine (which is currently grown in the area) does not tolerate prescribed fire, which may help keep habitat open for *Conradina glabra*. Other *Conradina* species grow in habitats with varying natural fire frequencies. Forestry practices may kill *Conradina glabra* directly: S. Gatewood (The Nature Conservancy, memorandum, 1987, provided by FNAI) reported that when most of the range of this plant was cut and site-prepared in 1987, he observed some *Conradina glabra* plants surviving on areas where chopping had not occurred, none where it had. The long-term consequences of the 1987 activity is not yet known; planting of slash pines in the area may have allowed *Conradina glabra* to spread through the plantations and onto road rights-of-way, but the site preparation methods used then were probably different from those in use today, and the slash pines never thrived well, casting less shade than can be expected of sand pines. The herbicide hexazinone (Velpar) is sometimes used in timber regeneration areas (S. Gatewood, memorandum, May 1987), and its use could affect *Conradina glabra*. The very limited distribution of *Conradina glabra*, and management of most of that range by a single landowner exacerbates the threat to this plant from forestry practices, simply because the same management practices are likely to be applied rangewide, at the same time. Some land with *Conradina glabra* has been converted to improved pasture, destroying the plant (Kral 1983) and rendering the land uninhabitable for it.

Except for two protected sites, *Conradina brevifolia* is threatened by destruction of its central Florida scrub habitat for agricultural purposes (citrus groves and pastures) and for residential development. As explained in the background section, 13 plant species from this habitat are federally listed (Fish and Wildlife Service 1990), and *Conradina brevifolia* is more narrowly distributed than most of the listed species. Its listing was delayed only because of uncertainty over its taxonomic status due to its treatment in Wunderlin (1982). *Conradina brevifolia* will benefit from the recovery plans that have already been prepared for these plants, from actions that are being taken to protect the threatened Florida scrub jay from take as defined by the Endangered Species Act, from planning that is underway to create a Lake Wales Ridge National Wildlife Refuge for endangered and threatened plants and animals, and from State and private land acquisition projects.

Conradina etonia is threatened by residential development of its two sites, one in a subdivision where houses are being built, and the other in an area where the landowner has obtained all necessary permits to create a residential development.

Okeechobee Gourd

Until the 1920's, Okeechobee gourd was abundant in swampy pond apple forests along the shore of Lake Okeechobee. John K. Small (1930) estimated that 95 percent of the former range of Okeechobee gourd had already been destroyed by agricultural development. It would appear that by 1930 Okeechobee gourd met the present-day standards for listing as an endangered species.

Since 1930, natural vegetation that remained along the lake shores was

further affected by lowering of the lake level from a maximum of about 20 feet above sea level (with an extreme range of stage of 7 or 8 feet). During the 1920's attempts were made to keep the lake within 13.5 to 16.5 feet (with the lake staying below minimum for most of three years). The current preferred range is 15.5 to 17.5 feet (Johnson 1974, Blake 1980, Fernald and Patton 1984). The lake level has fallen below the preferred range during dry periods in recent years, providing bare muck where the Okeechobee gourd's seeds can germinate. Any change in lake level management that would reduce the likelihood of low water would threaten this species, and changes in management that would result in more frequent low-water episodes might be beneficial.

Construction of the Hoover Dike and other water management facilities, planting of exotic melaleuca trees, the spread of Australian pine (*Casuarina*), and the use of Torry and Kreamer Islands for pasture also affected the habitat of this plant (these islands are now owned by the State and withdrawn from agricultural use). Herbicide use for vegetation management purposes may have affected the gourd. The Okeechobee gourd persists, in small numbers, in highly modified vegetation, and is highly vulnerable to further modifications of that vegetation.

Godfrey's Butterwort

Pinguicula ionantha has a limited geographic distribution. Within its range, it has been collected or observed at only 20 localities. Because it was only recognized as a distinct species in 1961, there has not been a long record of observations of this plant. Donald Schnell (*in litt.* 1990) considers the plant to be visible mostly in Apalachicola National Forest, where it is locally abundant. On a roadside where *Pinguicula ionantha* has been known to occur since 1960 (FNAI), Schnell commented: "The areas * * * north of Carrabelle have fallen off tremendously in the past ten years due to roadside work, lumbering and development—This area is outside the Forest".

The effects of forest management on *Pinguicula ionantha* are as follows: logging of cypress or pine and site preparation that removes other plants without lowering the water table is likely to favor this plant at least temporarily. Because *Pinguicula ionantha* does not tolerate shade, canopy closure in pine plantations results in loss or diminishment of the species, at least until the next logging (Kral 1983). At the present time, it is not known whether *Pinguicula ionantha* will persist indefinitely under a regime of commercial pulpwood production, but the prospects are unfavorable. If Clewell (1986) is correct in his belief that pinelands and savannahs, once converted to pulpwood production, cannot be restored, then the effects of pulpwood management on *Pinguicula ionantha* are irreversible once they occur.

The Forest Service's practice of conducting prescribed burns during the growing season to reduce the incidence of brown-spot infection of longleaf pine seedlings (Robbins and Myers in preparation) appears to favor many herbs, including *Pinguicula ionantha*. Most private land is planted with slash pine rather than longleaf, reducing the silvicultural need for prescribed fire.

Both commercial forest management and management of the Apalachicola National Forest have had the effect of allowing titi to encroach into grassy bog and savannah vegetation. This encroachment appears to pose the most serious threat to *Pinguicula ionantha* (J. Palis, Florida Natural Areas Inventory, pers. comm., 1991). Roadside maintenance, fireline cutting, and drainage ditch construction also threaten *Pinguicula ionantha* habitat.

Forest Service management practices are intended to benefit sensitive plant species, especially in the 469-acre Apalachicola Savannah Research Natural Area, which was established in 1978 (National Forests in Florida 1985). Unfortunately, management of this area to date has been based on casual observation of plant species rather than scientific monitoring to determine whether management practices benefit sensitive plants in the natural area (J. Walker, D. White, pers. comm., 1990). Folkerts (1977) had already noted the importance of conserving this plant in the National Forest.

In the Tates Hell area of Franklin County, the new owner of a 182,000 acre tract is selling small parcels to individuals; such sales may affect *Pinguicula ionantha* because an increase in the number of landowners and construction of dispersed houses will result in fire suppression. Fire suppression will reduce the habitat available to this species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is commercial trade in the genus *Conradina*, whose species have considerable horticultural potential. Robert McCartney (Woodlanders, Inc., Aiken, SC) reports that all the species of *Conradina* are easily propagated and are in cultivation (cited in U.S. Fish and Wildlife Service 1991). The Woodlanders catalog shows that the widespread, variable *Conradina canescens* is a rich source of horticultural selections, and it appears to be the species of greatest horticultural interest. Commercial trade in the rarer species of *Conradina* should not adversely affect those species, provided that it is dependent upon plants propagated from plants in cultivation. Inappropriate collecting from plants in the wild is a threat to the three *Conradina* species listed as endangered in this rule.

Due to the limited distribution and small population sizes of Okeechobee gourd, indiscriminate collecting of any nature could seriously affect this species. Hobbyist interest in gourds raises the possibility of such collecting.

During the 1970's, *Pinguicula ionantha* was one of the native carnivorous plants "most sought after and actually collected by hobbyists for personal use" (D. Schnell, *in litt.*, 1978), but the fashion for exotic green plants has died down since then. Collection of *Pinguicula ionantha* by carnivorous plant enthusiasts probably still occurs, and the species is at least periodically offered for sale in the United States by at least three nurseries (P.A. Thomas, *in litt.*, 1992). The international market is taken up by commercially propagated Mexican species (D. Schnell, R. Hanrahan, T.L. Mellichamp, *in litt.*, 1990).

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

Conradina glabra is listed as a threatened species, and *Cucurbita okeechobeensis* ssp. *okeechobeensis* and *Pinguicula ionantha* are listed as endangered species on the Florida Regulated Plant Index (Florida Department of Agriculture and Consumer Services Rule Chapter 5B–40). The list was formerly part of the Preservation of Native Flora of Florida law (section 581.185–187, Florida Statutes). The Regulated Plant Index regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will provide additional protection through sections 7 and 9, and recovery planning. The Florida law provides for automatic addition of federally listed plants to the State's list as endangered species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The threats listed above are exacerbated by a number of factors, including: The limited geographic distributions of each of the five species, the fragmentation of remaining habitat for *Conradina brevifolia* into small segments isolated from each other, the small sizes of the two known *Conradina etonia* populations and the very small number of *Cucurbita okeechobeensis* ssp. *okeechobeensis* plants in the wild add to the threats faced by these species. The lack of morphological variation in *Conradina glabra* and *Conradina brevifolia* compared to *Conradina canescens*, and the high incidence of male sterility in *Conradina glabra* suggest that these species are inbred, and gene pools may be limited. Limited gene pools may depress reproductive vigor, or single human-caused or natural environmental disturbances could destroy a significant percentage of the individuals of these species, especially *Conradina glabra* and *C. etonia*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Conradina glabra*, *C. brevifolia*, *C. etonia*, and *Cucurbita okeechobeensis* ssp. *okeechobeensis* as endangered species. Each of these species is likely to become extinct in a significant portion of its range within the foreseeable future, meeting the Act's requirements for listing as an endangered species. As discussed under Factor E for *Cucurbita okeechobeensis* ssp. *okeechobeensis*, the great majority of this species' habitat was destroyed 50 years ago, and the species has barely persisted in heavily modified areas that are subject to erratic flooding.

The preferred action for *Pinguicula ionantha* is to list it as a threatened species, in part because the uniformity of land use practices in most of its range exacerbates the risks posed by Factors A, B and D; therefore, unless conservation measures are taken, this species is likely, in the foreseeable future, to be in danger of extinction throughout a significant portion of its range, fitting the Act's definition of a threatened species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these five species.

All of the occurrences of the *Conradina* species, except for two protected sites with *Conradina brevifolia*, and many of the *Pinguicula ionantha* sites, are on unprotected private land. The sites on private land are unlikely to be affected by any Federal action in which there would be added protection from designation of critical habitat, and such a designation might motivate landowners to protect their property values and/or property rights from potential State regulation by extirpating the plants. Because *Pinguicula ionantha* occurs on commercial forest land, landowners might be inclined to attempt its extirpation to avoid limitations on the use of herbicides. Designation of critical habitat might also attract persons wishing to collect plants for horticultural purposes, with or without the written permission of the landowner that is required by Florida law. In particular, *Pinguicula ionantha* is vulnerable to carnivorous plant enthusiasts. Carnivorous plants in general are in great demand by commercial interests, although this species appears not to be in demand at the present time. For these reasons, it would not be prudent to determine critical habitat for these four species. The State and The Nature Conservancy are aware of the need to conserve *Conradina brevifolia* on lands they own. Owners of privately owned sites for the other two species have been, or will be contacted by the Service or other conservation agencies. Protection of these four species will be addressed through the recovery process and the Section 7 jeopardy standard.

The Forest Service will be able to incorporate management measures for *Pinguicula ionantha* into its planning and management systems, probably by formal agreement with the Fish and Wildlife Service. Principal private landowners can be notified of locations and the importance of protecting this species' habitat through several mechanisms, including Florida's system for protecting endangered and threatened species from pesticide (including herbicide) application, and Florida's procedures for regional and local planning.

For the Okeechobee gourd, the Service finds that designation of critical habitat is not prudent because of the populations of Okeechobee gourd are very small and localized. Designation of critical habitat could attract collectors and curiosity-seekers, inasmuch as there is hobbyist interest in gourds. Although Federal listing as endangered provides penalties in addition to those provided in Florida law against unauthorized removal of Okeechobee gourd plants from public land, such prohibitions against take are difficult to enforce, and publication of critical habitat descriptions and maps would only add to the threats faced by this species. The Army Corps of Engineers and the South Florida Water Management District are aware of the Okeechobee gourd on areas they manage. Restoration and protection of this species' habitat will be addressed through the recovery process and through the Section 7 consultation process.

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. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants 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 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 such a 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 populations of *Conradina brevifolia* on public and private conservation lands will require management of the vegetation, as part of management to benefit other endangered and threatened plant and animal species in the same habitat (Fish and Wildlife Service 1990). Land acquisition within the range of *Conradina brevifolia* is planned by the State of Florida and the Fish and Wildlife Service.

Protection of the threatened Florida scrub jay from take due to destruction of its scrub habitat may benefit *Conradina brevifolia* and *C. etonia*, both of which occur in scrub vegetation inhabited by scrub jays.

Conservation of *Conradina glabra* may require ensuring that use of herbicides in forestry or road right-of-way maintenance does not jeopardize this plant.

The populations of Okeechobee gourd at the periphery of Lake Okeechobee will require careful management, possibly including a program of habitat modification and enhancement, should such measures prove feasible. Control or extirpation of exotic pest plants such as melaleuca and Brazilian pepper and planting of pond apple may be necessary or desirable to protect existing populations of Okeechobee gourd or to restore former habitat.

Pinguicula ionantha's federally listed status will encourage efforts to conserve it in Apalachicola National Forest. The Florida Department of Agriculture and Consumer Services will ensure that it is not jeopardized by herbicide use under a program approved by the Environmental Protection Agency. Listing of *Pinguicula ionantha* also will encourage its conservation through Florida's planning procedures, supervised by the Florida Department of Community Affairs, and may encourage land acquisition or other land conservation measures by the State.

The Fish and Wildlife Service will prepare recovery plan(s) for all five species and encourage conservation efforts by the State, private landowners, and private conservation groups.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 (for endangered species), and 17.71 and 17.72 (for threatened species) set forth a series of general prohibitions and exceptions for all endangered or threatened plants. All trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Enforcement of the Endangered Species Act's trade prohibitions on *Conradina glabra* and *C.brevifolia* could be difficult because *Conradina canescens*, a widespread, secure species, is morphologically variable, and some individuals belonging to this species may be indistinguishable from individuals belonging to *C. glabra* and *C. brevifolia*. The Endangered Species Act (Sec. 4(e)) would allow for *Conradina canescens* to be treated as a threatened or endangered species, even though not listed as such, to facilitate enforcement of trade prohibitions, if doing so would "substantially facilitate the enforcement and further the policy of this Act" (Sec. 4(e)(C)). However, this course of action is unnecessary because none of the species of *Conradina* is presently threatened by taking for purposes of horticultural trade. Information available to the Service indicates that *Conradina* plants in trade are of cultivated origin. It is anticipated that trade permits will be sought and issued for members of the genus *Conradina* because every member of the genus is currently in commerce across state lines.

It is also anticipated that trade permits will be sought and issued for Okeechobee gourd because its seeds are transported across state lines, and probably internationally, in the course of plant breeding activities and maintenance of cultivated stocks of germplasm. Hobbyists may also trade seeds or possibly cuttings. The Okeechobee gourd does not appear to be sold across state lines to any large extent.

For *Pinguicula ionantha*, it is anticipated that relatively few trade permits will be sought or issued because this plant is not known to be traded at the present time. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358–2104).

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

A complete list of references cited herein is available upon request from the Service's Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

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: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	•	•	•	•	
Cucurbitaceae—Gourd family:						
Cucurbita okeechobeensis	Okeechobee gourd.	U.S.A. (FL)	E	507	NA	NA
• •	•	•	•	•		
Lamiaceae—Mint family:						
• •	•	•	•	•	•	
Conradina brevifolia	Short-leaved rosemary.	U.S.A. (FL)	E	507	NA	NA
Conradina etonia	Etonia rosemary .	U.S.A. (FL)	E	507	NA	NA
Conradina glabra	Apalachicola rosemary.	U.S.A. (FL)	E	507	NA	NA
• •	•	•	•	•	•	
Lentibulariaceae—Bladderwort family:						
Pinguicula ionantha	Godfrey's butterwort.	U.S.A. (FL)	T	507	NA	NA
• •	•	•	•	•	•	

Dated: June 8, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–16302 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640–1140; I.D. 070193A]

Atlantic Swordfish Fishery

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

ACTION: Closure of the drift gillnet fishery.

SUMMARY: The Secretary of Commerce (Secretary) closes the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. The Secretary has determined that the entire annual quota for swordfish that may be harvested by drift gillnet will be reached on or before July 16, 1993. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding the quota established for this category.

EFFECTIVE DATES: Closure is effective 1200 hours local time July 16, 1993, through 2359 hours local time December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

By final rule effective August 4, 1992 (57 FR 34246, August 4, 1992), the Secretary implemented quota provisions for Atlantic swordfish. A quota of 47,583 pounds (21,584 kg) was established for swordfish that could be harvested by drift gillnet during each of two periods, January 1 through June 30, and July 1 through December 31. On June 17, 1993 (58 FR 33568, June 18, 1993), the 1993 Atlantic swordfish TAC adjustment was filed with the Office of the Federal Register as an interim final rule. This adjustment, based on revised historical data, increased the semi-annual swordfish quota for the drift gillnet category. From this revised semi-annual swordfish drift gillnet quota of 69,286 pounds (31,428 kg), a total of 39,820 pounds (18,062 kg) were landed by drift gillnet vessels during the January 1 to June, 30, 1993, season opening. The underharvest of 29,466 pounds (13,366 kg) is therefore added to the second semi-annual quota to yield a total of 98,752 pounds (44,794 kg).

Under 50 CFR 630.25(a), the Secretary is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a notice with the Office of the Federal Register at least 8 days before the closure is to become effective.

The Northeast Fisheries Science Center, NMFS, estimates that 11 drift gillnet vessels will begin fishing on or about July 1, 1993. Based on recent average catch per set data for the months of June and July, NMFS has determined that the adjusted drift gillnet quota for the July 1 through December 31, 1993 period of 98,752 pounds (44, 794 kg) of swordfish will be reached on or before July 16, 1993. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 1200 hours local time July 16, 1993, through 2359 hours local time December 31, 1993.

During the closure of the drift gillnet fishery, a person aboard a vessel using or having aboard a drift gillnet (1) may not fish for swordfish from the North Atlantic swordfish stock; (2) may not possess more than two swordfish per trip in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. lat.; and (3) may not land more than two swordfish per trip in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is required by 50 CFR 630.25(a) and complies with E.O. 12291. Notice of this action will be mailed to permit holders and dealers.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: July 6, 1993.

David S. Crestin,

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

[FR Doc. 93–16354 Filed 7–6–93; 3:45 pm]

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Proposed Rules

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 33–7006; 34–32575; File No. S7–20–93]

RIN 3235–AF90

Penny Stock Definition for Purposes of Blank Check Rule

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise the definition of "penny stock" in Rule 3a51–1 under the Securities Exchange Act of 1934 ("Exchange Act") for purposes of its rules relating to registration statements filed by blank check companies under the Securities Act of 1933 ("Securities Act"). The proposed revision would make the exclusion from the penny stock definition for securities priced at five dollars or more inapplicable to securities offerings subject to section 7(b) of the Securities Act and Rule 419 thereunder.

DATES: Comments should be received on or before August 11, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549. All comment letters should refer to File No. S7–20–93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC. 20549.

FOR FURTHER INFORMATION CONTACT: Richard Wulff, Division of Corporation Finance (202) 272–2644, or Belinda Blaine, Branch Chief, Division of Market Regulation (202) 272–2844.

SUPPLEMENTARY INFORMATION: The Commission is proposing to revise its penny stock definition, Rule 3a51–1 [1] under the Exchange Act,[2] as applicable to blank check offerings so that offerings registered with the Commission under the Securities Act[3] by blank check companies will be required to comply with the Commission's rules governing blank check registration statements, regardless of the price at which the securities are offered.

I. Background

On April 20, 1992, the Commission, pursuant to the requirements of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990,[4] adopted rules governing the activities of broker-dealers engaging in transactions in penny stocks with or for their customers.[5] These rules included a definition of the term "penny stock" to implement new section 3(a)(51) of the Exchange Act,[6] which defines the term to include any equity security other than those excluded pursuant to Commission rulemaking. Rule 3a51–1 excludes certain equity securities from the definition of "penny stock." [7]

On April 13, 1992, pursuant to the same legislative authority, the Commission adopted rules relating to Securities Act registration statements filed by blank check companies.[8] For purposes of Securities Act registration statements, a blank check company is a development stage company[9] that is issuing a penny stock and that has no specific business plan or purpose or has indicated that its business plan or purpose is to merge with an unidentified company.[10] Congress found the offerings of blank check companies to be common vehicles for fraud and manipulation in the penny stock market and directed the Commission to develop disclosure-based regulations so that investors might make informed investment decisions with respect to these securities offerings. Thus, as contemplated by section 7(b) of the Securities Act,[11] Rule 419 [12] prescribes special requirements with regard to the registration statements filed by blank check companies. The rule (1) requires issuers to provide timely and specific disclosure about companies to be acquired and the application of proceeds; (2) places limits on the use of proceeds and distribution of the securities by way of a mandatory escrow or trust procedure until the disclosures have been made through a post-effective amendment; and (3) provides a refund right to investors. The provision is strengthened by Rule 15g–8,[13] which

[1] 17 CFR 240.3a51–1.

[2] 15 U. S. C. 78a *et seq.*

[3] 15 U. S. C. 77a *et seq.*

[4] Pub. L. No. 101–429 (October 15, 1990).

[5] Release No. 34–30608 (April 20, 1992)[57 FR 18004].

[6] 15 U. S. C. 78c(a)(51)(A).

[7] Rule 3a51–1 excludes from the definition of penny stock any security that is a "reported security," i. e., a security for which last sale reports are collected and made available pursuant to an effective transaction reporting plan as defined by Rule 11Aa3–1(a)(4). Securities listed on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("AMEX"), as well as securities that meet NYSE or AMEX listing standards but are listed only on regional exchanges, are reported securities for purposes of the rule. Securities quoted on the National Association of Securities Dealers, Inc.'s ("NASD") automated quotation system ("NASDAQ") that are designated as National Market System ("NMS") securities also are reported securities.

Also excluded from the definition of penny stock, for most purposes, are securities that are registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available pursuant to Rule 11Aa3–1, 17 CFR 240.11Aa3–1, provided that (1) current price and volume information with respect to transactions in those securities is required to be reported and is made available to vendors pursuant to the rules of the national securities exchange; and (2) the securities are purchased or sold in a transaction on or through the facilities of a national securities exchange, or as part of a distribution of the security. Similarly excluded are securities authorized, or approved for authorization upon notice of issuance for quotation on NASDAQ, subject to the condition that current price and volume information with respect to transactions in those securities be reported and made available to vendors pursuant to the rules of the NASD.

Other exclusions cover securities that have a price of five dollars or more (including any share of any unit that has an independent exercise price) and securities issued by an issuer that has either (1) net tangible assets in excess of $2 million, if in continuous operation for at least three years, or $5 million, if not in continuous operation for such period; or (2) average revenue of at least $6 million for the last three years.

Securities issued by an investment company registered under the Investment Company Act of 1940, 15 USC 80a–1 *et seq.*, and put and call options issued by the Options Clearing Corporation also are excluded from the definition of "penny stock."

[8] Release No. 33–6932; 34–30577; IC–18651 (April 13, 1992) (57 FR 18037).

[9] Rule 1–02(h) of Regulation S–X, 17 CFR 210.1–02(h), defines such a company as one that is devoting substantially all of its efforts to establishing a new business in which planned principal operations have not commenced, or have commenced but there has been no significant revenue therefrom.

[10] See section 7(b) of the Securities Act, 15 U. S. C. 77g(b); Rule 419(a)(2), 17 CFR 230.419(a)(2).

[11] See also H. Rep. No. 101–617 at 34–35.

[12] 17 CFR 230.419.

[13] 17 CFR 240.15g–8.

makes unlawful transactions of any kind in securities that are contained in a Rule 419 escrow or trust account.

II. Discussion

The Commission is proposing to delete the exclusion from the definition of penny stock for securities priced at five dollars or more, as it applies to the rules governing registered offerings by blank check companies. After more than a year of experience with the new Commission rules, it appears that, for blank check offerings, the price threshold presents a mechanism for avoiding the regulatory scheme contemplated by Congress.

In enacting the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Congress responded to extensive evidence of fraudulent and manipulative practices involving the issuance and secondary market trading of penny stocks and blank checks.[14] Among other things, Congress was specifically concerned about the validity of blank check vehicles and their frequent involvement in manipulative schemes that harm investors. In this regard, Congress included in the Act a specific finding that:

> The present regulatory environment has permitted the ascendancy of the use of particular market practices such as "reverse mergers" with shell corporations and "blank check" offerings, which are used to facilitate manipulation schemes and harm investors.[15]

While most of the penny stock rules adopted by the Commission deal with secondary trading transactions, the blank check rule, as Congress directed, is targeted toward the initial offering by the issuer of the securities. Its purpose is to provide complete issuer disclosure to investors, not only when funds are first sought, but also when a specific use of proceeds is identified, with a right to obtain a refund when such information is provided. Applying the five dollar exclusion contained in Rule 3a51–1 to offerings by blank check issuers has not operated to further the intended purpose of Rule 419.

Ordinarily, the price at which securities are to be offered takes into account a number of factors, including book value, asset value, projected earnings, the price-earnings ratio of other companies in the same industry, and current market price. In an initial public offering, certain of these typical factors—for example, those relating to the market for the issuer's securities—are not available. Where an offering is made by a blank check company, objective pricing factors are scarce and pricing is largely arbitrarily determined.[16]

A comparison of the pricing determinations made for blank check registration statements filed before the effective date of Rule 419, and those made after that date, reflect this arbitrariness. Before the effective date, such offerings were almost always priced below five dollars per share. After the rule's effective date, however, a high proportion of registered offerings by registrants with no business plan or purpose other than acquisitions were priced at or higher than five dollars per share, the threshold for falling outside the scope of Rule 419. Indeed, some registration statements filed after the new rule became effective state expressly that the offering price was chosen to avoid the rule's requirements.

III. Proposed Revision and Request for Comments

The Commission proposes to revise the definition of "penny stock" for purposes of section 7(b) of the Securities Act and Rule 419 thereunder so that the five dollar price exclusion provided by Rule 3a51–1(d) would not apply to the offerings of blank check companies.[17] All other provisions of the penny stock definition and its exclusionary provisions would continue to apply to blank check companies.

The Commission requests comment on this proposal. Furthermore, comments are also solicited as to other ways in which the remedial purposes of the blank check rules can be fully accomplished. For example, comment is sought on whether the dollar threshold should continue to be applicable to the offerings of blank check companies, but at a higher amount, such as $10, $20 or $40. Comments also are sought about the other exclusions from the penny stock definition for purposes of the blank check rule and whether they too should be modified in order to protect investors. For example, should the asset or revenue levels[18] be increased for purposes of exclusion from the penny stock definition in the blank check rules, and if so, what higher levels should be used?

The Commission also is considering whether this proposed revision, if adopted, should become effective immediately upon publication in the **Federal Register**, and apply to all filings currently pending with the Commission as well as to registration statements filed by blank check companies after such date. Comments on this matter are requested.

IV. Effects on Competition

Section 23(a) of the Exchange Act[19] requires that the Commission, in adopting rules under the Exchange Act, consider the anticompetitive effects, if any, of such rules and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. Comment is solicited as to whether the proposal, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a).

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act.[20] The Analysis notes that the Penny Stock Reform Act defines "blank check company" and directs the Commission to prescribe special registration procedures for those companies. Many small entities are within the definition of blank check company provided by Congress. Congress excluded from that definition, however, small entities with a specific business plan or purpose. Accordingly, those entities are not subject to the requirements of the rules. To consider exclusion of additional small entities from the scope of the rules would be inconsistent with the Congressional definition of blank check company and Congressional directive to the Commission to adopt special procedures for those specified entities.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from Twanna M. Young, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 7–8, Washington, DC 20549, (202) 272–2644.

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[14] For example, Congress found that "[u]nscrupulous market practices and market participants have pervaded the 'penny stock' market with an overwhelming amount of fraud and abuse." Section 502(4), Pub. L. 101–429 (October 15, 1990); see also, H. Rep. No. 101–617 at 20 ("The penny stock market is not an 'efficient market'. In the penny stock market, little or no useful information upon which the small investor can base a decision is provided.").

[15] Section 502(8), Public Law 101–429 (October 15, 1990).

[16] See, e.g., W. Prifti, Securities: Public & Private Offerings at 1A–8 (Jan. 1993).

[17] As a result, this exclusion also would be unavailable for purposes of Rule 15g–8, which refers to Rule 419.

[18] Rule 3a51–1(g). See n.7, *supra*.

[19] 15 U.S.C. 78w(a).

[20] 5 U.S.C. 603.

VI. Statutory Basis, Text of Proposal and Authority

The amendment to the Commission's rule is being proposed pursuant to sections 7(b) and 19(a) of the Securities Act and sections 3(a)(51)(A) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78l, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. In § 240.3a51–1, revise the introductory text of paragraph (d) to read as follows:

§ 240.3a51–1 Definition of penny stock.

* * * * *

(d) Except for purposes of section 7(b) of the Securities Act and § 230.419 of this chapter, that has a price of five dollars or more;

* * * * *

By the Commission.

Dated: July 2, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16300 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

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

July 7, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of filings and opportunity to file comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has received filings from five industry working groups relating to standards for Electronic Bulletin Boards and is permitting interested persons an opportunity to file comments on these filings.

DATES: Comments due by July 14, 1993.

ADDRESSES: Comments should be filed at: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:

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

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0666.

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

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

Notice of Filings

Take notice that Industry Working Groups 1, 2, 4, and 5 made filings in this proceeding on July 1, 1993, and Working Group 3 made a filing on July 6, 1993, regarding proposals for standards governing Electronic Bulletin Boards which pipelines are required to implement under Commission regulations.

Any person desiring to submit comments on these filings should file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 on or before July 14, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16399 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is reopening the public comment period and announcing the receipt of revisions to a previously proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revised amendment proposes further changes to the State's revegetation success guidelines. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This documents sets forth the times and locations that the Kansas program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.d.t., August 11, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

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

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining

Reclamation and Enforcement, 934 Wyandotte, room 500, Kansas City, MO 64105, Telephone: (816) 374–6405.

Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, telephone (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Discussion of Proposed Amendment

By letter dated September 4, 1992, (Administrative Record No. KS–533) Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment on its own initiative to improve its program.

OSM announced receipt of the proposed amendment in the October 29, 1992, **Federal Register** (57 FR 49051) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on November 30, 1992. The public hearing scheduled for November 23, 1992, was not held because no one requested an opportunity to testify.

On December 15, 1992, Kansas requested that OSM meet with the State in a public meeting to discuss any concerns that OSM had with the proposed amendment (Administrative Record No. KS–544). By letter to Kansas dated March 24, 1993 (Administrative Record No. KS–552), OSM identified some 37 deficiencies and 27 editorial comments concerning the September 4, 1992, amendment submission. On April 15, 1993, OSM held a public meeting in Pittsburg, Kansas to discuss these concerns. As a result of this public meeting and in response to OSM's letter, Kansas has submitted a revised amendment by letter dated June 24, 1993 (Administrative Record No. KS–559). This new amendment submission contains further revisions to the Revegetation Guidelines and Requirements for Kansas Coal Mine Reclamation, Second Edition, Version 6.0, June 23, 1993. These guidelines include the revegetation bond release requirements for Phase II and Phase III liability release.

The revised guidance document submitted by Kansas is intended to fulfill the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) that standards for revegetation success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in the approved regulatory program. The substantive changes proposed Kansas respond to the 37 deficiencies and 27 editorial comments of the OSM issue letter dated March 24, 1993. Due to the numerous revisions throughout the revised guidance document, OSM only provides a summary of the proposed standards for revegetation success and the major contents of the revegetation guidelines for the measurement of revegetation success.

The phase II requirements for previously mined areas without topsoil are that the area must have 1 year of ground cover success. The phase III requirements for previously mined areas without topsoil are that the area must have 2 years of ground cover success. For both phase II and III liability release there are no productivity requirements. The ground cover success standard may be established by a premine survey or by an acceptable reference area.

The phase II requirements for pasture or grazing land uses are that: (1) The areas must have 1 year of ground cover success; and (2) the success standard for ground cover is 100-percent cover (alternative success standards may only be used if a valid premine survey is conducted and approved by Kansas as part of the permit). The phase III requirements are that: (1) These areas must have 2 years of ground cover success; and (2) the areas must have 2 crop-years of forage production success. This forage production standard may be calculated or a reference area, established with the procedures described in the guidelines, may be used.

The phase II requirements for cropland land use areas are that: (1) These areas must have 1 year of ground cover success; or (2) (if the area is to be all row cropped) there must be 1 crop-year of production success, and the productivity success standard will be established using the procedures in the guidelines. The ground cover success standard is established as 100-percent cover. The phase III requirements are that: (1) If test plots are used, (a) there must be 2 years of ground cover success from the adjacent forage area, (b) there must be 1 crop-year of forage production success from the adjacent area, and (c) there must be 1 crop-year of crop production success (this may need to be of a deep rooted crop as required in the permit application); and (2) if the entire area is row cropped, then the area must meet 2 crop-years of production success (one of those crop-years of production success may need to be of a deep rooted crop as indicated in the permit application).

The phase II requirements for prime farmland are that: (1) The success standard for ground cover is 100-percent cover (alternative success standards may only be used if a valid premine survey is conducted and approved by Kansas as part of the permit); (2) one crop-year of production success with the deep rooted crop will be required; and (3) if test plots are to be used, 2 years of ground cover success and 1 crop-year of forage production success will be required.

The guidelines consist of the eight major sections including: (1) The applicability of the document in the introduction; (2) the regulatory requirements, references, terms and definitions; (3) how to establish revegetation success standards with reference areas or technical standards for productivity, cover, and stem density; (4) vegetation standard applicability, sampling options, and requirements discussing exclusions, sample adequacy, test plots selection, and averaging of data; (5) phase II and III bond release requirements by land use for previously mined and permanent program pasture and grazing land use, prime farmland, cropland land use, previously mined and permanent program fish and wildlife habitat, recreation, shelterbelts, and forest products land uses, and industrial, commercial, or residential land uses; (6) a description of the methods for vegetation measurement for production including the annual biomass and row crop methods, including a description of the point intercept method for measurement for ground cover and a description of the sampling circle method for measuring woody stem density; (7) list of reference citations; (8) five appendices including (a) the USDA Soil Conservation Service (SCS) Soil Survey Database with crop yields, (b) the USDA SCS Technical Guide Notice KS–145 with crop yields, (c) the method for conversion of Animal Unit Months (AUM) data, (d) a list of acceptable plant species in Kansas, (e) forms for reporting planting data, and (f) example calculations for revegetation.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Kansas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional revisions submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

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

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–16453 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 934

North Dakota Abandoned Mine Land Reclamation Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the North Dakota Abandoned Mine Land Reclamation (AMLR) Program (hereinafter the "North Dakota Program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would implement a State-administered Abandoned Mine Land Emergency Program in accordance with section 410 of SMCRA.

This document sets forth the times and locations that the North Dakota Program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t., August 11, 1993. If requested, a public hearing on the proposed amendment will be held on August 6, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t., on July 27, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

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

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

Louis A. Ogaard, Director, Abandoned Mine Lands Division, Public Service Commission, State Capitol, Bismarck, ND 58505–0480, Telephone: (701) 224–4086.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota AMLR Program

On December 23, 1981, the Secretary of the Interior approved the North Dakota AMLR program. General background information, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota AMLR program can be found in the December 23, 1981, **Federal Register** (46 FR 62253). Subsequent actions concerning North Dakota's program amendments can be found at 30 CFR 934.25.

II. Proposed Amendment

By letter dated May 25, 1993, (Administrative Record No. ND–R–01), North Dakota submitted a proposed amendment to its AMLR program pursuant to SMCRA. North Dakota submitted the proposed amendment at the request of OSM. North Dakota proposes to amend the North Dakota Reclamation Plan to implement a State-administered Abandoned Mine Land Emergency Program in accordance with section 410 of SMCRA.

III. Public Comment Procedures

In accordance with the provisions at 30 CFR 884.15, OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria at 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

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

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., m.d.t. July 27, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meeting will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order No. 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or disapproval of State abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

2. Executive Order 12778

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

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 6, 1993.

W. Hord Tipton,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 93–16454 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4677–9]

Open Meeting of the Architectural and Industrial (AIM) Maintenance Coatings Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The AIM Negotiated Rulemaking Advisory Committee will meet in Washington, DC to attempt to reach consensus that can be used as the basis of a proposed rule.

DATES: The meeting will take place on July 28–30. On July 28, we'll start at 9 a.m. and run until completion. On July 29, we'll start at 8:30 a.m. and run until completion. On July 30, we'll start at 8:30 a.m. and end by 4 p.m.

ADDRESSES: The meeting will be held at the Stouffer Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036, [202] 347–3000.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Ellen Ducey of EPA's Office of Air Quality Planning and Standards at 919–541–5408. Persons needing further information on meeting logistics should call Barbara Stinson the Committee Co-chair at 303–468–5822.

Dated: July 6, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–16435 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[IN26–1–5748; FRL–4678–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On February 4, 1992, the Indiana Department of Environmental Management (IDEM), submitted requested revisions to the Indiana State Implementation Plan (SIP) for Lead. They include: Source-specific lead emission limitations and operating provisions for the Refined Metals Inc. (Refined Metals) Marion County lead smelting facility in the portion of Marion County designated nonattainment for lead, a facility name change from General Battery Corporation to Exide Corporation, and several editorial changes. USEPA has completed its evaluation and is proposing to fully approve the editorial changes; to give a limited approval of the emission limitations and the other requirements applicable to the Marion County nonattainment area; and acknowledges the facility name change. At the same time, USEPA is proposing to disapprove the requirements applicable to the nonattainment area because of certain enforceability and modeling deficiencies and because the State failed to address all pertinent federal requirements.

DATES: Comments on this revision request and on the proposed USEPA action must be received by August 11, 1993.

ADDRESSES: Copies of the SIP revision request and related technical information are available for inspection at the following address: (It is recommended that you telephone Rosanne Lindsay at (312) 353–1151, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to:

J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR–18J), U.S. Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne Lindsay, Regulation Development Branch, Regulation Development Section (5AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–1151.

SUPPLEMENTARY INFORMATION:

I. Background/History

In a **Federal Register** notice published on November 6, 1991, USEPA announced that a portion of Marion County; Indiana was being designated nonattainment for lead under section 107(d)(5) of the 1990 CAA based on violations of the lead NAAQS, monitored in 1990, in the vicinity of the Refined Metals facility in Marion County. See, e.g., 56 FR 56694 (codified at 40 CFR 81.315). The lead nonattainment designation for this area became effective on January 6, 1992. On February 4, 1992, IDEM submitted to the USEPA a site-specific revision request to the Indiana lead SIP to address these 1990 NAAQS violations. This revision request amends emission limitations and other requirements for Refined Metals as specified in Title 326 IAC 15–1–2,[1]. Additional revisions to Rule 15–1–2 include a facility name change from General Battery Corporation to Exide Corporation, and several editorial changes.

Section 191(a) of the CAA requires that States containing areas designated nonattainment for lead submit a SIP meeting the requirements of part D, title I of the CAA within 18 months of the nonattainment designation. Section 192(a) further provides that such SIP must provide for attainment of the lead NAAQS as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation. Thus, Indiana must submit a SIP by July 6, 1993, for the portion of Marion County designated nonattainment meeting the requirements of part D, title I of the CAA. Among other things the requirements include: Implementation of all reasonably available control measures (RACM), including reasonably available control technology (RACT); demonstration of reasonable further progress (RFP); a comprehensive, accurate and current inventory of all sources of lead in the nonattainment area; a new source review (NSR) program meeting the requirements of section 173 of the CAA (i.e., require permits for construction and operation permits for new or modified major stationary sources of lead in the nonattainment area); enforceable emission limits, timetables and schedules for compliance; the applicable requirements of section 110(a)(2); and provisions for implementation of specific measures (contingency measures) upon a determination by USEPA that the nonattainment area fails to make RFP or meet the NAAQS by the applicable date (see, e.g., sections 172(c), 173 and 171 of the CAA). USEPA provided the States with guidance SIP requirements for lead nonattainment areas in the April 16, 1992, General Preamble for the Implementation of title I of the CAA of 1990 (see, e.g., 57 FR 13498; see also 57 FR 18070, April 28, 1992), and in a July 16, 1992, draft addendum of supplemental information to the General Preamble (see, e.g., 57 FR 31477). The State's February 4, 1992, submittal is available for inspection at the USEPA Region 5 Office.[2]

II. Identification of Review Criteria

USEPA has evaluated the revisions to Indiana's lead SIP for consistency with the requirements of sections 191(a) and 192(a) of the CAA, and other applicable federal requirements. Additional guidance documents containing USEPA policy include: Questions and Answers prepared by the Office of Air Quality Planning and Standards (OAQPS) from April-July 1992; the April 16, 1992, General preamble (see, e.g., 57 FR 13498; and 57 FR 18070); and the July 16, 1992, draft addendum of supplemental information to the General Preamble (see, e.g., 57 FR 31477).

III. USEPA Review and Findings

A. Review of Submittal Applicable to Portion of Marion County Designated Nonattainment for Lead

This revision request provides for a total enclosure of the building housing the sources considered to be responsible for the monitored violations (i.e., blast and dust furnaces). In addition, a new baghouse control system and stack, as well as revised emission limits for existing stacks, and several operating provisions are intended to combine and minimize emissions to prevent any further violations of the NAAQS at the Refined Metals facility. The emission limit for the new baghouse stack (M–4) is 0.30 lbs lead/hr. Lead emission limits for three other existing baghouse stacks, supported by modeling, are presented below:

EXISTING BAGHOUSE STACKS

Baghouse stack	Old limit (lb/hr)	New limit (lb/hr)
M–1	1.132	0.91
M–2	.015	.15
M–3	.005	.15

In addition to the above, 326 IAC 15–1–2, sections 2(1)(A) to 2(1)(I) contain the following provisions to reduce the release of fugitive emissions containing lead to the atmosphere: (1) The installation and operation of several hooding systems in several areas of the facility, (2) enclosure of the screw conveyors used to transport lead dust, (3) a 3 percent opacity limit for all stacks with compliance determined through the use of continuous opacity monitor (COM) data, and (4) stack testing of the above stacks. Compliance dates for requirements 1 and 2 are on or before June 1, 1987; for requirement 3, compliance is required by April 30, 1992; and for requirement 4, compliance is required by June 30, 1992.

B. Review of SIP Deficiencies

USEPA has reviewed Indian's rule for consistency with the CAA, USEPA regulations and policy, and has found that the revised rule does not adequately address certain applicable requirements necessary for full approval. Three TSD's dated March 18, 1992, February 1, 1993, and May 4, 1993, provide a technical basis for this action.

Section 110(a)(2)(C) of the CAA requires that the SIP contain a program for the enforcement of SIP measures, and for the regulation of the modification and construction of stationary sources. USEPA has also reviewed this SIP submittal for enforceability. A technical support document (TSD), dated March 18, 1992, identifies several enforceability deficiencies in the submitttal that must be addressed to fulfill USEPA requirements. The deficiencies are:

Section 2(a)(1)(D)

- A definition for "natural draft opening" is not incorporated in this section of the State's rule.
- A method to measure average air velocity through natural draft openings is not incorporated in this section of the State's rule.

[1] Subsequent to USEPA's approval of Indiana's Lead rule in 325 IAC Article 15, Indiana recodified this rule (and its other air pollution control rules) under title 326. USEPA has not taken action on this recodification nor on subsequent modifications to 326 IAC Article 15. Action on this recodification will be addressed in a future **Federal Register**.

[2] USEPA approved the Indiana lead SIP called for in response to the issuance of lead NAAQS and subject to the requirements of then section 110 of the CAA [see Title IAC 326 15–1 on April 10, 1988 (53 FR 12896) and October 3, 1988 (53 FR 38719)].

Section 2(a)(1)(F)

• A definition for "building opening" is not incorporated in this section of the State's rule.

Section 2(a)(1)(G)

• The State's rule does not specify certification requirements for continuous opacity monitors (COMs).

• The COM operating requirement specified in 325 IAC 3–1.1 is not federally enforceable because 326 IAC 3–1.1 is not part of the SIP. Although USEPA approved the incorporation of 325 IAC 3–1.1 into the Indiana SIP on October 5, 1981, (46 FR 44448), the recodified rule, which is substantially revised, has been submitted (but not yet approved) as a SIP revision.

Section 2(a)(1)(I)

• Reference methods for stack testing are not provided as part of the State's rule. (USEPA Reference Methods 1 through 5 should be employed.)

• This paragraph of the State's rule does not include a definition for "subdivision" or "division".

• This paragraph of the State's rule should require operation at full capacity during compliance stack testing.

Section 110(a)(2)(K) of the CAA authorizes USEPA to require modeling of a complete and current inventory of all lead sources including industrial (stack emissions) and open dust sources (fugitive emissions) (see also sections 191(a) and 172(c)(3)). USEPA's review indicates that fugitive emissions were not considered in the modeling. USEPA recognizes that Refined Metals is controlling lead emissions from process (industrial) sources by way of enclosures and operating procedures. However, Indiana's requested SIP revision does not consider open dust sources (i.e., exposed materials that generate fugitive emissions of solid particles by the force of wind or machinery). Potential sources or activities include dust piles, unpaved roads, parking lots, the open transport, storage, or transfer of materials containing lead, and heavy construction activities. Significant airborne lead emissions could come from roadways near the facility and wind erosion due to lead deposition on the soil. It is suggested that a silt content analysis be done on roadways and open areas. Then, using USEPA guidance, emissions can be calculated and modeled.

When supplementary modeling is performed, fugitive emissions must be considered. The modeling should include an explanation and/or description of sources that were explicitly modeled and how their emission rates were developed. In the previous modeling, emission limits of casting fugitive emissions were not substantiated by calculations showing the derivation of the numbers. Final modeling must be performed according to provisions set forth in USEPA's *Guideline on Air Quality Models (Revised)*, and other appropriate USEPA guidance, and must demonstrate attainment as expeditiously as practicable (see sections 192(a) and 172(c)(1) of the CAA).

Furthermore, section 172(c)(1) calls for the implementation of RACM in lead nonattainment areas. USEPA has, for example, made available draft guidance identifying available measures for sources of fugitive lead-bearing dust that represent the suggested starting point for specifying RACM in a SIP (see, e.g., 57 FR 31477). Where these measures are not implemented, a justification showing why they were not "reasonably" available for a particular area should be prepared. There are several reasons why otherwise available measures may not be "reasonably" available for a particular area. *Id.*; see also 57 FR 13540–44.

Previously, areas that were not attaining the lead NAAQS were not designated nonattainment and therefore were not required to have a nonattainment NSR program (see, e.g., 57 FR 13550). Further, the 1990 Amendments to the CAA made changes to the NSR program. (see, e.g., 57 FR 13498 & 57 FR 18079, app. D). Pursuant to sections 191(a) and 172(c)(5) of the CAA, States containing areas designated nonattainment for lead must submit as part of the applicable SIP for such area, provisions requiring permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area that meets the requirements of revised section 173 of the CAA. Thus, Indiana must submit such a program by July 6, 1993, for the portion of Marion County designated nonattainment for lead.

USEPA also notes that the fugitive lead dust control plan, submitted for Refined Metals as part of a State-wide control plan, and disapproved on February 1, 1993 [3], is still required under part D, title I of the CAA which requires compliance with the provisions of section 110(a)(2) (see, e.g., section 172(c)(7)). The State of Indiana has notified USEPA of its intention to submit fugitive lead control plans for several facilities including Refined Metals. Pursuant to section 191(a) of the Act, the State of Indiana must submit such control plans for Refined Metals to USEPA by July 6, 1993.

[3] Pursuant to the Indiana SIP, the State is required to submit approvable source-specific fugitive lead dust control plans as revisions to the SIP.

IV. Proposed Rulemaking Action; Solicitation of Public Comment

USEPA is proposing a "limited" approval of the emission limits and other provisions of the submittal specifically applicable to the portion of Marion County designated nonattainment for lead because not all of the applicable requirements under sections of the CAA have been met (see, e.g., section 110(k)(3)). Further, this portion of the submittal is not composed of separable parts which meet all applicable CAA requirements.

The portions of the submittal that apply to the lead nonattainment area in Marion County do not meet all of the requirements of sections 191(a) and 192(a) of the CAA because, among other things, the SIP does not:

(1) Provide for the implementation of RACM (including RACT) for sources of lead in the area or does not otherwise demonstrate why available control measures are not "reasonably" available for such sources (see, e.g., section 172(c)(1), 57 FR 13540–44, 57 FR 18070 and 57 FR 31477);

(2) Contain a nonattainment NSR program meeting all of the requirements of section 173 of the CAA (see, e.g., sections 172(c)(5) and 173, 57 FR 13498 and 57 FR 18070);

(3) Adequately and appropriately demonstrate attainment of the lead NAAQS as expeditiously as practicable but no later than January 6, 1997 (see, e.g., sections 192(a), 110(a)(2)(K), and 57 FR 13550);

(4) Contain a comprehensive, accurate current inventory of actual emissions in the area (see, e.g., section 172(c)(3) and 57 FR 13550);

(5) Provide for reasonable further progress (see, e.g., sections 172(c)(2) and 171(1), and 57 FR 31477); and

(6) Contain contingency measures (see, e.g., section 172(c)(9) and 57 FR 31477).

Nevertheless, the portions of the submittal applicable to the portion of Marion County designated nonattainment for lead do contain measures and other provisions that advance the NAAQS-related air quality protection goals of the CAA. Therefore, USEPA is proposing a "limited" approval of the Indiana Title 326 IAC 15–1–2 for Refined Metals' emission limitations and related requirements due to the SIP strengthening which will result (see, e.g., sections 110(k)(3), 301(a) and 101(b)(1) of the CAA). USEPA is proposing to fully approve the editorial changes to the statewide

Indiana SIP for lead. USEPA acknowledges the facility name change from General Battery to Exide Corporation. However, USEPA is also proposing to disapprove these provisions as a whole for failing to meet all of the requirements of sections 191(a) and 192(a) of the CAA as cited above and in the March 18, 1992, February 1, and May 4, 1993, TSDs. *Id.* However, USEPA does not intend to finalize this "limited" approval and corresponding disapproval until after July 6, 1993, the due date for lead nonattainment area SIPs. This is to provide the State with an opportunity to submit a SIP revision for the Marion County lead nonattainment area that meets all of the applicable requirements of sections 191(a) and 192(a).

If USEPA ultimately disapproves all or part of the SIP submittal for the Marion County nonattainment area, the disapproval would constitute a final disapproval for purposes of section 179(a)(2) of the CAA. As provided under section 179(a) of the CAA, the State of Indiana would then have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before the CAA imposes either the requirement to provide 2 to 1 new source review offsets or the highway funding sanction (see also section 110(m) of the CAA). If the State has not corrected its deficiency within 6 months thereafter, USEPA must impose the second sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance (i.e., until USEPA has published final rulemaking approving a SIP revision). Any final disapproval would also trigger the requirement for the USEPA to impose a Federal Implementation Plan as provided under section 110(c)(1) of the CAA within 24 months of the final disapproval if the deficiencies have not been corrected and the corrections approved by USEPA by that time.

Public comment is solicited on the State's submittal and on all aspects of USEPA's proposed rulemaking action. Comments received by the date listed above will be considered in the development of USEPA's final rule.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management Budget (OMB) waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

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

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

USEPA's disapproval of the State submittal under section 110 and subchapter I, part D of the CAA would not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability of the rules. Moreover, USEPA's disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

The CAA Amendments of 1990 were enacted on November 15, 1990, Public Law 101–549, 104 stat 2399, codified at 42 U.S.C. 7401–7671q. Sections 191(a) and 192(a) of the CAA contain new requirements for lead nonattainment areas. In addition, section 193 of the CAA provides that each regulation, standard, rule, notice, order and guidance promulgated or issued by USEPA prior to the Amendments' enactment shall remain in effect (with certain exceptions).

List of Subjects in 40 CFR Part 52

Lead, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 20, 1993.

Janet Mason,

Acting Regional Administrator.

[FR Doc. 93–16434 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 52 and 81

[OH41–1–5775; FRL–4678–3]

Approval of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a redesignation request and maintenance plan for Cuyahoga County, Ohio as a revision to Ohio's State Implementation Plan (SIP) for carbon monoxide.

The revision is based on a request from the State of Ohio to redesignate this area, and approve its maintenance plan, and on the supporting data the State submitted. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

DATES: Comments on this requested redesignation, SIP revision, and on the proposed USEPA action must be received by August 11, 1993.

ADDRESSES: Written comments should be addressed to:

William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Region 5, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the pre-amended Clean Air Act (CAA), the United States Environmental Protection Agency (USEPA) promulgated the carbon monoxide (CO) attainment status for each area of every State. For Ohio, Cuyahoga County was designated nonattainment for CO, see 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). On November 15, 1990, the Clean Air Act Amendments (CAAA) of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Pursuant to section 107(d)(1)(C), Cuyahoga County retained its designation of nonattainment for CO by operation of law, see 56 FR 56694 (November 6, 1991). At the same time

the area was classified as a moderate CO nonattainment area based on a design value of 10.1 parts per million. The Ohio Environmental Protection Agency requested that the area be redesignated to attainment in a letter dated October 16, 1992, and received by USEPA on October 21, 1992. The CO nonattainment area consists of Cuyahoga County. The State of Ohio has met all of the CAAA requirements for redesignation pursuant to section 107(d)(3)(E).

USEPA has provided guidance on processing redesignation requests in a September 4, 1992, memorandum from John Calcagni, Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Redesignation Memorandum). This guidance memorandum was used in the evaluation of the submittal. The requirements of section 107(d)(3)(E) are set forth in the following sections.

Section 107(d)(3)(E)(i). The Administrator determines that the area has attained the National Ambient Air Quality Standard.

Consistent with the requirements of 40 CFR 50.8, the most recent two years of carbon monoxide air quality monitoring data, 1991 and 1992, for Cuyahoga County show that the County is currently meeting this requirement. In addition, modeling data submitted by the State supports the monitoring data by showing that the worst traffic intersections in the area are in attainment.

Section 107(d)(3)(E) (ii) and (v). The Administrator has fully approved the applicable implementation plan for the area under section 110(k) and the State containing such area has met all requirements applicable to the area under section 110 and part D.

USEPA has interpreted section 107(d)(3)(E) (ii) and (v) to mean that for purposes of redesignation a State must have a fully approved SIP that meets all of the requirements of section 110 and part D that became due on or before the date of submittal of a complete redesignation request.

On October 31, 1980 (45 FR 72122), USEPA approved a CO SIP for Cuyahoga County, with the exception of the I/M program and the conditionally approved Part D New Source Review (NSR) program (45 FR 72119). The State has submitted an I/M program for the Cleveland area. This program is currently under review and must be approved for the State to have met all of the applicable section 110 and part D requirements. The amended Clean Air Act established new submittal requirements with respect to I/M and NSR. Therefore, USEPA must review the State's submittal, not to determine whether the State met the pre-amended I/M and NSR requirements, but whether the State has acted consistently with respect to the requirements of the amended Act. Section 187(a)(4) establishes the I/M requirements applicable to moderate CO nonattainment areas. Section 187(a)(4) requires the State to have submitted an I/M program immediately upon enactment of the Clean Air Act Amendments of 1990. USEPA has interpreted this provision to not require an actual submittal to USEPA until November 15, 1992, see 57 FR 52950 (Nov. 5, 1992); therefore, November 15, 1992, is the date on which the I/M requirement became applicable. Although Ohio is not required to submit an approvable I/M program in order for USEPA to determine that the State has met the applicable requirements of part D, the State must have an approved I/M program prior to redesignation because it has relied on such a program to demonstrate maintenance of the NAAQS.

With respect to NSR, the applicable requirement for moderate CO areas is section 172(c)(5). Section 172(b) establishes a date no later than November 15, 1993, for submittal of the section 172(c) requirements. Since USEPA has not established an earlier date for submittal, the NSR requirement does not become an applicable requirement until November 15, 1993. Since Ohio submitted the redesignation request for Cuyahoga County prior to November 15, 1993, the State need not submit NSR for purposes of USEPA's review of its redesignation request.

The amended Act also specifies new requirements—i.e., requirements not established under the pre-amended Act—for CO nonattainment areas. These include an oxygenated fuels program and an emissions inventory. These requirements were due on November 15, 1992. Since Ohio submitted the redesignation request prior to November 15, 1992, the State was not required to submit these plan elements for purposes of redesignation. However, the State did submit an oxygenated fuels SIP on November 3, 1992. In addition, the State was required to submit an emissions inventory as part of its maintenance plan; USEPA is reviewing that submittal for approval in conjunction with the maintenance plan.

Once the area is redesignated to attainment, the Prevention of Significant Deterioration (PSD) program, which has been delegated to Ohio, will become effective immediately. The PSD program was delegated to Ohio at Code of Federal Regulations 40 CFR 52.21(u), on May 1, 1980, and amended November 7, 1988.

The State has committed to follow USEPA's conformity regulation upon issuance, as applicable (proposed on January 11, 1993, 58 FR 3768).

Section 107(d)(3)(iii). The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.

The submittal states that the reductions are due to the Federal Motor Vehicle Control Program and changing the existing 1990 anti-tampering program to a tailpipe inspection program coupled with a three point anti-tampering check. The tailpipe inspection program was implemented in January 1991. This provided a 43 percent reduction in CO emissions for mobile sources and a 17 percent reduction in overall CO emissions from 1990 to 1992. The submittal indicates that in 1990, mobile source emissions were 117.77 tons per day and total actual CO emissions were 297.535 tons per day for Cuyahoga County. For 1992, the actual emissions were estimated at 67.17 tons per day for mobile source emissions and 246.982 tons per day for total CO emissions. Therefore, USEPA believes that the improvement in air quality is due to permanent and enforceable reductions in emissions.

Section 107(d)(3)(E)(iv). The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A.

The State submission addresses the attainment inventory, maintenance demonstration, tracking plans progress, and the contingency plan. The State has included a 1992 emissions inventory as the attainment inventory. The inventory satisfies USEPA guidance for an attainment emissions inventory for a redesignation request. The 1992 CO attainment emissions inventory totals in tons per day are 98.55, 81.25, and 67.17 for the point, area, and mobile sources, respectively.

For the contingency plan, the submittal states that in order to assure that ambient CO levels remain below the National Ambient Air Quality Standards (NAAQS), a contingency plan encompassing a seven-county oxygenated fuels program as outlined in this submittal will be implemented to correct any violation of the CO standard. The submittal further states that Ohio

will continue to track the progress of this maintenance demonstration by reviewing both the factors used in preparing the inputs for the hot-spot modeling analyses and the 1992 attainment inventory. This review will be done in 1996 and every three years after.

The CO concentrations were computed using MOBILE4.1, CALINE3, and CAL3QHC for 1992, 1993, 1994, 1995, 1996, 1997, 2000, and 2005. The modeling that was performed used USEPA recommended guideline models. The results of the modeling show that the area is expected to maintain the NAAQS through the year 2005.

The State relied on an I/M program as part of its maintenance demonstration. Therefore, in order for USEPA to fully approve the maintenance demonstration, USEPA must first approve the State's I/M submittal. USEPA anticipates taking action on this submittal in the near future. Final action on the maintenance plan and redesignation request will not be taken until such time as USEPA grants final approval to the State's I/M submittal.

USEPA believes that the State submission will satisfy the requirements of section 175A, provided that the State submits a schedule for implementing the contingency plan, USEPA approves the State's I/M plan submittal, and the State commits to maintain an acceptable CO monitoring network in the maintenance area. Therefore, USEPA proposes to fully approve the maintenance plan as meeting the requirements of section 175A, provided that the schedule and commitments are received by the end of the comment period and USEPA takes final action on the State's I/M submittal.

Ohio has adequately responded to May 26, 1988 SIP call.

The State has adequately responded to the SIP call under Section 110(a)(2)(H) of the CAA, which was issued by USEPA to Ohio on May 26, 1988, concerning the Cleveland-Akron-Lorain Consolidated Metropolitan Statistical Area (CMSA) consisting of Portage, Summit, Cuyahoga, Geauga, Lake, Medina, and Lorain Counties, Ohio. In the General Preamble at 57 FR 13564–13565 (April 16, 1992) the requirements for satisfying SIP calls are discussed. The requirements for SIP calls were divided into two phases. In order for CO areas to meet phase I requirements, a Post-1987 emission inventory must be developed. The State submitted a Post-1987 inventory on December 29, 1989, and March 1, 1990. Included in Ohio's redesignation request is a revised version of this emissions inventory for 1990. For phase II the area had to meet the applicable requirements of section 187 of the CAA. Since the applicable requirements of Part D, which includes Section 187, are proposed as being met, provided the I/M program is approved, phase II of the SIP call is also proposed as being met.

Proposed Rulemaking Action

It is proposed that if the I/M program is approved as a part of the CO SIP, the State submits a schedule for implementing the contingency plan and the State commits to maintain an acceptable CO monitoring network in the maintenance area, then the redesignation request will be approved as meeting the section 107(d)(3)(E) conditions of the CAA for redesignation. It is also proposed that the State has met the terms of the May 26, 1988, SIP call for the Cleveland area when Cuyahoga County is redesignated to attainment.

Public comment is solicited on USEPA's proposed rulemaking action. Comments received by August 11, 1993 will be considered in the development of USEPA's final rulemaking action.

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

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. I certify that the approval of the redesignation request will not affect a substantial number of small entities.

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

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Incorporation by reference, Intergovernmental relations.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 30, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–16433 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–184, RM–8277]

Radio Broadcasting Services; Norlina, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Robert Carver and Frank White d/b/a Carver-White Broadcasting Company seeking the allotment of Channel 232A to Norlina, North Carolina, as the community's first local FM service. Channel 232A can be allotted to Norlina in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) north, at coordinates North Latitude 36–29–02 and West Longitude 78–11–23, to avoid short-spacings to Stations WRQR, Channel 232A, Farmville, North Carolina, and WQDR, Channel 234C, Raleigh, North Carolina.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: 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: Frank White, Carver-White Broadcasting Company, P.O. Box 1487, Roanoke Rapids, North Carolina 27870 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–184, adopted June 18, 1993, released July 7, 1993.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

Inc., (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 1.1204(b) for rules governing permissible *ex parte* contacts.

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.

Michael C. Ruger,

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

[FR Doc. 93–16417 Filed 7–9–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 659

Shrimp Fishery off the Southern Atlantic States

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

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council has submitted the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) for review by the Secretary of Commerce (Secretary). The FMP is available for public review and comments are requested from the public.

DATES: Written comments must be received on or before September 7, 1993.

ADDRESSES: Comments should be mailed to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of the shrimp FMP, which contains a regulatory impact review and a final environmental impact statement, may be obtained from the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that a council-prepared fishery management plan to be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the FMP, immediately publish a notice that is available for public review and comment. The Secretary will consider public comment in determining approvability of the FMP.

The FMP proposes that, when North Carolina, South Carolina, Georgia, or Florida closes the fishery for brown, pink, and white shrimp in its waters following severe cold weather that results in an 80 percent or greater reduction in the population of white shrimp, such state may request, and NMFS may effect, a concurrent closure of the fishery for brown, pink, and white shrimp in the exclusive economic zone (EEZ) adjacent to closed state waters. Such closures would not preclude continued fishing for royal red shrimp, rock shrimp, or whiting in the closed portion of the EEZ.

During a closure, no trawling for brown, pink, or white shrimp would be allowed in the adjacent EEZ and no shrimp could be possessed aboard a fishing vessel in the adjacent EEZ, except aboard a vessel in transit with all nets having a net size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, stowed below deck. During a closure of the EEZ, a buffer zone could be established in that part of the closed area within 25 nautical miles of the baseline from which the territorial sea is measured. A vessel that trawls in that buffer zone would not be allowed to use or have aboard a trawl net with a mesh size less than 4 inches (10.2 cm).

Proposed regulations to implement the FMP are scheduled for publication within 15 days.

Dated: July 7, 1993.

David S. Crestin,

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

[FR Doc. 93–16419 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 131
Monday, July 12, 1993

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

Beaverhead Oil and Gas Leasing; Beaverhead National Forest and Parts of Deerlodge National Forest; Beaverhead, Madison, Gallatin, Silver Bow, and Deerlodge Counties, MT

AGENCY: Forest Service, USDA, and Bureau of Land Management, USDI.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service and the Bureau of Land Management will prepare an environmental impact statement (EIS) for oil and gas leasing on the Beaverhead National Forest. The Forest Service and the BLM will be joint lead agencies for this EIS (40 CFR 1501.5). The EIS will be designed to satisfy the requirements of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and implementing regulations (36 CFR 228.102).

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than September 15, 1993.

ADDRESSES: Send written comments to Ronald C. Prichard, Forest Supervisor, Beaverhead National Forest, 420 Barrett Street, Dillon, MT 59725.

FOR FURTHER INFORMATION CONTACT: Peri Suenram, Environmental Analysis Team Leader, Beaverhead National Forest, as above, or phone: (406) 683–3967.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to make certain lands within the Beaverhead and Deerlodge National Forests administratively available for oil and gas leasing, subject to constraints given in the 1986 Beaverhead National Forest Land and Resource Management Plan. The Forest Service also proposes to authorize the BLM to offer those lands for lease, subject to specified stipulations. The BLM proposes to offer for lease the lands authorized by the Forest Service, with stipulations attached by the Forest Service.

The EIS will examine the effects of the proposal and alternatives. The primary purpose of this analysis is to determine which lands should be available for leasing, what stipulations should be applied to any leases, and which specific lands should be offered for lease at this time.

Lands affected are within the boundaries of the Beaverhead National Forest and that portion of the Deerlodge National Forest which is administered by the Beaverhead Forest. These lands are roughly within 75 air miles of Dillon, Montana. The following types of land will be considered unavailable for leasing under all alternatives: existing and proposed wilderness, further planning areas, Wilderness Study Areas, and stream segments eligible for "wild" status under the Wild and Scenic Rivers Act of 1968.

This analysis is required by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and implementing regulations promulgated in 1990 (36 CFR 228.102). The purpose and need for the proposal include:

1. To respond to interest and activity by the energy industry in oil and gas exploration and development in and adjacent to the Beaverhead National Forest;
2. To implement forest plan goals, objectives, standards, and management direction for oil and gas leasing;
3. To implement Congressional direction for oil and gas leasing (Mineral Leasing Act of 1920, Mineral Leasing Act for Acquired Lands of 1947, Mining and Minerals Policy Act of 1970, National Materials and Minerals Policy, Research and Development Act of 1980);
4. To ensure orderly development and conservation of the oil and gas resource (Forest Service Policy at FSM 2800 and 1990 RPA);
5. To ensure oil and gas leasing analysis and decisionmaking are conducted according regulations for the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (36 CFR 228E).

The Forest Supervisor for the Beaverhead National Forest has been assigned the task of compiling the EIS. However, the responsible officials who will make the decision are: David F. Jolly, Northern Region Regional Forester, Federal Building, 200 E. Broadway, P.O. Box 7669, Missoula, MT 59807; and Robert H. Lawton, State Director, USDI-Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107–6800.

They will decide on this proposal after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Potential issues that have been identified to date are the effects of oil and gas activities on:

1. Threatened and endangered species.
2. Sensitive fish, wildlife, and plant species.
3. Increased vulnerability to big game because of new roads.
4. Public safety.
5. Soil stability.
6. Inventoried roadless areas.

Public participation will be important to the analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues identified above. People may visit with Forest Service officials at any time during the analysis and prior to the decision. No former scoping meetings are planned. However, two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS comment period.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species. Portions of the project area have been identified as bald eagle or peregrine falcon habitat. A scoping document will be prepared and mailed to parties known to be interested in the proposed action by August 1, 1993. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

In addition to the proposed action, a range of alternatives will be developed in response to issues identified during

scoping. One of these will be the "no-action" alternative, in which no leasing would be authorized at this time. The Forest Service will analyze and document the direct, indirect, and cumulative effects of all alternatives. They will develop stipulations to mitigate effects and protect other resources, and assess the effectiveness of those stipulations.

The BLM prepares a Reasonably Foreseeable Development (RFD) scenario to predict the scope of potential oil and gas activity. The RFD is based on known geologic, economic, and technical information for the local area. This RFD is used to analyze the effects of the proposed action and alternatives.

The Forest Service will continue to involve the public and will inform interested and affected parties as to how they may participate and contribute to the final decision. Another formal opportunity for response will be provided following completion of a DEIS.

The draft EIS should be available for review in March 1994. The final EIS is schedule for completion in January 1995.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 2, 1993.

Ronald C. Prichard,

Forest Supervisor, Beaverhead National Forest.

[FR Doc. 93-16386 Filed 7-9-93; 8:45 am]

BILLING CODE 3410-11-M

Notice of Intent To Prepare an Environmental Impact Statement To Disclose the Environmental Impacts of Proposed Actions Within the Northwest Baranof Project Area; Tongass National Forest, Chatham Area, Sitka Ranger District, Sitka, AK

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental impacts of proposed actions within the Northwest Baranof Project Area. The proposed action provides for: (1) Construction of approximately 80 miles of road; (2) harvest of 7,000 acres of timber, and regeneration of new stands of trees. This level of development would result in the harvest of approximately 140 million board feet of sawlog and utility timber volume to support local mills. (3) 1,000 foot uncut timber buffers along Nakwasina Passage, St. John Baptist Bay, and the north side of Fish Bay for the protection of wildlife and subsistence uses; (4) temporary log transfer facilities in Nakwasina Passage and Nakwasina Sound (VCU 301); (5) permanent log transfer facilities in St. John Baptist Bay, Fish Bay, and Rodman Bay; (6) no harvest in areas which are visible from the Alaska Marine Highway route between Fish Bay and Nakwasina Passage; (7) no harvest in VCUs 290, 299, 310, 312, and 313; (8) no harvest in Rodman Creek drainage or on the east side of Rodman Bay; (9) development of a recreation trail to Fish Bay Hot Springs; (10) development of a road connection between Nakwasina Passage and Rodman Bay; and (11) no road connection between Rodman Bay and Appleton Cove.

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action.

DATES: Comments concerning the scope of the analysis should be received in writing by August 31, 1993.

ADDRESSES: Send written comments to Northwest Baranof Planning Team, USDA Forest Service, 204 Siginaka Way, Sitka, Alaska 99835.

FOR FURTHER INFORMATION CONTACT: Gordon Anderson, Interdisciplinary Team Leader, Chatham Area Supervisors Office, 204 Siginaka Way, Sitka, AK 99385, (907) 747-6671.

SUPPLEMENTARY INFORMATION: This EIS will tier to the 1979 TLMP EIS, including the 1985-86 and 1990 amendments. The TLMP provides the overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the desired future condition for the area in which the project is proposed.

The Northwest Baranof Project Area is located about 10 air miles north of Sitka, Alaska, and 30 miles east of Angoon, Alaska, on the northwestern part of Baranof Island and encompasses Value Comparison Units (VCUs) 287, 288, 289, 290, 291, 292, 299, 300, 301, 310, 312, and 313 as designated in the Tongass Land Management Plan (TLMP). These VCUs are located within Management Areas C40 and C41 as described in the TLMP. The project area is administered by the Sitka Ranger District of the Chatham Area, Tongass National Forest in Sitka, Alaska.

The purpose and need for the Northwest Baranof project is to make timber available in compliance with the Alaska Pulp Corporation Long-term Timber Sale Contract Number 12-11-010-1545 (Forest Service 1956). A comparison of the desired future condition for the project area, identified in the TLMP, with the existing condition shows the need to convert suitable stands of old-growth timber to managed productive stands capable of long-term timber volume production. Approximately 90 to 120 million board feet of sawlog volume, and another 20 to 30 million board feet of utility volume, is needed from the project area in one or more timber offerings to contribute to volume requirements under the contract. This is enough timber volume to maintain operation of

the Sitka and Wrangell mills for one year.

Gary A. Morrison, Forest Supervisor, Chatham Area, will be the Responsible Official and will decide whether or not to authorize timber harvest within the Northwest Baranof Project Area. He will decide: (1) If the design of the timber sale offerings are consistent with meeting resource protection standards and guidelines in the TLMP; (2) how much timber volume to make available; (3) the location and design of the arterial and collector road system needed to develop the project area; (4) the location and design of timber harvest units and log transfer facilities; (5) mitigation and monitoring measures for sound resource management; and (6) whether there may be a significant restriction on subsistence uses, and if so, other determinations required by section 810 of the Alaska National Interest Lands Conservation Act.

Issues are expected to revolve around: (1) Management of wildlife and fish habitat; (2) subsistence needs; (3) location, design and impacts of transportation systems and log transfer facilities; (4) recreation and visual impacts relative to the marine highways; (5) the economic health of southeast Alaska; and (6) possible road connections between Sitka and Rodman Bay.

To proceed with the timber harvest as proposed, various permits must be obtained from other agencies. Applications for these permits would take place after the Final EIS is filed with the Environmental Protection Agency (EPA) and not sooner than 30 days following publication of this decision in the Juneau Empire newspaper, published in Juneau, Alaska. Both the EPA and the U.S. Army Corps of Engineers have been requested to participate as cooperating agencies in preparation of the EIS. The agencies and their responsibilities are as follows: U.S. Army Corps of Engineers has the responsibility for approval of discharge of dredged or fill materials into the waters of the United States (Section 404 of the Clean Water Act), and approval of construction of structures or work in navigable waters of the United States (Section 10 of the Rivers and Harbors Act of 1899); EPA has responsibility for the National pollutant Discharge Elimination System review (Section 402 of the Clean Water Act). Other agencies which will participate are as follows: State of Alaska, Department of Natural Resources has responsibility for authorization for occupancy and use of tidelands and submerged lands; State of Alaska, Department of Environmental Conservation has responsibility for the Solid Waste Disposal Permit (Section 402 of Clean Water Act) and the Certificate of Reasonable Assurance (Section 404 of Clean Water Act); U.S. Coast Guard has responsibility for Coast Guard Bridge Permits (in accordance with the General Bridge Act of 1946) required for all structures constructed within the tidal influence zone.

Preparation of the EIS will include the following steps: (1) Public notification and scoping on or before August 26, 1993; (2) identification of issues related to the proposed action (significant issues) and a discussion of reasons for not considering other issues (non-significant issues) in this analysis; (3) identification of issues to be analyzed in depth; (4) development of reasonable alternatives to the proposed action which meet the stated purpose and need for the proposed action and address significant issues; and (5) Identification of the potential environmental effects of the alternatives.

For step 1, a scoping brochure will be mailed to interested persons following publication of this Notice in the Federal Register. This brochure will briefly explain the timing and location of the proposed project and will request a response. It will also contain specific information about the location and timing of public involvement meetings. A scoping meeting will be held in Sitka, Alaska at 7 pm, August 5, 1993, at the Centennial Building. A second scoping meeting will be held at 7 pm August 10 in the City Hall at Angoon. Locations and times of the scoping meetings will also be announced in local newspapers and on radio station public service announcements in addition to the scoping brochure.

Step 4 will consider a range of alternatives developed to address significant issues. One of these will be the "No Action" alternative, in which there is no harvest or road building activity. Other alternatives will consider various levels and locations of harvest and regeneration in response to issues and non-timber objectives.

Step 5 will analyze the environmental effects of each alternative. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, site specific mitigation measures for each alternative will be identified and their effectiveness evaluated.

In addition to commenting on the proposed action and the Draft EIS when it is released, agencies and other interested persons or groups are invited to contact with Forest Service officials at any time during the planning process.

The Draft EIS is expected to be filed with the EPA during September 1994. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.

The Final EIS is expected to be released May 1995. The Forest Supervisor for the Chatham Area of the Tongass National Forest will, as the responsible official for the EIS, make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decisions and supporting reasons will be documented in a Record of Decision.

Dated: July 1, 1993.

Gary A. Morrison,

Forest Supervisor.

[FR Doc. 93–16387 Filed 7–9–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Indian Creek Watershed, Plumas County, CA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Indian Creek Watershed, Plumas County, California.

FOR FURTHER INFORMATION CONTACT: Pearlie S. Reed, State Conservationist, Soil Conservation Service, 2121–C Second Street, Davis, CA 95616, telephone (916) 757–8200.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Pearlie S. Reed, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are watershed protection and agricultural water management for water quality improvement. The planned project includes long-term land treatment contracts with individual land users for a grazing management program along 13.7 miles of the creek, and structural measures for stream stabilization and restoration along 2.8 of the 13.7 miles.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Pearlie S. Reed.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: July 1, 1993.

Pearlie S. Reed,

State Conservationist.

[FR Doc. 93–16388 Filed 7–9–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice; request for comments.

SUMMARY: This notice announces the Department's proposal to establish a new system of records under the Privacy Act. The system is entitled, "COMMERCE/DEPT–22, Small Purchase Records." This notice is submitted in accordance with the requirements of the amended Privacy Act, 5 U.S.C. 552a, and OMB Circular A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

EFFECTIVE DATE: The establishment of this system of records will be effective September 10, 1993, unless Commerce receives comments that would result in a contrary determination.

ADDRESS: Please address comments to: Daniel J. Rooney, Chief, Planning, Coordination and Management Division, Office of Management Support, room H6020, U.S. Department of Commerce, Washington, DC 20230. Comments received at this same address will be available for public inspection at this same address from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel J. Rooney: 202–482–4115.

SUPPLEMENTARY INFORMATION: The Department of Commerce is establishing a new system of records for its small purchasing/imprest fund activity. This system covers personally identifiable information collected by the Department of Commerce offices on Bankcard holders and authorizing Bankcard officials; and information collected concerning reimbursement for small purchases as well as other payments that are made through the imprest fund.

As instructed in OMB Circular A–130, Appendix I, the Department's Report has been filed with Congress and the Office of Management and Budget.

The proposed system, "COMMERCE/DEPT–22, Small Purchase Records," will read as follows.

Proposed System Notice

COMMERCE/DEPT–22

SYSTEM NAME:

Small Purchase Records.

SYSTEM LOCATIONS:

1. Records on cardholders and authorizing officials: the Office of the Secretary's computer facilities in Springfield, Virginia at 5285 Port Royal Road, Springfield, Virginia 22151. 2. Records reflecting information on imprest funds paid to individuals: Finance Services Division, Office of Administration, National Oceanic and Atmospheric Administration, Germantown, Maryland 20876.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commerce employees established as Government Credit Card (BankCard) holders and their authorizing officials; and individuals seeking reimbursement through the Department's imprest funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, official duty station; background information and authorities given to BankCard holders and authorizing officials, and claim for reimbursement forms filed by imprest fund claimants; receipts for small purchases, and receipts and/or other documentation for nominal expenses incurred for ground transportation.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3321 and 40 U.S.C. 486(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and data may be disclosed, as necessary, (1) to Members of Congress who respond to inquiries for individual constituents that are record subjects; (2) to representatives of the General Services Administration or to the National Archives and Records Administration who conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906; (3) to a non-government company providing credit card consulting or contracting services to the Government.

Also, records and data may be disclosed, as necessary, (1) in responding to a request for discovery or for the appearance of a witness,

provided that what is disclosed pertains to the subject matter involved in a pending judicial or administrative proceeding; and (2) to respond to a Federal agency's request made regarding the hiring or retention of an employee, provided that the information disclosed is relevant and necessary to the requesting agency's decision on the matter. If material in this system indicates a violation of civil, criminal, or regulatory law whether arising by general statute, by regulation, or order issued pursuant thereto, then the relevant records may be disclosed to the appropriate Federal, state, local or foreign agency charged with investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN A SYSTEM:

STORAGE:

System records will be stored on paper, computer printouts, magnetic tape, word processor diskettes, microform media or other electronic media.

RETRIEVABILITY:

Records are retrieved by employee name, social security number or account number.

SAFEGUARDS:

Paper records and backup diskettes are located in locked metal file cabinets; data on personal computer is password protected. Other machine readable records are stored on magnetic tape in a safe accessible only to security personnel; captured social security numbers will be invisible and will be maintained and sealed in a record system maintained solely in the Springfield office.

RETENTION AND DISPOSAL:

Records will be retained and disposed of at the time specified in the National Archives and Records Administration General Records Schedules 7 and 20. Records on electronic media will be erased, and records on paper, microform or microfiche will be destroyed through shredding or burning.

Records that must be retained longer than the specified retention period (e.g., records kept under court order, etc.) shall be maintained until appropriate releases are issued. At that time, such records will be disposed of in the method described above.

SYSTEM MANAGER AND ADDRESS:

1. For Charge Card Management Information System: Director, Office of Financial Policies and Procedures, Office of Financial Management, room H6818, U.S. Department of Commerce, Washington, DC 20230.

2. For Imprest Management Information System: Chief, Finance Services Division, Office of Administration, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20230.

NOTIFICATION PROCEDURES:

Information may be obtained from the System Manager(s). Requester should provide his or her name pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be sent to the address stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing the initial determination appear in 15 CFR part 4b. Use above address.

RECORD SOURCE CATEGORIES:

The subject individual, commercial entities involved, contractors, and those authorized by the individual to furnish information.

Dated: July 2, 1993.

Gloria Gutierrez,

Acting Chief Financial Officer and Assistant Secretary for Administration.

[FR Doc. 93–16471 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–FA

International Trade Administration

[A–588–823]

Antidumping Duty Order and Amended Final Determination: Professional Electric Cutting Tools From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Pamela Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–1766 or (202) 482–1174, respectively.

Scope of Order

This order covers professional electric cutting tools (PECTs). The tools may be assembled or unassembled and corded or cordless.

- The term "electric" encompasses electromechanical devices, including tools with electronic variable speed features.
- The term "assembled" includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool.
- The term "unassembled" means components, which when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations, (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable band saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs.

- Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface.
- Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. They are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECT order includes only the following bench-top, hand-operated tools: Cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include:

- professional sanding/grinding tools;
- professional electric drilling/fastening tools;
- lawn and garden tools;
- heat guns;
- paint and wallpaper strippers; and
- chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

"Corded" and "cordless" PECTs are included within the scope of this order. "Corded" PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

(1) The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);

(2) Helical, spiral bevel, or worm gearing;

(3) Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;

(4) Power supply cord with a separate cord protector;

(5) Externally accessible motor brushes;

(6) The predominate use of heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and

(7) The presence of more than one coil per slot armature. If only six of the above seven characteristics are applicable to a particular "corded" tool, then that tool must have at least four of the six characteristics to be considered a "corded" PECT.

"Cordless" PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 8508.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Amendment of Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on May 26, 1993, the Department of Commerce (the Department) published its final determination that PECTs from Japan were being sold at less than fair value (58 FR 30144). After publication of our final determination, we informed petitioner (Black & Decker (U.S.) Inc.) and respondent (Makita Corporation, Makita U.S.A., Inc., and Makita Corporation of America) (collectively Makita) that a hardware/software problem with the mainframe computer prevented us from including in the PECT final margin computer program appropriate instructions which would yield a unique foreign market value for each U.S. product. We considered this a ministerial error within the meaning of 19 CFR 353.28(d). We informed both parties that we would correct this error and amend the final determination accordingly.

On June 15, 1993, we corrected the PECT program and released the revised program to petitioner and respondent. On June 17, 1993, we conducted a disclosure conference for the program changes with respondent. There were no clerical error allegations of the corrected PECT program. Accordingly, pursuant to section 735(e) of the Act, we are correcting the ministerial error in the final determination of sales at less than fair value. The final estimated margin changes from 54.43 percent published in the final determination of PECTs for Makita to 54.52 percent. The "All Others" rate also changes from the 54.43 percent published in the final determination to 54.52 percent.

On July 2, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry. Regarding the companion investigation of professional electric sanding/grinding tools (PESGTs), the ITC notified the Department that such imports do not materially injure a U.S. industry.

In addition, on June 9, 1993, Makita alleged that the Department made a clerical error by including two finishing sanders, U.S. models BO4510 and BO4530, in the scope of the companion PESGTs. Because the ITC determination was negative in the PESGT's investigation, this issue is moot.

Antidumping Duty Order

In accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the Department pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of PECTs from Japan. These antidumping duties will be assessed on all unliquidated entries of PECTs from Japan entered, or withdrawn from warehouse, for consumption on or after January 4, 1993, the date on which the Department published its preliminary determination notice in the **Federal Register** (58 FR 81). On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Margin percentage
Makita Corporation, Makita USA, Inc and Makita Corporation of America	54.52
All others	54.52

Regarding the PESGTs investigation, in accordance with section 735(c)(2) of the Act, because of the negative final determination by the ITC, the Department will direct the Customs Service to terminate suspension of liquidation and release any bond or other security and refund any cash deposit required under section 733(d)(2) of the Act of all entries of PESGTs.

This notice constitutes the antidumping duty order and amended final determination with respect to PECTs from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 30, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–16465 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–557–807]

Postponement of Preliminary Antidumping Duty Determination: Welded Stainless Steel Pipe From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–1776.

POSTPONEMENT: On July 1, 1993, we received a letter from petitioners in this investigation requesting that the Department postpone the preliminary determination in accordance with section 733(c)(1)(A) of the Tariff Act of 1930 (the Act), as amended (19 U.S.C.

1673b(c)(1)(A)). We find no compelling reasons to deny the request and are, accordingly, postponing the date of the preliminary determination until August 30, 1993.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: July 6, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–16466 Filed 07–09–93; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review.

A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–A0009."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 92–00009, which was issued on October 6, 1992 (57 FR 46843, October 13, 1992).

Summary of the Application

Applicant: Northern Textile Export Trading Company, Inc., D/B/A Textile Trading Company of America ("NTETC"), 230 Congress Street, Third Floor, Boston, Massachusetts 02110. Contact: Karl Spilhaus, President. Telephone: (617) 542–8220.

Application No.: 92–A0009.

Date Deemed Submitted: July 6, 1993.

Request for Amended Conduct: NTETC seeks to amend its Certificate to add Hanora Spinning, Inc. of Woonsocket, RI (Controlling Entity: The First Republic Corporation of America, New York, NY) and Dyecraftsmen, Inc. of Taunton, MA as "Members" within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l)).

Dated: July 6, 1993.

Jude Kearney,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–16469 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–DR–M

[Docket No. 930523–3123]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice announces availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives and scientists (also referred to as "interns") from the Independent States of the former Soviet Union (Independent States). The Department of Commerce, International Trade Administration (ITA) established the SABIT program in September 1990 to assist the former Soviet Union's transition to a market economy. Since that time, SABIT has been matching business executives and scientists from the Independent States with U.S. firms which sponsor them for short-term management training programs.

Under this program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. ITA will interview and recommend eligible interns to participate in SABIT. Interns may be from any of the following Independent States: Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tazikistan, Turkmenistan, Ukraine, and Uzbekistan. The U.S. firms will be expected to provide the interns with a hands-on, non-academic, executive training program designed to maximize their exposure to management operations. At the end of the training program, interns return to the NIS.

DATES: The closing date for application is November 9, 1993.

ADDRESSES: Request for Applications: Competitive Application kits will be available from ITA starting on the day this notice is published. To obtain a copy of the Application Kit please telephone (202) 482–0073, or telefax (202) 482–2443 (these are not toll free numbers) or send a written request with two self-addressed mailing labels to Cynthia M. Anthony, Director, Special American Business Internship Training Program, room 3413 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, 20230. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. An original and two copies of the application (Standard Form 424 (Rev. 4–88) and supplemental material) are to be received at the address designated in the Application Kit no later than 3 p.m., 120 days from publication of this notice. Applications will be considered on a "rolling" basis as they are received, subject to the availability of funds. All awards are expected to be made prior to October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Special American Business Internship Training Program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: SABIT exposes business managers and scientists from the Independent States to a completely new way of thinking in which demand, consumer satisfaction, and profits drive production. Senior-level interns visiting the U.S. for internship programs with public or private sector companies will be exposed to an environment which will provide them with practical knowledge for transforming their countries' enterprises and economies to the free market. The program provides first-

hand, eye-opening experience to managers and scientists which cannot be duplicated by American managers travelling to their territories.

Managers: The expanded SABIT program assists economic restructuring of the Independent States by providing business managers with exposure to American ways of innovation and management through three to six month management internships in U.S. firms. ITA reserves the right to allow an intern to stay for a shorter period if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities. Sponsoring U.S. firms will benefit by establishing relationships with key managers in similar industries who are uniquely positioned to assist their U.S. sponsors do business in the Independent States.

Scientists: The goals of the SABIT program for scientists are to provide opportunities for gifted scientists to apply their skills to peaceful research and development in areas such as defense conversion, pharmaceutical and other medical research, energy, and environment, and expose them to the role of scientific research in a market economy where applicability of the research relates to the success of the firm. Sponsoring firms in the U.S. scientific community also will benefit from the exchange of information and ideas, and different approaches to new technologies. As with the managers, internships are for three to six months; however, ITA reserves the right to allow an intern to stay for a shorter period if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities.

Funding Availability: Pursuant to section 531 of the Foreign Assistance Act of 1961, as amended, (the "Act") and section 632(b) of the Act, funding for the program will be provided by the Agency for International Development (A.I.D.). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act. The maximum amount of financial assistance available for the program is $1,700,000.

Funding Instrument and Project Duration: Federal assistance will be awarded pursuant to a cooperative agreement between ITA and the recipient firm. With funds provided by A.I.D., ITA will reimburse companies for the roundtrip air travel of each intern from Moscow (or other cities in the NIS as approved in advance by ITA) to the U.S. internship site, upon submission to ITA of the travel invoice. ITA will reimburse companies a stipend of $30 per day per intern for up to six months. Disbursement of funds for reimbursement of the stipend will be made upon certification by the companies that the internship program has been completed, and submission of a report on the training program. Each award will have a cap of $7,500 per intern for total cost of airline travel and stipend. There are no specific matching requirements for the awards. Host firms, however, are expected to bear the costs beyond those covered by the award, including housing, insurance, any food and incidentals costs beyond $30 per day, and any training-related travel within the U.S. Host firms provide training for the interns. Federal funding will be provided for this program for not more than eighteen months from the date of this Notice. U.S. firms wishing to utilize SABIT in order to be matched with an intern without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

Eligibility: Eligible applicants for SABIT will be any for profit or non-profit U.S. corporation, association, organization or other public or private entity. Each application will receive an independent, objective review by one or more three-member review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive, "rolling" basis as they are received in accordance with the selection criteria set forth below. ITA reserves the right to reject any application; to limit the number of interns per applicant; and to consider other than competitive procedures to distribute assistance under this program if appropriate and in accordance with law.

Evaluation Criteria: Consideration for financial assistance will be given to those SABIT proposals which:

1. Demonstrate a commitment to the intent and goals of the program to provide an appropriate management training experience to the intern(s), i.e., "on-the-job," practical, non-academic training;

2. Are proposed by applicants with the financial capacity to successfully undertake the intended activities of hosting an intern(s) and by applicants that state in their applications that they will provide medical insurance for the interns during their internships;

3. Respond to the priority business needs of managers in the Independent States, as determined by ITA. Host firms must be solidly committed to interns' return to their own countries upon completion of the internships.

In addition, priority consideration will be given to the following:

4. Applications that present a realistic work plan describing the program to be provided to the SABIT intern(s).

5. U.S. companies in the following fields: Energy, environment, including environmental clean-up; agribusiness (including food processing and distribution, and agricultural equipment and machinery); medical equipment, supplies, pharmaceuticals, and health care management; defense conversion; financial services (including banking and accounting); transportation; telecommunications; housing, and product standards and quality control.

6. Applicants open to sponsoring interns from a variety of NIS countries;

7. Applicants which provide U.S. geographic diversity;

8. Applicants which provide industry diversity; and

9. Applicants which provide diversity in terms of size.

Evaluation criteria 1–3 will be weighted equally. Priority consideration factors 4–9 will also be weighted equally. Evaluation criteria will take precedence over the priority consideration factors.

Notifications: All applicants are advised of the following:

1. Applicants that have an outstanding account receivable with the Federal Government may not be considered for funding until the debt has been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

2. Applicants are subject to Government-wide Debarment and Suspension (Non-procurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

3. A false statement on the application may be grounds for denial or termination of funds.

4. Awards under this program shall be subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards. Participating companies will be required to comply with all relevant U.S. tax and export regulations.

5. This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

6. The Grants Officer is the only individual who may legally commit the Government to the expenditure of

public funds. No costs chargeable to the proposed cooperative agreement may be incurred before receipt of either a fully executed cooperative agreement or a specific, written authorization from the Grants Officer.

7. Past performance: Unsatisfactory performance by an applicant under prior Federal awards may result in an application not being considered for funding.

8. No obligation for future funding: If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

9. Primary Applicant Certifications: All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

10. Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

11. Drug-Free Workplace: Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

12. Anti-Lobbying: Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

13. Anti-Lobbying Disclosures: Any applicant that has paid or will pay for lobbying in connection with this award using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

14. Lower Tier Certifications: Recipients shall require applicants/bidders for subgrants, contracts, subcontractors, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Cynthia M. Anthony,

Director, Special American Business Internship Training Program.

[FR Doc. 93–16468 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–HE–M

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Thursday, July 29, 1993, and Friday, July 30, 1993, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on July 29 and 30, 1993, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at National Institute of Standards and Technology, I–270 and Quince Orchard Road, Gaithersburg, MD 20899 in the Green Auditorium, Administration Building.

AGENDA:

—Welcome and Update
—Views of Law Enforcement Community on Cryptography
—Multi-National Corporation Perspectives on Key Escrowing Technology (Potential Users)
—Public Participation
—Board Discussion
—Pending Business
—Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by July 23, 1993. Approximately 250 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: July 6, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–16357 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[Docket No. 930518–3118; I.D. 041993A]

Projects To Provide Information on the Antarctic Marine Ecosystem

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

ACTION: Notice of availability of financial assistance.

SUMMARY: Subject to the availability of funds, NMFS issues this notice describing funding for directed scientific research conducted under the Antarctic Marine Living Resources Convention Act of 1984 (Act). As directed by the Act, the Antarctic Marine Living Resources (AMLR) program was created to provide information needed to advise the U.S. delegation to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), part of the Antarctic treaty system. One of the principal tenets of the Convention is that the harvest of Antarctic marine living resources shall be managed with the goal of preserving species diversity and stability of the entire Antarctic marine ecosystem. NMFS issues this notice describing the conditions under which applications will be accepted and

how NMFS will determine which applications will be funded.

DATES: Applications for funding under this program must be received by 4:30 P.S.T. on July 16, 1993. Applications received after that time will not be considered for funding. No facsimile applications will be accepted.

Successful applicants generally will be selected by September 1, 1993.

ADDRESSES: Applications will be inspected at the NMFS Southwest Fisheries Science Center's La Jolla Laboratory. Send applications to: Dr. Roger P. Hewitt, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92037.

Written inquiries of an administrative nature should be sent to: Grants Management Division, Attn: Jean West, Chief, Grants Operations Branch, NOAA, SSMC2, OA321, 1325 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Telephonic inquiries of an administrative nature should be directed to Jean West, 301–712–0926.

Telephonic inquiries of a programmatic nature should be directed to Dr. Roger P. Hewitt, 619–546–7007.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Act (Title III of Pub. L. 98–623, 16 U.S.C. 2431 *et seq.*) provides the legislative authority necessary to implement, with respect to the United States, the Convention (CCAMLR). The Act provides for Federal agency cooperation in carrying out the policies and objectives of the Convention or to implement any decision of CCAMLR. It further provides that the Secretary of Commerce, in conjunction with the Director of the National Science Foundation, the Secretary of State, and the heads of other appropriate Federal agencies, shall design and conduct a program of directed scientific research pursuant to a plan entered in accordance with the Act. The plan is to describe priority directed research and identify needs to be fulfilled by the United States. The research to be funded is in support of the U.S. AMLR Program, which provides information needed to formulate U.S. policy on the conservation and international management of resources living in the oceans surrounding Antarctica.

The AMLR program monitors finfish and krill fisheries, projects sustainable yields where possible, and formulates management advice and options. In addition, the program conducts field research designed to describe the functional relationships between krill, their predators, and key environmental variables. Three cooperative agreements will be awarded to conduct research on the Antarctic marine ecosystem in a 15,000 square mile (38,850 km²) area around Elephant Island, South Shetland Islands, Antarctica. This program is described in the Catalog of Federal Domestic Assistance under program number 11.446.

Research Methods

The research to be funded will be accomplished during a research cruise, consisting of two 30-day legs, and will be conducted in the vicinity of Elephant Island, Antarctica, during the months of January, February, and the first half of March, 1994. A large-area survey grid of approximately 90 stations and covering the area around Elephant, Clarence, and the eastern end of King George Islands will be occupied once during each leg. A small-area survey grid of approximately 25 stations covering the shelf/slope break area north of Elephant Island will also be occupied at least once during each leg. In addition, directed sampling, fine-scale sampling, and other specialized studies will be conducted. Additional research details will be provided to principal investigators prior to the cruise.

Sampling gear and supplies may be loaded aboard the NOAA Ship *SURVEYOR* in Seattle in mid-November, 1993, and during a port call in San Diego in early December, 1993. The scientific party will fly to Punta Arenas, Chile, to meet the ship in early January, 1994. Proposals should include the cost of travel to and from Punta Arenas, Chile. Airline tickets bought with cooperative agreement funds must be fully refundable and reservations alterable due to last minute changes in ship scheduling. There will be a mid-cruise port call in Punta Arenas in early February, 1994, and a final Punta Arenas port call in mid-March, 1994.

Depending on funding availability, a pre-cruise meeting for principal investigators may be held in Seattle in early November, 1993. Also, a post-cruise data workshop for principal investigators may be held in Seattle at the end of May, 1994. The Government will provide travel reimbursement for these meetings if they should occur; the cost of travel for these meetings should not be included in proposals.

A report of accomplishments and tentative conclusions will be due from each principal investigator by April 1, 1994. Final reports, including copies of all data sets on magnetic media, will be due by July 1, 1994. It is expected that results will be published in peer-reviewed journals. Proposals should include provisions for the preparation of collaborative manuscripts, publishing costs, and presentation of significant results at scientific meetings.

It is highly desirable that the principal investigators participate on at least one of the cruise legs. Minimum requirements for each of the three research disciplines are listed in this notice (see Funding Priorities). Applicants are encouraged to propose research elements to be conducted in addition to the minimum requirements, but they must understand that funding will not be increased for these additional elements.

II. Funding Priorities

A. Physical Oceanography

The objectives for this component are to:

(1) Describe the hydrography of the upper ocean waters in the vicinity of Elephant Island throughout the 1994 austral summer;

(2) Describe the physical setting in relation to the observed vertical and horizontal distribution of phytoplankton and zooplankton; and

(3) Provide a continuous record of sea surface and atmospheric conditions annotated by date, time, and ship's position.

Minimum observations should include: (1) Salinity, temperature, and oxygen profiles at each station; and (2) continuous measurements of air temperature, wind speed and direction, relative humidity, barometric pressure, sea surface temperature, and sea surface salinity.

The Government will supply a Seabird thermosalinograph, a General Oceanics rosette with 10-liter Niskin bottles, a Guideline salinometer, a Magnavox GPS receiver, and a Seabird SBE-9 CTD (to be used as a backup unit). All other equipment, supplies, and necessary personnel must be provided by the recipient.

B. Phytoplankton and Primary Productivity

The objectives for this component are to:

(1) Determine available food sources for zooplankton, including particulate organic carbon, phytoplankton organic carbon, cell-size distribution, and dominant species composition;

(2) Determine rates of primary production and associated levels of incident radiation and light attenuation;

(3) Describe the seasonal change of phytoplankton growth of grazing, vertical mixing, nutrient depletion, and settling on the distribution of phytoplankton biomass.

Minimum observations should include:

(1) Profiles of chlorophyll-a and inorganic nutrient content from discreet bottle samples and solar irradiance, beam attenuation and fluorescence from continuous measurements at each station;

(2) Primary production rates from shipboard incubations and associated irradiance levels;

(3) Continuous measurements of sea surface fluorescence and beam attenuation;

(4) Cell size distribution and floristics composition of the phytoplankton;

(5) Organic carbon and nitrogen content of the particulate material; and

(6) Total microbial biomass.

The Government will supply a General Oceanics rosette with 10-liter Niskin bottles equipped with teflon springs. All other equipment, supplies, and necessary personnel must be provided by the recipient. Laboratory space is very limited; however, fresh water, salt water, and electrical supplies can be provided to portable laboratory vans and incubation arrays.

C. Krill Demographics

The objectives of this component are to: (1) Describe the population structure and biological characteristics of krill collected throughout the study area and over the duration of the cruise; and (2) correlate and interpret the krill data with information on phytoplankton biomass, primary production, circulation pattern, and water mass boundaries.

Minimum observations should include distributions of animal length, maturity stages, sex ratios, reproductive condition, moult stages, and feeding condition. Specimen processing should be done at sea.

The Government will provide a small interior lab with fresh water, salt water, and electrical supplies. All other equipment, supplies, and necessary personnel must be provided by the recipient.

III. How To Apply

A. Eligible Applicants

1. Applications for cooperative agreements under the AMLR research program may be made, in accordance with the procedures set forth in this notice, by any state, university or college, institution, or laboratory, or any public or private nonprofit institution or organization qualified to perform the research described in this notice. All applications must be received in the office listed (see ADDRESSES) on or before the date specified (see DATES). All solicited proposals will be considered by NMFS. Applicants will be expected to identify the principal investigators who will be conducting the research. Curriculum vitae should also be provided for all essential personnel.

2. NOAA reserves the right to withhold the awarding of a cooperative agreement to any individual or organization delinquent on a debt to the Federal Government. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received; or (3) other arrangements satisfactory to the Department of Commerce (DOC) are made. Any first-time applicant for Federal cooperative agreement funds is subject to a pre-award accounting survey prior to execution of the award. Women and minority groups and individuals are encouraged to submit applications. NOAA employees, including full-time, part-time, and intermittent personnel (or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide information about the AMLR program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing or planned NOAA programs and activities that may have implications for an application.

B. Amount and Duration of Funds

Approximately $185,000 was requested in the President's FY 1994 budget to fund three cooperative agreements for research on the Antarctic marine ecosystem: (1) Physical oceanography, for $65,000; (2) phytoplankton and primary productivity, $65,000; and (3) krill (*Euphausia superba*) demographics, $55,000. Depending on available funding, cooperative agreements shall be awarded for a period of 1 year, beginning November 1, 1993, and ending October 31, 1994. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate all or any part of the available funds. Awards generally will be made no later than 90 days after the funding selection is determined and negotiations are completed. If an applicant incurs any costs prior to an award being made, he or she does so solely at his or her own risk of not being reimbursed by the Government. Applicants are also hereby notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover preaward costs.

C. Cost-Sharing Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the AMLR program.

D. Format

1. Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing the harvest of Antarctic marine living resources with the goal of preserving species diversity and stability of the entire Antarctic marine ecosystem, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown by category of expenditure with appropriate justification for both the Federal and non-Federal shares. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described by the application.

2. Applications must be submitted in the following format:

a. Cover sheet: An applicant must use OMB Standard Form 424 (revised 4/88) as the cover sheet for each project. Applicants may obtain copies of the form from the NMFS Southwest Fisheries Science Center's La Jolla Laboratory, or the Department's Grant Management Division (see ADDRESSES).

b. Project Summary: Each project must contain a summary of not more than one page that provides the following information:

(1) Project title.

(2) Project status (new or continuing). If continuing, show previous financial assistance award number and beginning/ending date.

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal investigator(s).

(6) Project objectives.

(7) Summary of work to be performed. For continuing projects, the applicant must briefly describe progress to date, in addition to any changes to the statement of work previously submitted.

(8) Total Federal funds requested. Although non-Federal funds or in-kind

contributions are not required under this program, where they will be provided the applicant should state the amount of non-Federal funds or the value of in-kind contributions that will be provided for the project.

(9) Total project cost.

c. Project Description: Each project must be completely and accurately described. Each project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public. NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows: (1) Identification of Research Discipline: State which of the three research disciplines (see Funding Priorities) is being applied for.

(2) Project Goals and Objectives: State what the proposed project will accomplish and describe how this will contribute to the description of the Antarctic marine ecosystem. Describe the time frame in which tasks would be conducted.

(3) Participation by Persons or Groups Other Than the Applicant: Describe the level of participation required in the project by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the proposal, even though the applicant may wish to acknowledge government expertise in an allied area.

(4) Federal, State, and Local Government Activities: List any programs (Federal, State, or local government or activities) this project would affect and describe the relationship between the project and those plans or activities.

(5) Project Outline: Describe the work to be performed during the project, starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, NMFS will not consider the application for funding and will return it to the applicant.

(6) Project Management: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

(7) Monitoring of Project Performance: Identify who will participate in monitoring the project.

(8) Project Impacts: Describe the impact of the project in terms of anticipated increased production, sales, exports, product quality and safety, improved management, social values or any other that will be produced by this project. Describe how these products or services will be made available to the fisheries and management communities.

(9) Evaluation of Project: The applicant is required to provide an evaluation of project accomplishments in the final report. The application must describe the methodology to be followed to determine technical feasibility.

(10) Total Project Costs: Total project costs is the amount of funds required to accomplish the proposed statement of work (SOW), and includes contributions and donations. All costs must be shown in a detailed budget. Costs must be allocated to the Federal and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget as follows:

(i) Personnel. (a) Salaries: Identify salaries by position and percentage of time and annual/hourly salary of each individual dedicated to the project.

(b) Fringe Benefits: Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent on the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to this project.

(ii) Consultants and Contract Services: Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application to contract with a particular organization, explain how the organization was selected. Describe the type of contract, budget, deliveries expected, and time frame. A detailed budget must be submitted (with supporting documentation) for the total amount of funding requested for a subcontractor/consultant. All contracts must meet the standards established in OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" or 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" as applicable.

(iii) Travel and Transportation: Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses.

(iv) Equipment, Space or Rental Costs: Identify equipment purchases or rental costs with the intended use. Equipment purchases greater than $500 are discouraged, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited. Identify space or rental costs with specific uses.

(v) Other Costs. (a) Supplies: Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies must be included under Indirect Costs unless purchased in a large quantity to be used specifically for the project.

(b) Postage and Shipping: Include postage for correspondence and other project related material, as well as air freight, truck or rail shipping of bulk materials.

(c) Printing Costs: Include costs associated with producing materials in connection with the project.

(d) Long Distance Telephone and Telegraph: Identify estimated monthly bills.

(e) Utilities: These costs should be included under Indirect Costs unless purchased in a large quantity to be specifically identified to the project. Identify costs of utilities and percentage of use in conjunction with performance of project.

(f) Indirect Costs: This entry should be based on the applicant's established indirect cost agreement rate with the Federal Government. A copy of the current, approved, negotiated Indirect Cost Agreement must be included. It is the policy of the Department that indirect costs shall not exceed direct costs.

(g) Additional Costs: Indicate any additional costs associated with the project that are allowable under OMB circulars A–21, A–87, or A–122 as applicable.

d. Supporting Documentation: This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the

significance of the discipline addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question the assertions made in describing the project and may result in a lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

E. Application Submission and Deadline

1. Deadline: (see DATES)

2. Submission of Applications to NMFS: Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Applicants must submit one signed original and two copies of the complete application to the NMFS Southwest Fisheries Science Center's La Jolla Laboratory (see ADDRESSES). Questions of an administrative nature should be referred to the Grants Management Division (see FOR FURTHER INFORMATION CONTACT).

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

1. Unless otherwise specified by statute, in reviewing applications for cooperative agreements that include consultants and contracts, NOAA will make a determination regarding the following:

a. Is the involvement of the applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

b. Is the proposed allocation of the applicant's time reasonable and commensurate with the applicant's involvement in the project?

c. Are the proposed costs for the applicant's involvement in the project reasonable and commensurate with the benefits to be derived from applicant's participation?

2. For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. This review normally will involve experts from non-NOAA as well as NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will provide point scores on proposals based on the following evaluation criteria:

a. Scientific merit and investigator qualifications (34 points).

b. Relevance to the objectives outlined in Research Methods in this notice (see Introduction and Funding Priorities) (33 points).

c. Soundness of planning and proposed methodology (33 points).

3. Applications will be ranked by NMFS into three groups: (a) Highly recommended, (b) recommended, and (c) not recommended. These rankings will be presented to a panel of fishery experts convened by NMFS.

B. Consultation With Others

NMFS will make project descriptions available for review as follows:

1. Public Review and Comment: Applications may be inspected at the NMFS Southwest Fisheries Science Center's La Jolla Laboratory (see ADDRESSES and DATES).

2. Consultation with Members of the Fishing Industry, Management Agencies, Environmental Organizations, and Academic Institutions: NMFS shall, at its discretion, request comments from members of the fishing and associated industries, groups, organizations and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

3. Consultation with Government Agencies: Applications will be reviewed in consultation with the Director, Southwest Fisheries Science Center, NMFS, and appropriate laboratory personnel, NOAA Grants Officer, and, as appropriate, Department bureaus and other Federal agencies, for elimination of duplicate funding. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

C. Funding Decision

After projects have been evaluated, the Director of the Southwest Fisheries Science Center, NMFS, in consultation with the Assistant Administrator for Fisheries, NOAA, will ascertain which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, determine the projects to be funded, and determine the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NMFS program staff. A project must not be initiated by a recipient until a signed award is received from the Grants Office.

V. Other Requirements

Recipients and subrecipients are subject to all applicable Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

A. Primary Applicant Certification

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are also hereby notified of the following:

1. Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace: Recipients of cooperative agreements (as defined at 15 CFR part 26, subpart F) are subject to 15 CFR part 26, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying: Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single-family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure: Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

B. Lower Tier Certifications

Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. An SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

All non-profit and for-profit applicants are subject to a name check

review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment as provided in 18 U.S.C. 1001.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If an application for an award is selected for funding, the Department has no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Classification

NMFS reviewed this solicitation in accordance with E.O. 12291 and DOC guidelines implementing that Order. This solicitation is not "major" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state, or local agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This notice does not contain policies with sufficient federalism implications to warrant preparation of a federalism assessment under E.O. 12612. Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act. This notice involves information collection requirements approved by OMB Control No. 0348–0043.

This program is not subject to the provisions of E.O. 12372.

Dated: July 6, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–16355 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–22–M

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone (EEZ) in 1993 under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). This notice announces the receipt of an application from the Russian Federation which requests authorization for the tanker DARNITSA to conduct cargo transport and bunkering operations in the Northwest Atlantic Ocean area of the EEZ. Send comments on this application to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910

and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331

For further information contact Robert A. Dickinson, Office of Fisheries Conservation and Management, (301) 713–2337.

Dated: July 6, 1993.

David S. Crestin,

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

[FR Doc. 93–16444 Filed 7–9–93; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Cancellation of Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The meeting of the Technical Advisory Group for Cigarette Fire Safety scheduled for July 9, 1993, and announced in the **Federal Register** of June 23, 1993 (58 FR 34038) has been canceled. The meeting will not be rescheduled.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0470.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 93–16462 Filed 7–9–93; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 227, Patents, Data, and Copyrights; OMB Control Number 0704–0240

Type of Request: Extension

Number of Respondents: 16,560

Responses Per Respondent: 1

Annual Responses: 16,560

Average Burden Per Response: 79 hours and 28 minutes

Annual Burden Hours (Including recordkeeping): 2,307.240

Needs and Uses: This proposal meets the collection and recordkeeping requirements in the areas of technical data, software, copyrights, and contracts.

Affect Public: Businesses of other for-profit, Non-profit institutions, and Small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of

the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: July 6, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16358 Filed 7–9–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–729–000, et al.]

Boston Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 2, 1993.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Co.

[Docket No. ER93–729–000]

Take notice that on June 25, 1993, Boston Edison Company (Edison) of Boston, Massachusetts, filed an All-Requirements Service Agreement dated March 17, 1993 between Edison and the Massachusetts Bay Transportation Authority (MBTA). Under the terms of the Agreement, Edison will provide the MBTA all-requirements service as that service is defined in the Agreement. Edison states that the MBTA currently has a peak demand of about 93 MW. Edison asks that the Agreement be allowed to become effective as a rate schedule as of February 1, 1993 consistent with the Commission's policy as stated in Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶61,106 at 61,338 (August 3, 1992).

Edison states that this filing has been posted as required by the Commission's regulations. Edison states that it has filed the Agreement with the consent of the MBTA as evidenced by the MBTA's execution of the Agreement. Edison further states that it has served the filing on the affected customer and upon the Massachusetts Department of Public Utilities.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

PacifiCorp; Portland General Electric Co., Puget Sound Power & Light Co., Washington Water Power Co.

[Docket No. ER93–744–000]

Take notice that PacifiCorp, on June 30, 1993, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Letter Agreement dated June 24, 1993 between Puget Sound Power & Light Company (Puget) and PacifiCorp. The Letter Agreement provides for the continued sale of generation owned by Puget, Portland General Electric Company (Portland), the Washington Water Power Company (Water Power) and PacifiCorp, among others, from the Skookumchuck Hydroelectric Project to Puget. PacifiCorp's filing is on behalf of Portland, Puget, Water Power and itself.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that the Letter Agreement be allowed to become effective as of July 1, 1993.

Copies of the filing were supplied to the owners of the Skookumchuck Hydroelectric Project including Portland, Puget, and Water Power and to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Co.

[Docket No. ER93–697–000]

Take notice that on Wisconsin Electric Power Company (Wisconin Electric) on June 22, 1993, tendered for filing a letter requesting that the Service Agreement date in this docket be changed to June 9, 1993.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Grayling Generating Station Limited Partnership

[Docket No. ER93–736–000]

Take notice that Grayling Generating Station Limited Partnership (Grayling), a Michigan limited partnership, on June 29, 1993, tendered for filing, pursuant to 18 CFR 35.1 and 35.13, proposed supplement No. 9 to Rate Schedule FERC No. 1, applicable to the sale of energy and capacity to Consumers Power Company (Consumers) from a biomass waste wood generating facility located in Crawford County, Michigan. The facility is a qualifying small power production plant of more than 30 MW within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978. The proposed changes would increase revenues from jurisdictional sales and services by 0.01 cents per kilowatthour.

Supplement No. 9 makes two changes to Rate Schedule FERC No. 1. First, the capacity to be sold by Grayling to Consumers has increased by 8 MW. As a result of the increase in capacity to be sold, the capacity charges has changed from 4.05 cents per kilowatthour to 4.06 cents per kilowatthour. The capacity rate is a weighted average charge based on the MPSC determination of avoided cost and escalated for the appropriate time period. Second, the calculation of capacity charges is modified if the average of the Plant's Annual Availability for the prior two consecutive calendar years of operation is greater than .95. This change has occurred at the insistence of the MPSC.

Grayling also is requesting that the sixty-day notice period under 18 CFR 35.3 be waived.

Copies of this filing have been served on Consumers Power Company.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Cleveland Electric Illuminating Co.

[Docket No. ER93–471–000]

Take notice that on June 28, 1993, The Cleveland Electric Illuminating Company (CEI) tendered for filing revisions to its proposed Service Schedule F—Economy Power to the Agreement for Installation and Operation of a 138 kv Synchronous Interconnection between CEI and the City of Cleveland, Ohio (CEI Rate Schedule FERC No. 12). CEI states that its proposed Service Schedule F has been revised pursuant to the Order Noting and Granting Interventions, Granting and Denying Summary Disposition, Accepting For Filing And Suspending Rates, Establishing Hearing Procedures, and Dismissing Complaint, issued on May 28, 1993, in order to establish a rate for economy energy transactions based on the-of-pocket cost of the supplying party plus 50% of the gross savings of the transactions.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Co.

[Docket No. ER93–742–000]

Take notice that on June 29, 1993, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its existing Contract for Interchange Service with the City of Wauchula, Florida (Wauchula).

Tampa Electric also tendered for filing a Letter Agreement amending its existing Letter of Commitment with Wauchula under Service Schedule D (Long-Term Interchange Service).

Finally, Tampa Electric tendered for filing a Service Agreement with Wauchula under Tampa Electric's FERC Electric Tariff, First Revised Volume No. 1, and a related revised tariff sheet.

Tampa Electric proposed the tendered documents be made effective on September 1, 1993.

Copies of the filing have been served on Wauchula, the other customers under Tampa Electric's tariff, and the Florida Public Service Commission.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Electric Power Co.

[Docket No. ER93–741–000]

Take notice that on June 29, 1993, Southwestern Electric Power Company (SWEPCO), by its counsel, submitted for filing Amendment No. 2 to SWEPCO's Electric System Interconnection Agreement with Cajun Electric Power Cooperative, Inc. (SWEPCO FERC Rate Schedule No. 100).

SWEPCO requests an effective date of the later of July 1, 1993 or the date on which SWEPCO completes its acquisition of the electric utility assets of Bossier Rural Electric Membership Cooperative, Inc., a Cajun member. Accordingly, SWEPCO requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Cajun, the Louisiana Public Service Commission, and copies of the transmittal letter only have been sent to other SWEPCO wholesale customers to advise them of the requested waiver of notice requirements.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER92–517–003]

Take notice that on June 18, 1993, Southern Company Services, Inc. (SCSI) tendered for filing its compliance filing in the above-referenced docket.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Co. of Colorado

[Docket No. ER93–634–000]

Take notice that on June 24, 1993, Public Service Company of Colorado (Public Service) tendered for filing an amendment in the above-referenced docket.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Central Louisiana Electric Co., Inc.

[Docket No. ER93–738–000]

Take notice that on June 29, 1993, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing proposed changes in its FERC Rate Schedule Nos. 4 and 58. CLECO proposes to change its transmission service agreements with CAJUN Electric Power Cooperative, Inc. (CAJUN) and Southwestern Electric Power Company (SWEPCO). As a result of the sale of Bossier Rural Electric Membership Corporation (BREMCO) to SWEPCO, CLECO proposes to no longer provide transmission service to CAJUN at the delivery points of its member, BREMCO, and to provide such transmission service to SWEPCO at such delivery points under a revised interconnection agreement between CLECO and SWEPCO. CLECO requests that the proposed changes become effective simultaneously, and request waiver of the Commission's prior notice requirements so that the effective date of the change will be July 1, 1993.

CLECO states that copies of this filing were served upon SWEPCO, CAJUN, BREMCO, and the Louisiana Public Service Commission.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Detroit Edison Co.

[Docket No. ER93–91–003]

Take notice that Detroit Edison Company (Edison) on June 18, 1993 tendered for filing its refund report in the above-referenced docket.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. PSI Energy, Inc.

[Docket No. ER93–351–000]

Take notice that on June 25, 1993, tendered for filing amended Service Schedules to the FERC Filing in Docket No. ER93–351–000 to comply with a FERC Staff request.

Copies of the filing were served on Illinois Municipal Electric Agency, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

Comment date: July 16, 1993, in accordance with Standard Paragraph E end of this notice.

13. The Montana Power Co.

[Docket No. ER93–608–000]

Take notice that on June 28, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an amendment to its filing of a Form of Service Agreement with Louis Dreyfus Electric Power, Inc. under FERC Electric Tariff, 2nd Revised Volume No.1. This amended filing provides additional information requested by Commission Staff.

Copies of the filing were served upon Louis Dreyfus Electric Power, Inc.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Westmoreland-LG&E Partners

[Docket No. ER93–734–000]

Take notice that Westmoreland-LG&E Partners, owner of an electric generating facility located in Weldon Township, North Carolina, submitted for filing, pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an initial rate schedule for sales to Virginia Electric and Power Company.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Power & Light Co.

[Docket No. ER93–735–000]

Take notice that on June 29, 1993, Puget Sound Power & Light Company (Puget) tendered for filing proposed changes in its Rate Schedule FERC No. 78 relating to the Centralia Transmission Agreement executed on September 22, 1980 between Puget and the City of Seattle (Seattle). The proposed changes would increase revenues for service provided under this schedule by $3,150 per year based on a 12-month period ending June 1991. A copy of the filing was served upon Snohomish.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Central Hudson Gas & Electric Corp.

[Docket No. ER93–733–000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on June 28, 1993, tendered for filing a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated June 1, 1993 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $3,823.17 to $3,300.58 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, no change in the monthly Transmission Charge in accordance with Articles V and VI of its Rate Schedule No. 22 and an increase in the annual Operation and Maintenance Charge from $4,367.57 to $4,564.11 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1993.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, P.O. Box 3607, Binghamton, New York 13902–3607.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. United Illuminating Co.

[Docket No. ER93–3–001]

Take notice that on June 17, 1993, The United Illuminating Company (UI) tendered its compliance filing in Docket No. ER93–3–000. That docket concerns UI's Wholesale Electric Sales Tariff, Rate Schedule FERC No. 100, and UI's Transmission Service Tariff, Rate Schedule FERC No. 101. Those rate schedules will govern UI's future wholesale electric sales to non-affiliates and UI's future provision of transmission services.

The compliance filing modifies the Transmission Tariff (1) by requiring cost support UI's proposed return on common equity, (2) by eliminating a separate out-of-rate charge, and (3) by eliminating a provision for recover of stranded investment.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. The Montana Power Co.

[Docket No. ER93–737–000]

Take notice that on June 29, 1993, The Montana Power Company (Montana Power) tendered for filing pursuant to part 35 of the Federal Energy Regulatory Commission's (FERC) Regulations under the Federal Power Act its proposed Rate Schedule REC–1, applicable for sales of electricity by Montana Power for resale to Central Montana Electric Power Cooperative, Inc. (Central Montana) (Rate Schedule FPC No. 39). Montana Power states that this filing has been served upon Central Montana. Montana Power has requested that the Commission allow the revised rates to be effective as of September 15, 1993.

Montana Power states that Rate Schedule REC–1 will provide it with an annual increase in revenues from sales to these customers of $866,000 as a result of a rate settlement agreement accepted by the above-mentioned parties.

Comment date: July 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. O'Brien Environmental Energy, Inc.

[Docket No. EL93–49–000]

Take notice that on June 28, 1993, O'Brien Environmental Energy, Inc. filed a request for a limited waiver of the 25 percent fossil fuel use limitation established for qualifying small power production facility (QFs) by § 292.204(b)(2) of the Commission's Rules and Regulations, 18 CFR 292.204(b)(2), implementing Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Petitioner requests that the waiver be applied to its small power production facility in Duarte, California and be effective as of July 15, 1993. The waiver requests authority to burn an additional 577.8 million btu's of natural gas, representing 25% of the btu's from lost landfill gas production at Petitioner's facility due to force majeure events. The Petitioner also requests expedited consideration of the request for waiver and public comment period not to exceed fifteen days.

Comment date: July 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Co.

[Docket No. ER93–731–000]

Take notice that on June 28, 1993, Delmarva Power & Light Company (DPL) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between DPL and Long Island Lighting Company (LILCO) dated June 21, 1993.

DPL states that the Agreement sets forth the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to LILCO. DPL requests that the Commission waive its standard notice period and allow this Agreement to become effective on August 1, 1993.

DPL states that a copy of this filing has been sent to LILCO and will be furnished to the New York Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas & Electric Corp.

[Docket No. ER92–726–000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on June 28, 1993 tendered for filing a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated June 1, 1993 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $3,823.17 to $3,300.58 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, no change in the monthly Transmission Charge in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $4,367.57 to $4,564.11 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1993.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, P.O. Box 3607, Binghamton, New York 13902–3607.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power & Light Co.

[Docket No. ER93–725–000]

Take notice that on June 24, 1993, Florida Power & Light Company (FPL) filed Supplement No. 8 to the Long-Term Agreement to Provide Capacity and Energy by Florida Power & Light Company to Florida Keys Electric Cooperative Association, Inc. FPL requests an effective date of June 30, 1993.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

23. Public Service Co. of New Mexico

[Docket No. ER93–727–000]

Take notice that on June 25, 1993, Public Service Company of New Mexico (PNM) submitted for filing an Agreement for Exchange of Economy and Amendment 1 thereto (the Agreements) between PNM and the City of Anaheim, California (Anaheim). Under the terms of the Agreements, entered into pursuant to Service Schedule C to the PNM/Anaheim Interconnection Agreement (Banked Energy), the parties establish certain conditions under which Anaheim will be able to bank energy that Anaheim would otherwise be required to schedule from its anticipated ownership interest in Unit 4 of the San Juan Generating Station.

PNM requests waiver of the applicable notice requirements so that service may commence under the Agreements as of the closing date of the PNM/Anaheim San Juan Unit 4 purchase transaction, presently scheduled for July 28, 1993.

Copies of the filing have been served upon Anaheim and the New Mexico Public Utility Commission.

Comment date: July 15, 1993, in accordance with Standard Paragraph E end of this notice.

24. Wholesale Power Services, Inc.

[Docket No. ER93-730-000]

Take notice that on June 25, 1993, Wholesale Power Services, Inc. (WPS) petitioned the Commission for acceptance of WPS Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. WPS is an indirect subsidiary of PSI Resources, Inc. which is the parent company of PSI Energy, Inc., a public utility.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

25. Central Hudson Gas & Electric Corp.

[Docket No. ER93-732-000]

Take notice that on June 28, 1993, Central Hudson Gas & Electric Corporation (CHG&E) tendered for filing a Rate Schedule and seven Supplements relating to an agreement for the installation, ownership and maintenance by CHG&E of certain facilities at its Rock Tavern and Roseton Substations in connection with the construction by the Power Authority of the State of New York (NYPA) of its Marcy South Transmission Lines. CHG&E has requested waiver of notice requirements so that the Rate Schedule can be made effective as of December 7, 1983, Supplement No. 1 as of September 11, 1985, Supplement No. 2 as of November 1, 1987, Supplement No. 3 as of July 1, 1988, Supplement No. 4 as of July 1, 1989, Supplement No. 5 as of July 1, 1990 and Supplement No. 6 as of July 1, 1991, Supplement No. 7 as of July 1, 1992.

CHG&E states that a copy of this filing has been served by mail upon NYPA and upon the Public Service Commission of the State of New York.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Electric and Gas Co.

[Docket No. ER93-500-000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on June 25, 1993, tendered for filing a Second Supplement to the Agreement for the Sale of Energy and Capacity to Central Hudson Gas and Electric Corporation (CHG&E) to provide replacement power for generating units (Roseton) damaged in a fire on March 18, 1993.

Copies of the Second Supplement have been served upon CHG&E and interested state commissions.

Comment date: July 15, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protect 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16370 Filed 7-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF92-54-003]

Polk Power Partners, L.P.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

July 6, 1993

On June 25, 1993, Polk Power Partners, L.P. of 3753 Howard Hughes Parkway, suite 200, Las Vegas, Nevada 89109, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in central Florida, near Bartow, in Polk County, Florida. On December 23, 1991, in Docket No. QF92-54-000 applicant filed a notice of self certification. The Commission subsequently certified and then recertified the facility as a qualifying cogeneration facility in Polk Power Partners, L.P., 61 FERC ¶ 61,030 (1992), and 61 FERC ¶ 61,300 (1992), respectively. The instant request for recertification is due to the fact that the maximum net electric power production capacity will decrease from 118.7 MW to 118.3 MW and an additional or alternative thermal host, an ethanol manufacturing plant, is contemplated. The ethanol manufacturer will use steam for the production of ethanol.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16373 Filed 7-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2454-018 Minnesota]

Minnesota Power Co.; Availability of Environmental Assessment

July 6, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Sylvan Hydroelectric Project, located on the Crow Wing River in Cass and Morrison Counties, Minnesota, near Rosing Township, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices

at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16374 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–70–000]

Black Marlin Pipeline Co.; Informal Settlement Conference

July 6, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, July 12, 1993 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Russell B. Mamone at (202) 208–0744 or Anja M. Clark at (202) 208–2034.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16371 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP91–1129–001]

Northwest Pipeline Corp.; Petition To Amend

July 6, 1993.

Take notice that on June 24, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91–1129–001, a petition pursuant to section 7(c) of the Natural Gas Act seeking a conforming amendment to a Certificate of Public Convenience and Necessity issued June 16, 1991, in Docket No. CP91–1129–000. Such amendment should reflect the differences between the actually installed new mainline compressor station near Ignacio, Colorado, and the originally certificated station, all as more fully set forth in the petition that is on file with the Commission and open to public inspection.

Northwest states that the original order authorized Northwest to construct and operate a new 13,000 horsepower compressor station, now referred to as the La Plata "B" Compressor Station. The new compressor station was proposed to be located within the boundaries of the existing La Plata "A" Compressor Station site. Northwest states that, because of design changes, the new 13,000 horsepower station was actually built on an adjacent site, with a modification to the originally proposed suction and discharge piping connecting the station with Northwest's transmission system and the Ignacio Processing Plant.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 27, 1993, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16372 Filed 7–9–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the sale to the Compagnie Generale des Matieres Nuclearies (COGEMA) Pierrelatte, France of the following materials: 611,028 pounds of natural uranium, and 6,804,559 pounds of uranium, enriched to less than 1.25 percent in the isotope uranium-235, for use as fuel in power reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on July 7, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–16458 Filed 7–9–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

[Notice 93–15]

Special Research Grant Program; Pre-Freshman Enrichment Program (PREP)

AGENCY: Office of Energy Research (ER), Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of University and Science Education Programs (USEP) of the U.S. Department of Energy (DOE), announces its interest in receiving grant applications from four-year and two-year (community colleges) institutions of higher education that will support the development of programs and approaches to encourage underrepresented populations in science-based careers. Examples of these approaches include, but are not limited to, summer institutes and academic year activities that prepare students in science and mathematics subject matter and motivate them to take future college-preparatory courses in science, mathematics, and engineering.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., e.d.t., September 15, 1993, to permit timely consideration for award in Fiscal Year 1994. No electronic submissions of formal applications will be accepted.

ADDRESSES: Formal applications referencing Program Notice 93–15 should be forwarded to: U.S. Department of Energy, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER TECHNICAL INFORMATION: John Ortman, Program Manager, Office

of University and Science Education Programs, ST–50, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–8949.

SUPPLEMENTARY INFORMATION: The DOE is concerned about whether there will be enough science, engineering and mathematics professionals to perform its research and development mission and is authorized in the Energy Reorganization Act of 1974 to "* * * assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools and other institutions * * *" 42 U. S. C. 5813 (11).

Specifically, DOE's concern is based on the consideration that the future supply of science and engineering manpower is threatened by two factors: fewer students enrolling in science-based courses in high school and fewer students available to join the science, engineering and math pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science-based course. Once the traditional math/science sequence is disrupted, it is too late for students to meet the minimum requirements for admission to college and university science and engineering programs.

The primary purpose of PREP is to alleviate manpower shortages in science, engineering and math careers by preparing and guiding students entering sixth through tenth grades (have not completed the tenth grade) in the selection of college-preparatory courses in science, mathematics and engineering. Therefore, in accordance with 10 CFR 600.7(b)(1), eligibility for awards under this notice is limited to four-year accredited institutions of higher education which grant baccalaureate degrees in science, mathematics and engineering and to two-year institutions (community colleges). Community colleges are encouraged to maintain articulation agreements with four-year institutions which offer degrees in science, mathematics and engineering. Eligibility is restricted to these institutions because they offer the science, mathematics and engineering degrees which the student participants entering sixth through tenth grade will be encouraged to pursue.

PREP projects are required to have a summer component. The summer component must be no less than four continuous weeks, reaching a minimum of 24 students in grades six to ten (have not completed the tenth grade). These 24 students must participate in the program for four continuous weeks. Typically, PREP grantee institutions work collaboratively with local school districts, local industry, students' parents and peers to ensure success. Other elements which may strengthen applications include, but are not limited to: follow-up activities during the academic year; interdisciplinary approach to teaching science and mathematics; the use of role models and field trips; and students' active participation in hands-on activities. DOE financial support is expected not to comprise the totality of funding for an individual project. In FY 1993, projects were supported at 50 institutions. DOE funds of approximately $2 million were augmented by over $2.7 million in non-DOE (private industry and university) funds and it is desirable that applications for the FY 1994 program indicate similar non-DOE support.

Contingent upon availability of appropriated funds, DOE expects to make several two-year grants in FY 1994 to meet the objectives of the program. The amount of each grant award will be limited to a maximum of $42,000 or $21,000 per year.

Information about the development and submission of applications, eligibility, limitations, program requirements, evaluation and selection processes, and other policies and procedures may be found in the ER Application Guide, and 10 CFR part 605. The application kit and guide is available from the U.S. Department of Energy, Office of University and Science Education Programs, ST–50, Washington, DC 20585. Telephone requests may be made by calling (202) 586–8949.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by 10 CFR part 605 should not exceed 15 double-spaced, typed pages. This description of work should include:

(1) The conceptual design and how that design relates to program objectives;

(2) The target audience(s) the project will serve and efforts planned to serve that audience;

(3) The mechanisms to be used to organize and manage the project, including the roles and responsibilities, financial and otherwise, of any partnerships;

(4) The monitoring and evaluation plan, including how those plans can be used for possible modification;

(5) The planned outcomes and how these outcomes will be assessed and reported; and

(6) The anticipated significance of the project and how it will be confirmed.

Issued in Washington, DC, on July 1, 1993.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93–16456 Filed 7–9–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 93–50–NG]

Cascade Natural Gas Corp; Order Granting Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: In DOE/FE Order No. 810, issued June 22, 1993, the Office of Fossil Energy of the Department of Energy authorized Cascade Natural Gas Corporation to import up to 4,864 Mcf of Canadian natural gas per day from Canadian Hydrocarbons Marketing, Inc., beginning June 22, 1993, through October 31, 1996.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 24, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–16457 Filed 7–9–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4677–8]

Public Water System Supervision Program Revision for the State of Ohio

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2, and

40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Ohio is revising its Public Water System Supervision (PWSS) primacy program. The Ohio Environmental Protection Agency (OEPA) has adopted drinking water regulations for the treatment of surface water that correspond to the NPDWR for surface water treatment (SWT) promulgated by the United States Environmental Protection Agency (U.S. EPA) on June 29, 1989, (54 FR 27486). The U.S. EPA has completed its review of Ohio's primacy revision.

The U.S. EPA has determined that the Ohio SWT Rule meets the requirements of the Federal rule. Included in this determination is U.S. EPA's conclusion that the analytical methods referenced in the Ohio SWT Rule for determining compliance are as stringent as the Federal SWT Regulations.

As part of its review of the Ohio SWT Rule, U.S. EPA conducted a technical evaluation of the analytical methods referenced in the Ohio Analytical Techniques Rule (*Ohio Administrative Code* (OAC), Chapter 3745–81–27), which contains the analytical methods referenced in the Ohio rules for determining compliance for turbidity and residual disinfectant chlorine at treatment systems which have a surface water source. The OAC Chapter 3745–81–27 prescribes certain analytical methods from the 17th Edition of Standard Methods for the Examination of Water and Wastewater which have not been formally approved by the U.S. EPA. After conducting a side-by-side comparison of the proposed Ohio methods and those currently approved by the U.S. EPA, U.S. EPA concluded that the Ohio methods for turbidity and residual disinfection concentration (free chlorine and combined chlorine, chlorine dioxide and ozone) are scientifically identical to the Federally approved methods. The U.S. EPA has therefore determined that these referenced methods are as stringent as the corresponding citations in the Federal regulations for deciding compliance at water treatment systems which obtain public drinking water supplies from a surface water source.

All interested parties are invited to submit written comments on this proposed determination, and request a public hearing on or before August 11, 1993. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time, following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action.

Please submit all comments and requests for a public hearing to William Spaulding (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

If requests which indicate sufficient interest and/or significance are received by the end of the Notice period, a public hearing will be held. Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Ohio. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Ohio. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, these determinations shall become effective on August 11, 1993.

Please bring this Notice to the attention of any persons known by you to have an interest in these determinations.

All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Ohio Environmental Protection Agency, Division of Drinking and Ground Waters, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266–0149.

U.S. Environmental Protection Agency, Region 5, Safe Drinking Water Branch (WD–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William D. Spaulding, Region 5, Drinking Water Section, at the Chicago address given above, telephone 312/886–9262.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Signed this 28th day of June, 1993.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 93–16431 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL 4676–5]

Public Meetings on Municipal Solid Waste Flow Control

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a series of three public, one-day meetings on municipal solid waste (MSW) flow control. These meetings will offer an opportunity for interested parties to express their views and provide information on the issues and impacts associated with the use of municipal solid waste flow control. The Agency will use this information in preparing a Report to Congress on flow control. Interested parties may submit written comments directly to the Agency without speaking or attending a meeting if they choose.

MEETING FORMAT, DATES AND LOCATIONS: The Agency is inviting interested parties, including representatives of State and local governments, waste management and recycling industries, financial markets, environmental, and other public interest organizations, to attend one of the meetings, present a statement, and/or submit written information to the Agency. Speakers should register at least two weeks in advance of the meeting at which they wish to speak. They may present a brief oral statement, not to exceed five minutes, and respond to questions from an EPA panel. Interested parties may submit written comments at the meeting without speaking, or directly to the public docket without attending the meeting (see information below). All written statements should be submitted in an original and two copies. Meeting attendees who do not wish to speak do not need to register in advance.

Each meeting will begin promptly at 9:30 a.m. and may continue until 6 p.m.,

depending on the number of speakers. The meeting may adjourn earlier than 6 p.m. if all attendees who have registered to make a statement have completed their presentations earlier than 6 p.m. Speakers generally will be scheduled in the order of registration. Speakers may be asked to limit their statement to less than five minutes, depending on the number of speakers. If there is sufficient time available after all pre-registered speakers have been scheduled, additional speakers who register at the meeting site between 8 and 9 a.m. will be able to present a statement.

The schedule for Flow Control Public Meetings is listed below. Please note that meeting space is limited to a first-come, first-serve basis. A block of rooms has been reserved at each hotel meeting site for your convenience. Please make your reservation directly with the hotel by asking for the U.S. EPA Flow Control Public Meeting.

August 17, 1993 9:30 a.m., Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 418–6800

August 31, 1993 9:30 a.m., Holiday Inn Financial District, 750 Kearny St., San Francisco, California 94108, (415) 433–6600

September 15, 1993 9:30 a.m., The Palmer House Hilton, 17 East Monroe Street, Chicago, Illinois 60603, (312) 726–7500

FOR FURTHER INFORMATION CONTACT: For information on substantive matters, contact Patricia K. Cohn, Municipal and Industrial Solid Waste Division, U.S. Environmental Protection Agency (OS–301), 401 M St. SW., Washington, DC 20460, (202) 260–3132 or (202) 260–6261. For information on administrative matters or to pre-register to present a statement at any of the meetings, please call the U.S. EPA Flow Control Meeting Line at (703) 218–2550. Please pre-register no later than two weeks before the meeting at which you wish to speak.

Public Docket

A summary of the meetings and all written comments received by EPA on flow control will be placed in a public docket and made available for viewing in the RCRA Information Center (RIC), which is located in room M2616, U.S. EPA, 401 M Street, SW., Washington, DC, 20460. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials. Call (202)260–9327 for an appointment. Copies cost $0.15 per page. The reference number for this docket is F–93–RFCN-FFFFF.

SUPPLEMENTARY INFORMATION:

A. Background

In September 1992, Congress directed EPA to conduct a study and submit a Report to Congress by September 1994 on flow control as a means of MSW management. The study is to contain a comparative review of states with and without such authority, and an analysis of the impact of flow control laws on (1) protection of human health and the environment, (2) development of state and local waste management capacity, and (3) achievement of state and local goals for source reduction, reuse, and recycling.

Flow controls are legal provisions used by local governments to designate where MSW from a specified geographic area must be processed, stored, or disposed. The purpose of flow control ordinances is to keep wastes within a specific area. In accomplishing this goal, flow control laws may restrict interstate movement of wastes.

There is a wide variation in the specific circumstances of flow controls from one locality to the next, reflecting a variety of public-private waste management roles and relationships, waste management systems, and public policy goals to be served by the flow controls. More than half of the States have granted local governments authority to exercise flow control over municipal solid waste.

Although many jurisdictions have used flow control over the years, there are several reasons why flow control has recently become more controversial. First, old, less protective disposal facilities are closing as new facility standards take effect. The costs of municipal solid waste management are increasing as local governments plan for new, state-of-the-art recycling, disposal and combustion facilities to replace closing facilities and meet growing capacity needs. Flow control has become a widely relied upon tool to cover the costs of existing facilities and may be a prerequisite to obtain financing for new facilities in many circumstances.

Second, state and local governments are taking more active roles in integrated waste management planning. They are looking at the whole waste management system to develop plans that rely on a combination of source reduction, recycling, disposal, and combustion to ensure more responsible materials use and solid waste management. Local governments see flow control as a key tool to follow through in their responsibility for implementing those plans.

Private waste management companies, recyclers, and secondary materials marketers have always been important participants in municipal waste management and materials reuse. These industries are facing dynamic changes to meet new standards and changing markets and management practices. They view flow control laws as serious impediments to their ability to compete and to continue to do business in a jurisdiction. As governments have become more involved in comprehensive planning and implementation, the potential for public-private conflict and competition has increased significantly.

Finally, court decisions over the last several years have raised serious questions about the legal status of flow controls. A number of recent decisions have overturned specific flow control laws as violations of the Commerce Clause of the U.S. Constitution. However, other decisions have supported flow control laws. Because each case is highly dependent on the factual circumstances, it is unlikely that there will be any clear understanding through the courts of what legislation is or is not acceptable for some years to come. (The Supreme Court recently accepted a flow control case, C & A Carbone v. Clarkstown.) In the interim, both government and the private sector are faced with uncertainty over how to proceed. Increasingly, flow control is a subject of national debate, with some parties raising the call for Congressional action.

EPA recognizes that these are critical issues to many parties with differing views. The Agency is convening three public meetings to provide all parties with a forum to present their positions and to provide factual information to assist the Agency in better understanding the impacts of flow control.

B. Issues Associated With Flow Control

EPA believes there are several key issues associated with the use of MSW flow control. EPA would also like to learn of any additional issues that the Agency should address in the Report to Congress. The Agency encourages interested parties to comment and provide factual information in the following areas.

- What materials are/should be covered by flow control laws, (e.g. residential, commercial, industrial solid waste, curbside separated recyclables, commercial separated recyclables)? When should recyclables be treated as separate from the municipal solid waste stream?

• What is the impact of flow control on source reduction and recycling—while some flow control laws are intended to promote recycling, are there near term or long term negative impacts associated with controlling certain activities associated with collection, separation, or transport of recyclables?

• How can local governments implement comprehensive, integrated waste management plans without flow control?

• Are there human health and environmental impacts associated with flow control?

• What are the economic impacts of flow control—how does it affect cost and delivery of services to taxpayers? Does flow control foster inefficiencies that may undermine sustainable waste management systems in the future?

• What effect does flow control have on waste management capacity—are jurisdictions with flow control more successful in financing, constructing and operating facilities?

• What are non-legislative options to achieve public policy goals served by flow control—what do States and localities without flow control do? Is there a free market approach to achieve flow control goals—is it effective?

C. Provisions for Written and Oral Comments

All interested parties may submit comments to EPA. Comments may be submitted directly to the docket (see information above) and need not be presented at the public meetings.

Dated: June 30, 1993.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

[FR Doc. 93–16425 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4678–1]

Science Advisory Board; Environmental Engineering Committee; Ground Water Monitoring and Network Design Review Subcommittee; Open Meeting; July 29–30, 1993

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Ground Water Monitoring and Network Design Review Subcommittee (GWMNDRS) of the Environmental Engineering Committee (EEC), will meet on Thursday, July 29, and Friday, July 30, 1993. The meeting will be at the U.S. Environmental Protection Agency (EPA), Environmental Monitoring Systems Laboratory (EMSL), P.O. Box 93478, Las Vegas, Nevada 89193–3478 (944 East Harmon = 89119). The meeting will begin at 9 a.m. on Thursday, July 29th and 8:30 am on Friday, July 30th and will adjourn no later than 4 p.m. on July 30th.

At this meeting, the GWMNDRS will receive briefings from Agency staff, as well as academic researchers conducting research under Cooperative Agreements with the Agency's EMSL–LV Laboratory, and comment on the draft document describing the Agency's research program dealing with data quality objectives for Ground-Water Monitoring, otherwise known as research on quantitative methods for ground-water monitoring network design. The review document was prepared by the staff of the Agency's Office of Research and Development (ORD). Copies of the draft document on the Agency's EMSL–LV research program, entitled "Monitoring Network Design Research Plan," dated 1993 may be obtained by contacting Mr. Steven Gardner (Tel. 702–798–2580) or Ms. Cherie Hooper of the Aquatic and Subsurface Monitoring Branch (AMW) of the Advanced Monitoring Systems Division (AMD) (Mail Drop AMW) at the U.S. EPA's EMSL–LV Laboratory at (702) 798–2368. The EMSL–LV FAX number is (702) 798–2692.

The proposed charge to the SAB's GWMNDRS from the Agency's EMSL–LV, as well as from the Office of Solid Waste (OSW) is to address the use of quantitative methods in the overall monitoring well network design research program dealing with quantitative data quality objectives (QDQO), to evaluate research-in-progress, and to examine what other technical expertise or resources that can be brought to bear on the research program to enhance implementation of the Resource Conservation and Recovery Act (RCRA) ground-water monitoring research program. The following monitoring network design research areas will be addressed in the review: (1) Computerized geostatistical tools; (2) stochastic simulation and optimization models, and (3) fractal mathematics to describe aquifer heterogeneity. The EMSL–LV staff will also present its plans for future research.

The following questions are being asked of the SAB/GWMNDRS: (1) Do the quantitative methods assist in designing monitoring networks? What advantages do they have over current network design methods, such as best professional judgement? Are the methods too complex, considering the user profile? Will user profiles be considered in developing the final project deliverables?; (2) Are the underlying assumptions of models used valid? Do the model assumptions make sense considering the physical system being modeled?; (3) Are the data requirements for the models realistic? How does the model address data reliability (e.g., accuracy and precision), variance, and sample sizes? What improvements could be made to address these concerns?; (4) How can the research be used to enhance implementation of the RCRA ground-water monitoring program?; and (5) What other technical expertise or resources within EPA, other Federal Agencies, national laboratories, and academic institutions could be utilized to better serve the client's needs?

The meeting is open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Dorothy M. Clark, Secretary to the Ground Water Monitoring and Network Design Review Subcommittee (GWMNDRS), Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 260–6552 or FAX (202) 260–7118. Written comments received by July 15, 1993 will be mailed to the SAB/GWMNDRS; comments received after that date will be provided to the GWMNDRS at the meeting. Written comments of any length (at least 35 copies) may be provided to the Subcommittee up until the meeting.

Members of the public who wish to make a brief oral presentation should contact Dr. K. Jack Kooyoomjian no later than July 26, 1993 in order to have time reserved on the agenda. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: June 28, 1993.

Samuel R. Rondberg,

Acting Staff Director, Science Advisory Board (A101F).

[FR Doc. 93–16432 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50765; FRL–4629–5]

Receipt of Notification to Conduct Small-Scale Testing of a Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a nonindigenous microbial pesticide (NMP) application from the Department of Entomology, University of Minnesota of intent to conduct small-scale field testing of an NMP microsporidian, *Nosema furnacalis*. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the **Federal Register**].

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50765 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7690.

SUPPLEMENTARY INFORMATION: An application for an NMP has been received from Dr. Cary T. Oien, Department of Entomology, University of Minnesota, 219 Hudson Hall, 1980 Folwell Ave., St. Paul, MN 55108, of intent to conduct small-scale field testing of microsporidian, *nosema furnacalis* (Microsporidia nosematidae). This NMP application EPA file symbol is 060219–NMP–II. The proposed small-scale field trials will involve the introduction of the microsporidia, *nosema furnacalis*, and the European corn borer, *Ostrinia nubilalis*. The testing will be conducted at the University of Minnesota Agricultural Experimental Station in Rosemount, Minnesota. The crop to be used is a hybrid Jubilee sweet corn which is widely planted and is not resistant to the European corn borer. Corn is naturally habitant for both, the natural host, *Ostrinia furnacalis*, and the experimental host, *Ostrinia nubilalis*. The entire test site will be less than 10 acres.

Since the microsporidian is host-specific, extra corporeal survival of the organism is not expected for this Ostrinia furnacalis species to be tested.

Dated: June 21, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–16430 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50763; FRL–4629–3]

Receipt of Notification to Conduct Small-Scale Testing of a Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a nonindigenous microbial pesticide (NMP) application (NMP No. 10182–NMP–R) from ZENECA Ag Products of intent to conduct small-scale field testing. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before August 11, 1993.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50763 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7690.

SUPPLEMENTARY INFORMATION: An application for an NMP has been received from ZENECA Ag Products, P.O. Box 751, Wilmington, Delaware 19897. This NMP application EPA file symbol is 10182–NMP–R. This proposed small-scale field trials will involve the release of the nonindigenous insect virus, *Heliothis Armigera* to be tested to determine its efficacy against *Heliothis Virescens* and *Heliocoverpa zea* on cotton in the United States during the 1993 growing season. The total acres to be tested on cotton will be no more than 10 acres.

The primary objectives of the proposed test are: (1) To determine the intrinsic efficacy valve of HaNPr A44EB (the best material) against field populations of *Heliothis virescens* and *Heliocoverpa zea* on cotton, and (2) to compare the physical and biological properties of different formulations of HaNPr A44EB under field conditions.

These viruses are ubiquitous in the environment worldwide, and it is not likely that this strain of nuclear polyhedrosis virus (NPV) could escape its natural constraints and survive in the environment in which testing will take place.

Dated: June 21, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–16429 Filed 7–9–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP-50762; FRL-4629-2]

Receipt of an Amendment Application for an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 17, 1993, EPA received from Monsanto Company an amendment application requesting an extension/expansion of their experimental use permit (EUP) EUP No. 524-EUP-73, issued on April 10, 1992. Monsanto intends to continue to conduct small-scale field testing of a genetically engineered microbial pesticide. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this amendment application request for extension/expansion of Monsanto's EUP.

DATES: Written comments must be received on or before August 11, 1993.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP-50762 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-7690.

SUPPLEMENTARY INFORMATION: On March 17, 1993, EPA received an application from Monsanto Company, 700 Chesterfield Parkway North, St. Louis, Missouri 63198. This EUP application for extension/expansion is EPA Registration Number 524-EUP-73. Monsanto's EUP extension/expansion application is a request to allow for the continuation of field testing of several lines of cotton plants which contain several forms of insect control protein derived from the common soil microbes *Bacillus thuringiensis* variety *kurstaki* (B.t.k.). Monsanto is requesting that their EUP be amended to add an additional site in Maryland.

In addition to the originally approved EUP (April 10, 1992), Monsanto in cooperation with the Asgrow Seed Company plans to establish a plot containing up to 5 different genetically modified crops at the Asgrow Research Farm located near Queenstown, Maryland. The total plot area will be no more than 0.5 land acre. There will be no more than 80 cotton plants per 0.03 acre. The maximum of B.t.k. planted acre will be the same as the original EUP (147.9). A total amount of the B.t.k. proteins release will not exceed 134.22 grams.

The primary difference between the proposed extension/expansion is the addition of the State of Maryland, and the increase in the amount of seed to be planted from 1,289 pounds of transgenic cotton seed to 2,958 pounds of seed. Upon completion of the testing, some of cotton seed, lint, and vegetation will be collected and saved for future research, analysis, or plantings. No seed may be used for food or feed, and all other plant material must be destroyed.

Dated: June 21, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-16428 Filed 7-9-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1951]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 2, 1993.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for reviewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to these petitions must be filed. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment FM § 73.606(b), Table of Allotments, Television Broadcast Stations. (Albion, Lincoln, and Columbus, Nebraska) (MM Docket No. 91-304, RM No. 7787)
Number of Petitions Filed: 2

Subject: Competition in the Interstate Interexchange Marketplace.
(CC Docket No. 90-132)
Number of Petitions Filed: 1

Subject: Amendment of Part 69 Allocation of General Support Facility Costs.
(CC Docket No. 92-222)
Number of Petitions Filed: 1

Federal Communications Commission.

La Vera F. Marshall,

Acting Secretary.

[FR Doc. 93-16413 Filed 7-9-93; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 93-161, DA 93-640]

Clark Bader, Inc. d/b/a/ TMC Long Distance v. Pacific Bell; Designation for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice of designation for hearing.

SUMMARY: The Hearing Designation Order designates for hearing a formal complaint proceeding to resolve material questions of fact surrounding Pacific Bell's (Pacific's) provision of interstate access services to Clark-Bader, Inc., d/b/a TMC Long Distance (TMC), during the period from 1985 through 1988. The issues to be decided in the proceeding is whether Pacific's actions, policies and practices in providing the services complained of violated sections 201(b) and/or 202(a) of the Communications Act and, if so, whether TMC suffered any measurable harm as a consequence of such violations and is entitled to an award of damages from Pacific.

FOR FURTHER INFORMATION CONTACT: Thomas D. Wyatt, Chief, Formal Complaints and Investigations Branch, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Common Carrier Bureau's Hearing Designation Order in

CC Docket No. 93–161, adopted June 1, 1993, and released June 23, 1993.

The complete text of this Hearing Designation Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M street, NW., Washington, DC., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 857–3800, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Hearing Designation Order

1. In February 1989, TMC filed a formal complaint with the Commission alleging that Pacific had violated the prohibitions against unjust, unreasonable practices and unlawful discrimination contained in sections 201(b) and 202(a) of the Communications Act, 47 U.S.C. 201(b), 202(a), by failing to provide equal access for TMC's competitive long distance services in the San Diego area. The crux of TMC's complaint is its claim that a defectively engineered equal access tandem switch installed by Pacific caused TMC's customers to experience severe and repeated disruptions of service and that Pacific failed to remedy the service problems through an alternate arrangement. Pacific, while admitting the switch malfunctions and an alternate means of providing service, contends that TMC was repeatedly advised of the service alternative but failed to take steps to obtain the necessary service. Moreover, Pacific claims that TMC has greatly exaggerated the difficulties experienced and resulting damages.

2. After submission of numerous pleadings and motions to the Commission and substantial discovery by the parties directed at the identification and production of evidence to support their respective claims, both the facts and circumstances surrounding Pacific's provision and TMC's taking of the access services are sharply disputed. Although neither TMC nor Pacific has formally requested that the complaint be designated for hearing, both have informally advised Commission staff that they view a hearing as the most appropriate and expeditious way to resolve the issues raised by the complaint.

3. Based on review of the record adduced in this matter, the Acting Chief of the Common Carrier Bureau concluded that further proceedings are necessary to resolve material questions of fact bearing on whether Pacific violated the just and reasonable standard of the Communications Act in connection with its provision of interstate access services to the complainant during the period described in the complaint.

4. Accordingly, *It is ordered,* pursuant to sections 4(i), 4(j), 201, 206, 207, 208, and 209 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 206, 207, 208 and 209, and the authority delegated under § 0.291 of the Commission's Rules, 47 CFR 0.291, that the above-captioned complaint proceeding is designated for hearing in a proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent order upon the following issues:

1. To determine the facts and circumstances surrounding Pacific's provision of interstate access services to TMC during the period covered by the complaint.
2. To determine whether Pacific engaged in unjust and unreasonable practices and/or charged unjust and unreasonable rates in violation of Section 201(b) of the Communications Act in connection with its provision of interstate access services to TMC during the period covered by the complaint.
3. To determine whether Pacific engaged in unjust and unreasonably discriminatory practices and/or charged unjust and unreasonably discriminatory rates in violation of Section 202(a) of the Communications Act in its provision of interstate access services to TMC during the period covered by the complaint.
4. To determine, in view of the evidence adduced on the foregoing issues, whether and if so, in what amounts, Pacific should be required to pay monetary damages to TMC.
5. To determine, in view of the evidence adduced under the foregoing issues, whether TMC is entitled to an award of prejudgment interest on any damages recovered in this proceeding.

5. *It is further ordered,* that the burden of proof and the burden of proceeding with the introduction of evidence shall be upon TMC.

5. *It is further ordered,* that the designated parties may avail themselves of an opportunity to be heard by filing with the Commission a Notice of Appearance in accordance with § 1.221 of the Rules, 47 CFR 1.221, within twenty (20) days of the mailing of this Order.

Federal Communications Commission.

Kathleen B. Levitz,

Acting Chief, Common Carrier Bureau.

[FR Doc. 93–16414 Filed 7–9–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; South Seas/Blue Star Cross Space Charter and Sailing Agreement

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, delivery a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 132–011420.

Title: South Seas/Blue Star Cross Space Charter and Sailing Agreement.

Parties:

South Seas Steamship Company
Blue Star (North America) Ltd.

Filing Agent: Lawrence N. Minch, Esquire, Lillick & Charles, Two Embarcadero Center, San Francisco, CA 94111.

Synopsis: The proposed Agreement would permit the parties to space charter and rationalize sailings in the trade between Samoa/Tahiti and the Pacific Northwest.

By Order of the Federal Maritime Commission.

Dated: July 7, 1993.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–16421 Filed 7–9–93; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; United States/ Australasia Interconference and Carrier Discussion Agreement, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011117–015.

Title: United States/Australasia Interconference and Carrier Discussion Agreement.

Parties:

Australia-New Zealand Direct Line
Blue Star (North America) Limited
Hamburg-Sudamerikanische Dampfschiffahrts-Geselschaft Eggert & Amsinck
Ocean Star Container Line
Pacific Coast/Australia-New Zealand Tariff Bureau
U.S. Atlantic & Gulf/Australia-New Zealand Conference
Wilhelmsen Lines AS

Synopsis: The proposed amendment adds a new Article 5.3 which clarifies the terms and procedures to be used for space chartering and equipment interchange arrangements among members of the Agreement.

Agreement No.: 203–011422.

Title: Empresa Naviera Santa/ENS Containerline, Ltd. Discussion Agreement.

Parties:

Empresa Naviera Santa, S.A.
ENS Containerline, Ltd.

Synopsis: The proposed Agreement would establish a discussion agreement in the trade between U.S. Atlantic and Gulf ports, and inland or coastal points via such ports, and ports and points in Peru and Chile, and inland points in Bolivia.

Dated: July 7, 1993.

By order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–16423 Filed 7–9–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3269
Name: Bok Kun Chung
Address: 6 Latina, Irvine, CA 92714
Date Revoked: June 4, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 3300
Name: Karen L. Nowell
Address: 8222 Wiles Rd., Ste. 120, Coral Springs, FL 33065
Date Revoked: June 6, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 2733
Name: Falcon Forwarding Co., Inc.
Address: 129 Hanse Ave., Freeport, NY 11520
Date Revoked: June 8, 1993
Reason: Surrendered license voluntarily.

License Number: 3619
Name: Gene Ronald Campbell dba Carolina Marine Services
Address: 1101 Tarrant Rd., Greensboro, NC 27410
Date Revoked: June 12, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 815
Name: Wood, Niebuhr and Co., Inc.
Address: 30 Vesey Street, New York, NY 10007
Date Revoked: June 13, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 3671
Name: Kanmar, Corp.
Address: 3400 NW. 64th Ave., Bldg. 1007, Miami, FL 33166
Date Revoked: June 17, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 2982
Name: Gada Navigation—USA, Inc.
Address: 50 Carnation Ave., Bldg. 6, Floral Park, NY 11001–1733
Date Revoked: June 17, 1993
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–16422 Filed 7–9–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P36–93]

Petition of Ocean Tariff Bureau for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petition

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline, on behalf of a number of carrier customers stating they are unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than July 16, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Capt. Alex Yang, President, Ocean Tariff Bureau, 161 W. Victoria Street, suite 240, Long Beach, California 90805.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–16470 Filed 7–9–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3430]

ASFE, the Association of Engineering Firms Practicing in the Geosciences; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Maryland-based association of engineering firms from engaging in a variety of practices designed to prevent its members from participating in price competition, giving favorable pricing or credit terms, engaging in competitive bidding, or advertising. The order also requires the respondent to remove from its policy statements or guidelines any statements that violate the order.

DATES: Complaint and Order issued June 11, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Renee Henning, FTC/H–380, Washington, DC 20580. (202) 326–2610 or 326–2621.

SUPPLEMENTARY INFORMATION: On April 2, 1993, there was published in the **Federal Register**, 58 FR 17401, a proposed consent agreement with analysis In the Matter of ASFE, the Association of Engineering Firms Practicing in the Geosciences, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in deposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 93–16400 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3434]

Sherwin Basil d/b/a Audio-Logics; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California hearing aid seller to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in his offices or provide it to consumers prior to purchase, and prohibits him from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service he offers in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19108, a proposed consent agreement with analysis In the Matter of Sherwin Basil d/b/a Audio-Logics, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16407 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3435]

Susan Frugone & Patricia Keane d/b/a Audio RX Hearing Aids; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California hearing aid sellers to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19111, a proposed consent agreement with analysis In the Matter of Susan Frugone & Patricia Keane d/b/a Audio RX Hearing Aids, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16408 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3436]

Bay Colony Audiology Center, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Massachusetts corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19113, a proposed consent agreement with analysis In the Matter of Bay Colony Audiology Center, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60)

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[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16409 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3437]

Brooklyn Audiology Assocs., P.C., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the New York corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19115, a proposed consent agreement with analysis In the Matter of Brooklyn Audiology Assocs., P.C., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 93–16410 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3438]

Brown-Potter Hearing Aid Center; Prohibited Trade Practices, and Affirmative Correction Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California hearing aid seller to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in her office or provide it to consumers prior to purchase, and prohibits her from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service she offers in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19118, a proposed consent agreement with analysis in the Matter of Sallye B. Carpentier d/b/a Brown-Potter Hearing Aid Center, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available for the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Authority: (Sec. 6, 38 Stat. 721; 15 U.S.C 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 93–16411 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–02–M

[Dkt. C–3433]

Center for Improved Communications, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the New York corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19120, a proposed consent agreement with analysis In the Matter of Center for Improved Communications, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16406 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3431]

Conair Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Connecticut-based manufacturer of personal health care and consumer electronic products from representing that sound waves emitted by the California Facial Skin Rejuvenating System, or by any substantially similar product that uses sound waves with a frequency of no more than 20 kilohertz, will firm and tone facial muscles or improve the efficacy of a facial skin clarifying toner or scrub. The order requires the respondent to have competent and reliable scientific evidence to support certain future representations it makes regarding sound waves emitted from any product.

DATES: Complaint and Order issued June 14, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On April 9, 1993, there was published in the **Federal Register**, 58 FR 18400, a proposed consent agreement with analysis In the Matter of Conair Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93–16404 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3432]

Fone Telecommunications, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York marketer of "900" number information services from misrepresenting premium offers, requires a preamble statement at the beginning of each children's message giving the child a chance to hang up without charge, and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children. In addition, the consent order prohibits the respondent from misrepresenting the ease with which a premium is obtainable and requires the disclosure of all material terms and conditions for obtaining any premium offers.

DATES: Complaint and Order issued June 14, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Toby Levin or Carol Kando, FTC/S–4002, Washington, DC 20580. (202) 326–3156 or 326–3152.

SUPPLEMENTARY INFORMATION: On April 2, 1993, there was published in the **Federal Register**, 58 FR 17408, a proposed consent agreement with analysis In the Matter of Fone Telecommunications, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order

No comments have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 93–16405 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3439]

Hearing Care Associates-Arcadia, et al; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California firms and their officer to correct false and deceptive claims in Yellow Pages advertisements, and to prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

DATES: Complaint and Order issued June 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580. (202) 326–3127.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1993, there was published in the **Federal Register**, 58 FR 19122, a proposed consent agreement with analysis In the Matter of Hearing Care Associates-Arcadia, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 93–16412 Filed 7–9–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 326]

Research Program for Exposure-Dose Reconstruction

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program to develop a research program for exposure-dose reconstruction. The purpose of the program is to reconstruct, estimate, predict, and evaluate exposures to widely varying contaminant concentrations, exposure frequencies, and exposure durations, with widely varying emission characteristics that can be found at National Priorities List (NPL) sites, Resource Conservation and Recovery Act (RCRA) facilities, and other sites or facilities where a hazardous substance has been released into the environment.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section **Where To Obtain Additional Information.**)

Authority

This program is authorized under section 104(i)(1)(E) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i)(1)(E)] and RCRA, as amended (Hazardous and Solid Waste Amendments of 1984) [42 U.S.C. 6939a (b) and (c)].

Eligible Applicants

Eligible applicants are the official public health agencies of the states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $165,000 is available in FY 1993 to fund one award. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period with a proposed project period of up to 4 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this project is to assist in research related to exposure-dose reconstruction associated with hazardous waste sites. This research will develop, evaluate, and apply computational tools and a decision support system for estimating exposure-dose relations resulting from exposure to contaminated environmental media and hazardous substances commonly found at sites.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop and implement research methods to characterize exposure-dose relations associated with hazardous waste sites.

2. Identify and pursue emerging technical advances in the exposure-dose reconstruction area to encompass reconstruction of exposure histories and determination of biologically effective doses. These advances should include assessment of methods such as environmental multi-media exposure, kinetic networks, and dose reconstruction as a means to bridge the gap between the release of hazardous substances into the environment, potential dose (exposure), and resulting health effects.

3. Reconstruct exposure and potential dose histories and determine potential for future exposure resulting from hazardous substances in the environment for populations in the environs around hazardous waste sites by use of methodology driven environmental assessment tools. These tools may include numerical simulators that can be run on 486-type personal computers such as: (a) Steady flow in Layered Aquifer Media (SLAM486); (b) Unsteady flow in Layered Aquifer Media (ULAM486); and (c) Contaminant transport in Layered Aquifer Media (CLAM486). The generalized description of the theory of these assessment tools can be found in the public domain literature.

4. Integrate the environmental assessment simulator tools (described in 3 above) to meet multi-environmental media customization requirements.

5. Develop a "user friendly" decision support system that may consider the following, but is not limited to:

(a) Site characterization and exposure scenario data;

(b) Environmental fate and transport computations;

(c) Chemical-compound intake and exposure-dose computations;

(d) Probability distributions and uncertainty analyses; and

(e) Access to the decision support system by means of desktop computational devices.

6. When the project is terminated, provide a report which includes the methodology describing the exposure-dose reconstruction process as applied to the public health assessment process.

B. ATSDR Activities

1. Assist in the development of plausible exposure-dose relations and criteria for the selection and use of computational tools and define appropriate assumptions.

2. Provide recipient organization with a list of hazardous waste sites from which they can choose to test and validate the acceptability of the environmental assessment simulator tools developed as part of the exposure-dose reconstruction research program.

3. Collaborate with recipient organization to identify and pursue emerging disciplines related to advances in assessment of exposure to hazardous chemicals and/or mixed wastes typically associated with hazardous waste sites.

4. Collaborate with recipient organization to extend the appropriate use of novel exposure characterization and dose relations protocols to hazard characterization and communication efforts.

5. Assist in communicating advances in the above areas to all relevant communities including state and local governments and the public.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. *Scientific and Technical Review Criteria of New Application*

a. Proposed Program (40%)

The extent to which the applicant's proposal addresses: (1) The development and implementation of methods designed to characterize exposure-dose relations associated with hazardous waste sites (10%); (2) the reconstruction of exposure histories through the identification and pursuit of technical advances such as environmental multi-media exposure, kinetic networks, and/or dose reconstruction (10%); (3) the methods for reconstructing exposure and potential dose histories and determining future exposure resulting from hazardous substances released into the environment for populations around hazardous waste sites (15%); and (4) the proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured (5%).

b. Experience and Technical Ability (30%)

The extent to which the proposal has described: (1) The familiarity, qualifications, knowledge, and experience of the principal investigator in his/her ability to utilize and apply methodology driven environmental assessment tools to reconstruct exposure histories at selected sites (10%); (2) the ability of the principal investigator to modify these tools in order to meet the program objective as described in the **Purpose** section of this announcement (10%); and (3) the demonstrated ability of the principal investigator to integrate the aforementioned computational tools into kinetic networks so as to develop a decision support system in order to support and enhance the preparation of public health assessments (10%).

c. Program Personnel (20%)

The extent to which the proposal has described: (1) The qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership (10%); and (2) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project (10%).

d. Applicant Capability (10%)

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed project.

e. Program Budget (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

2. *Continuation awards within the project period will be made on the basis of the following criteria:*

a. Satisfactory progress has been made in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

d. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

B. Technical Review

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA, section 104(i)(13) [42 U.S.C. 9604(i)(13)].

C. Protection of Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

D. Animal Welfare

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy Statement on Humane Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

E. Cost Recovery

CERCLA, as amended, provides for the recovery of costs incurred for health-related activities at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated costs including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final financial status report, unless there is a litigation, claim, negotiation, audit, or other action involving the specific site; then the records will be maintained until resolution of all issues on the specific site.

F. Disclosure

Recipient is required to provide proof by way of citation to state code or regulation or other state pronouncement given the authority of law, that medical information obtained pursuant to the agreement, pertaining to an individual, and therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

G. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

(1) State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review (ATSDR selected peer reviewers), ownership of data, and the arrangement for copyright when publications, data,

or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.

(2) State that any copyrighted or copyrightable works shall be subject to a royalty-fee, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.

(3) State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work.

(4) State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall therefore retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

Application Submission and Deadline

The original and two copies of application PHS Form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before August 13, 1993. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, (404) 842–6797. Programmatic technical assistance may be obtained from Allan Susten, Ph.D., Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, (404) 639–0610.

Please Refer to Announcement Number 326 When Requesting Information and Submitting an Application

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

Dated: July 2, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–16397 Filed 7–9–93; 8:45 am]

BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

[Announcement 345]

Surveillance of Elevated Blood Lead Levels in Children; Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreement programs with state health departments and/or appropriate agencies of state governments to build capacity for conducting surveillance of elevated blood-lead (PbB) levels in children.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under section 317A of the Public Health Service Act [42 U.S.C. 247b–1], as amended by section 303 of the "Preventive Health Amendments of 1992" [Pub. L. 102–531].

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments. Current recipients of cooperative agreement funds to develop childhood blood-lead surveillance activities are not eligible to apply. Applicants other than health departments must apply in conjunction with their state or territorial health department.

Eligible applicants must have regulations for reporting of PbB levels by both public and private laboratories or provide assurances that such regulations will be in place within six months of awarding the cooperative agreement. This program is intended to initiate and build capacity for surveillance of childhood PbB levels. Therefore, any applicant that already has in place a PbB level surveillance activity must demonstrate how these cooperative agreement funds will be used to enhance, expand or improve the current activity, in order to remain eligible for funding. Cooperative agreement funds should be added to blood-lead surveillance funding from other sources, if such funding exists. Funds for these programs may not be used in place of any existing funding for surveillance of PbB levels.

Awards will be made with the expectation that expanded or improved surveillance activities will continue when awarded funds are terminated at the end of the project period.

Availability of Funds

Approximately $200,000 will be available in FY 1993 to fund up to 4 new cooperative agreements. The

awards are expected to range from approximately $45,000 to $55,000 with the average award being approximately $50,000. The awards are expected to begin on or about September 30, 1993, and are made for a 12-month budget period within project periods of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

This cooperative agreement program is intended to assist state health departments or other appropriate agencies to implement a complete surveillance activity for PbB levels in children. For the purpose of this program, a complete PbB surveillance activity is defined as a process which: (1) Systematically collects information over time about children with elevated PbB levels using laboratory reports as the data source; (2) provides for the follow-up of cases, including field investigations when necessary; and (3) provides timely and useful analysis and reporting of the accumulated data including an estimate of the rate of elevated PbB levels among all children receiving blood tests. Development of surveillance systems at the local, state and national levels is essential for targeting interventions to high-risk populations and for tracking progress in eliminating childhood lead poisoning.

The childhood blood-lead surveillance program has the following five goals:

1. Increase the number of state health departments with surveillance systems for elevated PbB levels;
2. Build the capacity of state- or territorial-based PbB level surveillance systems;
3. Use data from these systems to conduct national surveillance of elevated PbB levels;
4. Disseminate data on the occurrence of elevated PbB levels to government agencies, researchers, employers, and medical care providers; and
5. Direct intervention efforts to reduce environmental lead exposure.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Revise and refine, in collaboration with NCEH, the methodology for surveillance as proposed in the respective program application.
2. Implement the revised and approved surveillance activity.
3. Collaborate with NCEH in any interim and/or final evaluation of the surveillance activity.
4. Provide quarterly and annual surveillance data to CDC.

B. CDC Activities

1. Provide consultation in the implementation of the surveillance activities throughout the project period.
2. Provide guidelines for evaluating surveillance activities.
3. Provide a format for reporting surveillance data to CDC.
4. Analyze the data, disseminate the results in public health publications and other appropriate media, and provide the results to childhood lead poisoning prevention constituents, and state, and local agencies.
5. Provide surveillance data to the recipient from other states and territories where surveillance data are reported to CDC.
6. Provide timely feedback to the recipient from the review of quarterly reports on the program activities conducted by the recipient.
7. Provide assistance in the conduct of field investigations and intervention efforts, at the recipient's request, as resources permit.

Evalation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Surveillance Activity (35%)

The clarity, feasibility, and scientific soundness of the approach. Also, the extent to which a proposed schedule for accomplishing each project activity and methods for evaluating each activity are clearly defined and appropriate. The following points will be specifically evaluated:

a. How will laboratories report PbB levels?

b. How will data be collected and managed?

c. How will data quality and completeness of reporting be assured?

d. How and when will data be analyzed?

e. How will summary data be reported and disseminated?

f. What provisions are made for follow-up of individuals with elevated PbB levels?

g. What provisions will be made to obtain denominator data?

2. Progress Toward Complete Blood-Lead Surveillance (30%)

The extent to which the proposed activities are likely to result in substantial progress towards establishing a complete state-based PbB surveillance activity (as defined in the "Purpose" section).

3. Project Sustainability (20%)

The extent to which the proposed activities are likely to result in the long-term maintenance of a complete state-based PbB surveillance system. In particular, specific activities that will be undertaken by the state during the project period to continue surveillance after completion of the project period and the ability of states to assure reporting from all laboratories performing PbB tests on samples from residents of their state.

4. Personnel (10%)

The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal.

5. Use of Existing Resources (5%)

The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.

6. Budget (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Other Requirements

Paperwork Reduction Act

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to the Intergovernmental review of Federal programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving

more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the deadline date for new and competing awards. The funding agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in May 1993.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6796. Programmatic technical assistance may be obtained from Carol Pertowski, M.D., Medical Epidemiologist, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–42, Atlanta, Georgia 30341–3724, telephone (404) 488–7330. Please refer to Announcement Number 345 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 6, 1993.

Robert L. Foster

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16396 Filed 7–9–93; 8:45 am]

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[Program Announcement Number 329]

The Evaluation of Specific Youth Violence Interventions; Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements for the evaluation of specific interventions designed to reduce interpersonal violence among high-risk youth. The interventions may be educational, regulatory, or environmental. The evaluation may pertain to a past, ongoing, or new interventions.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Violent and Abusive Behavior. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under Sections 391 and 392 (42 U.S.C. 280b and 280b–1) of the Public Health Service Act, as amended.

Eligibility

Eligible applicants include all non-profit and for-profit organizations. Thus state and local health departments and other state and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including minority institutions, community-based organizations, small, minority and/or woman-owned businesses, are eligible.

All applicants must be able to demonstrate that they have the capacity to implement and evaluate the intervention by themselves or that they have established a working partnership with others whose cooperation or participation assures the successful completion of the project. Collaboration with a community-based organization, a university or other academic institution, and a state or local health department is encouraged, especially for applicants proposing 3 year projects.

Availability of Funds

Approximately $2,000,000 is available in FY 1993 to fund up to 10 specific intervention projects.

Purpose

The purpose of this project is to evaluate specific interventions that may influence one or more of the factors in the causal chain that lead to interpersonal violence-related injuries or deaths among or by high-risk adolescents and young adults. The interventions should have a theoretical and empirical foundation. The specific interventions preferably should be designed to produce measurable behavioral or health (i.e., injuries or deaths) improvements. Interventions which influence awareness, knowledge, or other antecedent factors will be considered if their causal connection with behavioral or health improvements is established. The evaluation may pertain to a past, ongoing, or new intervention.

As a guide, adolescents and young adults may be generally defined as persons 12–24 years of age. The applicant should define the specific age span that will be the focus of the prevention strategy. The target population for a specific intervention may or may not be adolescents and young adults. For example, the intervention could be targeted towards parents, teachers, or other role models of youth. Interventions might also be directed towards younger children with the aim of reducing their violent behavior not only during childhood but also during adolescence and young adulthood.

Violence prevention interventions are defined as specific, targeted activities designed to prevent violent injury. They may be "freestanding" or a component of a larger program. Interventions are delivered in a defined setting (e.g., schools, juvenile detention centers, youth clubs, housing communities) and utilize a clear strategy (e.g., mentoring, skills building). Intervention strategies may be educational, regulatory, or environmental. Interventions may also be incorporated into existing programs (e.g., Head Start, Job Corps).

Combinations of interventions that are specific, complementary, yet narrow in scope are welcomed (e.g., mentoring in combination with job skills training).

Intervention strategies may include, but are not limited to the following:

social skills/social cognitive training
conflict resolution skills training
parental training
mentoring of children and adolescents
peer mentoring/tutoring/mediation
assault crisis teams
safe havens for walking through high-risk neighborhoods
job skills training/placement
metal detectors in schools
firearm licensing laws
waiting periods to purchase firearms
regulation of public firearm carrying

Applicants are encouraged to maximize the use of funds for research and evaluation purposes by collaborating with ongoing projects or utilizing previously collected data. Applicants may, for example:

- analyze data collected from a previously implemented intervention
- add a data collection and evaluation component to an existing intervention
- develop, implement, and evaluate a new intervention within an ongoing program

Program Requirements

The applicant must demonstrate a willingness to collaborate with CDC at all stages of the project. Applicant must also clearly identify the specific project period for the evaluation of proposed intervention(s) (i.e., one year, two year, or three year project period) and must provide information on each of the following issues: target group, proposed goals and objectives, intervention description, location of the intervention, study design, data collection and analysis, project management and staffing plan, collaboration, and project budget. See application instructions contained in the program announcement in the application kit for the information to be provided in each section.

The successful completion of the project is likely to require a close working relationship between the recipient and CDC. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for the activities under B., below:

A. Recipient Activities:

1. Develop procedures for collecting and compiling information relevant to the proposed project. This information should include, but not be limited to describing the target population; selecting the strategy to be evaluated; identifying the setting for implementing the strategy; developing the evaluation design; developing and pilot testing the data collection instruments; collecting process and outcome data; developing and implementing a data management plan; developing and implementing a plan for data analysis and dissemination of study findings.

2. Develop a final written scientific protocol for evaluating the specific intervention. This protocol will contain the following elements:

a. Statement of the questions to be answered (hypotheses to be tested);

b. Description of the intervention to be evaluated;

c. Specific process and outcome data that will be collected and analyzed, including data collected for purposes of intervention monitoring and management;

d. Description of methods (both scientific and operational) for collecting process and outcome data;

e. description of how data will be maintained (i.e., in what databases); and,

f. Description of statistical techniques that will be used to analyze the data.

3. Obtain the necessary clearances and agreements to proceed with all aspects of the proposed violence prevention project.

4. Develop and pilot test instruments for data collection.

5. Establish baseline rates for the pertinent outcomes within the target population.

6. Establish goals and realistic, measurable, time-oriented objectives for all remaining phases of the project.

7. Develop and implement the selected intervention.

8. Evaluate the intervention.

9. Collect and compile monitoring and prevention effectiveness data in an ongoing fashion. Compile "lessons learned" from the project.

10. Collaborate with CDC in the description and dissemination of the final results of the project.

B. CDC Activities

1. Provide consultation in defining the target population; selecting and implementing the intervention; determining the impact of the evaluation; and designing the scientific protocols.

2. Collaborate in the design of all phases of the study. Provide consultation on data collection instruments and procedures. Provide consultation on the choice and timing of the intervention, and training needs and composition of the implementation team.

3. Monitor intervention implementation and collection and analysis of process and outcome data.

4. Arrange for information sharing among the various evaluation projects.

5. Provide up-to-date scientific information about youth violence prevention.

6. Assist in the transfer of information and methods developed in these projects to other prevention programs

Review and Evaluation Criteria

CDC-convened panels will review applications separately according to the project period specified in the application (i.e., all one year projects will be reviewed separately from two year projects, which will be reviewed separately from three year projects). Applicants will be evaluated according to the following criteria (Maximum of 100 total points):

1. *Target Group:* The extent to which the target group is described and access to the target is demonstrated. The extent to which the target group has a high incidence or prevalence of the risk factors to be influenced by the proposed intervention and the extent to which appropriate demographic and morbidity data are described. The extent to which the youth, who are the direct or indirect target group, have a high incidence of interpersonal violence and violence-related injuries and deaths. The extent to which it is demonstrated that the participation of the target group will be sufficient to evaluate the intervention in an unbiased fashion. (13 points)

2. *Goals and Objectives:* The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which they encompass both process and outcome features of the intervention. The extent to which specific research questions and/or hypotheses are described. (12 points)

3. *Intervention Description:* The extent to which the potential effectiveness of the intervention is theoretically justified and supported with epidemiologic, methodological, and behavioral research. The extent to which the intervention is feasible and can be expected to produce the expected results in the target group of interest. The extent to which the intervention, its implementation, the development of all necessary materials, and all necessary training are clearly described. The extent to which the desired outcomes (e.g., behavioral change, injury, or death) are specified and definitions of measurable endpoints are provided. The extent to which the setting in which the intervention is to be implemented is clearly described and shown to be adequate for reaching the target group and achieving the desired objectives. (25 points)

4. *Study Design and Analysis:* The extent to which the evaluation design and the analysis plan are clearly described and are appropriate for the target population, intervention, data collection opportunities, and proposed project period. The extent to which the various threats to the validity of the study are recognized and addressed. The extent to which the sampling methods, sample size estimates, power estimates, and attrition of the participating population are clarified. The extent to which data collection, data processing, and management activities are described. The extent to which the major phases of the project are clearly presented and logically and realistically sequenced. (25 points)

5. *Project Management and Staffing Plan:* The extent to which the management staff and their working partners are clearly described, appropriately assigned, and have pertinent skills and experiences. The extent to which the applicant proposes to involve appropriate researchers and other personnel who reflect the racial/ethnic composition of the target population. The extent to which the applicant or a full working partner has the capacity and facilities to design, implement, and evaluate the proposed intervention. (13 points)

6. *Collaboration:* The extent to which the necessary partners are clearly described and their qualifications and intentions to participate explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities. The extent to which a full working partnership between a community-based organization, a university or other academic institution, and a state or local health department has been established for applicants seeking funds for a 3 year project period. Evidence should be provided that these funds do not duplicate already funded components of ongoing projects. (12 points)

7. *Proposed Budget:* The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds. (Not scored)

Funding Priorities

Approximately $2,000,000 is available to fund up to 10 specific intervention projects. It is expected that projects completed in one year will have an average award ranging from $75,000 to $175,000; projects completed in two years will have an average award ranging from $100,000 to $200,000 per year; and projects completed in three years will have an average award ranging from $150,000 to $225,000 per year. Applicant must clearly identify the specific length of the project period for which funds are requested. Institutions may request funds for more than one project period as long as the proposed projects are submitted separately and are distinctly different. Based on the quality of the applications received within each project period the estimates outlined above may vary.

Priority will be given to ensuring a geographic balance and a balance among educational, regulatory, and environmental strategies.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, GA 30305, no later than 30 days after the application deadline date. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate state and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate state and/or local health agency is determined by the applicant. The following information must be provided:

a. A copy of the face page of the application (SF 424)

b. A summary of the project that should be titled "Public Health System Impact Statement" (PHSIS), not to exceed one page, and to include the following:

(1) A description of the population to be served

(2) A summary of the services to be provided

(3) A description of the coordination plans with the appropriate state and/or local health agencies.

If the state and/or local health official should desire a copy of the entire application, it may be obtained from the state Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Confidentiality of Records

All identifying information obtained in connection with the provision of services to any person in any program that is being carried out with a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a state or political subdivision or unless written, voluntary informed consent is provided by persons who receive services.

C. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, GA 30305, on or before August 26, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to objective review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 329. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Adrienne Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, GA 30305, (404) 842–6634. Programmatic technical assistance may be obtained from Timothy N. Thornton, Public Health Advisor, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mail Stop F–41, Atlanta, GA 30333, (404) 488–4400.

Please refer to Announcement Number 329 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington DC 20402–9325 (Telephone 202–783–3238).

Dated: July 6, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16395 Filed 07–09–93; 8:45 am]

BILLING CODE 4160–18–P

Health Resources and Services Administration

Final Definitions, Post-Residency Activities, and Student Agreement for Primary Health Care for the Exceptional Financial Need (EFN) and Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Programs

SUMMARY: The Health Resources and Services Administration (HRSA) announces final definitions, post-residency activities, and student agreement for Primary Health Care for the Exceptional Financial Need (EFN) Scholarship Program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Program, now found in sections 736 and 740 of the PHS Act as amended by the Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408, dated October 13, 1992). A notice which proposed these definitions, post-residency activities, and student agreement for these two programs was published in the **Federal Register** at 58 FR 15501, dated March 23, 1993. A comment period of 30 days was established to allow public comment concerning the proposed definitions, post-residency activities, and student agreement. Sixteen comments were received. This notice will discuss the comments received and will include the final definitions of "residency training program in primary health care" and "residency training program in general dentistry", final acceptable and unacceptable post-residency activities, and final student agreement for primary health care. Comments on program aspects that were not specifically proposed for public comment are not addressed in this notice.

EFFECTIVE DATE: The program elements described in this notice are for use in fiscal year (FY) 1993 and will become effective with scholarships made to medical, osteopathic medical, and dental students on or after July 1, 1993.

Definition of "Residency Training Program in Primary Health Care" and "Residency Training Program in General Dentistry"

Four comments were received concerning the definitions of "residency training program in primary health care" and "residency training program in general dentistry." One comment objected to the separation of general dentistry from the definition of primary health care. Section 723(d)(5) of the PHS Act defines the term "primary health care" as family medicine, general internal medicine, general pediatrics, preventive medicine, or osteopathic general practice. The definition of "residency training program in primary health care" is based on this statutory definition. The definition of residency training in general dentistry is separate. However, in all other references in this notice, including the student agreement, the term primary health care includes the practice of general dentistry.

Other comments suggested additional specialties that should be included in the list of approved residency programs such as Physical Medicine, Rehabilitation, Emergency Medicine, and primary care Obstetrics and Gynecology. Since the definition of primary health care is statutory, no change is made as a result of these comments.

Finally, one comment seeks to clarify that osteopathic primary care residency programs require a 1-year internship *and* 2 or 3 additional years of residency training. Both 2- and 3-year osteopathic residency programs are acceptable training programs for the maintenance of physician eligibility under the EFN and FADHPS programs. The language in the definition of "residency training program in primary health care" has been edited to be more clear about osteopathic residencies.

Final Definition of "Residency Training Program in Primary Health Care"

"Residency training program in primary health care" is defined as a 3-year residency program in allopathic or osteopathic family medicine, internal medicine, pediatrics, combined medicine/pediatrics, or preventive medicine approved by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA), or a rotating or primary health care internship or general practice residency program approved by the AOA.

Final Definition of "Residency Training Program in General Dentistry"

A "residency training program in general dentistry" shall include the following:

(1) Programs of advanced education for general dentistry, general practice residency programs, and pediatric dental residency programs, provided that they are accredited by the Commission on Dental Accreditation;

(2) Dental public health residency programs accredited by the Commission on Dental Accreditation (which may include one academic year in a program accredited by the Council on Education for Public Health, leading to the degree of Master's in Public Health or a similar graduate degree in public health); and

(3) Other continuous advanced education programs in general dentistry that are sponsored by an institution of higher education and that are recognized entities within the institution's administrative structure, as approved by the Secretary on a case-by-case basis.

This definition is intended to assure that a scholarship recipient is permitted to pursue any recognized advanced training program that would further his or her knowledge of general dentistry, including pediatric dentistry and dental public health. It also prohibits scholarship recipients from specializing in orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology.

Post-Residency Activities

Several respondents suggested that physicians who pursue careers in primary care research should retain their eligibility for EFN and FADHPS participation. This change was not adopted since most primary care research is conducted by faculty who are engaged in teaching, research and clinical activities and who are thus eligible on the basis of their teaching and clinical practice.

One respondent expressed concern that family physicians who wish to pursue additional training in the care of adolescents were not included. A formal system for recognizing added qualification in adolescent care is not in place for family physicians. However, a limited number of family medicine programs offer fellowship training in adolescent health care. Physicians who receive this training are expected to continue their generalist family physician careers. A new item #7 has been added under the list of Acceptable Activities to accommodate this training activity.

One respondent requested that sports medicine training, which was proposed as an Unacceptable Activity, be changed to an Acceptable Activity. Unpublished data indicate that family physicians who obtain added qualification in sports medicine continue in careers as generalist practitioners. The section on sports medicine has been deleted from the Unacceptable Activities list and added, as item #8, to the Acceptable Activities list.

Two respondents cited primary care public policy careers that EFN and FADHPS participants should be permitted to pursue. These activities are consistent with section 736 purposes and will be allowed. A new item #9 has been added.

Final Acceptable Activities

Medical and osteopathic medical residency graduates who will qualify to meet the new service obligation requirement under the EFN and FADHPS programs include: (1) Generalist physician graduates of a primary health care residency programs who enter clinical practice; (2) preventive medicine graduates who practice in the primary health care fields of clinical preventive medicine, occupational medicine, or public health; (3) senior (chief) residents in one of the residency programs defined above; (4) faculty, administrators, or policy makers who maintain certification in one of the primary health care disciplines; (5) family physicians and internists who obtain a certificate of added qualification in geriatrics; (6) internists and pediatricians who enter training to qualify for a certificate of added qualification in adolescent medicine or board certification in adolescent pediatrics; (7) family physicians who enter post-residency training to gain added skills in the care of adolescents; (8) primary health care physicians who enter training to qualify for a certificate of added qualification in sports medicine; and (9) special training to prepare physicians for primary care faculty or public policy careers, such as a Master's degree in a Public Health program, a public policy fellowship program, or faculty development training activities.

An individual shall be considered to be "practicing in general dentistry" as long as he or she is working in the field of dentistry and has neither specialized in, nor limited his or her practice to, orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology.

Final Unacceptable Activities

Physicians who will not meet the service obligation requirement under the EFN and FADHPS programs include those who: (1) enter medical or pediatric subspecialty training (e.g., cardiology, gastroenterology); (2) receive subspecialty certification; or (3) enter a non-primary health care specialty (e.g., obstetrics/gynecology, surgery, dermatology, radiology).

Dental scholarship recipients who specialize in orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology would be considered to be in breach of their service commitments.

Student Agreement for Primary Health Care and General Dentistry Service

A variety of comments related to the student agreement were received. One comment suggested that the parents' financial resources should be required in addition to the financial resources of the scholarship recipient. While this information was always required for the "formal needs analysis," this has been clarified in the final student agreement.

Several comments suggested an increased role of the DHHS in follow-up and monitoring of scholarship recipients. One of the responsibilities of the applicant schools for these programs is to monitor the scholarship recipients. This remains unchanged.

Several comments suggested that exit interviews by mail should be permitted. Because it is preferable to have a face-to-face interview, no change is made in this requirement.

Regarding penalties for scholarship recipients who fail to comply with the agreement, one comment requested additional information concerning the interest rate. As a result, in the final student agreement additional information is provided including the current maximum prevailing rate, how frequently and where the rate will be published, and when interest will begin to accrue. Several comments recommended a more flexible and longer payment schedule. However, the payment period of 3 years is specified in section 795(b)(3) of the PHS Act. No change is made in this requirement.

Regarding the contract, one comment requested more information about what is meant by the word "discipline." In the final student agreement, "discipline" is identified as medicine, osteopathic medicine, or dentistry. Several comments requested additional information regarding disposition of the student agreement. The school will retain the original, since the school will monitor the scholarship recipients compliance with the agreement. One copy of the agreement should be given to the student.

One comment suggested that the social security number should be

required rather than voluntary. Because of legal issues related to requiring the social security number, provision of this information remains voluntary.

Final Student Agreement

The following Student Agreement for Primary Health Care Service implements the new service obligation provisions applicable to sections 736 and 740 of the PHS Act and sets forth new requirements found in section 795(b) of the PHS Act with respect to breach of service obligation, waiver or suspension of liability, and repayment requirements.

Exceptional Financial Need (EFN) and Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Scholarship Programs; Student Agreement for Primary Health Care Service, Academic Year 1993–94

A. My Obligations as a Scholarship Recipient

I understand that by accepting the EFN/FADHPS Scholarship, I am agreeing to the terms outlined below:

(1) I will complete the program of education with respect to which such assistance is provided;

(2) If I receive such assistance to attend a school of medicine or osteopathic medicine, I will

(a) Not later than 4 years after completing the program of education for which I received such assistance, enter and complete a 3-year residency program in allopathic or osteopathic family medicine, internal medicine, pediatrics, combined medicine/pediatrics, or preventive medicine approved by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or a general practice residency program approved by the AOA. This may include participation in a rotation or primary health care internship approved by the AOA, and

(b) Practice in one of the primary health care specialties identified in paragraph (2)(a) for 5 years after completing the training identified in paragraph (2)(a).

(3) If I receive such assistance to attend a school of dentistry,

(a) I will practice in general dentistry for 5 years (exclusive of any period during which I am attending a residency training program in general dentistry). I will be considered to be "practicing in general dentistry" as long as I am working in the field of dentistry and have neither specialized in, nor limited my practice to, orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology.

(b) A "residency training program in general dentistry" shall include the following:

(i) Programs of advanced education for general dentistry, general practice residency programs, and pediatric dental residency programs, provided that they are accredited by the Commission on Dental Accreditation;

(ii) Dental public health residency programs accredited by the Commission on Dental Accreditation (which may include 1 academic year in a program accredited by the Council on Education for Public Health, leading to the degree of Master's in Public Health or a similar graduate degree in public health); and

(iii) Other continuous advanced education programs in general dentistry that are sponsored by an institution of higher education and that are recognized entities within the institution's administrative structure, as approved by the Secretary on a case-by-case basis.

(4) To receive the Scholarship, I must be a full-time (as determined by the health professions school) student at a school participating in the EFN/FADHPS Scholarship Program;

(5) I must maintain "good standing" as defined by the school;

(6) I must provide the school with all information regarding my financial resources and sources of income that the school requires to conduct a formal needs analysis including information on the financial resources of my parent(s) and spouse;

(7) I am aware that the Scholarship pays the equivalent of my tuition and other reasonable educational expenses, as determined by the school, including fees, books and laboratory expenses for a full academic year, but does not provide for any costs of living;

(8) I must keep the school informed at all times of any changes which affect my continued eligibility for the Scholarship, such as withdrawal from the health professions program;

(9) I must attend an entrance interview with school officials before or at the time I sign this contract to discuss the terms of my Scholarship and service obligation and the penalties for not meeting my obligation;

(10) I must provide the school with personal information that would help the school and the Federal Government to locate me if I fail to keep them informed of my location. This information will include, at a minimum, my current or permanent address, my telephone number, the names, addresses, and telephone numbers of my parents or other close relatives that may be contacted. I will also provide other information as requested, including for example: State driver's license number and expiration date, names, addresses and telephone numbers of other personal references, and the State(s) in which I plan to practice primary care;

(11) I must keep the school informed at all times of any changes in my name, address, and telephone number until I complete my service obligation as a primary care practitioner;

(12) Prior to graduating or leaving school for any reason, I must attend an exit interview with school officials to review information regarding eligible practice activities, to update personal information (as described in Item 10 above) and to review the terms of my service obligation and the penalties for not meeting the obligation. Should the school not inform me of a date and time for this interview, I must request an interview from the appropriate school officials.

B. Penalties if I Fail To Comply With Agreement

I understand that I am liable to the Federal Government (DHHS) for the entire amount of any scholarship funds I have received and for interest on such amount at the maximum legal prevailing rate, if I

(1) fail to maintain an acceptable level of academic standing in the program of education (as indicated by such program in accordance with requirements established by the Secretary);

(2) am dismissed from the program for disciplinary reasons;

(3) voluntarily terminate the program; or

(4) fail to begin or complete the service obligation required by this contract in accordance with the terms of the contract.

In the event of my failure to comply with the terms of the contract for any of the above reasons, the Scholarship funds become a debt owed to the Federal Government and I must repay all Scholarship funds that I received under this contract, plus interest, at the maximum prevailing rate, as determined by the Treasury Department. The maximum prevailing rate was 13.6 percent for the quarter ending 3/31/93, and is published quarterly in the **Federal Register** by the Secretary. Interest will begin to accrue as of the date of the breach of contract. I will be required to repay this amount in full within 3 years of the date that the Secretary determines that I failed to comply with the terms of this contract and will be required to make payments during the 3 years, in accordance with a repayment schedule which the Secretary will provide to me. If I fail to

make payments when they are due in accordance with the repayment schedule, I understand that the Federal Government will actively pursue me to collect the debt. This may include the use of collection agents, reporting the debt to credit bureaus, and other collection procedures (such as addition of late charges under the Department's Claims Collection Regulations).

C. Cancellation, Suspension, and Waiver of Obligation

I understand that my service or payment obligation may be canceled, suspended, or waived under certain circumstances described below:

(1) Should I die or become permanently and totally disabled, the Secretary will cancel my obligation under this contract. To receive cancellation in the event of my death, the executor of my estate must submit an official death certificate to the Secretary. To receive cancellation for permanent and total disability, I or my representative must apply to the Secretary, submitting medical evidence of my condition, and the Secretary may cancel this obligation in accordance with applicable Federal statutes and regulations;

(2) Upon receipt of supporting documentation the Secretary may waive or suspend my service or payment obligation under this contract if the Secretary determines that: (a) my meeting the terms and conditions of the contract is impossible or would involve extreme hardship; and, (b) enforcement of the obligations would be unconscionable. Supporting documentation should be submitted to: Division of Student Assistance, Student and Institutional Support Branch, room 8–34, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

D. Scholarship Renewal and Extension of Contract

This contract provides funding for *1 year only.* Renewal of the contract is at the discretion of the school and is subject to the availability of funds.

EFN/FADHPS Contract 1993–94

Tuition: $_____
Other Educational Costs: $_____
Total: $_____
Name of Recipient _____
_____Mr _____Ms
Permanent Address _____
City, State, Zip Code _____
Social Security Number (voluntary) _____
Anticipated Graduation Date _____
Discipline: Medicine _____Osteopathic Medicine _____Dentistry _____

Scholarship Recipient: By my signature below, I certify that I have read and understand my rights and obligations under this contract

_____
Signature of Scholarship Recipient

_____
Date

Grantee Institution: I understand that this award is made upon the terms, conditions and obligations specified in this contract.

_____
Grantee Institution (Name)

_____
Signature of Authorizing Official

_____
Date

Any person who knowingly makes a false statement or misrepresentation or commits any other illegal action in connection with the EFN/FADHPS scholarship programs is subject to a fine or imprisonment under federal statute.

Additional Information

If additional programmatic information is needed, please contact: Mr. Michael Heningburg, Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–1173.

Dated: July 6, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–16403 Filed 7–9–93; 8:45 am]

BILLING CODE 4160–15–P

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on October 1, 1990.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Claude Daniels on behalf of Jonah Daniels, Deceased, Longmont, Colorado, Claims Court Number 90–3426 V
2. John Garrison, Bell Gardens, California, Claims Court Number 90–3427 V
3. Randall Eaton on behalf of Randall Bradley Eaton, Bossier City, Louisiana, Claims Court Number 90–3428 V
4. Stephen Wilkins on behalf of Summer Wilkins, Deceased, Miami, Florida, Claims Court Number 90–3429 V
5. Teresa Snyder on behalf of Frank Snyder, Jr., Clifton Heights, Pennsylvania, Claims Court Number 90–3430 V
6. Earl Hall and Dorothy Davis on behalf of Jennifer Hall, Annapolis, Maryland, Claims Court Number 90–3431 V
7. Randall Wilson on behalf of Charles Wilson, Deceased, Fort Worth, Texas, Claims Court Number 90–3432 V
8. Melissa Sawyer on behalf of David Sawyer, Barnwell, South Carolina, Claims Court Number 90–3433 V
9. Rodney Burnette, Waynesville, North Carolina, Claims Court Number 90–3434 V
10. Theresa Rooney, St. Petersburg, Florida, Claims Court Number 90–3435 V
11. Joseph D'Agostino, Bloomfield, New Jersey, Claims Court Number 90–3436 V
12. Ralph Golub on behalf of Rebecca Golub, Norwood, Massachusetts, Claims Court Number 90–3437 V
13. Lisa Garove on behalf of Tiffany Garove, Washington, Pennsylvania, Claims Court Number 90–3438 V
14. Donald Patient on behalf of Donald Patient, Jr., Deceased, Sullivan, Illinois, Claims Court Number 90–3439 V
15. Lorrieanne Dirizziano on behalf of Dean McCartin, Torrance, California, Claims Court Number 90–3440 V
16. Evan Levy, New York, New York, Claims Court Number 90–3441 V
17. Alice Elam on behalf of Brian Elam, Sayreville, New Jersey, Claims Court Number 90–3442 V
18. Alice Elam on behalf of Robert Elam, Sayreville, New Jersey, Claims Court Number 90–3443 V
19. Alice Elam on behalf of Susan Elam, Sayreville, New Jersey, Claims Court Number 90–3444 V
20. Rhonda Wolford on behalf of Jessica Wolford, Newark, Ohio, Claims Court Number 90–3445 V
21. Darlene Crane on behalf of Leon Crane, Guilford, Connecticut, Claims Court Number 90–3446 V
22. Sandra Roberts on behalf of Jennifer Roberts, Deceased, Hazard, Kentucky, Claims Court Number 90–3447 V
23. Dominic Calabrese, Pittsburgh, Pennsylvania, Claims Court Number 90–3448 V
24. Wayne Huckabay on behalf of Charley Huckabay, Houston, Texas, Claims Court Number 90–3449 V
25. Billy and Margaret Phillips on behalf of Michael Phillips, Dallas, Texas, Claims Court Number 90–3450 V
26. Annette Hoffman, Pasadena, California, Claims Court Number 90–3451 V
27. Betty Jones, Munster, Indiana, Claims Court Number 90–3452 V
28. Dora Pastore on behalf of Jerry Pastore, Wheat Ridge, Colorado, Claims Court Number 90–3453 V
29. Wanda Bailey on behalf of Stephanie Bailey, Augusta, Georgia, Claims Court Number 90–3454 V
30. Gail Falk on behalf of Barry Buker, Waterbury, Vermont, Claims Court Number 90–3455 V
31. Maryalice Drew, Grand Forks, North Dakota, Claims Court Number 90–3456 V
32. Carol Belec on behalf of Joel Belec, Mt. Morris, New York, Claims Court Number 90–3457 V
33. Linda Rodriguez on behalf of Julie Hazelwood, Franklin, Indiana, Claims Court Number 90–3458 V
34. Alfred Gangi on behalf of Karen Gangi, Lawrence, Massachusetts, Claims Court Number 90–3459 V
35. Ronald Askew on behalf of Stacy Askew, Florence, Alabama, Claims Court Number 90–3460 V
36. Barbara Pratt on behalf of James Doros, Woodhaven, Michigan, Claims Court Number 90–3461 V
37. Scotty Griffith on behalf of Ashley Griffith, Oak Ridge, Tennessee, Claims Court Number 90–3462 V
38. Marsha Heisley, Columbus, Ohio, Claims Court Number 90–3463 V
39. Earl DeArmond on behalf of Darren DeArmond, Hammond, Louisiana, Claims Court Number 90–3464 V
40. Elizabeth McCabe, Winston-Salem, North Carolina, Claims Court Number 90–3465 V
41. Gail Falk on behalf of Milford Hill, Burlington, Vermont, Claims Court Number 90–3466 V
42. Sarah Fleming on behalf of Ronny Fleming, Clarksville, Texas, Claims Court Number 90–3467 V
43. Gail Falk on behalf of Katrina Centariczki, Hanover, New Hampshire, Claims Court Number 90–3468 V
44. Yoshikiyo Nagao on behalf of Lacey Nagao, Los Angeles, California, Claims Court Number 90–3469 V
45. Kathleen Shappee on behalf of Timothy Shappee, Canandaigua, New York, Claims Court Number 90–3470 V
46. Allen and Mary Legard on behalf of Allen Legard, Osburn, Idaho, Claims Court Number 90–3471 V
47. Paul Romander on behalf of Richard Romander, Deceased, Sacramento, California, Claims Court Number 90–3472 V
48. Diane Aalders, Pleasantville, New York, Claims Court Number 90–3473 V
49. Cindy Hayes on behalf of Megan Hayes, St. Joseph, Missouri, Claims Court Number 90–3474 V
50. Susan Olito on behalf of Natalie Ann Olito, Bishop, California, Claims Court Number 90–3475 V
51. Robert Graham, Casa Grande, Arizona, Claims Court Number 90–3476 V
52. Derek Norberg, Geneseo, Illinois, Claims Court Number 90–3477 V
53. Karen Pisano, Chicago, Illinois, Claims Court Number 90–3478 V
54. Betty Bernius on behalf of Scott Bernius, New Orleans, Louisiana, Claims Court Number 90–3479 V
55. Larry Stivers on behalf of Mark Stivers, Chicago, Illinois, Claims Court Number 90–3480 V
56. Marilyn George, Flint, Michigan, Claims Court Number 90–3481 V
57. Michael James, Norfolk, Virginia, Claims Court Number 90–3482 V
58. Linda Turnes on behalf of Robert Turnes, Hammond, Indiana, Claims Court Number 90–3483 V
59. Judith Anderson, Little Falls, Minnesota, Claims Court Number 90–3484 V
60. Garry Hunter on behalf of Michael Hunter, Garden Grove, California, Claims Court Number 90–3485 V
61. Mary Knapik on behalf of James Knapik, Cleveland, Ohio, Claims Court Number 90–3486
62. Steven DeKozlowski on behalf of Jocelyn DeKozlowski, Knoxville, Tennessee, Claims Court Number 90–3487 V
63. Patricia Clinkscales on behalf of Patrice Clinkscales, Anderson, South Carolina, Claims Court Number 90–3488 V
64. Walter Leginski, Detroit, Michigan, Claims Court Number 90–3489 V
65. Joel Ippolito, Tampa, Florida, Claims Court Number 90–3490
66. Karen Johnson on behalf of Adrian Johnson, Elmwood, Wisconsin, Claims Court Number 90–3491
67. Hillary Hill, Albuquerque, New Mexico, Claims Court Number 90–3492 V
68. Linda Newman on behalf of Chase Edward Newman, Tampa, Florida, Claims Court Number 90–3493 V

69. Sylvia Haynes on behalf of Deborah Bean, Newport, Rhode Island, Claims Court Number 90–3494 V
70. Margaret Ruble on behalf of Barbara Ruble, Warren, Indiana, Claims Court Number 90–3495 V
71. Lorinda Pletka on behalf of Kelly Pletka, Warren, Michigan, Claims Court Number 90–3496 V
72. Joseph Sikora on behalf of Lauren Sikora, Farmington Hills, Michigan, Claims Court Number 90–3497 V
73. Terry Spurgin on behalf of Andrew Spurgin, Fort Worth, Texas, Claims Court Number 90–3498 V
74. Diane De Vaul and Hagos Alemayehu on behalf of, Victor De Vaul, Wheaton, Maryland, Claims Court Number 90–3499 V
75. Sherry Salomon on behalf of Daniel Salomon, Bethesda, Maryland, Claims Court Number 90–3500 V
76. Gayle Tanbouz on behalf of Omar Tanbouz, Van Nuys, California, Claims Court Number 90–3501 V
77. Peter Manuel on behalf of Erik Manuel, Pasadena, California, Claims Court Number 90–3502 V
78. Carlos Diaz on behalf of Joseph Diaz, Chicago, Illinois, Claims Court Number 90–3503 V
79. Teena Spears on behalf of Shannon Spears, Grundy, Virginia, Claims Court Number 90–3504 V
80. Mary Hedges, Latrobe, Pennsylvania, Claims Court Number 90–3505 V
81. Jan Kochmeister on behalf of Sharisa Kochmeister, Pomona, New York, Claims Court Number 90–3506 V
82. William Johnson on behalf of Patrick Johnson, Deceased, Grosse Pointe Woods, Michigan, Claims Court Number 90–3507 V
83. Gunilla Duncan, no city or state available, Claims Court Number 90–3508
84. Sherry McWilliams on behalf of Carey McWilliams, Douglas, Arizona, Claims Court Number 90–3509 V
85. Jackie Purvis on behalf of Merrill Purvis, Indianapolis, Indiana, Claims Court Number 90–3510 V
86. Dorothy Frazier on behalf of Earl Frazier, Jr., Sacramento, California, Claims Court Number 90–3511 V
87. Elisa Thompson, South Hampton, New York, Claims Court Number 90–3512 V
88. Peggy Duval on behalf of Judy Duval, Houston, Texas, Claims Court Number 90–3513 V
89. James Hollis, Magnolia, Arkansas, Claims Court Number 90–3514 V
90. Mary Brendlinger on behalf of Robert Brendlinger, Philadelphia, Pennsylvania, Claims Court Number 90–3515 V
91. James and Denise Belpedio on behalf of James Belpedio, Ishpeming, Michigan, Claims Court Number 90–3516 V
92. Donna Snow on behalf of Stephen Scates, Upland, California, Claims Court Number 90–3517 V
93. Linnea Ficek on behalf of K. Matthew Ficek, Manchester, New Hampshire, Claims Court Number 90–3518 V
94. Samuel Matthews, Fayette, Alabama, Claims Court Number 90–3519 V
95. Elna Gimotea on behalf of Joy Dime, Bacolod City, Philippines, Claims Court Number 90–3520 V
96. Eugene Corntassel on behalf of Bradley Corntassel, Deceased, Kalispell, Montana, Claims Court Number 90–3521 V
97. Michael Spurlin, Memphis, Tennessee, Claims Court Number 90–3522 V
98. Eunice Gosman on behalf of Katherine Wilson, Orange, California, Claims Court Number 90–3523 V
99. Veldon Kouba on behalf of Allen Kouba, Okarche, Oklahoma, Claims Court Number 90–3524 V
100. Jack Larrison, Yakima, Washington, Claims Court Number 90–3525 V
101. David Poole, Eastlake, Ohio, Claims Court Number 90–3526 V
102. Kimberly Barnard, Bowling Green, Kentucky, Claims Court Number 90–3527 V
103. Karla Pedersen Evans, Des Moines, Iowa, Claims Court Number 90–3528 V
104. Darci Simmen on behalf of Keeley Simmen, no city or state available, Claims Court Number 90–3529 V
105. Linda Gravelle on behalf of Andrea Gravelle, Seattle, Washington, Claims Court Number 90–3530 V
106. Kandy Solesbee on behalf of Twyla Solesbee, Franklin, North Carolina, Claims Court Number 90–3531 V
107. Patricia Pollock on behalf of Stephanie Pollock, Delphos, Ohio, Claims Court Number 90–3532 V
108. Virginia Bonnin, San Diego, California, Claims Court Number 90–3533 V
109. Patricia Miller, New Orleans, Louisiana, Claims Court Number 90–3534 V
110. Mark Snow on behalf of Nicholas Snow, Port Orchard, Washington, Claims Court Number 90–3535 V
111. Mark Hessek on behalf of Katherine Hessek, Deceased, Alameda, California, Claims Court Number 90–3536
112. Susan Schuerlein, Uniondale, New York, Claims Court Number 90–3537 V
113. Margaret Sharkey on behalf of Margaret M. Sharkey, Deceased, Philadelphia, Pennsylvania, Claims Court Number 90–3538 V
114. Geevarghese Kochumman on behalf of Binoy Kochumman, Brooklyn, New York, Claims Court Number 90–3539 V
115. Kathleen Jakubasz, Haverhill, Massachusetts, Claims Court Number 90–3540 V
116. Edith Bergenn on behalf of Eric Bergenn, Patchogue, New York, Claims Court Number 90–3541 V
117. Linda Gravelle on behalf of Jessica Racette, Wadsworth, Ohio, Claims Court Number 90–3542 V
118. Anthony Sestito on behalf of Trisha Sestito, Columbus, Ohio, Claims Court Number 90–3543 V
119. Judith Vasquez, Fall River, Massachusetts, Claims Court Number 90–3544 V
120. Marcilyn Matson on behalf of Kristopher Matson, Munster, Indiana, Claims Court Number 90–3545 V
121. Guy Holtz on behalf of Renee Holtz, Elgin, Illinois, Claims Court Number 90–3546 V
122. Diane Jones, Columbus Grove, Ohio, Claims Court Number 90–3547 V
123. Andrew M. Jackson on behalf of Andrew C. Jackson, Monmouth, Illinois, Claims Court Number 90–3548 V
124. Eddie Merrell, Jr., on behalf of Holly Merrell, Jacksonville, Florida, Claims Court Number 90–3549 V
125. Nicholas Billardello on behalf of Frank Billardello, East Detroit, Michigan, Claims Court Number 90–3550 V
126. William Ford, Pineland, Texas, Claims Court Number 90–3551 V
127. Eugene Urias, Carson, California, Claims Court Number 90–3552 V
128. Delores Cox, Limon, Colorado, Claims Court Number 90–3553 V
129. Derek Phelps, London, Kentucky, Claims Court Number 90–3554 V
130. Sherry Ryan on behalf of Anna Ryan, Deceased, Elizabethtown, Kentucky, Claims Court Number 90–3555 V
131. Teresa Scarbrough on behalf of Ami Joy Scarbrough, Ozark, Arkansas, Claims Court Number 90–3556 V
132. Debra Synder-Diffin, Roseville, California, Claims Court Number 90–3557 V
133. Loraine Timmerman on behalf of Mark Prediger, Troy, New York, Claims Court Numbers 90–3558 V, 90–3559 V, 90–3560 V, and 90–3561 V
134. Randell Wilson on behalf of Abigail Wilson, Wiesbaden, Germany, Claims Court Number 90–3562 V
135. Rudolph Kroeger on behalf of Anneliese Kroeger, Boulder, Colorado, Claims Court Number 90–3563 V
136. Saeeda Hamid on behalf of Saeed Hamid, Denver, Colorado, Claims Court Number 90–3564 V
137. Terry Guymon on behalf of Nicholas Guymon, Evanston, Wyoming, Claims Court Number 90–3565 V
138. Pamela Pullen on behalf of Tina Pullen, Sapulpa, Oklahoma, Claims Court Number 90–3566 V
139. Florence Kamien on behalf of Jacques Kamien, Brick, New Jersey, Claims Court Number 90–3567 V
140. Mary Dailey on behalf of Charles Dailey, Sioux Falls, South Dakota, Claims Court Number 90–3568 V
141. Laura Westbrook, Detroit, Michigan, Claims Court Number 90–3569 V
142. Bernice Morgan on behalf of Evelyn Morgan, Chicago, Illinois, Claims Court Number 90–3570 V
143. David Proulox on behalf of John Proulox, Lewiston, New York, Claims Court Number 90–3571 V
144. Ron Viau on behalf of Danielle Viau, South Burlington, Vermont, Claims Court Number 90–3572 V
145. Robert MacNicholl on behalf of James MacNicholl, Sacramento, California, Claims Court Number 90–3573 V
146. Barbara Yajian on behalf of Haig Yajian, Deceased, Miami, Florida, Claims Court Number 90–3574 V
147. Joe David Johnson on behalf of Erin Blakley Johnson, Garland, Texas, Claims Court Number 90–3575 V
148. Vincent Scuotto, Fort Lauderdale, Florida, Claims Court Number 90–3576 V
149. Mario Cugini on behalf of Sergio Cugini, Boston, Massachusetts, Claims Court Number 90–3577 V

150. William Messick on behalf of Shari Messick, Miami, Florida, Claims Court Number 90–3578 V
151. Zelma Johnson on behalf of Thomas Martin, Jr., Franklin, Pennsylvania, Claims Court Number 90–3579 V
152. Myra Wallace, Fresno, California, Claims Court Number 90–3580 V
153. John Wagner on behalf of Edward Wagner, Hyattsville, Maryland, Claims Court Number 90–3581 V
154. Charles Butler, Sparta, Tennessee, Claims Court Number 90–3582 V
155. Carol Quaranda on behalf of Anthony Quaranda III, Deceased, Tampa, Florida, Claims Court Number 90–3583 V
156. Roberta Azpeitia on behalf of Edward Azpeitia, Los Angeles, California, Claims Court Number 90–3584 V and 90–3585 V
157. Patricia Gwen on behalf of James Kuyhendall, Jr., Walnut Grove, California, Claims Court Number 90–3586 V
158. Robert J. Guerrero, No city or state available, Claims Court Number 90–3587 V
159. Nora Findley on behalf of Paul Findley, Rome, New York, Claims Court Number 90–3588 V
160. Jack Wisell on behalf of Scott Wisell, Hialeah, Florida, Claims Court Number 90–3589 V
161. J. Frederick Barthmaier on behalf of Amy Barthmaier, Baldwinsville, New York, Claims Court Number 90–3590 V
162. Elvina Schultz on behalf of Roger Schultz, Cooperstown, North Dakota, Claims Court Number 90–3591 V
163. James Allen, St. Petersburg, Florida, Claims Court Number 90–3592 V
164. Virginia Johnson on behalf of Nathan Johnson, Flat Rock, Michigan, Claims Court Number 90–3593 V
165. Scott Grindle, Ellsworth, Maine, Claims Court Number 90–3594 V
166. Jerry Traylor on behalf of Brandi Traylor, Beaumont, Texas, Claims Court Number 90–3595 V
167. William Carrington on behalf of David Carrington, Doylestown, Pennsylvania, Claims Court Number 90–3596 V
168. Joanna Sue Bayless, Topeka, Kansas, Claims Court Number 90–3597 V
169. Sharon Kasecky on behalf of Kumara Kasecky, Honokaa, Hawaii, Claims Court Number 90–3598 V
170. Stephen Hawke on behalf of Kimberly Hawke, Tampa, Florida, Claims Court Number 90–3599 V
171. Anatole Wilson, Narberth, Pennsylvania, Claims Court Number 90–3600 V
172. Leischen Wells on behalf of Tyler Wells, Muskegon, Michigan, Claims Court Number 90–3601 V
173. Joyce Shoffner on behalf of Tasha Shoffner, Charleston, Missouri, Claims Court Number 90–3602 V
174. Cynthia Jones on behalf of Ashlie Burk, Redding, California, Claims Court Number 90–3603 V
175. Katherine Gooden on behalf of Jermainian Gooden, Oklahoma City, Oklahoma, Claims Court Number 90–3604 V
176. Joanna Sue Bayless on behalf of Racheal Bayless, Topeka, Kansas, Claims Court Number 90–3605 V
177. Harold Blackwell on behalf of Sarah Blackwell, Humble, Texas, Claims Court Number 90–3606 V
178. Gary and Donna Lamell on behalf of Shari Lamell, Deceased, Beaumont, Texas, Claims Court Number 90–3607 V
179. Janice Waggoner, Hendersonville, Tennessee, Claims Court Number 90–3608 V
180. Rudolph Dante on behalf of Mark Dante, Minneapolis, Minnesota, Claims Court Number 90–3609 V
181. Carol Singh, Springfield, Pennsylvania, Claims Court Number 90–3610 V
182. Carol Carr on behalf of Sarah Carr, Beverly, Massachusetts, Claims Court Number 90–3611 V
183. Theresa Chavez on behalf of Brenda J. Chavez, San Antonio, Texas, Claims Court Number 90–3612 V
184. Ann Beltran on behalf of Brian Beltran, Passaic, New Jersey, Claims Court Number 90–3613 V
185. Martha Harrison on behalf of Michael Harrison, Houston, Texas, Claims Court Number 90–3614 V
186. Wayne Lewis on behalf of Jenny Lynelle Lewis, Provo, Utah, Claims Court Number 90–3615 V
187. Beverly Lucas, Tipton, Indiana, Claims Court Number 90–3616 V
188. Elizabeth Scurich, New Orleans, Louisiana, Claims Court Number 90–3617 V
189. Albert Resnick on behalf of Henry Resnick, Deceased, Croton Falls, New York, Claims Court Number 90–3618 V
190. Joe Collins on behalf of Coretta Collins, Jackson, Mississippi, Claims Court Number 90–3619 V
191. Carl Hastings on behalf of Dustin Hastings, Decatur, Alabama, Claims Court Number 90–3620 V
192. Harold Gewirtz on behalf of Charles Gewirtz, Stamford, Connecticut, Claims Court Number 90–3621 V
193. Rebecca Moniz on behalf of Michael Moniz, Deceased, Providence, Rhode Island, Claims Court Number 90–3622 V
194. Charles McCready on behalf of Lisa McCready, Stratford, Connecticut, Claims Court Number 90–3623 V
195. Belinda Murff on behalf of Kevin Murff, Many, Louisiana, Claims Court Number 90–3624 V
196. Marty Cacares on behalf of Ashley Cacares, Tarzana, California, Claims Court Number 90–3625 V

Dated: July 6, 1993.

William A. Robinson,

Acting Administrator.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3647]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 24, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Personal Financial and Credit Statement.

Office: Housing.

Description of the Need For the Information and Its Proposed Use: Form HUD–92417, Personal Financial and Credit Statement, is submitted with the initial application for mortgage insurance of a project. The form is used by HUD to determine whether the sponsor will be able to develop a successful project and have the resources to complete the project.

Form Number: HUD–92417.

Respondents: Individuals or Households.

Frequency of Submission: On-Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Form HUD–92417	8,000		1		8		64,000

Total Estimated Burden Hours: 64,000.

Status: Extension.

Contact: Kerry J. Mulholland, HUD (202) 708–0283; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 24, 1993.

[FR Doc. 93–16381 Filed 7–9–93; 8:45 am]

BILLING CODE 4210–01–M

Office of Fair Housing and Equal Opportunity

[Docket No. N–93–3558; FR–3428–N–08]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

ACTION: Notice of open meeting—correction.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550), the Federal Advisory Committee Act (FACA). The Task Force's charter was published in the Federal Register on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks, and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing and make recommendations to the Secretary for the establishment of reasonable criteria for occupancy. The Federal Register on June 4, 1993 at 58 FR 31739 announced a meeting of the full Task Force on July 21–23, 1993. This is a notice revising the meeting dates to July 20–23 and announcing a new location for the meeting.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3727. (TDD) (202) 708–0113 (These are not toll-free numbers.) If a sign language interpreter is needed for this meeting, please call either telephone number for assistance at least seven days prior to the meeting.

SUPPLEMENTARY INFORMATION: Time and Place—The Task Force will meet on Tuesday, July 20, Wednesday, July 21 and Thursday, July 22, 1993 from 9 a.m. to 7 p.m. each day, and on Friday, July 23 from 9 a.m. to 12 noon. The meeting will take place at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA. This is an open meeting. Fifteen days advance notice of these changes could not be provided because the change in the Task Force's schedule necessitated finding a new meeting place.

Agenda—The Task Force expects to consider and approve its draft report which will be disseminated to the public prior to public hearings which are tentatively scheduled as follows:

September 21, 1993—San Antonio, TX

September 27, 1993—Boston, MA

October 1, 1993—Seattle, WA

A formal notice confirming these dates and locations and providing the precise time and place of the hearings will be published in the Federal Register following the July 20–23 meeting of the Task Force.

Public Participation

These are open meetings. The public is also invited to submit written comments on any aspects of the Task Force's mandate or activities to Ms. Bonnie Milstein, the Chair of the Task Force, at 1101 Fifteenth Street, NW., Suite 1212, Washington, DC 20005–2765.

Dated: July 3, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–16382 Filed 7–9–93; 8:45 am]

BILLING CODE 4210–28–M

[Docket No. N–93–3558; FR–3428–N–09]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of open meeting—correction.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. app 2). The Task Force's charter was published in the Federal Register on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks, and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing and to make recommendations to the Secretary for the establishment of reasonable criteria for occupancy. The Task Force has established an Executive Committee and three additional subcommittees—Admissions, Occupancy and Evictions. The Federal Register on June 4, 1993 at 58 FR 31739 announced meetings of the Executive Committee on July 21 and 23, 1993. This is a notice canceling the July 21st meeting and announcing a new place and time for the July 23rd meeting.

FOR FURTHER INFORMATION CONTACT:

Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3727, (TDD) (202) 708–0113 (These are not toll-free numbers.) If a sign language interpreter is needed for this meeting, please call either telephone number for assistance at least seven days prior to the meeting.

SUPPLEMENTARY INFORMATION: The Executive Committee meeting originally scheduled for July 21, 1993 from 9 a.m. to 12 noon has been cancelled. The Executive Committee meeting originally scheduled for July 23 from 1 p.m. to 5 p.m. has been moved to the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA, and is now scheduled to adjourn at 4 p.m. Fifteen days advance notice of these changes could not be provided because the change in the Task Force's schedule necessitated finding a new meeting place.

Agenda

The Executive Committee will plan for publication of the draft report of the Task Force, work out final details of the public hearings and make such other recommendations to the full Task Force as may be appropriate.

Public Participation

This is an open meeting. the public is also invited to submit written comments on any aspect of the Task Force's mandate or activities to Ms. Bonnie Milstein, the Chair of the Task Force, at 1101 Fifteenth Street, NW., suite 1212, Washington, DC 20005–2765.

Dated: July 3, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–16383 Filed 7–9–93; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–03–4120–03, WYW129707]

Coal Lease Exploration Licenses; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted as subpart 3410, title 43, Code of Federal Regulations, all interested parties are hereby invited to participate with Powder River Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, Wyoming.

T. 42 N., R. 70 W., 6th P.M., Wyoming
Sec. 28: Lots 1 thru 16;
Sec. 32: Lots 1 thru 16.
Containing 1,318.86.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain coal quality data on coal cores, water monitoring sites and coal thickness.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW129707): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Casper District Office, 1701 East 'E' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the "The News-Record" of Gillette, Wyoming, once each week for two consecutive weeks beginning the week of July 5, 1993, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Powder River Coal Company no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Robert J. Shevling, Powder River Coal Company, Caller Box 3034, Gillette, Wyoming 82717, and the Bureau of Land Management, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003. The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Lynn E. Rust,

Chief, Branch of Mining Law & Solid Minerals.

[FR Doc. 93–16392 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–22–M

[NV020–4320–02]

Winnemucca District Multiple Use Advisory Council Meeting

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Winnemucca District Advisory Council will be held on Thursday, August 19, 1993. The meeting will be from 8:00 a.m. to 3:00 p.m. in the conference room of the Bureau of Land Management Office at 705 East 4th Street, Winnemucca. Nevada 89445.

The agenda for the meeting will include:

1. Update of the Black Rock/High Rock NCA Proposal.
2. Water Canyon Recreation Management Plan.

The meeting is open to the public. Interested persons may make oral statements to the council at 2:00 p.m. or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by August 16, 1993. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection (during regular business hours), within 30 days following the meeting.

Dated: July 2, 1993.

Robert J. Neary,

Acting District Manager.

[FR Doc. 93–16390 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Delegation of Royalty Management Authority to the State of New Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Royalty Management Program for the Minerals Management Service (MMS) hereby gives notice of a public hearing on a petition from the State of New Mexico for delegation of authority for the performance of certain royalty management activities. The petition was submitted pursuant to section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1735 and 30 CFR part 229. Written comments from interested persons will be accepted.

DATES: The public hearing will be held beginning at 9:30 a.m. on August 3, 1993. Written comments on the petition will be accepted by MMS through August 18, 1993.

ADDRESSES: The hearing will be held at the following address: Secretary's Conference Room No. 3004/3138,

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico 87504.

Written comments on the petition should be sent to the Minerals Management Service, Royalty Management Program, State and Indian Program Audit Office, Attention: Mr. Todd R. McCutcheon, P.O. Box 25165, MS 3660, Denver, Colorado 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Todd R. McCutcheon, Acting Area Manager, State and Indian Program, Minerals Management Service, P.O. Box 25165, MS 3660, Denver, Colorado 80225–0165, (303) 275–7472.

SUPPLEMENTARY INFORMATION: Section 205 of FOGRMA authorizes the Secretary of the Interior to delegate to States certain audit, inspection, and investigation authority for oil, gas, and mineral production on Federal and Indian leases located within the State. The MMS issued regulations implementing section 205 of FOGRMA at 30 CFR part 229. Part 229 defines the scope of authorities which may be delegated to States and the standards for such delegation. Section 229.102 requires that a public hearing(s) be held on a petition for delegation from a State to determine whether:

- The State has an acceptable plan for carrying out delegated responsibilities and if it is likely that the State will provide adequate resources to achieve the requirements of FOGRMA;
- The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the Senate can be effectively carried out;
- The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary in accordance with the requirements at 30 U.S.C. 1735;
- The State's plan to carry out the delegated authority will be in accordance with MMS standards, and
- The State's plan to coordinate the delegated authority, with MMS and the Office of the Inspector General, audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian oil, gas or mineral leases within the State.

The purpose of the subject hearing is to provide a public forum to discuss the State of New Mexico's written request for delegation of audit activities for oil, gas, and mineral gas royalties with respect to Federal lands within the State. The State's written request for delegation will be available for public inspection at the hearing. Topics for discussion at the hearing include:

- The State's resources to be devoted to the delegated audit activity.
- The ability of the State to effectively and faithfully administer the rules and regulations of the Secretary under FOGRMA.
- Whether-or-not the delegation of authority will create an unreasonable burden on any lessee with respect to Federal and Indian lands within the State.

Dated: July 2, 1993.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 93–16394 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–MR–M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ruffe Control Committee Meeting

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ruffe Control Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The Committee will meet to discuss new information on ruffe in Lake Superior, research needs, and the development of economic and environmental assessments for the proposed Ruffe Control Program.

DATES: The Ruffe Control Committee will meet from 9:30 a.m. to 4:30 p.m. on Wednesday, July 28, 1993.

ADDRESSES: The Ruffe Control Committee meeting will be held at the Clarion Hotel Rosemont (near O'Hare Airport in Chicago), 6810 North Mannheim, Rosemont, Illinois 60018, (708) 297–1234.

FOR FURTHER INFORMATION CONTACT: Tom Busiahn, Ruffe Control Committee Chair, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806 at (715) 682–6185.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: July 6, 1993.

Gary Edwards,

Assistant Director—Fisheries Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93–16459 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Preliminary)]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–652 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Netherlands of aramid fiber formed of poly para-phenylene terephthalamide (PPD-T aramid fiber),[1] provided for in subheadings 5402.10.30, 5402.32.30, 5503.10.00, and 5601.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 16, 1993.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade

[1] The imported merchandise which is the subject of this petition is all PPD-T aramid fiber produced in the Netherlands and imported either directly or indirectly into the United States, whether in fiber, yarn, pulp, staple, or other form.

Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on July 2, 1993, by counsel on behalf of E. I. Du Pont de Nemours & Co., Wilmington, DE.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 23, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than July 21, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 28, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 8, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16597 Filed 7–9–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section or Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability.

AB–32 (SUB–NO. 50X), Boston and Maine Corporation and Springfield Terminal Railway Co.—Abandonment and Discontinuance of Service—Hillsboro County, New Hampshire. EA available July 2, 1993.

Comments on the following assessment are due 30 days after the date of availability:

AB–33 (SUB–NO. 79), Union Pacific Railroad Co.—Abandonment—In Canyon and Ada Counties, Idaho (Stoddard Branch). EA available June 28, 1993.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16451 Filed 7–9–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32312]

Connecticut Central Railroad Company—Trackage Rights Exemption—Connecticut Rail Systems, Inc.; Exemption

Connecticut Rail Systems, Inc. (CRSI), has agreed to grant approximately 10.2 miles of overhead trackage rights to Connecticut Central Railroad Company (CCRC) between milepost 4.8± at North Haven, CT, and milepost 15.0± at Reeds Gap, in Durham, CT.[1] The trackage rights were to become effective on June 29, 1993.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner,

[1] CRSI was authorized to acquire this line in Finance Docket No. 32233, Connecticut Rail Systems, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation (not printed), served April 5, 1993. The grant here will replace the overhead trackage rights that CCRC held prior to CRSI's purchase of the line. See Finance Docket No. 31045, Connecticut Central Railroad Company—Exemption Operation—Certain Lines of the State of Connecticut (not printed), served June 3, 1987.

[2] To qualify for an exemption under 49 CFR 1180.2(d), a railroad must file a verified notice of the transaction with the Commission at least a week before the transaction is consummated. See 49 CFR 1180.4(g). In this proceeding, the parties filed their verified notice of exemption on June 22, 1993, and indicated that the transaction would be consummated on or after seven days from the date of the notice or any time after June 25, 1993. Counsel for the parties has clarified that the parties did not consummate the transaction prior to the June 29, 1993, effective date.

Carpenter & Precup, 1700 K Street, NW., suite 1107, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 1, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16452 Filed 7–9–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–1 (Sub-No. 238)]

Chicago and North Western Transportation Company—Abandonment—Between Duck Creek and Kelly, WI; Findings

The Commission has issued a certificate authorizing Chicago and North Western Transportation Company (CNW) to abandon 83.4 miles of railroad, extending from Duck Creek (milepost 4.23) to Kelly (milepost 17.5A) in Marathon, Shawano and Brown Counties, WI. The abandonment certificate will become effective August 12, 1993, unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate CNW.

Any offers of financial assistance must be filed with the Commission and CNW no later than 10 days from the date of publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided June 25, 1993.

By the Commission Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons, joined by Chairman McDonald, dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16420 Filed 7–9–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket Nos. 92–40, 92–51]

Chemical Dependence Associates of Houston; Revocation of Registrations

On March 16, 1992, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Chemical Dependence Associates of Houston (Respondent) of 7442 Park Place Boulevard, Houston, Texas 77087. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration BC0150639 and deny any pending applications for registration. Additionally, by this Order to Show Cause, and pursuant to 21 U.S.C. 824(d), the Administrator immediately suspended Respondent's DEA Certificate of Registration. The Order to Show Cause alleged that Respondent's continued registration as a narcotic treatment program would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(g).

On April 23, 1992, the Administrator of the DEA issued another Order to Show Cause to Chemical Dependence Associates of Houston (Respondent) located at a second address of 16 Pinedale, Houston, Texas 77006. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration RC0138481 and to deny any pending applications for registration. By this Order to Show Cause, and again pursuant to 21 U.S.C. 824(d), the Administrator immediately suspended Respondent's DEA Certificate of Registration. The Order to Show Cause alleged that Respondent's continued registration as a narcotic treatment program would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the matters raised in both Orders to Show Cause. On May 27, 1992, Administrative Law Judge Mary Ellen Bittner issued an order consolidating the two cases in light of the fact that Chemical Dependence Associates of Houston, while operating under two separate DEA Certificates of Registration and at two separate addresses, was owned and operated by the same individual, Dr. Tommy Swate. Dr. Swate acted as the Program Sponsor and Medical Director of both Respondent facilities. Following prehearing procedures, a hearing on the consolidated cases was scheduled for August 25, 1992, in Galveston, Texas. The hearing was commenced on that day, however, due to threatening weather, was continued until January 1993. The hearing was resumed on January 11, 1993, in Beaumont, Texas.

On February 17, 1993, the administrative law judge issued her opinion and recommended decision. Neither party filed exceptions to the administrative law judge's opinion and recommended decision. On March 22, 1993, Judge Bittner transmitted the record in this proceeding to the Administrator. Having considered the record in its entirety, and pursuant to 21 CFR 1316.67, the Administrator hereby issues his final order in this matter as set forth below.

The Orders to Show Cause alleged that Respondents had engaged in various violations of DEA, FDA and Texas State regulations including falsification of medical records, inadequate testing documentation, dispensing methadone to an undercover agent for no legitimate medical purpose, failing to account for methadone received and dispensed, and failing to maintain proper documentation of treatment in patient records. Before evidence relating to these allegations was presented at the hearing in Beaumont, Texas, counsel for the Government filed a motion for summary disposition. The Government alleged that since the previous hearing date of August 25, 1992, Dr. Swate had relinquished control over both sites where Respondents were located. The Government maintained, therefore, that even if the Administrator were to reinstate Respondent's DEA Certificates of Registration, there would be no locations to register. As the Government noted, registrations for narcotic treatment programs are issued to locations, not to individuals. See, 21 U.S.C. 822(e) and 21 CFR 1301.22(a)(6).

In response to the motion, Dr. Swate stipulated that should he seek any future employment with a narcotic treatment program it would be as a program director or sponsor, a position which would require him to be the applicant for a DEA Certificate of Registration. The Government agreed that if the motion for summary disposition were granted, the DEA would take no action against Dr. Swate's individual DEA Certificate of Registration as a practitioner based solely on the violations alleged in the Orders to Show Cause. The Government further agreed that it would not attempt to apply 21 CFR 1301.76(a), which restricts employment of individuals with revoked DEA registrations, against Dr. Swate for any employment in a traditional office setting in which he would have access to controlled substances.

Based on these stipulations, and in light of the fact that there was no longer any issue to be resolved at the hearing, the administrative law judge granted the Government's motion for summary disposition. The administrative law judge noted that where no question of fact is involved, or when the facts are agreed upon, an administrative proceeding including submission of evidence and cross-examination is not required. See, Philip E. Kirk, M.D., Docket No. 82-36, 48 FR 32887 (1983), aff'd. sub nom *Kirk* v. *Mullen*, 749 F.2d 297 (6th cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977). The administrative law judge recommended that Respondent's DEA Certificates of Registration be revoked subject to the conditions mentioned above.

The Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 USC 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration RC0138481 and BC0150639, issued to Chemical Dependence Associates of Houston, be, and they hereby are, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-16439 Filed 7-9-93; 8:45 am]

BILLING CODE 4410-09-M

Tran Trong Cuong M.D.; Revocation of Registration

On March 15, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Tran Trong Cuong M.D., of 4534 Seminary Road, Alexandria, Virginia 22304, proposing to revoke his DEA Certificate of Registration, AC6059960, and deny any pending applications for renewal of such registration. The statutory basis for the Order to Show Cause was that Dr. Cuong's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was served on Dr. Cuong on March 18, 1993. More than thirty days have passed since the Order to Show Cause was received by Dr. Cuong. The Drug Enforcement Administration has received no response from Dr. Cuong or anyone purporting to represent him. Pursuant to 21 CFR 1301.54(d), the Administrator finds that Dr. Cuong has waived his opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e), the Administrator enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that in December 1990, DEA, in a joint effort with the Virginia State Police, Virginia Department of Health Professions and the Alexandria, Virginia Police Department, initiated an investigation of Dr. Cuong after receiving information regarding his excessive prescribing of controlled substances. Various investigative means were employed, including extensive pharmacy surveys, patient interviews and successful undercover purchases of sixteen controlled substances from Dr. Cuong.

On September 15, 1992, a Federal Grand Jury in the United States District Court for the Eastern District of Virginia returned an indictment charging Dr. Cuong with 136 counts of illegal distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). The indictment alleged that, from April 1989 to January 1992, Dr. Cuong unlawfully prescribed to 30 individuals over 49,500 dosage units of controlled substances outside the usual course of medical practice and for other than legitimate medical purposes. On December 18, 1992, following a jury trial, Dr. Cuong was found guilty on 127 counts of illegal distribution of controlled substances, and on April 2, 1993, was sentenced to a prison term of 97 months. Based upon these convictions, the Virginia State Board of Medicine revoked Dr. Cuong's license to practice medicine on April 26, 1993.

The Administrator finds that as of April 26, 1993, Dr. Cuong's license to practice medicine in the State of Virginia has been revoked, and as a result, he is unable to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Cuong's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AC6059960, previously issued to Tran Trong Cuong, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-16441 Filed 7-9-93; 8:45 am]

BILLING CODE 4410-09-M

William E. Doell, D.O.; Revocation of Registration

On March 15, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William E. Doell, D.O., of 7777 W. 38th Avenue, #124 Wheatridge, Colorado 80033, seeking to revoke his DEA Certificate of Registration, AD8996716, and deny any pending applications for renewal of such registration. The Order to Show Cause alleged that Dr. Doell lacks authorization to handle controlled substances in the State of Colorado, effective August 17, 1990. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. Doell by registered mail and was returned to DEA unclaimed. DEA Investigators then attempted to hand deliver the Order to Show Cause to Dr. Doell's residence as well as his business address, and both places were vacant. DEA Investigators were advised by local law enforcement authorities that Dr. Doell is no longer at his registered location and repeated attempts to locate him have been unsuccessful. The local authorities further informed DEA Investigators that there is no indication that Dr. Doell will be returning in the near future. As a result, Dr. Doell is deemed to have waived his opportunity for a hearing. The Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that, on August 1, 1988, the Colorado Attorney General at the direction of the Colorado State Board of Medical Examiners (Board) filed an eight-count complaint against Dr. Doell. The complaint alleged that from 1982 to 1988, Dr. Doell committed numerous acts of substandard care in connection with seventeen patients, including the

excessive prescribing of Dilaudid to a patient.

Following a hearing before the Board, the administrative law judge issued a decision on September 13, 1989, in which she concluded that the evidence in the record substantiated sixteen instances of substandard care on the part of Dr. Doell. The administrative law judge recommended that Dr. Doell's license to practice medicine be suspended for two years and then placed on probation for three additional years following the suspension. However, the Board ordered the revocation of Dr. Doell's license to practice medicine, effective August 17, 1990.

The Administrator finds that as of August 17, 1990, Dr. Doell's license to practice medicine in the State of Colorado has been revoked, and he is without authority to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Doell's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AD8996716, previously issued to William E. Doell, D.O., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied.

This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–16443 Filed 7–9–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–59]

David H. Gillis, M.D.; Granting of Registration

On June 1, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David H. Gills, M.D. (Respondent) of Cincinnati, Ohio proposing to deny his application for registration as a practitioner. The statutory basis for seeking the denial of the application was that Respondent's registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

Respondent filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Cincinnati, Ohio on October 28, 1992. On February 1, 1993, in his findings of fact, conclusions of law, and recommended ruling, the administrative law judge recommended that the Respondent's application for a DEA Certificate of Registration be granted.

No exceptions were filed to Judge Tenney's opinion, and on March 11, 1993, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent graduated from medical school in 1971 and currently treats patients who are injured during employment and consults with a number of practitioners with respect to chronic spinal injury cases. The majority of Respondent's patients suffer from chronic low back pain or other injuries which result in "chronic pain syndrome" (CPS). CPS develops following an acute injury that does not improve after six weeks. Medications used in the treatment of CPS include Valium, a Schedule IV controlled substance, and muscle relaxants such as soma and flexeril, and analgesics such as Vicodin, a Schedule III controlled substance, and Tylenol with codeine #3 and #4, Schedule III controlled substances, which diminish pain. The Drug Enforcement Administration initiated its investigation of the Respondent in April 1991 after receiving information from the Clermont County Ohio Sheriff's Department that Respondent was prescribing controlled substances to known drug abusers and drug traffickers. The Sheriff's Department provided DEA with reports and patient filed that had been obtained as a result of two search warrants. In 1990, during the execution of one of the search warrants, the Sheriff's Department seized 22 patient records out of 3,000 to 4,000 active patient files. During its investigation, DEA went to Eastgate Pharmacy, which was located in a suite in the same building as Respondent's medical office, and obtained 800 to 1000 prescriptions written by Respondent, and dispensed by Eastgate Pharmacy.

During the hearing in this matter, the Government placed into evidence some of Respondent's patient charts. These charts indicated that Respondent prescribed a variety of controlled substances to these individuals over extended periods of time. In one instance, the patient chart had printed on its face: "Drug addiction to Vicodin." In another instance, a patient chart had a notation that the individual was increasingly using more medication and, "used much more medication than he should have in the amount of time." Finally, it was clear from the evidence presented that Respondent knew that one of his patients had a serious substance abuse problem.

After reviewing these charts and Respondent's testimony at the hearing, the administrative law judge concluded that Respondent issued controlled substance prescriptions to these individuals for legitimate medical purposes, such as relief of pain, muscle spasms, and anxiety.

During the course of the investigation, a DEA Investigator interviewed Respondent's former secretary/office manager who stated that Respondent "prescribed numerous amounts of controlled substances to individuals and prolonged their use, having them off work for long periods of time. [Dr. Gillis] prescribed controlled substances to patients that had minor injuries." However, the administrative law judge did not credit these statements since the former secretary/office manager had no medical training, was not present in the examination rooms and did not testify in these proceedings.

At the hearing, the Government presented evidence that an osteopathic family practitioner, treated five of Respondent's patients, and indicated to DEA that the patients appeared to be drug dependent and that their only focus was to obtain controlled substances. However, the administrative law judge did not credit this doctor's opinion since he was neither a specialist in orthopedics, nor did he specialize in pain care management; the medical records of the five referenced patients were not in evidence; no report or statement by the doctor himself was in evidence; and the doctor did not testify.

The Government presented evidence at the hearing that Respondent's previous DEA Certificate of Registration expired on September 30, 1990, yet Respondent prescribed klonopin, a Schedule IV controlled substance, to an individual on July 25, 1991. While it

was wrong for Respondent to prescribe controlled substances when not registered to do so, the administrative law judge concluded that there were mitigating circumstances. The individual had a seizure disorder, was maintained on klonopin, and needed an immediate dose of the drug. Further, at the time Respondent was not aware that klonopin was a controlled substance since he is an orthopedic surgeon and therefore, does not routinely prescribe anticonvulsive medications.

Finally, the administrative law judge found that no nexus had been established between the volume of controlled substances that the Respondent prescribed, and subsequently dispensed from Eastgate Pharmacy, and an illegitimate purpose for such prescribing practices. At the hearing, a pharmacist employed at Eastgate Pharmacy, testified that during 1989 through 1991, he filled approximately 20,000 of the Respondent's prescriptions annually, however, not all of these prescriptions were for controlled substances. The pharmacist further testified that since the expiration of Respondent's DEA registration, the pharmacy is filling approximately the same number of prescriptions, but they are all for noncontrolled substances.

The Administrator may deny any application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors and give each factor the weight he deems appropriate. See, Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989). In addition, the DEA has the burden of proving that these factors are not satisfied. See, 21 CFR 1301.55(c). The Government's burden of proof for this administrative proceeding is a preponderance-of-the-evidence standard. See, *Steadman* v. *SEC*, 450 U.S. 91 (1980).

The administrative law judge found that factors two, four, and five are relevant in this proceeding. As to factors two and four, the administrative law judge concluded that although a suspicion exists that Respondent may have prescribed controlled substances absent a legitimate medical purpose, the DEA did not meet its burden of proof. The administrative law judge further concluded that the Government did not present persuasive evidence to controvert the Respondent's explanation of his prescribing practices. In addition, as to factor four, the administrative law judge found that the Government did not prove that Respondent violated any State, Federal or local laws relating to controlled substances.

Regarding factor five, the Government argued that Respondent is a danger to the public health and safety, as he has failed to acknowledge any illegal activity. A conclusion regarding this argument was not reached since the administrative law judge concluded that the Government had not met its burden of proof regarding any illegal activity.

The Administrator, having considered the entire record, adopts the administrative law judge's findings of fact, conclusions of law, and recommended ruling in its entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration of David H. Gillis, M.D., be, and it hereby is, granted. This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–16438 Filed 7–9–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–75]

George D. Osafo, M.D., Revocation of Registration

On July 23, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to George D. Osafo, M.D. (Respondent) of 800 Cottage Grove Road, Bloomfield, Connecticut 06002. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The Order to Show Cause also alleged that revocation of Respondent's DEA certificate of Registration A01678412 could be based on 21 U.S.C. 824(a)(5).

Respondent, through counsel, requested a hearing on the matters raised in the Order to Show Cause. Following prehearing procedures, a hearing was held in Hartford, Connecticut, on December 1, 1992. On march 8, 1993, Administrative Law Judge Paul A. Tenney issued his findings of fact, conclusions of law and recommended ruling. No exceptions were filed to Judge Tenney's recommended ruling and on April 8, 1993, Judge Tenney transmitted the record in this proceeding to the Administrator. Having considered the record in its entirety, and pursuant to 21 CFR 1316.67, the Administrator hereby issues his final order in this matter based upon the findings of fact and conclusions of law set forth below.

The administrative law judge first addressed the issue of Respondent's prior convictions and subsequent exclusion from participation in a program pursuant to 42 U.S.C. 1320a–7(a), a basis for revocation pursuant to 21 U.S.C. 824(a)(5). On March 8, 1988, following a plea of *nolo contendere*, Respondent was convicted in the Superior Court of New Haven County on four counts of larceny for submitting false medical claims to Blue Cross & Blue Shield. The false claims included Respondent's miscoding of laboratory tests as well as billing for services not rendered. Upon Respondent's conviction, he was ordered to pay restitution in the amount of $22,516.16 and received a suspended sentence of four years.

On March 3, 1989, after entering a plea of *nolo contendere* to the charges, Respondent was convicted in the Superior Court of Hartford County of second degree larceny for defrauding a public community. This conviction was based on Respondent's submission of 1,198 false medical claims to the State of Connecticut's Department of Income Maintenance. Respondent's false claims resulted in his overbilling the Department of Income Maintenance in the amount of $10,804.75. Following his conviction, Respondent received a suspended sentence of two years, was placed on three years probation and was ordered to reimburse in full the Department of Income Maintenance.

Respondent's conviction also resulted in his being terminated, commencing July 8, 1989, as a vendor of goods and services by the State of Connecticut's Department of Income Maintenance. This exclusion was to be effective for a period of seven years and was in conformance with the requirements of

section 1128(a) of the Social Security Act. Effective August 14, 1989, the United States Department of Health and Human Services excluded Respondent from participation in the Medicare program, also for a period of seven years. Again as a result of Respondent's convictions, in March 1991, the State of Connecticut Department of Health Services placed Respondent on probation and censured his license to practice medicine. Shortly thereafter, the State of Georgia Composite Board of Medical Examiners issued a Consent Order placing Respondent's medical license on probation. The Consent Order prohibited Respondent from resuming the practice of medicine in Georgia without obtaining prior written approval from the State of Georgia Composite Board of Medical Examiners.

The administrative law judge noted that Respondent's exclusion from Medicare was a basis for revocation of Respondent's registration pursuant to 21 U.S.C. 824(a)(5). The administrative law judge rejected Respondent's argument in his brief that there must be a nexus between the ground for exclusion from Medicare and some type of offense relating to controlled substances. As the administrative law judge noted, the Administrator of the DEA has held that misconduct which does not involve controlled substances may constitute grounds for the revocation of a registration pursuant to 21 U.S.C. 824(a)(5). See Gilbert L. Franklin, D.D.S., 57 FR 3441 (1992).

The administrative law judge then turned to the issue of whether Respondent's continued registration was inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). With respect to the factors to be weighed when determining the public interest, the administrative law judge looked to 21 U.S.C. 823(f)(1) and noted that the State licensing boards of both Connecticut and Georgia have taken action against Respondent's medical licensure.

Respondent's experience in dispensing controlled substances, a factor which can be considered under 21 U.S.C. 823(f)(2), was also deemed significant. The administrative law judge concluded that Respondent's experience in dispensing controlled substances was questionable, in light of his prescribing of methadone to a patient for an unknown medical condition. This patient had a prior history of intravenous drug abuse. Respondent maintained that he prescribed methadone for this patient because the patient suffered from thalassemia or sickle-cell disease, and so noted on the prescriptions. Respondent did not perform any laboratory tests on the patient to confirm that she indeed had sickle-cell disease. The administrative law judge, however, found more reliable the findings of another doctor of the patient's. This doctor did perform a hemoglobin electrophoresis, a laboratory test which indicates the presence of sickle-cell disease. This test confirmed that the patient did not suffer from sickle-cell disease. The administrative law judge noted that this conclusion was corroborated by another expert in the field of hematology and oncology who reviewed the patient's medical records and stated in a notarized letter that the patient did not have sickle-cell disease.

Finally, the administrative law judge addressed Respondent's compliance with Federal regulations, another factor which can be considered when determining the public interest as provided in 21 U.S.C. 823(f)(4). After being advised by DEA's Long Island office that Respondent had ordered a "huge" amount of controlled substances, including Tussionex, a Schedule III controlled substance, and Xanax, a Schedule IV controlled substance, DEA Investigators executed an administrative inspection warrant at Respondent's office on December 6, 1991. The DEA Investigators asked Respondent for his initial and biennial inventories and his purchase invoices, none of which he was able to produce. When asked about his dispensing records, Respondent stated that they were intermingled in his patient records. Failure to maintain these records is a violation of Federal law and regulations.

After conducting an audit, the DEA Investigators found that Respondent was unable to account for 100% of the Tussionex purchased and almost 97% of the Xanax purchased. Respondent contended that he did not maintain proper records because he was not advised of the regulations and later testified that an injury prevented him from complying with the recordkeeping requirements of the Controlled Substances Act. The administrative law judge found that both these explanations lacked merit. The administrative law judge determined that Respondent failed to comply with numerous recordkeeping requirements and noted that it is a registrant's responsibility to be familiar with the Federal regulations applicable to controlled substances.

Finally, pursuant to 21 U.S.C. 823(f)(5), "other conduct which may threaten the public health and safety" may be considered when determining the public interest. The Government alleged that Respondent had attempted to assault the DEA Investigators. The administrative law judge determined that the evidence of such conduct was weak. However, the administrative law judge did conclude that Respondent's submission of fraudulent medical claims and subsequent convictions of larceny indicated that Respondent placed monetary gain above the welfare of his patients, and in so doing, endangered the public health and safety.

The administrative law judge concluded that Respondent's continued registration would be inconsistent with the public interest, a conclusion further bolstered by Respondent's exclusion from State and Federal programs under 21 U.S.C. 824(a)(5). The administrative law judge therefore recommended that Respondent's DEA Certificate of Registration AO1678412 be revoked and that any pending applications be denied.

The Administrator adopts the findings of fact, conclusions of law and recommended ruling of the administrative law judge in their entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AO1678412, issued to George D. Osafo, M.D., be, and it hereby is, revoked and that any pending applications be, and they hereby are, denied. This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–16440 Filed 7–9–93; 8:45 am]

BILLING CODE 4410–09–M

Steven I. Topel, M.D.; Revocation of Registration

On April 5, 1993, the Director, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Steven I. Topel, M.D., of Natural Bridge Road, Slade, Kentucky 40376, seeking to revoke his DEA Certificate of Registration, AT8477615, and deny any pending applications for renewal of such registration. The Order to Show Cause alleged that on or about June 20, 1991, the Commonwealth of Kentucky, State Board of Medical Licensure ordered the revocation of Dr. Topel's state license to practice medicine, and therefore, he is not authorized to handle controlled substances in the State of Kentucky. 21 U.S.C. 824(a)(3).

The Order to Show Cause was served on Dr. Topel on April 9, 1993. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Topel is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that, on May 28, 1991, the Commonwealth of Kentucky, State Board of Medical Licensure (Board), ordered the temporary suspension of Dr. Topel's license to practice medicine. The Board found that Dr. Topel engaged in inappropriate sexual contact with patients and inappropriately prescribed controlled substances to patients. The Board therefore found that it had probable cause to believe that Dr. Topel was suffering from a physical and/or mental condition that impeded his ability to practice medicine. As a result, Dr. Topel was ordered by the Board to submit to a neuropsychological examination by June 18, 1991, and a psychiatric examination by June 25, 1991, with the examinations to be conducted by specialists appointed by the Board.

On June 12, 1991, Dr. Topel informed the Board by letter that he would not appear for the scheduled neuropsychological and psychiatric examinations. In light of Dr. Topel's failure to comply with the Board's order, the Board revoked Dr. Topel's license to practice medicine, effective June 20, 1991.

The Administrator finds that as of June 20, 1991, Dr. Topel's license to practice medicine in the Commonwealth of Kentucky has been revoked, and he is without authority to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *James H. Nickens, M.D., 57* FR 59847 (1992); *Elliott Monroe, M.D.,* 57 FR 23246 (1992); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Topel's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AT8477615, previously issued to Steven I. Topel, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied.

This order is effective July 12, 1993.

Dated: July 2, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-16442 Filed 7-9-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93-41; Exemption Application No. D-9258, et al.]

Grant of Individual Exemptions; Kimball International, Inc. Retirement Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Kimball International, Inc., Retirement Plan (the Plan) Located in Jasper, IN

[Prohibited Transaction Exemption 93-41; Exemption Application No. D-9258]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of five parcels of real property (the Properties) to Kimball International, Inc., a party in interest with respect to the Plan, and the subsequent conveyance of one of the parcels to Springs Valley Bank and Trust Company of Jasper, Indiana provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are at least as favorable to the Plan as the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a purchase price for the Properties which is no less than the sum of the fair market values of each of the Properties as of the date of the sale, plus a premium of no less than five percent of such sum;

(C) The Plan's interests for all purposes in the transaction are represented by Arthur L. Dillard, Esq., an independent fiduciary acting on behalf of the Plan with respect to the Properties; and

(D) The Plan does not incur any costs or expenses related to the transaction, other than any taxes imposed by law on a seller.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 12, 1993 at 58 FR 28046.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Local No. 60 Health and Welfare Fund (the Plan) Located in Leominster, MA

[Prohibited Transaction Exemption 93–42; Exemption Application No. L–9015]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the cash sale of a parcel of real property (the Property) by the Plan to the New England Joint Board of the Retail, Wholesale and Department Store Union, AFL–CIO (the Joint Board), for the greater of (1) $212,000 in cash or (2) the fair market value of the Property as of the date of the sale, provided the following conditions are satisfied: (a) The purchase price is not less than the fair market value of the Property on the date of the sale; and (b) the fair market value of the Property is determined by a qualified, independent appraiser as of the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 9, 1993 at 58 FR 18423.

NOTICE TO INTERESTED PERSONS: The applicant represents that it was unable to comply with the notice to interested persons requirement within the time frame stated in its application. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by May 13, 1993. Interested persons were informed that they had until June 14, 1993, to comment or request a hearing with respect to the proposed exemption.

WRITTEN COMMENTS AND HEARING REQUESTS: The Department received six comments with request to the proposed exemption. One of the comments favored granting the exemption as it was proposed. Three of the comments did not focus on the merits of the transaction, but rather expressed concern that the proposed transaction would have a negative impact on the participants' retirement benefits. However, the transaction involves only the Plan, which is a health and welfare plan, and not any pension plan sponsored by the Joint Board or its local affiliate, Local No. 60. Accordingly, the exemption will not affect the pension rights of anyone entitled to pension benefits under such other pension plan.

One commentator expressed concern that the proceeds of the proposed sale of the Property would go to officials of Local No. 60. The commentator also inquired as to what the Plan had done with the proceeds from earlier rentals of the Property, as well as from the sale of another parcel of property (Spec Pond) previously owned by the Plan. The applicant responded to this comment by stating that a decision has been made to terminate the Plan and to pay out the remaining assets (after payment of administration and liquidation expenses, etc.) in equal shares to all participants and beneficiaries of the Plan who are living as of the date of Plan termination and asset distribution, and who are either: (1) Retirees of the Foster Grant Company (FG) from the Local No. 60—represented bargaining unit (including American Hoechst Corporation retirees who worked for FG in the Local No. 60 bargaining unit); or (2) "vested, terminated" (Local No. 60) bargaining unit employees of FG. The Plan, thus, has decided how to dispose of its remaining assets. The applicant represents that Local No. 60 will not receive any money from the sale of the Property, nor does Local No. 60 have any say in how the money will be distributed. The applicant further responded to the comment by stating that proceeds from past rentals of office space in the Property have been used by the Plan to pay for the various costs of owning and operating the Property, including mortgage, taxes, insurance, maintenance and utilities. Proceeds from the sale of Spec Pond will be distributed to the Plan's participants in the same manner as described above with respect to the sale of the subject Property. The applicant concluded by responding that all decisions by the trustees of the Plan have been made in accordance with procedures set forth in the Plan's governing documents. All decisions regarding the termination of the Plan and the distribution of its assets have been recorded in official minutes which are available for inspection by any of the Plan's participants and beneficiaries.

The final comment was submitted by the applicant to correct a statement that appeared in the Summary of Facts and Representations in the proposed exemption. That statement had indicated that no commissions would be paid with respect to the proposed sale. The applicant stated in its comment letter that the Plan had entered into an "Exclusive Right to Sell" agreement (the Agreement) with Century 21 Denault Realty (Century 21), an independent real estate broker on June 4, 1991. The Agreement was extended from December 2, 1991 until July 1, 1992, and again from July 1, 1992 through September 1, 1993.[1] The applicant thus represents that the Plan is under a binding legal obligation to pay a commission of $16,960 to Century 21 in connection with the sale of the Property. The Department notes this correction to the proposed exemption.

The Department received one request for a hearing with respect to the proposed exemption. However, after careful consideration of the entire record, including the comments submitted and the applicant's response to the comments, the Department does not believe that any issues have been raised which would require the convening of a hearing.

Accordingly, the Department has determined to grant the exemption as amended to permit the payment of the commission by the Plan to Century 21 as discussed above.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the

[1] The Department notes that the decisions to enter into the Agreement and the extensions thereof are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not providing relief for any violations of Part 4 of the Act which may have arisen as a result of the Plan's entering into or extending the Agreement.

transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of July, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–16463 Filed 7–9–93; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–8871, et al.]

Proposed Exemptions; Southwest-Tex Leasing Co., Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Southwest-Tex Leasing Co., Inc. Profit Sharing Plan (the Plan) Located in San Antonio, TX

[Application No. D–8871]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain undeveloped real property (the Property) to Walker Resources, Inc. (WRI), a party in interest with respect to the Plan for the greater of $95,800 or the fair market value of the Property at the time the sale transaction is consummated.

This proposed exemption is conditioned on the following requirements: (1) the sale is a one-time transaction for cash; (2) the Plan does not pay any real estate fees or commissions in connection therewith; (3) the sales price reflects the greater of $95,800 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the sale; and (4) an independent fiduciary monitors the proposed sale transaction on behalf of the Plan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 439 participants as of September 30, 1992. As of December 31, 1992, the Plan had total assets of $928,990. The trustee of the Plan (the Trustee) and the decisionmaker with respect to Plan assets is NCNB Texas of San Antonio, Texas.

2. Southwest-Tex Leasing Co., Inc. (SWT), the Plan sponsor, is a wholly owned subsidiary of WRI. SWT is engaged in the rental car business and conducts business under the registered trade name "Advantage Rent-A-Car" (Advantage). Advantage operates approximately 60 car rental locations in six states (Texas, New Mexico, Colorado, Arizona, Utah and Nevada). SWT, which was established approximately 30 years ago by Kenneth and Helen Walker, is based in San Antonio, Texas. The current officers and directors of SWT include members of the Walker Family.

3. WRI, the parent of SWT, is a Texas corporation engaged in the business of owning and leasing real property. WRI is located in San Antonio, Texas. The corporation is wholly owned by members of the Walker Family, some of whom also serve as officers and directors of this entity.

4. On August 27, 1980, SWT purchased a parcel of unimproved real property located on the south side of Halm Boulevard and the northeast side of U.S. Highway 281 North, City of San Antonio, Bexar County, Texas. The Property consists of 19,105 square feet of mostly vacant land.

5. SWT purchased the Property for $66,851 from unrelated parties. The sellers were Warren Marshall, individually and as independent executor of the Estate of Carrie Lou Bailey. Title to the Property was taken on behalf of SWT in the name of James P. Walker, as corporate trustee. Shortly thereafter during the Plan year 1981,

SWT donated the Property to the Plan as a voluntary, in-kind contribution.

6. On November 11, 1986, the Plan entered into a billboard lease with respect to a portion of the Property with the Patrick Media Group, Inc. (PMGI), an unrelated party, for a primary term of five years at an annual rental of $9,600 which was to be paid in quarterly installments of $2,400. The total rental received by the Plan under the initial term of the lease was $48,000. At present, the billboard lease continues on a month-to-month basis. Although PMGI still pays the Plan rent based upon the original, annual rate of $9,600, the applicant represents that it is doubtful the Plan can expect to receive this rental rate. Because of deteriorating economic conditions, it is likely that the Plan will be forced to receive a lesser rental rate. As of May 1993, the Plan had received total rental income with respect to the billboard lease of $60,000.

7. Since the Plan has owned the Property, WRI has acquired several parcels of contiguous real estate from unrelated parties. In this regard, WRI owns the vacant lots immediately east of the Property. In addition, WRI owns a small triangular parcel of land which is immediately south and adjacent to the Property. Further, WRI owns two of four lots that are immediately north of the Property on which SWT operates Advantage and a parking lot with shuttle service to the San Antonio Airport.

8. The Plan has incurred certain holding costs in connection with its ownership of the Property. These costs have been in the nature of real estate taxes and fees paid to independent appraisers. Other costs, such as insurance premiums, have been paid by SWT. Although records are not available showing real estate taxes that have been paid by the Plan between 1980 and 1983, the applicants state that for the years 1984 through 1990, the Plan paid total real estate taxes of $5,202. The applicants are uncertain about whether the Plan or SWT paid real estate taxes of $1,457 for 1991. The 1992 real estate taxes paid by the Plan were $1,567 thereby bringing the total real estate taxes paid by the Plan to $6,769. The 1993 real estate taxes assessed for the Plan are $1,618.

As for appraisal fees, the applicants again explain that records are not available showing the fees that might have been paid by the Plan before 1991. The applicants have, however, represented that the Plan paid $1,800 in 1991 for an independent appraisal of the Property.

Thus, based upon the foregoing analysis, the Plan had expended $8,569 as of May 1993 in connection with its ownership of the Property. Also as of May 1993, the Plan had received net income of $51,431 ($60,000–$8,569) with respect to rentals under its billboard lease with PMGI.

9. According to the applicants, the Plan has several options with respect to its continued holding or divestment of the Property. The applicants state that the Plan could continue to hold the Property in the anticipation of its future appreciation. However, the applicants believe that prospects for investment appreciation are bleak. The applicants also represent that the Plan could develop the Property. However, they do not believe this is an acceptable alternative because of the Property's small size and irregular shape. Further, the applicants do not believe real estate development is an activity in which the Plan should be engaged. Additionally, the applicants note that the Plan could hold the Property for condemnation by the Texas Department of Highways and Public Transportation (the Highway Department) which has expressed an interest in acquiring property in the vicinity of the Property. However, the applicants believe that due to current budgetary problems, there is no certainty that the Highway Department will acquire the Property and if acquired, the Property would be valued at far less than its appraised value. Finally, the applicants suggest that the Plan might be able to sell the Property to an unrelated party but they do not believe this is a viable alternative because WRI owns most of the contiguous property. Therefore, the applicants believe the only purchaser for the Property is WRI which could combine the Property with its other holdings and thereby expand its operations.

10. Between February and August 1992, the Property was listed for sale with an unrelated party, Trinity Asset Management, Inc. (Trinity) of San Antonio, Texas. As set forth in the Exclusive Sales Agreement, the listing price for the Property was $95,800. By letter dated August 19, 1992, Trinity's Senior Vice President, Mr. Edward Cross, II stated that he had installed a large sign on the Property and advertised the Property for sale in the San Antonio Light.[1] Mr. Cross also represented that although he had received a number of calls in response to these ads, none of the callers was interested in purchasing commercial property.

11. An administrative exemption is requested to allow the Plan to sell the Property to WRI for the total cash consideration of $95,800. The Plan will not be required to pay any real estate fees or commissions in connection with such sale.

12. The Property has been appraised by Messrs. Charles H. Noble, Jr., MAI, CRE, SREA and Michael D. Hennessey, RM, independent appraisers associated with Noble and Associates, Inc. Real Estate Appraisers and Consultants of San Antonio, Texas. In an appraisal report dated January 24, 1991, Messrs. Noble and Hennessey determined that the subject land including the billboard site had a total fair market value of $95,800 as of January 18, 1991. Of this amount, the appraisers attributed a fair market value of $48,000 to the billboard site and a fair market value of $47,800 to the remaining land. In an updated appraisal report of April 15, 1992, the same appraisers determined that the entire Property had an aggregate fair market value of $91,000 as of April 14, 1992.[2] The appraisers again placed the fair market value of the billboard site at $48,000. For the remaining land comprising the Property, the appraisers estimated its value at $43,000.

In a December 23, 1992 addendum to the second appraisal report, the appraisers state that the Property is of no unique or special value to WRI by reason of its proximity to other real property also owned by WRI. The appraisers point out that the Property (a) has no access to U.S. Highway 281, (b) is on a dead end street, (c) is irregular in shape, (d) is separated by a street from properties fronting on Interstate Loop 410, (e) has a billboard with declining rental income, and (f) lacks main street frontage. These factors, coupled with the trend of mergers in the rental car business, lead the appraisers to conclude that Property has no intrinsic value.

13. Mr. John C. Long, IV will serve as the independent fiduciary for the Plan with respect to the subject sale transaction. In such capacity, he will monitor the proposed transaction on behalf of the Plan. Mr. Long is an attorney who is engaged in the practice of general civil law in San Antonio, Texas. He has 9 years of legal experience. Mr. Long represents that he is completely unrelated to the parties involved in the proposed transaction. As for experience under the Act, Mr. Long states that he has advised clients

[1] The applicants note that the for sale sign stayed up until mid-January 1993.

[2] According to the applicants, the Property declined in value between 1991 and 1992 because real estate in the vicinity of the Property declined as well during the same period.

of their rights and obligations. Mr. Long further represents that he has consulted with counsel familiar with the Act regarding the duties, responsibilities and liabilities imposed by the Act on Plan fiduciaries and that he states that he understands, acknowledges and agrees to abide by such duties, responsibilities and liabilities.

Mr. Long believes the proposed transaction is in the best interest of the Plan and its participants and beneficiaries. He states that the Property is virtually incapable of meaningful partition. Unlike shares of stock or money held in a certificate of deposit, he explains that the Property is almost impossible to divide and then distribute to Plan participants. Mr. Long also represents that the Property has very little potential to increase in value. He explains that the Property can receive income only from the lease of space for commercial sign usage. Furthermore, Mr. Long notes that the proposed sales price is greatly in excess of any offers that have been made to Trinity and that the terms of the transaction are competitive with other arm's length transactions in the San Antonio area.

In addition to his evaluation of the proposed sales transaction, Mr. Long states that he has examined the Plan's overall investment portfolio, considered the Plan's liquidity requirements and diversification needs and considered how the transaction will comply with the Plan's investment objectives and policies.

14. In summary, the applicants represent that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will not be required to pay any real estate fees or commissions in connection therewith; (c) the sales price for the Property will represent the greater of $95,800 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the sale; and (d) the Plan will be able to divest itself of real estate that is not appreciating in value, end the payment of real estate taxes and periodic appraisal fees.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons within 7 days of the publication, in the Federal Register, of the notice of proposed exemption. The notice will include a copy of the notice of proposed exemption as published in the Federal Register and it will be provided to all Plan participants by personal delivery or by first class mail. The notice will inform interested persons of their right to comment on and/or to request a public hearing with respect to the proposed exemption. Written comments and requests for a public hearing are due within 37 days of the publication of the notice of proposed exemption in the Federal Register.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Prudential Mutual Fund Management, Inc. (PMF) Located in New York, NY

[Application No. D–9217]

Proposed Exemption

Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA) or a retirement plan for a self-employed individual (the Keogh Plan; collectively, the Plans) in the Target Portfolio Trust (the Trust) established in connection with such Plans' participation in the Target Personal Investment Advisory Service (the Target Program). In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply to the provision, by Prudential Securities Incorporated (Prudential Securities), of investment advisory services to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary) which may result in such fiduciary's selection of portfolios of the Trust (the Portfolios) in the Target Program for the investment of Plan assets.

This exemption is subject to the following conditions that are set forth below in Section II.

Section II. General Conditions

(1) The participation of Plans in the Target Program is approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Prudential Securities and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(2) The total fees paid to Prudential Securities and its affiliates constitute no more than reasonable compensation.

(3) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(4) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(5) Prudential Securities provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(6) Any recommendation or evaluation made by Prudential Securities to an Independent Plan Fiduciary are implemented only at the express direction of such independent fiduciary.

(7) Prudential Securities provides investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios.

(8) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of Prudential Securities and its affiliates.

(9) The quarterly investment advisory fee that is paid by a Plan to Prudential Securities for investment advisory services rendered to such Plan is offset by such amount as is necessary to assure that PMF retains no more than 20 basis points from any Portfolio (with the exception of the U.S. Government Money Market Portfolio for which PMF retains an investment management fee of 12.5 basis points) containing investments attributable to the Plan investor.

(10) With respect to its participation in the Target Program prior to purchasing Trust shares,

(a) Each Plan receives the following written or oral disclosures or questionnaires from Prudential Securities or the Trust:

(1) A copy of the prospectus (the Prospectus) for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between Prudential Securities, PMF and its subsidiaries, the compensation paid to such entities and additional information explaining the risks attendant to investing in the Trust.

(2) Upon written or oral request to Prudential Securities, the Independent Plan Fiduciary will be given a Statement

of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize, including a description of the risks.

(3) As applicable, an Investor Profile Questionnaire given to the Independent Plan Fiduciary or eligible participant of a Plan providing for participant-directed investments (the section 404(c) Plan).

(4) As applicable, a written analysis of Prudential Securities' asset allocation decision and recommendation of specific Portfolios given to the Independent Plan Fiduciary or the participant in a section 404(c) Plan.

(5) A copy of the investment advisory agreement between Prudential Securities and such Plan relating to participation in the Target Program.

(6) Upon written request to the Trust, a copy of the respective investment advisory agreement between Prudential Securities and the Sub-Advisers.

(7) As applicable, an explanation by a Prudential Securities Financial Advisor (the Financial Advisor) to section 404(c) Plan participants or the Independent Plan Fiduciary of the services offered under the Target Program and the operation and objectives of the Portfolios.

(8) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(b) If accepted as an investor in the Target Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing to Prudential Securities, prior to purchasing Trust shares that such fiduciary has received copies of the documents described in subparagraph 10(a) of this section.

(c) With respect to a section 404(c) Plan, written acknowledgment of the receipt of such documents is provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, or, in some instances, the Plan participant). Such Independent Plan Fiduciary will be required to represent in writing to PMF that such fiduciary is (1) independent of PMF and its affiliates and (2) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

(d) With respect to a Plan that is covered under title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to PMF that such fiduciary is (1) independent of PMF and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

(11) Subsequent to its participation in the Target Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation:

(a) Written confirmations of each purchase or redemption transaction by the Plan with respect to a Portfolio.

(b) Telephone quotations from Prudential Securities of such Plan's account balance.

(c) A monthly statement of account from Prudential Securities specifying the net asset value of the Plan's investment in such account to the extent there are transactions by the Plan.

(d) The Trust's semi-annual and annual report which will include financial statements for the Trust and investment management fees paid by each Portfolio.

(e) A written quarterly monitoring report (the Quarterly Account Monitor) containing a record of the performance of the Plan's assets invested in the Target Program, the rates of return received by the Plan with respect to such investments, the Plan's actual portfolio with a breakdown of investments made in each Portfolio, year to date and cumulative realized gains and losses and income received from each Portfolio, a summary of purchase, sale and exchange activity, dividends and interest received or reinvested and market commentary. The Quarterly Account Monitor will also contain an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(1) In the case of a section 404(c) Plan where the Independent Plan Fiduciary has established an omnibus account in the name of the Plan (the Undisclosed Account) with Prudential Securities, the Quarterly Account Monitor will be provided to the Independent Plan Fiduciary.

(2) In the case of a section 404(c) Plan where the Independent Plan Fiduciary opens an account for each Plan participant (the Disclosed Account), the Quarterly Account Monitor will be furnished to each participant and will set forth information pertaining to the participant's individual account.

(f) Written disclosures to the Independent Plan Fiduciary, on a quarterly and annual basis, of the (1) percentage of each Portfolio's brokerage commissions that are paid to Prudential Securities and (2) the average brokerage commission per share paid by each Portfolio to Prudential Securities, as compared to the average brokerage commission per share paid by the Trust to brokers other than Prudential Securities, both expressed as cents per share.

(g) Periodic meetings with Financial Advisors, Independent Plan Fiduciaries or if applicable, participants of Section 404(c) Plans, to discuss the Quarterly Account Monitor or other questions that may arise.

(12) PMF maintains, for a period of six years, the records necessary to enable the persons described in paragraph (13) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PMF and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than PMF shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (13) below.

(13)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (14) of this section are unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(4) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (13) are authorized to examine the trade secrets of PMF or

commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(1) An "affiliate" of Prudential Securities includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential Securities. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(b) Any officer, director or partner in such person, and

(c) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(2) An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of Prudential Securities and its affiliates and is either

(a) A Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares of a Section 404(c) Plan,

(b) A participant in a Keogh Plan,

(c) An individual covered under a self-directed IRA which invests in Trust shares, or

(d) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a title I Plan that does not permit individual direction as contemplated by section 404(c) of the Act.

Effective date: If granted, this proposed exemption will be effective March 15, 1993.

Summary of Facts and Representations

1. The parties to the transactions are as follows:

a. *Prudential Securities,* located in New York, New York, is an indirect, wholly owned subsidiary of the Prudential Insurance Company of America (Prudential), the largest insurance company in the United States and the second largest insurance company in the world. Prudential Securities offers a broad spectrum of financial services to both individual and institutional investors including cash management services, retirement and financial planning services, mutual funds, investment management services and insurance and annuity services. Among these services are a variety of asset allocation programs. The investment management and financial services that comprise Prudential Securities are involved with the management of more than $50 billion in assets. Prudential Securities assists investors in selecting Portfolios for investment in the Trust. In addition, Prudential Securities serves as the distributor of Trust shares and provides investment allocation advice to investors.

b. *PMF,* which is located in New York, New York, is an indirect wholly owned subsidiary of Prudential. PMF is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the 1940 Act). PMF was incorporated in May 1987 under the laws of the State of Delaware.

Currently, PMF is the investment manager to 35 open-end investment companies, constituting all of the Prudential mutual funds. In addition, PMF serves as investment manager or administrator to 19 closed-end investment companies. These companies collectively have total assets of approximately $41 billion. PMF serves as the investment manager of the Trust and the underlying Portfolios.

c. *Prudential Mutual Fund Services, Inc. (PMFS)* of Edison, New Jersey is a wholly owned subsidiary of PMF. PMFS will serve as Transfer Agent and Dividend Disbursing Agent for the Trust. In these capacities, PMFS maintains certain books and records for the Trust.

d. *Ibbotson Associates, Inc. (Ibbotson)* of Chicago, Illinois, is an investment consulting, data and software products firm that specializes in applying investment theories and empirical findings to current business practice. Ibbotson is not related to Prudential or its affiliates. Ibbotson has developed software for the Target Program (described herein) which involve investment profile matrices and asset allocation methodologies. These matrices and methodologies translate investor needs, preferences and attitudes into suggested portfolio allocations. Ibbotson will maintain and update the software package from time to time as deemed appropriate by Prudential Securities.

2. On July 31, 1992, Prudential Securities formed the Trust, a no load, open-end, diversified management investment company registered under the Investment Company Act of 1940, as amended. The Trust is organized as a Delaware business trust and it has an indefinite duration. As of September 22, 1992, the Trust had no assets.

The Trust consists of nine different portfolios which range from the U.S. Government Money Market Portfolio to the International Equity Portfolio and which pay monthly or annual dividends to investors. The composition of the Portfolios covers a spectrum of investments which include U.S. Government-related securities or equity or debt securities issued by foreign or domestic corporations. The Portfolios are further categorized under two major groupings—Equity and Income. No Portfolio of the Trust is permitted to invest any of its assets in securities issued by Prudential Securities or companies which are directly or indirectly controlled by, or under common control with Prudential Securities. Further, no Portfolio of the Trust may engage in principal transactions with Prudential Securities or its affiliates.

3. Shares in the Trust are being offered by Prudential Securities, as distributor, to participants in the Target Program. The Target Program is an investment advisory service pursuant to which the Asset Management Group of Prudential Securities, in its capacity as investment adviser to participants in the Target Program, in conjunction with Ibbotson, directly provides to investors asset allocation recommendations and related services with respect to the Portfolios based on an evaluation of an investor's investment objectives and risk tolerances.

The Target Program is designed for mid-sized investors with assets of $10,000–$1 million. To participate in the Trust, each investor must open a brokerage account with Prudential Securities by making a current, minimum initial investment of $10,000.[3]

Although PMF anticipates that investors in the Trust will consist of institutions and individuals, it is proposed that prospective investors include Plans for which PMF may or may not currently maintain investment accounts. A majority of these Plans may be IRAs or Keogh Plans. In addition, it is proposed that Plans for which PMF or an affiliate serves as a prototype sponsor and/or a nondiscretionary trustee or

[3] Shares in the Trust are not certificated for reasons of economy and convenience. PMFS, the Trust's transfer agent, however, maintains a record of each investor's ownership of shares. Although Trust shares are transferable and accord voting rights to their owners, they do not confer pre-emptive rights (i.e., the privilege of a shareholder to maintain a proportionate share of ownership of a company by purchasing a proportionate share of any new stock issues). PMF represents that in the context of an open-end investment company that continuously issues and redeems shares, a pre-emptive right would make the normal operations of the Trust impossible.

As for voting rights, PMF states that they are accorded to recordholders of Trust shares. PMF notes that a recordholder of Trust shares may determine to seek the submission of proxies by Plan participants and vote Trust shares accordingly. In the case of individual account plans such as Section 404(c) Plans, PMF believes that most Plans will pass-through the vote to participants on a pro-rata basis.

custodian be permitted to invest in the Trust.[4]

The applicants represent that the initial purchase of shares in the Trust by a Plan may give rise to a prohibited transaction where PMF or an affiliate has a party in interest relationship with the Plan. PMF also acknowledges that a prohibited transaction could arise upon a subsequent purchase or redemption of shares in the Trust by a participating Plan inasmuch as the party in interest relationship between PMF and the Plan may have been established at that point.

Accordingly, the applicants have requested retroactive exemptive relief from the Department with respect to the purchase and redemption from Prudential Securities of shares in the Trust by a participating Plan where Prudential Securities does not (a) sponsor the Plan (other than serving as a prototype sponsor) or (b) exercise discretionary authority over such Plan's assets.[5] No commissions or fees are being paid by a Plan with respect to the sale and redemption transactions or a Plan's exchange of shares in a Portfolio for shares of another Portfolio. If granted, the applicants request that the exemption be made effective as of March 15, 1993.

4. Overall responsibility for the management and supervision of the Trust and the Portfolios rests with the Trust's Board of Trustees (the Trustees) which will initially be comprised of seven members. The Trustees approve all significant agreements involving the Trust and the persons and companies that provide services to the Trust and the Portfolios. Three of the Trustees and all of the Trust's executive officers are affiliated with PMF and/or its affiliates. The four remaining Trustees are not affiliated with PMF.

5. Under its management agreement entered into with the Trust, PMF, as investment manager, manages the investment operations of the Trust, administers the Trust's affairs and is responsible for the selection, subject to the review and approval of the Trustees, of the Sub-Advisers of each Portfolio.[6]

Through the Target Program, Prudential Securities provides a Plan investor with non-binding, asset allocation recommendations with respect to such investor's investments in the Portfolios. In order to make these evaluations, Prudential Securities will furnish copies of an Investor Profile Questionnaire, designed to elicit information about the specific investment needs, objectives and expectations of the investor, to the Independent Plan Fiduciary or participant of a Title I Plan, as provided below, or to an IRA or a Keogh Plan. In the case of a Plan where the Independent Plan Fiduciary has established a Disclosed Account in the name of each Plan participant (such as in a Section 404(c) Plan), Prudential Securities will furnish copies of the Investor Profile Questionnaire to each of the Plan participants for response. However, if the Independent Plan fiduciary establishes an Undisclosed Account with Prudential Securities in the name of the Plan, Prudential Securities will provide the Independent Plan Fiduciary, upon oral or written request and at no additional cost, with sufficient copies of the Investor Profile Questionnaire so that the Independent Plan Fiduciary may distribute such questionnaire to Plan participants. Prudential Securities, if requested, will also perform, at no additional cost, the asset allocation analyses for each of these participants.

6. Based upon data obtained from the Investor Profile Questionnaire, Prudential Securities evaluates the investor's risk tolerances and financial goals. Prudential Securities then provides investment advice as to the appropriate mix of investment Portfolios of the Trust that are designed to balance the investor's goals, objectives and risk tolerances as part of a long-term investment strategy.

The applicants represent that Prudential Securities does not have any discretionary authority or control with respect to the allocation of an investor's assets among the Portfolios. In the case of an IRA or Keogh Plan, the applicants represent that all of Prudential Securities' recommendations and evaluations are presented to the Independent Plan Fiduciary and are implemented only if accepted and acted upon by such Independent Plan Fiduciary. However, in the case of a Plan such as a Section 404(c) Plan, PMF represents that Independent Plan Fiduciaries or participants in such Plan are presented with Prudential Securities' recommendations and evaluations depending upon the type of account the Independent Plan Fiduciary has established with Prudential Securities.

7. With respect to an Undisclosed Account, the applicants represent that Prudential Securities' recommendations will be presented to the Independent Plan Fiduciary and such fiduciary will advise Prudential Securities of the investment to be made for the Plan. However, with respect to a Disclosed Account, the applicants note that Prudential Securities' recommendations will be presented to the participants who will be responsible for acting upon that recommendation.

8. The applicants note that not all of the services described above will be provided to every Plan. The services provided to each Plan or to each Plan participant will depend on what is decided upon by the Independent Plan Fiduciary. The applicants represent that an Independent Plan Fiduciary may decide for its own reasons to establish an Undisclosed Account with Prudential Securities under which Prudential Securities is not required to provide investment allocation services to each Plan participant. The applicants state that an Independent Plan Fiduciary may already have an established relationship with a recordkeeper which, depending on the recordkeeper's accounting system, makes it administratively desirable for the Independent Plan Fiduciary to invest a Plan's assets on an undisclosed basis instead of on a disclosed basis. The recordkeeper would be responsible

[4] The Department notes that the general standards of fiduciary conduct promulgated under the Act would apply to the participation in the Target Program by an Independent Plan Fiduciary. Section 404 of the Act requires that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, an Independent Plan Fiduciary must act prudently with respect to the decision to enter into the Target Program with Prudential Securities as well as with respect to the negotiation of services that will be performed thereunder and the compensation that will be paid to Prudential Securities and its affiliates. The Department expects that an Independent Plan Fiduciary, prior to entering into the Target Program, to understand fully all aspects of such arrangement following disclosure by Prudential Securities of all relevant information.

[5] PMF represents that to the extent employee benefit plans that are maintained by PMF purchase or redeem shares in the Trust, such transactions will meet the provisions of Prohibited Transaction Exemption (PTE) 77–3 (42 FR 18734, April 8, 1977). The applicants further represent that, although the exemptive relief proposed above would not permit PMF or an affiliate (while serving as a Plan fiduciary with discretionary authority over the management of a Plan's assets) to invest those assets over which it exercises discretionary authority in Trust shares, a purchase or redemption of Trust shares under such circumstances would be permissible if made in compliance with the terms and conditions of PTE 77–4 (42 FR 18732, April 8, 1977). The Department expresses no opinion herein as to whether such transactions will comply with the terms and conditions of PTEs 77–3 and 77–4.

[6] Subject to the supervision and direction of the Trustees, PMF provides to the Trust investment management evaluation services principally by performing initial review on prospective Sub-Advisers for each Portfolio and thereafter monitoring each Sub-Adviser's performance. In evaluating prospective Sub-Advisers, PMF considers, among other factors, each Sub-Adviser's level of expertise, consistency of performance and investment discipline or philosophy. PMF has the responsibility for communicating performance expectations and evaluations to the Sub-Advisers and ultimately recommending to the Trustees whether the Sub-Advisers' contracts should be renewed.

for making allocations to each participant's account in the Plan.

However, if the Independent Plan Fiduciary requests a reduction in the level of services, there will be no corresponding reduction in the fee that the fiduciary pays Prudential Securities if the investment in the Target Program is $100,000 or less. Only investments in excess of $100,000 in the Target Program can result in the payment to Prudential Securities of a quarterly investment allocation fee that is lower than 1.35 percent. (See Representation 17.)[7]

9. Based upon the investment advice and recommendations, which may or may not be adopted, the Independent Plan Fiduciary, with respect to an Undisclosed Account, the Plan participant, with respect to a Disclosed Account, or the IRA or Keogh Plan participant, as applicable, selects the specific Portfolios. Prudential Securities will continue to render Portfolio selection advice to Plans or Plan fiduciaries relating to asset allocations among the selected Portfolios.

10. As stated above, PMF is responsible, subject to the supervision and direction of the Trustees, for selecting the Sub-Advisers which will provide discretionary advisory services with respect to the investment of the assets of the individual Portfolios on the basis of their performance in their respective areas of expertise in asset management. PMF represents that there are presently seven Sub-Advisers, all of which are independent of, and will remain independent of, PMF and/or its affiliates.[8] The Sub-Advisers are registered investment advisers under the 1940 Act. They maintain their principal executive offices in various regions of the United States.

11. Aside from the Investor Profile Questionnaire described above, in order for a Plan to participate in the Target Program, Prudential Securities will provide an Independent Plan Fiduciary with a copy of the Trust Prospectus. This document discusses the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between Prudential Securities, PMF and its subsidiaries, the compensation paid to such entities and information explaining the risks attendant to investing in the Trust. In addition, upon written or oral request to Prudential Securities, the Independent Plan Fiduciary will be given a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize including a description of the risks.[9] Further, each Independent Plan Fiduciary or if, applicable, Plan participant, will be given a copy of the investment advisory agreement between Prudential Securities and such Plan relating to participation in the Target Program including copies of the notice of proposed exemption and grant notice for the exemptive relief provided herein. Upon written request to the Trust, Prudential Securities will also provide an Independent Plan Fiduciary or if applicable, Plan participant, with a copy of the respective investment advisory agreement between PMF and the Sub-Advisers. (Independent Plan Fiduciaries or Plan participants will be apprised by Prudential Securities that they may receive the aforementioned information in sales and marketing material and/or in communications made by brokers.)

With respect to a section 404(c) Plan, Financial Advisors affiliated with Prudential Securities will also explain the services offered under the Target Program as well as the operation and objectives of the Portfolios to either the Independent Plan Fiduciary or to eligible section 404(c) Plan participants depending upon the type of account the Independent Plan Fiduciary establishes with Prudential Securities.[10]

If accepted as a Trust investor, an Independent Plan Fiduciary will be required by Prudential Securities to acknowledge, in writing, prior to purchasing Trust shares, that such fiduciary has received copies of the aforementioned documents. With respect to a Plan that is covered by title I of the Act (e.g., a defined contribution plan), where investment decisions will be made by a trustee, investment manager or a named fiduciary, Prudential Securities will require that such Independent Plan Fiduciary acknowledge in writing receipt of such documents and represent to Prudential Securities that such fiduciary is (a) independent of Prudential Securities and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program. With respect to a section 404(c) Plan, written acknowledgement of the receipt of such documents will be provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, or in some instances, the Plan participant). Such Independent Plan Fiduciary will be required to represent, in writing, to Prudential Securities that such fiduciary is (a) independent of Prudential Securities and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

12. Prudential Securities will provide all parties that execute the investment advisory agreement and in whose name the Target Program account is registered with written confirmations of each purchase and redemption of shares of a Portfolio, telephone quotations of such investor's account balance, a monthly statement of account specifying the net asset value of a Plan's assets that are invested in such account (to the extent there are transactions involving the account), and a written quarterly Target Program account statement. The Quarterly Account Monitor is designed to include a record of the performance of the client's assets and rates of return as compared to several appropriate market indices (illustrated in a manner that reflects the effect of any fees for participation in the Target Program actually incurred during the period), the

[7] In this regard, the Department emphasizes that it expects the Independent Plan Fiduciary to prudently consider the relationship of the fees to be paid by the Plan to the level of services to be provided by Prudential Securities. In light of the relatively fixed nature of the fees, Independent Plan Fiduciaries should consider the appropriateness of this arrangement in the context of a section 404(c) Plan where asset allocation advice is not provided directly or indirectly to Plan participants.

In response to the Department's concern over this matter, Prudential Securities represents that it will amend the Trust Prospectus and Investment Advisory Agreement to include the following statement: "The Independent Plan Fiduciary [has] [should] consider, in a prudent manner, the relationship of the fees to be paid by the Plan along with the level of services provided by Prudential Securities."

[8] Although there are presently nine Portfolios comprising the Trust, there are only seven Sub-Advisers because two of the Sub-Advisers manage two Portfolios.

[9] In the case of a section 404(c) Plan, Prudential Securities represents that the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, will make available the Trust Prospectus to section 404(c) Plan participants. If requested by such Plan administrator, trustee or named fiduciary, the Prudential Securities will make available to such Independent Plan Fiduciaries sufficient quantities of Prospectuses for distribution to Plan participants, as well as provide Statements of Additional Information to any parties upon request.

[10] The Department is expressing no opinion as to whether the information provided under the Target Program is sufficient to enable a participant to exercise independent control over assets in his or her account as contemplated by section 404(c) of the Act.

client's actual portfolio with a breakdown of investments made in each Portfolio, year to date and cumulative realized gains and losses and income received from each Portfolio, a summary of purchase, sale and exchange activity and dividends and interest received or reinvested as well as a market commentary. In addition, the Quarterly Account Monitor will contain an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations. The Quarterly Account Monitor is described in the summary of the Target Program attached to the front of the Trust's Prospectus.

If an Independent Plan Fiduciary of a section 404(c) Plan opens a Disclosed Account for each Plan participant, such participant will receive a Quarterly Account Monitor reflecting information that pertains to the participant's individual account. However, if an Independent Plan Fiduciary elects to establish an Undisclosed Account with Prudential Securities, then Prudential Securities will provide the Quarterly Account Monitor to the Independent Plan Fiduciary. Such report will contain information relative to the Plan's account.

In addition, on both a quarterly and annual basis, commencing with the first quarterly report due after this notice of proposed exemption is issued, Prudential Securities will provide, as applicable, an Independent Plan Fiduciary or a section 404(c) Plan participant with written disclosures of (a) the percentage of each Portfolio's aggregate brokerage commissions that are paid to Prudential Securities and (b) the average brokerage commission per share paid by each Portfolio to Prudential Securities, as compared to the average brokerage commission per share paid by each Portfolio to brokers other than Prudential Securities, both expressed as cents per share. With respect to a Disclosed Account established for a section 404(c) Plan participant, Prudential Securities will provide the brokerage report to the participant and not to the Independent Plan Fiduciary.

Further, the Independent Plan Fiduciary or section 404(c) Plan participant, as applicable, will have access to a Financial Advisor for the discussion of any questions that may arise.

13. A Plan wishing to redeem Trust shares must communicate such request in writing or by telephone to Prudential Securities. Redemption requests received in proper form prior to the close of trading on the New York Stock Exchange (the NYSE) will be effected at the net asset value per share determined on that day. Redemption requests received after the close of regular trading on the NYSE will be effected at the net asset value at the close of business of the next day, except on weekends or holidays when the NYSE is closed. A Portfolio is required to transmit redemption proceeds for credit to an investor's account with PMF or to an "introducing" broker[11] within 5 business days after receipt of the redemption request. Prudential Securities will place redemption proceeds in the client's brokerage account and will, in the absence of receiving investment instructions, place all such assets in a money market fund (other than the Trust's U.S. Government Money Market Portfolio) which may be affiliated with Prudential Securities.[12]

Due to the high costs of maintaining small accounts, the Trust may also redeem an account where the current value is $10,000 or less, provided the Plan has been given at least 30 days' advance written notice in which to increase the account balance to more than the $10,000 amount. The proceeds of such redemption will be deposited in the investor's brokerage account unless Prudential Securities is otherwise instructed.[13]

14. Shares of a Portfolio may be exchanged by an investor, without the payment of any fees, for shares of another Portfolio at their respective net asset values. However, Portfolio shares are not exchangeable with shares of other Prudential Mutual Funds.

15. With respect to brokerage transactions that are entered into under the Target Program for a Portfolio, such transactions may be executed through Prudential Securities, if in the judgment of the Sub-Adviser, the use of such broker-dealer is likely to result in price and execution at least as favorable, and at a commission charge at least as comparable to those of other qualified broker-dealers. In addition, Prudential Securities may not execute transactions for a Portfolio on the floor of any national securities exchange but it may effect transactions by transmitting orders to other brokers for execution. In this regard, Prudential Securities is required to pay fees charged by those persons performing the floor brokerage elements out of the brokerage compensation it receives from a Portfolio.

16. Each Portfolio bears its own expenses, which generally include all costs that are not specifically borne by PMF, Prudential Securities, the Sub-Advisers or PMFS. Included among a Portfolio's expenses are costs incurred in connection with the Portfolio's organization, investment management and administration fees, fees for necessary professional and brokerage services, fees for any pricing service, the costs of regulatory compliance and costs associated with maintaining the Trust's legal existence and shareholder relations. No Portfolio, however, will impose sales charges on purchases, reinvested dividends, deferred sales charges, redemption fees, nor will any Portfolio incur distribution expenses.

17. The total fees that are paid to Prudential Securities and its affiliates will constitute no more than reasonable compensation. In this regard, for its asset allocation and related services, Prudential Securities will charge an investor a quarterly investment advisory fee. The "outside fee," which is computed quarterly, ranges annually from .50 percent up to a maximum of 1.35 percent of the average annual net assets held in a Target Program account invested by the Plans in the Equity and Income Portfolios. The outside fee will be charged directly to an investor and it will not be affected by the allocation of assets among the Equity or the Income Portfolios nor by whether an investor follows or ignores Prudential Securities' advice.[14] The outside fee can be negotiated to below the 1.35 percent

[11] Prudential Securities provides clearance, settlement and other back office services to other broker-dealers. Prudential Securities may also provide confirmations and account statements to clients of brokers who have "introduced" clients to Prudential Securities. If a Plan uses an introducing broker, the arrangement between the Plan and that broker will define whether the broker is authorized by the Plan to accept redemption proceeds.

[12] The applicants are not requesting, nor is the Department proposing, exemptive relief with respect to the investment, by Prudential Securities, of redemption proceeds in an affiliated money market fund where the Plan investor has not given investment instructions. The applicants represent that to the extent Prudential Securities is considered a fiduciary, such investments will comply with the terms and conditions of PTE 77–4. However, the Department expresses no opinion herein on whether such transactions are covered by this class exemption.

[13] The 30 day limit does not restrict a Plan's ability to redeem its interest in the Trust. The 30 day notice period is provided to give a Plan an opportunity to increase the value of the assets in its Plan account with Prudential Securities to an amount in excess of $10,000. If desired, the Plan may still follow the redemption guidelines described in Representation 13 above.

[14] Prudential Securities represents that the outside fee is not imposed on the accounts of employees of Prudential and its subsidiaries, including PMF, the accounts of their immediate families, IRAs and certain employee pension benefit plans for these persons. With respect to employee benefit plans maintained by PMF or its affiliates for their employees, the applicants assert that such waiver would be required by PTE 77–3.

maximum only if the Plan invests an aggregate amount of $100,000 or greater in the Target Program. In the case of Plans, the outside fee may be paid by the Plan or by the Plan sponsor or, in the case of IRAs only, the fee may be paid by the IRA beneficiary directly.

For Plan investors, the outside fee will be payable in full within 6 business days after the trade date for the initial investment in the Portfolios and will be based on the value of assets in the Target Program on the trade date of the initial investment. The initial fee payment will cover the period from the initial investment trade date through the last calendar day of the calendar quarter, and the fee will be pro-rated accordingly. Thereafter, the quarterly fee will cover the period from the first calendar day through the last calendar day of the current calendar quarter. The quarterly fee is based on the value of assets in the Target Program measured as of the last calendar day of the previous quarter and is payable on the fifth business day of the current quarter.[15]

18. Each time that additional funds aggregating $10,000 or more are invested in the Portfolios during any one quarter, the applicable fee, pro-rated for the number of calendar days then remaining in the quarter and covering the amount of such additional funds, shall be charged and be payable 6 business days later. In the case of redemptions aggregating $10,000 or more during a quarter, the fee will be reduced accordingly, pro-rated for the number of calendar days then remaining in the quarter.

In addition, for investment management and related services provided to the Trust, PMF is paid, from each Portfolio, a management fee which is computed daily and paid monthly at an annual rate ranging from .25 percent to .70 percent of the value of the Portfolio's average daily net assets depending upon the Portfolio's objective. From these management fees, PMF compensates the Sub-Advisers. This "inside fee," which is the difference between the individual Portfolio's total management fee and the fee paid by PMF to the Sub-Adviser, varies from 12.5 to 30 basis points depending on the Portfolio. In addition, pursuant to a Transfer Agency and Service Agreement with the Trust, PMFS will be paid an annual fee of $35 per Target Program participant out of the operating expenses of the Portfolios.[16]

19. The management fees that are paid at the Portfolio level to PMF and the Sub-Advisers are set forth in the table below. As noted in the table, the sum of the management fees paid by a Portfolio to PMF and the Sub-Advisers (S-A) and retained by such entities equals the total management fee paid by the Portfolio.

Portfolio	Tot. mgt. fee (%)	S-A ret. fee (%)	PMF ret. fee (%)
Equity:			
Large capitalization value portfolio	.60	.30	.30
Large capitalization growth portfolio	.60	.30	.30
Small capitalization value portfolio	.60	.30	.30
Small capitalization growth portfolio	.60	.30	.30
International equity portfolio	.70	.40	.30
Income:			
U.S. Government Money Market portfolio	.25	.125	.125
Mortgage backed securities portfolio	.45	.25	.20
Intermediate-term bond portfolio	.45	.25	.20
Total return bond portfolio	.45	.25	.20

20. PMF proposes to offset, quarterly, against the outside fee that will be paid to Prudential Securities such amount as is necessary to assure that PMF retains no more than 20 basis points (the Reduction Factor) from any Portfolio on investment of assets attributable to any Plan.[17]

Under the proposed fee offset, a Reduction Factor of .10 percent will be applied against Prudential Securities' quarterly outside fee with respect to the value of the Plan assets that have been invested in the Equity Portfolios only. As noted above, the Income Portfolios do not involve a Reduction Factor because the fee retained by PMF for these Portfolios does not exceed 20 basis points.

The Department, in conjunction with the applicants, has developed the following example to demonstrate how the fee offset mechanism will work and determine the aggregate fee that a hypothetical Plan investor might expect to pay to both Prudential Securities and PMF in a given calendar quarter or year:

Assume that as of March 31, 1993, the average daily value of Trust shares held by a Plan investor was $1,000. Investment assets attributable to the Plan were distributed among five Portfolios: (1) U.S. Government Money Market Portfolio in which the Plan made a $50 investment and from which PMF would not retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee of .125 percent; (2) Total Return Bond Portfolio in which the Plan made a $200 investment and from which PMF would retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee of .20 percent; (3) Small Capitalization Growth Portfolio in which the Plan made a $250 investment and from which PMF would be entitled to retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee of .30 percent; (4) Large Capitalization Growth Portfolio in which the Plan made a $250 investment and from which PMF would be entitled to retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee

[15] The applicants represent that an Independent Plan Fiduciary or Plan participant may change Portfolio allocations on any business day and there are no limitations as to how frequently Portfolio allocations can be made. The applicants also state that assets which are subsequently added to a Target Program account after the beginning of any calendar quarter (and are allocated in accordance with the Independent Plan Fiduciary's or participant's asset allocation decision) will not be subject to the outside fee for that quarter until such additional investments "aggregate" (i.e., new money invested during the quarter) $10,000 or more. When this occurs, the applicants explain that the outside fee will be assessed on such additional assets and will be payable six business days thereafter (pro-rated based on the length of time remaining in the current calendar quarter). If the additional investments have not reached the $10,000 level by the last day of the calendar quarter, the applicants state that such investments will start being subject to the outside fee as of the first business day of the next calendar quarter.

[16] The applicants represent that if an Undisclosed Account is established by an Independent Plan Fiduciary only one $35 fee will be levied.

[17] Prudential Securities asserts that it chose 20 basis points as the maximum net fee retained for management services rendered to the Portfolios because this amount represents the lowest percentage management fee charged by PMF among the Portfolios (except that the fee paid by the U.S. Government Money Market Portfolio to PMF is equal to 12.5 basis points).

of .30 percent and (5) International Equity Portfolio in which the Plan made a $250 investment and from which PMF would be entitled to retain, after payment of the sub-advisory fee to the Sub-Adviser, an inside fee of .30 percent.

Assume that the Plan investor pays the maximum annual outside fee of 1.35 percent on the Portfolios so that the total outside fee for the calendar quarter April 1 through June 30, 1993, prior to the offset, would be:

Portfolio	Amount invested	Max. outside quart. fee	Outside fee for quart.
U.S. Government Money Market portfolio	$50	1.35%(.25)	$0.1688
Total return bond portfolio	200	1.35%(.25)	.6750
Small capitalization growth portfolio	250	1.35%(.25)	.8438
Large capitalization growth portfolio	250	1.35%(.25)	.8438
International equity portfolio	250	1.35%(.25)	.8438
Total	1,000		$3.3752

Under the proposed fee offset, the outside fee charged to the Plan must be reduced by the Reduction Factor to ensure that PMF retains an inside fee of no more than .20% from each of the Portfolios on investment assets attributable to the Plan. The following table shows the Reduction Factor as applied to each of the Portfolios comprising the Trust:

Portfolio	PMF. ret. fee (%)	Red. fact. (%)	PMF ret. fee after red. fact.
Equity:			
Large capitalization value portfolio	0.30	0.10	0.20
Large capitalization growth portfolio	.30	.10	.20
Small capitalization value portfolio	.30	.10	.20
Small capitalization growth portfolio	.30	.10	.20
International equity portfolio	.30	.10	.20
Income:			
U.S. Government Money Market portfolio	.125		.125
Mortgage backed securities portfolio	.20		.20
Intermediate-term bond portfolio	.20		.20
Total return bond portfolio	.20		.20

Under the proposed fee offset, the quarterly outside fee will be reduced with respect to Plan assets in the example that have been invested in the Small Capitalization Growth Portfolio, the Large Capitalization Growth Portfolio and the International Equity Portfolio only (i.e., the Equity portfolios). In the example above, the U.S. Government Money Market Portfolio and the Total Return Bond Portfolio do not require a reduction of the outside fee because the fee retained by PMF for these Portfolios does not exceed 20 basis points. Therefore, the quarterly offset for the Plan investor is computed as follows:

(.25) [($250) (.10%)+($250) (.10%)+($250) (.10%)]=$.1875.

In the foregoing example, the Plan investor, like all other investors in the Target Program, would receive a statement for its Target Program account during the fourth week of April 1993. This statement would include a debit notice for the outside fee for the calendar quarter April 1 through June 30, as adjusted by subtracting the quarterly offset from the quarterly outside fee as determined above. The net quarterly outside fee that would be paid to Prudential Securities would be determined as follows:

$3.3752 − $.1875=$3.1877.

The account of the Plan investor (as with other investors) would be debited on or about April 8, 1993 (i.e., the sixth business day of the calendar quarter) for the amount of the net quarterly outside fee (pursuant to the authorization contained in the Target Program investment advisory agreement, and as described in the Target Program description attached to the cover of the Trust's Prospectus.[18]

Assuming the Plan investor wishes to gain a more realistic perspective of the aggregate quarterly and annual fees that would be paid to both Prudential Securities and PMF at both the Plan level and the Portfolio level, the investor would include within the computation on the net quarterly outside fee, the quarterly inside fee that such investor would be paying to PMF.

The quarterly, aggregate fee calculation would be computed as follows:

$3.1877, representing the quarterly net outside fee paid to Prudential Securities+(.25)[(.125%)($50)+(.20%)($200)+(.30)($250+$250+$250)] or $.6781, representing the quarterly inside fee paid to PMF=$3.8658, which represents the quarterly fee that would be paid to Prudential Securities and PMF for services provided to the Plan investor.

The total annual fee that the Plan investor would pay to both Prudential Securities and PMF would be equal to (4)[$3.1877 (net outside fee) + $.6781 (inside fee)] or $15.4632 per $1,000 investment, or a total fee percentage of 1.55%.

21. Because PMF will retain an inside fee of 12.5 basis points with respect to assets invested in the U.S. Government Money Market Portfolio, the applicants note that a potential conflict may exist by reason of the variance in net inside fees among the U.S. Government Money Market Portfolio and the other Portfolios. The applicants also recognize that this factor could result in the recommendation by Prudential Securities of a higher fee-generating Portfolio to an investing Plan. To help address this potential conflict, Prudential Securities will disclose to all participants in the Target Program the fee differentials of the various Portfolios.

22. The books of the Trust will be audited annually by independent,

[18] The foregoing example illustrates that fact that the outside fee and the fee offset are computed contemporaneously and that Plan investors will get the benefit of the fee offset contemporaneously upon the payment of the outside fee. Because the inside fee is paid monthly and the fee offset is computed quarterly, the applicants represent that PMF will not receive the benefit of a "float" as a result of such calculations because the fee offset will always be realized no later than the time that the outside fee is paid (i.e., on or about the sixth business day of the first month of the calendar quarter). Since the inside fee is paid at the end of each calendar month, Plan investors will realize the full benefit of the offset before the time that the inside fee is paid for the second and third months of the calendar quarter.

certified public accountants selected by the Trustees and approved by the investors. All investors will receive copies of an audited financial report no later than 60 days after the close of each Trust fiscal year. The books and financial records of the Trust will be open for inspection by any investor, including the Department, the Service and the Securities and Exchange Commission, at all times during regular business hours.

23. In summary, it is represented that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The investment of a Plan's assets in the Target Program will be made and approved by a Plan fiduciary which is independent of Prudential Securities and its affiliates such that Independent Plan Fiduciaries will maintain complete discretion with respect to participating in the Target Program; (b) Independent Plan Fiduciaries will have an opportunity to redeem their shares in the Trust in such fiduciaries' individual discretion; (c) no Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust; (d) prior to making an investment in the Trust, each Independent Plan Fiduciary will receive offering materials and disclosures from either PMF or Prudential Securities which disclose all material facts concerning the purpose, fees, structure, operation, risks and participation in the Target Program; (e) Prudential Securities will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria; (f) any Sub-Adviser that is appointed by Prudential Securities to exercise investment discretion over a Portfolio will always be independent of Prudential Securities and its affiliates; (g) the annual investment advisory fee that is paid by a Plan to Prudential Securities for investment advisory services rendered to such Plan will be offset by such amount as is necessary to assure that PMF retains no more than 20 basis points from any Portfolio on investment assets attributable to the Plan investor; (h) each Plan will receive copies of the Trust's semi-annual and annual report which will include financial statements for the Trust and investment management fees paid by each Portfolio; and (i) on a quarterly and annual basis, Prudential Securities will provide written disclosures to Independent Plan Fiduciaries with respect to (1) the percentage of each Trust Portfolio's brokerage commissions that are paid to Prudential Securities and its affiliates and (2) the average brokerage commission per share paid by each Portfolio to Prudential Securities as compared to the average brokerage commission per share paid by each Portfolio to brokers other than Prudential Securities and its affiliates, both expressed as cents per share.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Peoples Heritage Financial Group, Inc., Thrift Incentive Plan (the Thrift Plan); and Peoples Heritage Financial Group, Inc., Profit Sharing and Employee Stock Ownership Plan (the ESOP; Together, the Plans) Located in Portland, Maine

[Application Nos. D–9242 and D–9243]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past receipt of certain stock rights (the Rights) by the Plans, which are sponsored by Peoples Heritage Financial Group, Inc. (Peoples) and its affiliates, pursuant to a stock rights offering (the Offering) by Peoples to shareholders of record of Peoples common stock (the Stock) as of December 3, 1992; (2) the holding of the Rights by the Plans during the Offering Period; and (3) the disposition or exercise of the Rights by the Plans, provided: (a) The Plans' acquisition and holding of the Rights resulted from an independent act of Peoples as a corporate entity, and all holders of the Stock were treated in a like manner, including the Plans; (b) with respect to the Thrift Plan, the Rights were acquired, held and controlled by individual Plan participant accounts pursuant to plan provisions for individually directed investment of such accounts; and (c) with respect to the ESOP, the authority for all decisions regarding the acquisition, holding and control of the Rights was exercised by an independent fiduciary which made determinations as to whether and how the ESOP should exercise or sell the Rights acquired through the Offering.

Effective Date: If the proposed exemption is granted, the exemption will be effective December 3, 1992.

Summary of Facts and Representations

1. The Thrift Plan is a defined contribution plan which currently has approximately 850 participants and had $6,767,410 in assets as of September 30, 1992. The Thrift Plan allows participants to contribute up to 15% of their compensation to the Plan. Peoples currently matches 50% of each participant's contribution, up to 6% of compensation. The Thrift Plan permits participants to direct the investment of their accounts, both with respect to employee contributions and Peoples matching contributions, among five investment funds, including one fund primarily invested in shares of the Stock (the Stock Fund) and four other funds invested in other types of assets (the Non-Stock Funds).

2. The applicant represents that the ESOP is an employee stock ownership plan within the meaning of section 407(d)(6) of the Act. Participants are not allowed to make contributions to the ESOP. Instead, Peoples has the discretionary authority to make contributions as it deems appropriate within the limits of the Code. Contributions for any year are allocated on the basis of the participants' compensation for that year. ESOP assets are to be invested primarily in the Stock. There are currently approximately 850 participants in the ESOP. As of January 7, 1993, the assets of the ESOP consisted of Stock having a fair market value of $397,431, plus $70,443 in cash.

3. Prior to the Offering, the total number of shares of Stock outstanding was 8,330,802, of which approximately 223,669 shares (2.68%) were held by the Plans. The Stock is publicly traded on the NASDAQ National Exchange. Peoples has distributed to its Stockholders the Rights, which are rights to acquire additional shares of Stock. The total number of shares of Stock outstanding after the Offering was 15,386,193, an increase of 7,055,391 shares. Of these additional shares, 5,600,000 were sold to shareholders upon exercise of the Rights, and the other 1,455,391 shares were sold to outside investors pursuant to standby purchase agreements. The following provides an overview of the Offering.

4. Rights have been distributed to holders of Stock at the rate of .67 Rights per share of Stock held as of the close of business on the Record Date, the date on which Peoples determined which holders of Stock could participate in the Offering. The Record Date for

participants in both Plans was November 16, 1992, and December 3, 1992 for all other Stockholders (see rep. 6, below). Rights were exercisable from the effective date (the Opening Date) of the Final Registration Statement filed with the Securities and Exchange Commission, which was December 3, 1992, until December 22, 1992 (the Ending Date). The Rights are separate securities under the Federal securities laws, and they were quoted on the NASDAQ National Exchange from the Opening Date until the Ending Date (the Offering Period). The price of each whole Right opened at $1.00, rose to a high of $3.00, and closed at $2.625 at the end of the Offering Period. Each whole Right entitled the holder to subscribe for and purchase one share of Stock at a stated exercise price set forth in the final Registration Statement, which was $5.75. The price per share of the Stock was $7.625 on December 4, 1992 and $8.625 at the end of the Offering Period.

5. Peoples determined that it was appropriate to allow Thrift Plan participants to determine the disposition of Rights allocated to their accounts. In providing this pass-through election, Peoples attempted to put participants in the same position as other shareholders receiving Rights, to the extent practicable. On December 4, 1992, participants were sent election forms which explained the Offering. The applicant represents that election forms and information were sent to the participants at the same time such information went to all shareholders. Each participant who had shares of Stock allocated to his account in the Stock Fund as of the Record Date was allowed to determine whether and to what extent to sell the Rights credited to his account on the open market, or to exercise those Rights. Eligible participants were permitted to make their elections during an election period that ran until December 16, 1992 (the Election Close-Out Date; see rep. 8, below).

6. The applicant represents that it was unable to use the same Record Date, December 3, 1992 for participants as for other holders of the Stock because of the time necessary to (i) value accounts, (ii) calculate relative interests, and (iii) timely notify participants of their rights so that they could prudently consider and exercise their elections. In order to protect participant interests to the fullest extent, Peoples allocated the Rights as of the closest date possible consistent with prudent administration. Peoples originally anticipated that the Offering would commence during early November, 1992, and be completed before the Thanksgiving holiday. Thrift Plan accounts are normally valued on a quarterly basis, but Peoples decided to undertake a special mid-period valuation of the Thrift Plan once the Opening Date was known, in order to allow participants to participate as fully as possible in the Offering. However, Peoples was not in control of the timing of the commencement of the Offering, which depended on the Securities and Exchange Commission (SEC) granting its approval of the transaction. When it realized the SEC's authorization would be delayed, Peoples planned to commence the Offering on Monday, November 30, 1992, based upon its understanding that the SEC would approve the transaction during the week of November 23–27.

Walker Associates (Walker), the record keeper for the Thrift Plan, was closed for the Thanksgiving holiday from Thursday, November 26 until Monday, November 30, 1992. As a result, November 25 was the last day prior to November 30 on which Walker could undertake the special valuation. Peoples decided to go forward with a mid-period valuation, and Walker conducted the special valuation on Wednesday, November 25, 1992, based on account balances as of the close of business on November 16, 1992. The special valuation thus occurred one week before the commencement of the Offering and covered all contributions to the Thrift Plan since the end of the third quarter of 1992, including contributions from the November 13 payroll.

The SEC approval was further delayed, and the Offering actually commenced on December 3. Once Peoples found out that the Opening Date would be December 3, and not November 30, it considered whether to conduct a second special payroll valuation to include contributions from the November 27 payroll. Peoples determined that it was probably not physically possible, and in any event it would not be prudent, to conduct another special valuation of the Thrift Plan. First, Walker advised Peoples that it might not be able to conduct a complete, accurate and timely valuation in the available time. Second, Peoples had to notify all eligible participants (both active and terminated) of the Offering as soon as it became effective on December 3, in order to give them a sufficient amount of time to determine the disposition of the Rights allocated to their accounts. The applicant represents that an updated valuation would likely have resulted in errors, late notice to participants or both. Peoples determined that providing participants with a sufficient amount of time to make their elections based upon the accurate valuation of November 25, greatly outweighed the minimal additional benefit to participants of trying to update the November 25 valuation. Third, the date of the special valuation of the Thrift Plan did not preclude any participant from participating in the Offering; use of the November 27 payroll would not have allowed any new participants to take advantage of the Offering.

With respect to the ESOP, the applicant represents that it is valued once a year, on December 31. The Rights which were distributed to the ESOP on December 3, 1992 pursuant to the Offering were allocated among ESOP participants based upon share balances as of December 31, 1991, the date of the last annual valuation. However, there were no contributions to, or withdrawals from, ESOP accounts from December 31, 1991 until the start of the Offering, and no relative account balances changed during that period. Therefore, the applicant represents that the fact that the Rights were allocated to the ESOP based on the December 31, 1991 valuation date was irrelevant; a December 3, 1992 valuation would have produced an identical allocation of income from the Rights.

In summary, Peoples represents that it used the closest valuation Record Date possible consistent with its duty to allocate accurately and to notify participants of their rights on a timely basis. In doing so, Peoples, as Plan Administrator, consulted daily with its legal and administrative advisers to assure it was doing everything possible to protect participants' interests.

7. Peoples appointed Heritage Investment Planning Group, Inc. (Heritage), its wholly owned subsidiary, as the Special Fiduciary (the Special Fiduciary) for the Thrift Plan. Heritage did not receive any fees or commissions for performing this function. A participant could elect to exercise his Rights by notifying the Special Fiduciary at any time up until the Election Close-Out Date. For participants who elected to have the Rights in their accounts exercised, the exercise price was obtained by liquidating a sufficient amount of their assets in the Non-Company Stock Funds, in the order directed by the participants, and transferring the proceeds of such liquidations to the Company Stock Fund. The Special Fiduciary only exercised Rights to the extent that proceeds were available in a participant's Company Stock Fund as a result of the intra-fund transfer. The actual proceeds transferred to the

Company Stock Fund for the purpose of exercising Rights were held in an account called the Exercise Account. If the amount of the participant's credit in the Exercise Account was insufficient to exercise the total number of Rights which the participant elected to exercise, the Special Fiduciary exercised the maximum number of Rights possible with the participant's available proceeds and sold the rest. Fractional Rights could not be exercised; any fractional Rights remaining after exercise were treated as though they were subject to an election to sell.

8. Those participants who elected to sell their Rights could make such an election up until the Election Close-Out Date. The Special Fiduciary then sold such Rights on the open market. Although the Ending Date, the date on which the Rights expired, was December 22, 1992, the Election Close-Out Date was December 16, 1992. The applicant represents that the Election Close-Out Date deadline was imposed by Mellon Securities Trust Co. (Mellon), the Offering subscription agent, and was noted in the Offering prospectus. The applicant represents that all shareholders of the Stock using Mellon as the selling agent had to submit their election by December 16, 1992. Since Mellon was to perform the exercise and sales transactions for the Thrift Plan, Peoples had to conform the Election Close-Out Date to Mellon's deadline. The Special Fiduciary sold the Rights as the participant elections were received; it did not sell the Rights all at one time. The proceeds from all such sales were allocated to the Thrift Plan accounts of those participants who elected to sell their Rights, in direct proportion to the number of Rights they elected to sell. Individual elections by the participants to sell Rights were accounted for on a transaction-by-transaction basis. For those participants who elected to sell their Rights, the Rights were sold on a daily basis from December 7, 1992 through December 16, 1992. The Special Fiduciary prepared a daily list of participants and the number of Rights each participant wanted to sell in order to notify Mellon of the correct number of Rights to sell. This daily list was also used to allocate the correct amount of proceeds to each participant who elected to sell. If a participant who had shares of Stock allocated to his Thrift Plan account failed to respond during the election period, or filed an invalid or untimely election, he was deemed to have elected to sell his Rights, and the Special Fiduciary proceeded accordingly to sell those Rights on the open market. These Rights were sold by Mellon on December 16, 1992.

9. The decision with respect to the disposition of the Rights allocated to the ESOP as a result of the Stock held therein was made by the independent fiduciary for the ESOP, Tucker Anthony Incorporated (TA). TA is a registered broker/dealer with total assets of $270 million. TA has $479 million of assets under management. TA, which is headquartered in Boston, Massachusetts and in New York, New York, is a wholly-owned subsidiary of John Hancock Mutual Life Insurance Company. TA does not currently provide any service to, or have any other business relationship with, Peoples or any of its subsidiaries. TA decided to sell the Rights allocated to the ESOP. TA did not solicit the views of participants with respect to this decision because investment decisions are not generally passed through under the ESOP. Fleet Bank of Maine, the ESOP's trustee, agreed to be the custodial trustee for these transactions, so Peoples was not involved in the actual trades. Since TA decided to sell the Rights acquired by the ESOP, the proceeds of such sale were allocated to each participant's ESOP Stock Account (as defined in the ESOP) in the same ratio as that particular ESOP Stock Account bore to all ESOP Stock Accounts on the Record Date.

10. TA represents that prior to making the decision on behalf of the ESOP to sell the Rights, it consulted with its research analyst who was well acquainted with Peoples and other regional banks. In addition, TA considered a variety of factors that it deemed relevant in considering whether the ESOP should exercise or sell the Rights. These factors included: (a) The current market price of the Stock; (b) the market price of the Rights; (c) the price/earnings ratio of the Stock; (d) the recent trading history of the Stock and the Rights, and how that trading compared to the trading of similar offerings of comparable financial institutions; (e) a comparison of Peoples' price/earnings ratio compared to that of comparable financial institutions; and (f) a comparison of Peoples' pro-forma book value to that of other financial institutions, and the relation of that value to the respective market values of those institutions. TA represents that it had complete authority to make the decision with respect to the Rights on behalf of the ESOP, and it made the decision to sell without any influence from Peoples. TA considered the objectives of the participants in the ESOP as well as the manner in which the ESOP operates. TA represents that it also considered the short-term needs of the ESOP's participants. After considering all these factors, TA determined that the sale of the Rights was appropriate for the ESOP and in the best interest of the ESOP's participants. The applicant represents that after TA made the decision to sell, the ESOP sold its Rights during the Offering Period.

11. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (a) The Plans' acquisition and holding of the Rights resulted from an independent act of Peoples as a corporate entity, and all holders of the Stock were treated in a like manner, including the Plans; (b) with respect to the Thrift Plan, the Rights were acquired, held and controlled by individual Plan participant accounts pursuant to Plan provisions for individually-directed investment of such accounts; and (c) with respect to the ESOP, the authority for all decisions regarding the acquisition, holding and control of the Rights was exercised by the ESOP's independent fiduciary, TA, which made determinations whether and how the ESOP should exercise or sell the Rights acquired through the Offering.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Federal Paper Board Salaried Employees' Pension Plan (the Plan) Located in Montvale, New Jersey

[Application No. D–9312]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed contribution to the Plan of approximately 11,051 acres of growing timber (the Timber) by the Federal Paper Board Company, Inc. (the Employer), the Plan's sponsor and as such a party in interest with respect to the Plan, in partial satisfaction of the Employer's obligation to make certain cash contributions to the Plan by September 15, 1993; and (2) the proposed sale of the Timber by the Plan to the Employer when the Timber is

harvested by the Employer at a later date; provided that the following conditions are met:

(a) The Timber is valued at an amount which is no greater than its fair market value at the time of contribution, as established by an independent, qualified appraiser;

(b) The terms and conditions of the contribution are at least as favorable to the Plan as terms and conditions which the Plan could obtain in a purchase of similar timber by the Plan from an unrelated party;

(c) The fair market value of the Timber does not exceed 10% of the Plan's total assets at the time of the contribution and at any time during which the Timber is held as an asset for the Plan's portfolio;

(d) In any sale of the Timber by the Plan to the Employer at a later date, the Plan receives an amount which is no less than the greater of either: (i) The fair market value of such Timber at the time of the transaction as established by an independent, qualified appraiser; or (ii) the fair market value of the Timber at the time of the contribution as established by the independent appraisal which was used for valuing the Timber when the contribution was made by the Employer;

(e) AmSouth Bank, N.A. (AmSouth), as an independent, qualified fiduciary for the Plan, determines that the proposed contribution of the Timber to the Plan is in the best interests of the Plan as an investment for the Plan's portfolio at the time of the transaction, and protective of the Plan and its participants and beneficiaries;

(f) AmSouth determines that upon any sale of the Timber by the Plan to the Employer, the sale would be in the best interests and protective of the Plan and its participants and beneficiaries;

(g) AmSouth monitors the performance of the Timber as an investment for the Plan and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

(h) AmSouth monitors the compliance by all parties with the terms and conditions of the exemption.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of March 31, 1993, had 1,978 participants and total assets of approximately $74,267,863. The Plan is maintained by the Employer, a New York corporation with its executive offices located at 75 Chestnut Ridge Road, Montvale, New Jersey. The assets of the Plan are held in a master trust (the Master Trust) by Wachovia Bank of North Carolina, N.A. (Wachovia). The Master Trust also holds the assets of three other retirement plans maintained by the Employer—the Federal Paper Board Hourly-Wage Employees' Pension Plan, the Federal Paper Board Company, Inc. Pension Plan for Hourly Employees of the Paper Division-Carolina Operations, and The Imperial Cup Corporation 401(k) Profit Sharing Plan (the Other Plans). The applicant states that the proposed transactions regarding the Timber will only involve the assets of the Plan and will not be commingled for investment purposes with assets of the Other Plans held in the Master Trust.

2. The Employer proposes to satisfy part of its funding obligations to the Plan for the Plan year ending September 15, 1993 by contributing the Timber.[19] The Timber will be contributed in the form of a timber deed which passes ownership of a long term fee simple interest in the existing growing timber to the Plan at its fair market value as established by an independent appraiser at the time of contribution. The Employer states that its federal income tax deduction for the contribution will not exceed the fair market value of the Timber on the date the contribution is made. The fair market value of the Timber will equal approximately 7.2% of the Plan's total assets.

The Employer will continue to own the underlying land and will own any new timber which is grown after the Timber is harvested. In this regard, AmSouth will make all investment decisions for the Timber as the Plan's independent fiduciary (as discussed below) and will enter into an agreement with the Employer for the Employer to manage the Timber during the period prior to harvest. The management of the Timber will include maintaining fire protection, pest control, roads, drainage and other normal forestry practices. The fees that will be charged by the Employer for its services as manager of the Timber will reflect direct expenses only.[20] The Plan's payment of these expenses will be monitored by AmSouth to ensure that such expenses are appropriate.

3. The Timber is located on 11,054 acres of non-contiguous lands owned by the Employer in 14 counties in North Carolina, 3 counties in South Carolina, and 2 counties in Georgia. Most of the Timber is in pine plantations which will be harvested routinely during the twelve year period commencing in calendar year 2002 and ending in calendar year 2014.

The Employer owns more than 550,000 acres of timberland in the Southeastern United States and operates two large pulp and paperboard mills—one in North Carolina and one in Georgia. The Employer acquires approximately 25% of its annual wood needs from its own timberlands and the balance is purchased from other sources. When the Timber is eventually harvested, the Employer along with other pulp and paper manufacturers in the area will be potential purchasers for the Timber. The Employer proposes to purchase, pursuant to the terms of a written agreement which will be entered into by the parties at the time of contribution, any and all of the Timber at the time it is harvested or at an earlier date if AmSouth proposes to have the Plan sell the Timber.[21] The Employer will be obligated to buy the Timber at a price which is the greater of either (i) the fair market value of the Timber at the time of the transaction as established by an independent, qualified appraiser chosen by AmSouth, or (ii) the fair market value of the Timber at the time of the contribution, as established by the independent appraisal which was used for valuing the Employer's contribution. However, under the agreement, the Plan will not be obligated to sell the Timber to the Employer and can sell the Timber on the open market at the best possible price. The applicant states that the fair market value of the Timber for any such sale will be readily determinable by AmSouth through an analysis of market prices for similar timber or a contemporaneous appraisal of the Timber by a qualified independent appraiser.

4. The Timber has been appraised by Thomas R. Brickman RF/ACF (Mr. Brickman) of Resource Management Service, Inc. (RMS), an independent,

[19] The Department expresses no opinion in this proposed exemption as to whether the proposed contribution of the Timber would violate section 404(a) of the Act. Section 404(a)(1) of the Act requires, among other things, that plan fiduciaries act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

[20] The applicant represents that the services provided by the Employer to the Plan as manager of the Timber will meet the statutory exemption for services by a party in interest under section 408(b)(2) of the Act and the regulations thereunder. However, the Department is providing no opinion herein as to whether the Employer's provision of such services under the arrangement described will satisfy section 408(b)(2).

[21] The applicant states that the agreement with the Plan to buy the Timber is meant to protect the Plan's interests in the event the value of the Timber declines due to damage from fire, disease or other natural causes. The applicant notes that the fair market value of the Timber is otherwise expected to increase as the Timber grows and the age of the trees becomes closer to the time for harvest.

qualified timberland appraiser located in Birmingham, Alabama, as having a fair market value of $5,380,000 as of April 21, 1993. RMS used the income approach to value the Timber, with a discount rate of 8% used based on comparable sales of timber in the area. The property rights appraised were limited to the timber rights only in the existing timber which the Plan would acquire, subject to easements and encumbrances of record, and did not involve any mineral rights or other interests in the land owned by the Employer. Mr. Brickman represents that forestry experts from RMS thoroughly inspected the Timber in accordance with standard industry procedures. The findings of RMS indicate that the Timber is almost entirely planted pine in terms of total volume, 96% of which is under 28 years of age. The few natural stands that exist (approximately 9% of the total acres) are mostly narrow drains following the courses of small creeks interspersed in the planted stands. Mr. Brickman states that the land on which the Timber stands has been managed by the Employer to maximize pine production and that nearly all land capable of being converted to pine is being used with some thinning practiced in order to maximize saw timber production. Mr. Brickman notes that access to most of the tracts of the Timber is well established and that roads are in good condition. Mr. Brickman concludes that the highest and best use for the Timber would be as raw material for which there is a readily available market.

5. AmSouth, the Plan's independent fiduciary, represents that it has extensive experience in the management of assets of employee benefit plans and other institutional investors. AmSouth currently manages over $250 million in timberland assets in a fiduciary capacity and maintains a natural resources department that manages in excess of 500,000 acres of timber held in investment portfolios. AmSouth states that it has expertise with respect to timber acquisition, forest management, timber growth and timber sales. AmSouth represents that it has no relationship to the Employer or its affiliates.

6. AmSouth will enter into a written agreement with the Employer at the time of the contribution of the Timber which provides that AmSouth will have complete control over the timing and conditions of the harvesting and sale of the Timber. As part of this agreement, AmSouth will maintain discretionary control and oversee any forestry management undertaken by the Employer. AmSouth will also enter into an agreement with the Employer (as noted in Item 3 above) wherein the Employer will agree to purchase the Timber at a purchase price equal to the greater of its then current fair market value or its fair market value on the date of the contribution. However, AmSouth states that the current fair market value of the Timber as established by RMS is indicative of what the Timber would be worth in its present condition on the open market if the Plan had to sell the Timber prior to its scheduled time for harvest.

7. AmSouth has reviewed the contribution to the Plan of the Timber and considered the appropriateness of the Timber as an investment for the Plan. AmSouth has determined that the acquisition of the Timber by the Plan would be in the best interests of the Plan and its participants and beneficiaries, based on all relevant information concerning the proposed transaction including the appraisal of the Timber by RMS. In this regard, AmSouth believes that the terms and conditions of the contribution are at least as favorable to the Plan as terms and conditions the Plan could obtain in a purchase of similar timber from an unrelated party. AmSouth states that the Plan's investment in the Timber would be prudent and would add diversification to the Plan's investments. AmSouth states further that the Timber would comply with the Plan's investment objectives and policies and would not adversely affect the Plan's liquidity needs. Thus, AmSouth represents that the Timber as an asset for the Plan will not adversely impact the Plan's ability to make any current or projected benefit payments.

8. AmSouth will monitor the performance of the Timber as an investment for the Plan and will take whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries. AmSouth will ensure that the fair market value of the Timber will not exceed 10% of the Plan's total assets at the time of the contribution and at any time during which the Timber is held as an asset for the Plan's portfolio. AmSouth will have the authority to require that the Plan sell any of the Timber, either on the open market or to the Employer, if necessary to ensure that the value of the Timber does not exceed the 10% limit. AmSouth will monitor compliance by all of the parties with the terms and conditions of the proposed exemption and understands that the effectiveness of the exemption, if granted, will be dependent of such compliance.

9. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Timber will be valued at an amount which is no greater than its fair market value at the time of contribution to the Plan, as established by an independent, qualified appraiser; (b) the Timber will be contributed under terms and conditions which are at least as favorable to the Plan as a purchase of similar timber on the open market; (c) the fair market value of the Timber will not exceed 10% of the Plan's total assets at any time during the proposed acquisition or holding of the Timber; (d) the Employer will purchase the Timber at the time it is harvested, or earlier if the Plan proposes to sell the Timber, at a price which will be the greater of either (i) the fair market value of such Timber at the time of the transaction, as established by an independent, qualified appraiser; or (ii) the fair market value of the Timber at the time of the contribution to the Plan, as established by the independent appraisal used for such contribution; (e) the Plan's interests with respect to the contribution of the Timber, and any subsequent sale of the Timber to the Employer, will be represented by AmSouth, a qualified, independent fiduciary; (f) AmSouth will monitor the proposed transactions, as well as the conditions of the exemption, and will take any appropriate action necessary to safeguard the Plan's interests; and (g) AmSouth has analyzed the contribution as an investment for the Plan and concluded that the transaction would be in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Riser Foods, Inc., Employee Savings and Retirement Plan (the Plan) Located in Bedford Heights, Ohio

[Application No. D–9323]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed extension of

credit over a one-year period (the Loans) to the Plan by Riser Foods, Inc. (the Employer), the sponsor of the Plan, with respect to a group annuity contract (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the potential repayment of the Loans (the Repayments) by the Plan; provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Plan;

(C) The Repayments shall not exceed the amount of the Loans;

(D) The Repayments shall not exceed the amounts actually received by the Plan from Mutual Benefit, any state guaranty fund, and any other responsible third party payors with respect to the GAC (the GAC Proceeds); and

(E) The Repayment of the Loans shall be waived to the extent that the total amount of the Loans exceeds the total GAC Proceeds.

Temporary Nature of Exemption: This exemption, if granted, shall apply to Loans executed within one year from the date on which the first of such Loans is executed.

Summary of Facts and Representations

1. The Plan is a defined contribution retirement plan which includes a cash or deferred compensation arrangement under section 401(k) of the Code and provides for employer matching contributions and additional employer discretionary contributions. As of January 29, 1993, the Plan had 205 participants, and as of December 31, 1991, the Plan had total assets of approximately $865,775. The Employer is an Ohio corporation engaged in the wholesale and retail grocery business, with its principal offices in Bedford Heights, Ohio. Participants in the Plan include employees of the Employer and the following wholly-owned subsidiaries of the Employer: Rini-Rego Supermarkets, Inc., American Seaway Foods, Inc., and Seaway Food Service, Inc. The Plan has two trustees: J & W Seligman Trust Company (Seligman) and Capital Guardian Trust Company (Capital Guardian). The Plan provides for individual participant accounts (the Accounts) and for participant-directed investment of the Accounts among investment options offered by an investment vehicle selected by the Employer. Plan participants may change the directions for investment of their Accounts on a quarterly basis.

2. Effective May 30, 1990 and prior to August 27, 1992, all Plan assets were held in trust by Seligman and were invested and managed by Mutual Benefit under a group annuity contract (the GAC). Under the GAC, four different investment funds were offered to Plan participants for the investment of their Accounts. These investment choices included a general account fund (the GA Fund), which provides for the payment of interest at a guaranteed rate (the GA Rate) of no less than four percent per annum on principal deposits through May 30, 2027.[22] The GA Rate for contributions to the GA Fund during the GAC's first year, effective May 30, 1990, was 8.0 percent, and the GA Rate for contributions during the second year, effective May 30, 1991, was 7.25 percent. Principal contributions were not made to the GA Fund after July 16, 1991. As of December 31, 1991, the GA Fund held Plan assets totalling $171,923.95.

The terms of the GAC authorize withdrawals from the GA Fund to enable inter-fund transfers upon participant direction, distributions upon termination of employment, hardship withdrawals, and loans (collectively, the Withdrawal Events). Since August 27, 1992, Capital Guardian has served as trustee with respect to all Plan assets other than those invested in the GA Fund, and all Plan assets other than the GA Fund have been withdrawn from the GAC.

3. By an order entered July 16, 1991 in the Superior Court of New Jersey, Mutual Benefit was placed into receivership and rehabilitation by the New Jersey Commissioner of Insurance (the Receivership).[23] Since the commencement of the Receivership, withdrawals from the GA Fund have been suspended.[24] Consequently, Withdrawal Events are not being funded by the GA Fund.

The Employer represents that under prevailing circumstances it is likely that Plan assets invested in the GA Fund will be subject to restrictions for an extended period of time, and potentially subject to loss of interest and principal. In order to enable Plan participants to prevent loss of guaranteed principal and interest by transferring Account funds out of the GA Fund over a one-year period, and to resume funding of other Withdrawal Events by the GA Fund for one year, the Employer proposes to make the Loans to the Plan. The Employer is requesting an exemption to permit the Loans, and their potential Repayment by the Plan, under the terms and conditions described herein.

4. The terms of the Loans and the Repayments are set forth in a written agreement (the Agreement) between the Employer and Seligman. Under the Agreement the Employer will be obligated to make the Loans over a one-year period at such times and in such amounts as required to enable the GA Fund to fund Withdrawal Events, in lieu of the same amounts which otherwise would be paid by Mutual Benefit as withdrawals from the GA Fund under the terms of the GAC. Accordingly, the amount of each Loan will be determined on the basis of total principal deposits plus interest at the Contract Rate, less previous withdrawals, as of the date of the Loan. Each Loan will also be reduced by any amounts actually received by the Plan, with respect to the Withdrawal Event funded by the Loan, from Mutual Benefit or any other party making payment with respect to Mutual Benefit's obligation under the GAC. The Employer will receive no interest or fees for the Loans. The Employer's obligation to make the Loans pursuant to the Agreement will expire one year from the date on which the first Loan under the Agreement is executed.[25]

In return for the Loans, the Plan is obligated to make the Repayments of the Loans as specified in the Agreement. The Agreement provides that the Repayments will be made only from the proceeds received by the Plan with respect to the GAC from Mutual Benefit, any state guaranty fund, or any other responsible third party making payment with respect to the GAC (collectively, the GAC Proceeds). No other Plan assets may be used to repay the Loans. The Agreement provides that if the total

[22] Section 2.5 of the GAC provides that Mutual Benefit will guarantee the principal amount and will credit interest at a "guaranteed interest rate" of 4.0 percent compounded annually, or at one or more rates higher than the "guaranteed interest rate", to be changed no more frequently than once each year.

[23] The Department notes that the decision to acquire and hold the GAC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GAC.

[24] Plan assets other than the GA Fund are not affected by the suspension of payments on Mutual Benefit's obligations, and have been withdrawn from Mutual Benefit's custody, because such assets were invested in funds considered to be "separate accounts" to which the court-ordered withdrawal and transfer restrictions do not apply. The terms of the Receivership imposed by the Superior Court specifically allow payment from, and withdrawal of funds invested in Mutual Benefit separate accounts.

[25] The Employer anticipates that during the one-year period of the Agreement, all participants with Account balances invested in the GA Fund will withdraw such balances or will direct the transfer of such balances to one of the Plan's investment funds managed by Capital Guardian.

amount of GAC Proceeds is less than the total amount of the Loans, then the Employer will forgive repayment of the deficiency.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will be relieved of any further risk of loss of principal or interest with respect to the GAC; (2) The Loans will allow the Plan to resume the funding of Withdrawal Events involving GA Fund assets; (3) The Loans will protect the Accounts' full investments in the GA Fund as of the date of the Loans, represented by total principal deposits in the GA Fund plus interest at the Contract Rate, less previous withdrawals; (4) The Plan will pay no interest or expenses for the Loans; (5) The Repayments will be restricted to the GAC Proceeds; and (6) The Repayments will be waived to the extent the Loans exceed the GAC Proceeds.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Hanover Orthopaedic Associates, Inc. Profit Sharing Plan (the Plan) Located in Hanover, Pennsylvania

[Application No. D–9384]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale (the Sale) from R. James Rinker, M.D.'s (Dr. Rinker) individually-directed account (the Account) in the Plan of certain property (the Property) to Dr. Rinker, a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plan is not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Property is appraised by a qualified, independent appraiser; and (4) the sales price for the Property reflects its fair market value on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Hanover Orthopaedic Associates, Inc. (the Employer), which as of March 24, 1993, had 17 participants, one of whom is Dr. Rinker. The Plan provides for individually-directed accounts by participants. As of September 30, 1992, the Plan had total assets of $2,287,272 and the Account had total assets of $881,077.61. Thomas K. Howard, M.D., James H. Ellison, M.D., and Dr. Rinker are the trustees of the Plan.

2. The Property is a parcel of vacant land located at the Long Cove Club, Hilton Head Island, Lot #85, county of Beaufort in the state of South Carolina. The Long Cove Club consists of 575 full size, single family lots on an eighteen (18) hole golf course. The Account originally purchased the Property on August 8, 1984 from Albert and Bettie Keske, unrelated parties, for a cash purchase price of $71,000. Dr. Rinker represents that the Account purchased the Property for use as an inflation hedge in the hopes that it would appreciate in value. Dr. Rinker further represents that the Property has not been used in any capacity for the past nine (9) years and that the Account has paid all expenses related to the Property during this nine (9) year period.

3. In order that the Account may divest itself of a non-income producing asset, Dr. Rinker requests an administrative exemption from the Department to purchase the Property for cash from the Account for its fair market value on the date of the Sale. Dr. Rinker represents that he does not own any of the properties adjacent to the Property. Because the Sale would be between Dr. Rinker and the Account, the accounts of the other Plan participants would not be affected. The Plan will not be required to pay any commissions, costs or other expenses in connection with this transaction.

4. John E. McKenzie, Jr. (Mr. McKenzie) of John E. McKenzie, Jr. and Associates (McKenzie Associates) appraised the Property (the Appraisal). Mr. McKenzie's qualifications include nineteen (19) years of experience as a licensed South Carolina real estate broker with eight (8) years specialized experience as the broker-in-charge of Long Cove Club Realty, Inc. and approximately ten (10) years of appraisal experience. Mr. McKenzie represents that both he and McKenzie Associates are unrelated to and independent of the Employer.

In determining the fair market value of the Property, Mr. McKenzie relied on the Sales Comparison approach and concluded that as of January 12, 1993, the fair market value of the Property is $105,000 which includes a ten (10) percent sales commission fee. According to Mr. McKenzie's valuation, the fair market value of the Property without the commission is $95,455. The Appraisal provided comparisions to three (3) lots of similar size on the fairway of the Long Cove Club golf course. Thus, based upon the Appraisal, the Account will sell the Property to Dr. Rinker for $105,000, which is equivalent to the fair market value of the Property plus a ten (10) percent sales commission fee.

5. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Sale will represent a one-time cash transaction; (b) the Plan will not be required to pay any commissions, costs or other expenses in connection with the transaction; (c) the Property has been appraised by a qualified, independent appraiser and (d) the sales price for the Property will reflect its fair market value on the date of the Sale.

For Further Information Contact: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

(1) The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of July 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–16464 Filed 7–9–93; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Revisions to the Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment on Proposed Revision 3 to NUREG–1200.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability for public comment a proposed Revision 3 to the Standard Review Plan (SRP) for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility (NUREG–1200).

The SRP (NUREG 1200) is guidance for NRC staff to review an application for a low-level radioactive waste disposal facility license. The NRC anticipated periodic review and updating of the SRP as a result of practical experience gained with use in actual reviews and as technological or regulatory changes occur which indicate a need to revise the SRP. Two revisions have already been issued and now the staff is proposing a third revision.

On December 18, 1991, a draft version of the proposed revision 3 to the SRP was made available to all Agreement and Non-Agreement States and Low-Level Waste Compacts. On January 16, 1992, the NRC staff discussed the proposed revision 3 to SRP with the Advisory Committee on Nuclear Waste (ACNW). A more detailed listing of the specific chapters modified by this proposed revision follows:

1.1 Licensing Process
3.2 Design Considerations
3.2–Appendix A Guidance on Soil Cover Systems Placed Over Low-Level Radioactive Waste
4.1 Receipt and Inspection of Waste
4.2 Waste Handling and Interim Storage
4.3 Waste Disposal Operations
6.1 Release of Radioactivity-Introduction
7.1 Occupational Radiation Exposures
7.2 Radionuclide Inventories
7.3 Radiation Protection Design Features and Operating Procedures
7.4 Radiation Protection Program

When revision 3 of the SRP is issued in final approved form, the NRC staff intends to make two additional administrative changes affecting every chapter. First, references listed at the end of each chapter will be separated into essential references which a reviewer should be familiar with and references which simply provide additional information that may be obtained from other sources as well. Second, at the first of each SRP section or chapter, the NRC staff will list technical disciplines sufficient to assure a meaningful review of a license application for that section.

Public comments are being solicited on the proposed revisions as described above, including the two administrative changes. Comments should be accompanied by supporting data.

DATES: The comment period expires August 31, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or hand deliver comments to 7920 Norfolk Avenue, Bethesda, MD, between 7:45 a.m. and 4:15 p.m. Copies of comments may be examined at the Commissions Public Document Room, the Gilman Building, 2120L Street NW. (lower level), Washington, DC.

The proposed revision 3 to the SRP is available for inspection at the Commissions Public Document Room, the Gilman Building, 2120 L Street NW. (lower level), Washington, DC. Request for single copies of the proposed revision 3 to the SRP should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Chief, Low-Level Waste Management Branch, Office of Nuclear Material Safety and Safeguards, Mail Stop: 5E–4. NUREG's are not copyrighted and Commission approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Mr. John O. Thoma, Low-Level Waste Management Branch, Office of Nuclear Material Safety and Safeguards, Washington, DC, 20555: Telephone (301) 504–3450.

Dated at Rockville, Maryland, this 2nd day of July, 1993.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Chief, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–16446 Filed 7–9–93; 8:45 a.m.]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 55th meeting on Tuesday, Wednesday and Thursday, July 20, 21 and 22, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on June 23, 1993 (58 FR 34068).

Portions of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

During this meeting, the Committee plans to consider the following:

Tuesday, July 20, 1993

1 p.m.–1:45 p.m.—The ACNW Chairman will make opening remarks regarding the conduct of the meeting and comment briefly regarding items of current interest (Open).

1:45 p.m.–5 p.m.—The Committee will discuss issues that will serve as topics for discussion during the Committee's meetings with several Commissioners. Possible topics to be discussed include: the revised ACNW Charter, renewal of appointments for members, and future ACNW resources (Open/Closed).[1]

[1] Portions of this session may be closed to public attendance to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c) (2) and (6).

Wednesday, July 21, 1993

8:30 a.m.–10 a.m.—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the status of high-level waste management quality assurance (Open).

10:15 a.m.–11:30 a.m.—The Committee will hear a report by ACNW Members regarding recent activities including a visit to the Canadian Whiteshell Nuclear Laboratory and the Underground Research Laboratory in Manitoba, Canada, a report on a DOE workshop on multi-purpose canisters, and a report on a NWTRB meeting on thermal loads for the proposed HLW repository (Open).

1 p.m.–2:15 p.m.—The Committee will meet with Commissioners Rogers and de Planque to discuss items of mutual interest (Open/Closed).

2:30 p.m.–3:30 p.m.—The Committee will meet with Commissioner Remick to discuss items of mutual interst (Open/Closed).[1]

4 p.m.–5:30 p.m.—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational and personnel matters relating to ACNW members, staff and consultants (Closed).[1]

Thursday, July 22, 1993

8:30 a.m.–11 a.m.—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff, Public Service of Colorado, and the Long Island Power Authority regarding the status of decommissioning plans for Ft. St. Vrain and Shoreham Nuclear Power Plants (Open.)

11:15 a.m.–1 p.m.—The Committee will discuss proposed ACNW reports regarding items considered during this meeting and previous meetings. (Open).

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with ACNW Executive Director or call the recording (301)/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c) (2) and (6).

Dated: July 2, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–16445 Filed 7–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–11883; License No. 53–16929–01; EA 93–040]

Castle Medical Center, Kailua, Hawaii; Order Imposing Civil Monetary Penalties

I

Castle Medical Center is the holder of Materials License No. 53–6929–01, first issued by the Nuclear Regulatory Commission (NRC or Commission) on June 4, 1976, and most recently renewed on March 5, 1993. The license authorizes the medical use of radioactive materials in accordance with the conditions specified therein and in 10 CFR 35.100, 35.200, and 35.300.

II

An inspection of the Licensee's activities was conducted on February 9–11, 19, and 22, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated March 31, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

The Licensee responded to the Notice in two letters dated April 30, 1993. In its response, the Licensee agreed that violations B, C, G, H, and I occurred as documented in the Notice. For reasons described in the Appendix to this Order, the Licensee denied Violations A.1, A.2, A.3, and F; denied a portion of Violation D; and argued that Violation E should not have been cited. In addition, the Licensee requested remission of the civil penalties.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that Violation D should be modified to delete one example as provided in the Appendix, that the remaining violations occurred as stated, and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is Hereby Ordered That:* The Licensee pay civil penalties in the amount of $7,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region V, 1450 Maria Lane, Walnut Creek, California 94596–5368.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in compliance with the requirements specified in Violations A.1, A.2, A.3, and F, as set forth in the Notice referenced in section II above, and Violation D as modified in the Appendix, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice that the Licensee admitted, this Order should be sustained.

For the Nuclear Regulatory Commission.

Hugh L. Thompson,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Dated at Rockville, Maryland this 2nd day of July 1993.

Appendix—Evaluations and Conclusions

On March 31, 1993, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection conducted on February 9–11, 19, and 22, 1993. Castle Medical Center (Licensee or CMC) responded to the Notice in two letters dated April 30, 1993. The Licensee denied Violations A.1, A.2, A.3, and F, and a portion of Violation D; argued that Violation E should not be cited; and requested remission of the civil penalties. The NRC's evaluation and conclusion of the Licensee's requests are as follows:

Restatement of Violation A.1

A. 10 CFR 35.32 requires that a Licensee establish and maintain a written Quality Management Program (QMP) to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user.

1. 10 CFR 35.32(a) requires in part that prior to administration, a written directive be prepared for administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131 or any therapeutic radiopharmaceutical, other than sodium iodide I–125 or I–131.

As defined in 10 CFR 35.2, a written directive means an order in writing for specific patient, dated, and signed by an authorized user prior to the administration of a radiopharmaceutical which includes the dosage and route of administration.

Contrary to the above, between January 27, 1992, and February 9, 1993, the Licensee administered greater than 30 microcuries of iodine-131 on 14 occasions and therapeutic administrations of phosphorus-32 on 4 occasions, without first preparing a written directive which included the signature of the authorized user, the route of administration, and the amount to be administered, prior to administering the radiopharmaceutical to the patient.

Summary of Licensee's Response

The Licensee denies the violation, arguing that it complied with its interpretation of the requirement between January 27 and December 16, 1992. CMC states that prior to December 16, 1992, it adequately implemented the QMP by having the authorized user sign either the Patient Consent Form or the written directive form (described in the QMP) prior to administration of a radiopharmaceutical, and provided representative copies of the completed forms. The Licensee states that, after December 16, 1992, the Licensee interpreted the QMP to require signature of the written directive form by the authorized user prior to administration, and that after December 16, 1992, no radiopharmaceuticals requiring a written directive were administered without the authorized user first signing the written directive form.

NRC Evaluation of the Licensee's Response

Although the Licensee claims that it misinterpreted the requirement, that fact does not nullify the violation. Further, the requirement is clear and leaves no room for misinterpretation. 10 CFR 35.2 defines written directive as an order in writing that is dated and signed by an authorized user prior to the administration of a radiopharmaceutical, which includes, for iodine-131, the dosage, and for phosphorous-32, the radiopharmaceutical, dosage and route of administration.

Moreover, section 3 of the Licensee's revised QMP submitted on March 10, 1992 states that: Prior to administration of a dosage of greater than 30 microcuries of sodium iodide I–131 and any therapeutic radiopharmaceutical, a written directive shall be signed and dated by an authorized user. The written directive shall contain the following information: (a) The name of the patient, (b) The date of the request, (c) The radiopharmaceutical, (d) The dosage, (e) The route of administration, and (f) The signature of the authorized user.

While the patient consent form could comply with the requirement for a written directive if all information and signatures were added prior to each administration, nine of fourteen patient consent forms did not include the amount of iodine-131 to be administered. Also, of the four patient consent forms used for phosphorus-32 therapy, two forms were signed by the referred physician instead of the authorized user, one of the two forms did not include the route of administration and the other form did not include the amount of phosphorus-32 to be administered, and two forms could not be located for the inspectors' review.

The Licensee enclosed two forms to show that it satisfied the intent of the QMP because the authorized user signed at least one of the forms. The patient consent form was signed by the authorized user; however, the amount of iodine-131 to be administered was omitted; further, the written directive form was completed by the technologist during or immediately after administration. It was not until after the administration that the technologist obtained the authorized user's signature on the written directive form.

Finally, the Licensee states that "[S]ince December 16, 1992, written directives containing all the necessary information and signed in advance have been used for therapy administrations." However, according to the Chief Technologist, a nine millicurie phosphorus-32 dosage was administered to a patient on December 21, 1992, before the patient consent form or the written directive form were dated and signed by an authorized user.

Restatement of Violation A.2

10 CFR 35.32(c) requires in part that the Licensee evaluate and respond, within 30 days after discovery of the recordable event, to each recordable event by: (1) Assembling the relevant facts, including the cause; (2) identifying what, if any, corrective action is required to prevent recurrence; and (3) retaining a record, in an auditable form, for three years, of the relevant facts and what corrective action, if any, was taken.

Recordable events as defined in 10 CFR 35.2 include administration of a radiopharmaceutical without a written directive and administration of a radiopharmaceutical where a written directive is required without daily recording of each administered radiopharmaceutical dose in the appropriate record.

Contrary to the above, records of recordable events identified and evaluated by the annual audit of the QMP performed on December 16, 1992, did not include the relevant facts and the corrective action taken.

Summary of Licensee's Response

The Licensee denies the violation, arguing that the annual review of the QMP identified one administration where no written directive was found, and that the written directive for that administration was later found and thus did not constitute a recordable event. CMC also argues that under its interpretation of the regulations prior to December 16, 1992, the lack of the countersignature on the written directive when the physician had signed the patient consent form did not constitute a recordable event.

NRC's Evaluation of Licensee's Response

The audit performed by the consultant on December 16, 1992, identified problems that fall under the definition of *recordable event* in 10 CFR 35.2, including: (1) A patient treatment omitted from the radiopharmaceutical dosage log and (2) written directives not found for two patient treatments. The Licensee's claim that it misinterpreted the rule does not change the fact that these problems were identified and that they are, by definition, recordable events.

The regulation requires that the Licensee retain a record of the relevant facts and corrective action for each recordable event, which the Licensee did not do. Although the Licensee claims that it later found one of the written directives, the violation still occurred as stated, because a record of the relevant facts and the corrective action was not retained for the other recordable events identified in the audit report.

Restatement of Violation A.3

10 CFR 35.25(a)(1) requires in part that the Licensee instruct supervised individuals in the Licensee's written QMP.

Contrary to the above, between January 27, 1992, and January 1993, the Licensee did not instruct a nuclear medicine technologist, a supervised individual, in the Licensee's written QMP.

Summary of Licensee's Response

The Licensee denies the violation, arguing that the technologist is the Director of Radiology and that he participated in discussions regarding the QMP at Radiation Safety Committee (RSC) meetings conducted on March 2 and September 28, 1992, when selected items of the QMP were discussed, and therefore he got the required training because, as the Director of Radiology, he is capable of assessing his own training needs in specific program areas.

NRC's Evaluation of Licensee's Response

During the Enforcement Conference, the Radiation Safety Officer (RSO) stated that an overview of the QMP was discussed during the Radiation Safety Committee meetings, but that it did not include specific requirements associated with the QMP. See NRC Enforcement Conference Report 93–02, dated March 31, 1993 at page 2, paragraph 2. Therefore, attendance at the RSC meetings did not fulfill the training requirement.

The NRC inspection report further documents the fact that the training requirement was not fulfilled. Specifically, the Director of Radiology stated to the NRC inspector that he had not received any QMP training until January 1993 and that, until that time, he was unaware of any requirement to complete a written directive prior to the administration of a therapy dose. Moreover, on December 14, 1992, the Director of Radiology administered 14.9 millicuries of iodine-131 to a patient even though the authorized user had not specified, on the patient consent form or on the written directive form, the amount of iodine-131 to be administered.

Summary of Licensee's Request for Mitigation of Civil Penalty Assessed for Violations A.1, A.2, and A.3

The Licensee disagrees that Violations A.1, A.2, and A.3 demonstrate a significant failure to effectively implement and maintain the QMP, stating that the violations merely document CMC's changing interpretation of the regulations in an effort to meet the intent of the QMP, and its effort to make the record keeping requirements fit with the Licensee's existing record keeping requirements. The Licensee contends that the intent of the QMP was met, as evidenced by the fact that there were no misadministrations between January 27, 1992 and February 9, 1993. Accordingly, CMC continues, the violations should have been classified as Severity Level IV.

The Licensee also disagrees with the staff's escalation of the civil penalty based on the NRC's identification of the problems, arguing that CMC identified the need for the authorized user's signature on the written directive, as documented in the minutes of the RSC meeting of December 16, 1992. Additionally, the Licensee contends that the discrepancies identified in the annual evaluation of the QMP were not considered as recordable events due to CMC's interpretation of the regulations in effect at that time.

NRC's Evaluation of Licensee's Request for Mitigation of Civil Penalty Assessed for Violations A.1, A.2, and A.3

In accordance with the NRC Enforcement Policy, 10 CFR Part 2, Appendix C, Supplement VI.C.6, a substantial failure to implement the QMP is an example of a Severity Level III problem regardless of whether or not a misadministration occurred. A review of the QMP requirements in 10 CFR 35.25 and 35.32 clearly shows that the three key elements of any quality management program must be: (1) Administration of therapy treatments in accordance with a written directive as defined in 10 CFR 35.2, (2) training of individuals in the requirements of the QMP, and (3) appropriate response to recordable events. The licensee had violations in all three areas. Therefore, Violations A.1, A.2, and A.3, when considered in the aggregate, represent a substantial failure to implement the QMP.

The 50% escalation for NRC identification of the violation is warranted because the Licensee failed to identify: (1) That the referring physician instead of the authorized user had signed the patient consent form (written directive) on two occasions, (2) that the amount of iodine-131 to be administered was not specified on the patient consent form (written directive) on nine occasions, (3) that the amount of phosphorus-32 to be administered was not specified on the patient consent form (written directive) on one occasion, (4) that the route of administration for phosphorus-32 was not specified on the patient consent form (written directive) on one occasion, (5) that it had not retained a record of the relevant facts and corrective action for recordable events, and (6) that the Director of Radiology had not been trained in the QMP as required.

NRC Conclusion

The NRC staff concludes that Violations A.1, A.2, and A.3 occurred as stated and that neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the Licensee. Consequently, the proposed civil penalty in the amount of $2,500 should be imposed.

Violations B through I

The Licensee denies Violation F and a portion of Violation D, and argues that Violation E should not have been cited because the criteria in Section VII.B of the Enforcement Policy were satisfied. The Licensee admits the remaining violations.

Restatement of Violation D

10 CFR 35.51(c) requires, in part, that a Licensee check each survey instrument for proper operation with the dedicated check source each day of use.

Contrary to the above, as of February 9, 1993, the Licensee did not check its Xetex and Victoreen Model 293 with pancake probe survey meters with a dedicated check source on days when the instruments were used.

Summary of Licensee's Response

The Licensee admits that it failed to check the Xetex survey meter with a dedicated check source, but disagrees that the violation occurred with the Victoreen Model 493 survey meter, stating that the inspector misunderstood the certified nuclear medicine technologist when she stated she did not use the Victoreen survey meter and pancake probe for daily surveys to mean that she did not source check the meter before use.

NRC's Evaluation of Licensee's Response

Based on the Licensee's explanation, the portion of Violation D relating to the failure to source check the Victoreen pancake probe is withdrawn. Violation D should still be cited, however, because the Licensee did fail to source check the Xetex survey meter before use.

Restatement of Violation E

10 CFR 35.205(e) requires, in part, that a Licensee measure each six months the ventilation rates available in areas of use of radioactive gas.

Contrary to the above, the Licensee used radioactive xenon-133 gas in the imaging room but did not measure the ventilation rates therein from September 1991, to July 22, 1992, a period of 10 months.

Summary of Licensee's Response

The Licensee indicated that this violation should not have been cited because it was identified by its consultant during an audit performed on June 24, 1992.

NRC's Evaluation of Licensee's Response

In specified circumstances, Section VII.B(2) of the Enforcement Policy allows, but does not require, the NRC staff to refrain from issuing a Notice of Violation for licensee identified Severity Level IV violations. In this case, however, the Licensee performed four more xenon studies after the Licensee was aware that the surveillance test was past due. It is within the discretion of the NRC staff to cite this violation, and the staff has chosen to do so because the violation is indicative of the pattern of inadequate management attention to assure compliance with NRC requirements.

Restatement of Violation F

10 CFR 20.201(b) requires that each Licensee make such surveys as may be necessary to comply with the requirements of Part 20 and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, the Licensee did not make surveys to assure compliance with 10 CFR 20.202(a)(1), which requires the use of personnel monitoring equipment for those individuals who are likely to receive a dose in any calendar quarter in excess of 25 percent of the applicable value specified in 10 CFR 20.101. Specifically, between May 8, 1991, and February 9, 1993, the Licensee did not adequately evaluate the proper placement of finger dosimetry for nuclear medicine technologists.

Summary of Licensee's Response

The Licensee denies the violation, contending that an evaluation was made of the proper placement of the ring dosimeter in that the technologist wore the dosimeter on a finger, rather than on the wrist, and that the work performed by the technologist is so varied that it is pointless to evaluate which finger of which hand should be monitored.

To support its position, CMC references NCRP Report No. 57, "Instrumentation and Monitoring Methods for Radiation Protection, 1978," Section 4.2.2.3, and Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," Appendix I, regarding the criteria for placement of extremity dosimeters.

CMC contends that NCRP 57 supports the view that dosimeters can be worn on any finger rather than on a specific finger of a specific hand, and that Regulatory Guide 10.8 provides no specific guidance on this issue. CMC adds that based on a review of exposure records for 1991 and 1992, no monitoring was required because the technologist's extremity doses were 6.4% and 5.8%, respectively, of the limits specified in 10 CFR 20.101.

NRC's Evaluation of Licensee's Response

While NCRP guidance does not take precedent over NRC requirements, NCRP 57, Section 4.2.2.3, "Partial Body Exposure" does state in part:

Where sealed or unsealed radioactive sources are handled, it may be particularly important to determine the dose to the hands. Extremity dosimeters should be worn *as near to the point of maximum exposure as possible* (on a finger or the wrist) and should not be shielded from radiation by the extremity. (Emphasis added).

The Licensee's contention that it is acceptable to place the extremity dosimeter on either hand conflicts with the recommendation to place dosimeters "as near to the point of maximum exposure as possible."

Regulatory Guide 10.8, Appendix I, does not specify how dosimeters are to be worn. However, Appendix I does indicate that dosimeters should be worn as prescribed by the Radiation Safety Officer (RSO). As documented in the inspection report, the RSO stated that he had never evaluated which of the technologist's hands was likely to receive the highest dose.

The inspection report indicates that the technologist's method of drawing and injecting doses brought the left hand, where she wore the dosimeter, in proximity to shielded volumes of Tc-99m, and brought the right hand in proximity to unshielded volumes. The Licensee cannot use the dosimeter readings from the left hand to argue that no monitoring is required because the dose to the right hand, which was not measured, may be significantly greater based on the inspector's observation of the technologist's work habits.

Summary of Licensee's Request for Mitigation of Civil Penalty Assessed for Violations B Through I

The Licensee admits six of the eight violations, but argues that individually these violations would be considered minor. CMC also disagrees that the violations collectively represent a programmatic breakdown in the Radiation Safety Program, and adds that the violations were identified as a result of an extremely detailed, three-day inspection.

CMC disagrees with the escalation of the penalty based on two NRC Information Notices (INs). CMC challenges the relevance of IN 90–71, "Effective Use of Radiation Safety Committees [RSCs] to Exercise Control Over Medical Use Programs," because, according to the Licensee, the six purposes of the RSC described in the discussion section of IN 90–71, including RSC review of the radiation safety program, were fulfilled at CMC, as documented in the RSC meeting minutes.

CMC also challenges the applicability of IN 91–71, "Training and Supervision of Individuals Supervised by an Authorized User," arguing that the significant incidents cited therein were caused in part by training problems which were of much greater significance than those at CMC. Specifically, while conceding that three of the six admitted violations were caused by training deficiencies, CMC contends that a training program was in place and that attention to the training of facility personnel is documented in the RSC meeting minutes.

Finally, CMC argues that the proposed civil penalty is not consistent with the enforcement actions described in IN 90–71, or with a recent unspecified enforcement action in Hawaii.

NRC's Evaluation of Licensee's Request for Mitigation of Civil Penalty Assessed for Violations B Through I

The NRC Enforcement Policy, section IV.A, states in part that a group of violations may be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations have the same underlying cause or programmatic deficiencies, or if the violations contributed to or were unavoidable consequences of the underlying problem. The NRC staff concluded that all of the violations stem from the same root cause, namely, a pattern of lack of attention by the RSO and management above the RSO to compliance with NRC regulatory requirements. Thus aggregation was warranted.

As to the relevance of IN 90–71, this notice indicates that the RSC should review the functions of the RSO to ensure that the RSO does not have other duties that prevent adequate attention to the safety program, and that the RSO has not delegated substantial responsibilities to other staff members or to consultants. As documented in the inspection report, the oversight of the Radiation Safety Program was primarily limited to administrative reviews of the program by the consultant. Further, CMC personnel conceded during the Enforcement Conference that the Radiation Safety Program had not received enough management attention.

Contrary to CMC's contention that its RSC fulfilled the six purposes of RSCs oulined in IN 90–71, the RSC failed to identify radiation safety problems; initiate, recommend or provide corrective actions; and verify implementation of corrective actions (Purpose One of IN 90–71). While the Licensee may have identified some problems, it failed to implement timely, lasting corrective action, as documented in NRC Inspection Report No. 93–01, section 3. Specifically, the Licensee failed to implement corrective actions concerning: (1) The failure to perform ventilation room checks, (2) The failure to obtain dose calibrator records for a "loaner" dose calibrator, (3) The failure to implement the Quality Management Program by using written directives, by evaluating recordable events, and by training personnel in the provisions of the QMP, (4) The failure to provide and document annual radiation safety refresher training, (5) the failure to perform required surveys (repeat violation), and (6) the failure to perform required dose calibrator constancy checks (repeat violation).

As to the relevance of IN 91–71, this Notice was written specifically to remind licensees of the importance of providing adequate instruction and supervision to individuals, such as technologists, who work under the supervision of an authorized user. This notice also highlights the need for adequate training of individuals such as part-time, cross-trained, or temporary technologists. As documented in the inspection report, the Licensee's primary technologist is a Certified Nuclear Medicine Technologist (CNMT), and two other, non-certified technologists fill in for her when she is not available. Violation B was caused by a non-certified technologist's lack of familiarity with the operation of the dose calibrator, resulting in his use of a loaner dose calibrator from the radiopharmacy and his lack of familiarity with the requirement for performing dose calibrator tests upon installation of the dose calibrator. Violation C occurred because the non-certified technologists did not understand the requirement for performing surveys at the end of each day of use of radiopharmaceuticals. Violation D occurred because the technologists assumed that if the instrument did not have an installed source, the source check did not have to be performed. Violation H occurred because the technologist assumed that removing gloves prior to leaving the area meant that there was no need to monitor her hands. Violation I occurred because the staff wrongly thought that the requirement applied to the use of iodine-131 for inpatient therapy and not for phosphorus-32 inpatient therapy.

Licensees are expected to be pro-active in identifying and correcting their own violations and are required to maintain compliance with NRC regulatory requirements at all times. Therefore, the degree of detail of an NRC inspection or the length of time devoted to it have no bearing on the consideration of any resulting enforcement action. Further, in this case, the inspection was extended due to the number and nature of the violations that were being identified.

It is also inappropriate to compare the monetary amount of civil penalties assessed among different licensees because the effect of the Enforcement Policy's mitigating and escalating factors on the final monetary

amount is case specific. Further, the total monetary amount was higher in this case because there were two separate Severity Level III problems and, in accordance with the Enforcement Policy, a separate civil penalty was assessed for each problem.

NRC Conclusions

The NRC has concluded that Violations B through I occurred as stated and that neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the Licensee. Consequently, the proposed civil penalty for violations B through I in the amount of $5,000 should be imposed.

[FR Doc. 93–16447 Filed 7–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–321 and 50–366]

Georgia Power Co.; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Virginia Electric and Power Company, (the licensee) for amendments to Facility Operating License Nos. DPR–32 and DPR–37 issued to the licensee for operation of the Surry Power Station, Units 1 and 2. Notice of Consideration of the amendments was published in the **Federal Register** on February 12, 1991.

The licensee's application of November 14, 1990, proposed three changes to the Technical Specifications (TS) relating to containment leak rate testing. One of these changes was previously granted. The second is authorized by the current amendments. The third requested a reduction in the emergency escape airlock seal from 45 psig to 10 psig. This specific change to reduce the leak test pressure for the airlock seal is not justified because the licensee has not adequately demonstrated the 10 psig pressure test provides the required assurance that the emergency airlock seal will function as required to minimize outleakage during and following a loss-of-coolant accident. The requested change is therefore denied. The licensee was notified of the Commission's denial by letter dated July 1, 1993.

By August 11, 1993, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza East Tower, 915 E. Byrd Street, Richmond, Virginia 23219, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 14, 1990, and (2) the Commission's letter to the licensee dated July 1, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 1st day of July 1993.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Project Director, Project Directorate II-2, Division of Reactors Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16450 Filed 7–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Unit 1); Exemption

I

Southern California Edison Company, (SCE or the licensee) is the holder of Facility Operating License No. DPR–13, which authorizes possession and maintenance of the San Onofre Nuclear Generating Station, Unit 1 (Songs 1). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The facility consists of a permanently shutdown pressurized water reactor at the SCM site located in San Diego County, California.

II

Title 10 of the Code of Federal Regulations, § 50.54(x) (10 CFR 50.54(x)), allows each licensee to "take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent." Section 50.54(y) of 10 CFR states that such "action permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator prior to taking the action." The underlying purpose of 10 CFR 50.54 (x) and (y) is to permit personnel to take emergency actions in response to abnormal conditions which may not have been considered when the License Conditions and Technical Specifications were formulated.

III

By letter dated February 8, 1993, the licensee requested an exemption from 10 CFR 50.54(y) for Songs 1. Songs 1 was permanently shut down in November 1992 and refueling of the reactor completed in March 1993. Upon licensee certification of the refueling on March 9, 1993, Amendment No. 150 to Facility Operating License No. DPR–13 became effective, changing the license to a possession only license. On May 27, 1993, the NRC staff issued Amendment No. 154 to Facility Operating License No. DPR–13 which permitted replacement of the 10 CFR part 55 licensed operator program with an approved Fuel Handler Program at Songs 1. The amendment established the nonlicensed Certified Fuel Handler position as the highest level of defueled plant operator, analogous to a licensed senior operator at an operational facility. This exemption allows a Certified Fuel Handler, in lieu of a Senior Reactor Operator, to approve the taking of actions under 10 CFR 50.54(x) for a facility with a possession only license and a defueled reactor presents no undue risk to the public health and safety.

The licensee will assure that the underlying purpose of 10 CFR 50.54(y) is fulfilled by establishing administrative controls requiring that any emergency action permitted by 10 CFR 50.54(x) must be approved, as a minimum, by a Certified Fuel Handler prior to taking the action. The administrative controls will be implemented following issuance of the exemption.

The Commission finds, pursuant to 10 CFR 50.12(a)(2)(ii), that special circumstances exist such that application of 10 CFR 50.54(y) in the particular circumstances existing at

Songs 1 would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule. A Certified Fuel Handler will have appropriate technical qualifications to carry out licensed activities under the possession only license, and a Senior Reactor Operator is not necessary to approve the taking of action under 10 CFR 50.54(x). Therefore, based on the considerations stated above, it is concluded that the request of the licensee for an exemption from the requirements of 10 CFR 50.54(y) is acceptable and should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants the exemption request from the requirements of 10 CFR 50.54(y), for the San Onofre Nuclear Generating Station, Unit 1 to allow the approvals provided for therein to be granted by a Certified Fuel Handler.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the quality of the human environment (58 FR 35986, July 2, 1993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of July, 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16448 Filed 7–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 179 to Facility Operating License No. DRP–32 and Amendment No. 179 to Facility Operating License No. DPR–37, issued to the Virginia Electric and Power Company (the licensee), which revised the Technical Specifications for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia. The amendments were effective as of the date of their issuance.

The amendments revised the Technical Specifications to increase the containment leak test pressure from 39.2 psig to 45.0 psig.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act of the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 12, 1991 (56 FR 5712).

Also in connection with the action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on January 28, 1993 (58 FR 6424).

For further details with respect to the action, see (1) the application for amendments dated November 14, 1990, (2) Amendment No. 179 to License No. DPR–32, and Amendment No. 179 to License No. DPR–37, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland this 1st day of July 1993.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16449 Filed 7–9–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE FEDERAL REGISTER

Agreements Between the American Institute in Taiwan and the Coordination Council for North American Affairs

AGENCY: Office of the Federal Register.

ACTION: Correction to Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Coordination Council for North American Affairs in order to maintain cultural, commercial and other unofficial relations between the American people and the people on Taiwan. The Director of the **Federal Register** is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest. The list published in the **Federal Register** on June 9, 1993 (58 FR 32355) inadvertently omitted one agreement.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people in Taiwan are maintained on a nongovernmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) is its nongovernmental Taiwan counterpart.

Under section 12(a) of the Act, agreements concluded between the AIT and the CCNAA are transmitted to the Congress, and according to Sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, 17th floor, Arlington, Virginia 22209. For further information contact the Corporate Secretary of AIT at this address, telephone: (703) 525–8474, fax: (703) 841–1385.

Following is the agreement omitted from the June 9, 1993, **Federal Register** list: "Agreement concerning trade matters with annexes. Effected by exchange of letters at Arlington and Washington, October 24, 1979. Entered into force October 24, 1979; effective January 1, 1980."

Dated June 29, 1993.

J. Richard Bock,

Deputy Managing Director and Corporate Secretary.

Dated: July 7, 1993.

Martha L. Girard,

Director, Office of the Federal Register.

[FR Doc. 93–16398 Filed 7–9–93; 8:45 am]

BILLING CODE 1502–02–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–19558; 812–8402]

First Prairie Cash Management, et al.; Notice of Application

July 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First Prairie Cash Management; First Prairie Diversified

Asset Fund; First Prairie Money Market Fund; First Prairie Tax Exempt Bond Fund, Inc.; First Prairie Tax Exempt Money Market Fund; First Prairie U.S. Government Income Fund; First Prairie U.S. Treasury Securities Cash Management (collectively, the "Funds"); and the First National Bank of Chicago.

RELEVANT ACT SECTIONS: Section 17(d) and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds to deposit their uninvested cash balances into a joint trading account where the cash will be invested in short-term money market instruments and repurchase agreements.

FILING DATE: The application was filed on May 14, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 27, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, First Prairie Funds, 144 Glenn Curtiss Boulevard, Uniondale, New York 11556–0144; the First National Bank of Chicago, Three First National Plaza, Chicago, Illinois 60670.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each Fund is a registered, open-end, management investment company. First Prairie Money Market Fund and First Prairie Tax Exempt Bond Fund, Inc. each consist of two portfolios ("Series"). The Funds and the Series are collectively referred to as "Portfolios." From time to time, the Portfolios have uninvested cash balances that otherwise would not be invested in portfolio securities at the end of each trading day. All the Portfolios are authorized to invest at least a portion of their uninvested cash assets in short-term liquid assets, including repurchase agreements.

2. The First National Bank of Chicago currently serves as investment adviser to each Portfolio. The Dreyfus Corporation ("Dreyfus") provides administrative services to each Portfolio, and the Bank of New York serves as custodian of the Portfolios (the "Custodian").

3. Applicants request that relief be extended to other registered investment companies for which the First National Bank of Chicago, or any entity under common control or controlled by the First National Bank of Chicago (collectively "FNBC") subsequently serves as investment adviser.

4. In general, on each trading day, most Portfolios have cash balances in their accounts maintained by the Custodian that are not invested in portfolio securities. Frequently, such cash balances are invested in repurchase agreements. Repurchase agreements are entered into with banks, non-bank government securities dealers, and major brokerage houses. Typically, the uninvested assets of some Portfolios are too small, or are received too late, to be invested effectively.

5. For its investments in repurchase agreements, each Portfolio has established substantially similar systems and standards. These systems and standards, adopted in compliance with Investment Company Act Release No. 13005 (Feb. 2, 1983) and the SEC Division of Investment Management's interpretations set forth in letters to the Investment Company Institute dated January 25, 1985 (pub. avail. same day), April 17, 1985 (pub. avail. May 7, 1985), and June 19, 1985 (pub. avail. same day), include quality standards for issuers of the repurchase agreement and require that the repurchase agreements be at least 100% collateralized at all times. Applicants acknowledge that they have a continuing obligation to monitor published statements of the SEC on repurchase agreements, and in the event the SEC sets forth different or additional requirements, each Portfolio intends to modify its systems and standards accordingly.

6. Currently, the uninvested cash balances of the Portfolios typically are not invested in taxable and tax exempt short-term money market instruments with overnight, over-the-weekend, or over-the-holiday maturities ("Short-Term Money Market Instruments"). FNBC believes that such investments ordinarily cannot be made on a cost efficient basis because of the relatively high processing fees imposed in connection with the transactions. FNBC further believes that, if the joint account were established for investing in Short-Term Money Market Instruments, the larger size of the joint account's cash balances would permit such investments to be made on a cost efficient basis.

7. Applicants propose to deposit the uninvested cash balance in each Portfolio's custodial account into a single joint account at the end of each trading day. The daily balance in the joint account will be used to purchase one or more Short-Term Money Market Instruments and/or repurchase agreements. FNBC will invest Portfolio assets only in Short-Term Money Market Instruments that constitute "Eligible Securities" within the meaning of rule 2a–7 under the Act.

8. When the joint account invests in more than one investment on a given day, each participant in the joint account would not necessarily have its cash invested in every investment purchased through the joint account. This may occur for a variety of reasons. FNBC believes that it is prudent to limit investment risk by entering into repurchase agreements with a number of different counter-parties and purchasing Short-Term Money Market Instruments of a number of different issuers. In some cases, certain Portfolios may be precluded by their investment restrictions from participating in a repurchase agreement with a particular counter-party or from purchasing certain Short-Term Money Market Instruments. In addition, on a given day, cash of a Portfolio may become available too late to be included in repurchase agreements that have already been negotiated, or may be too small to invest individually. In many such cases, however, it will still be advantageous for this cash to be invested jointly along with that of other Portfolios in a similar position on that day.

9. FNBC believes that no conflict of interest or potential for favoring one Portfolio over another arises merely as a result of the fact that the participating Portfolios may not always be allocated a *pro rata* portion of all of the investments made through the joint account. In determining which investments to allocate to which Portfolios participating in the joint account, FNBC will take into account each Portfolio's investment restrictions

and repurchase agreement collateral requirements, its obligation to fairly allocate investment opportunities among the Portfolios, the need for diversification, and the time when cash becomes available for investment on a given day.

10. A Portfolio will never be in a less favorable position than if the joint account were not in place. In many cases, a particular Portfolio will be in a better position, since it may not have enough cash to invest profitably in an individual investment. Any alternative structure, in which FNBC would have to limit investments to those which could include every participating Portfolio, would be less beneficial than the proposed structure.

11. All assets of participating Portfolios transferred to the joint account will continue to be held under proper bank custodial procedures. The joint account will not be distinguishable from any other account maintained by the Custodian for a Portfolio except that monies from multiple Portfolios will be deposited into it on a commingled basis.

12. The recordkeeping system of the joint account will be substantively identical to that which would be used if several joint accounts were set up. After agreeing on the trade details with a third party, FNBC's cash management desk will compile all necessary joint trade information, assign a control reference number to the trade, produce a joint trade ticket and breakdown sheet displaying each participant's *pro rata* portion of the joint investment (the "Trade Information"), and transmit the Trade Information to each participant in the investment. The Trade Information will be sent to Dreyfus' fund accounting department to be entered into its accounting system, and to the Custodian, to be used as authorization to transfer money from the individual participants' accounts to the joint account. FNBC's cash management desk will reconcile all joint transactions during the course of the day as transactions are processed. Dreyfus' fund accounting department will reconcile all Portfolio trades to cash transactions daily. The Custodian will reconcile all joint transactions, including money movement transactions, during the course of the day as transactions are processed and at the end of the day.

13. Applicants estimate that the joint account will save the Portfolios transaction fees totaling approximately $85,000 per year. In addition, the joint account will allow the Portfolios to negotiate higher rates of return on their overnight cash balances, invest funds which otherwise might not be invested, and reduce the possibility of errors by reducing the number of trade tickets.

14. Each participant's decision to invest in the joint account will be solely at its option. A participant will not be required either to invest a minimum amount or to maintain a minimum balance in the joint account. Each participant will retain the sole ownership rights to any of its assets invested in the joint account, including interest payable on the assets invested in the joint account. The assets of a participant held in the joint account will not be subject to the claims of creditors of other participants.

15. Except insofar as it is an "affiliated person" (within the meaning of the Act) of entities participating in the joint account, FNBC will have no monetary participation in the joint account, but will be responsible for investing assets in the account and establishing accounting and control procedures.

Applicants' Legal Analysis

1. The Portfolios participating in the proposed joint account and FNBC could be deemed to be "joint participants" in a "transaction" within the meaning of section 17(d). In addition, the proposed account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

2. The board members of each Fund have considered the proposed joint account and have determined that the use of such account will be beneficial to each Fund for the reasons set forth above and will not result in any conflicts of interest among the various participants. The board members believe that the operation of the joint account will be free of any inherent bias favoring one Portfolio over another. The board members considered the fact that, although FNBC can gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries will be the participating Portfolios and their shareholders.

3. Although not every participant will participate in each and every investment held in the joint account on any given day, each participant's interest in a repurchase agreement and/or Short-Term Money Market Instrument will be on the same basis as every other participant's interest in such repurchase agreement and/or Short-Term Money Market Instrument.

4. Rule 17d–1(b) provides that, in passing upon applications under section 17(d) and rule 17d–1, the SEC will consider whether each party's participation in the proposed joint arrangement "is consistent with the provisions, policies and purposes of the Act," as well as the "extent to which such participation is on a basis different or less advantageous than that of other participants." For the reasons described above, applicants believe that the criteria of rule 17d–1 is met by the joint trading account as proposed.

Applicants' Conditions

The joint account will operate subject to the following conditions:

1. A separate cash account will be established with the Custodian into which each Portfolio will daily be permitted to deposit its uninvested net cash balances.

2. Cash in the joint account will be invested by FNBC in one or more repurchase agreements and/or Short-Term Money Market Instruments. Each participant's funds in the joint account will be invested consistent with that participant's investment objectives, policies, and restrictions. Not every participant in the joint account necessarily will have its cash invested in every repurchase agreement entered into and/or Short-Term Money Market Instrument purchased through the account. However, to the extent a participant's funds are applied to a particular investment made through the joint account, the participant will participate in and own a proportionate share of such investment and the income earned or accrued thereon, based upon the percentage of such investment purchased with such participant's funds.

3. FNBC and the Custodian will maintain records (in conformity with section 31 and the rules and regulations thereunder) documenting, for any given day, each participant's aggregate investment in the joint account and its *pro rata* share of each investment made through the joint account.

4. The joint account will invest only in repurchase agreements and Short-Term Money Market Instruments with overnight, over-the-holiday, or over-the-weekend maturities. Investments in repurchase agreements will be collateralized by obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities. Each repurchase agreement entered into in connection with the proposed joint account will be collateralized to the extent required by the most restrictive collateral requirements of the participating Portfolios. The joint account will invest only in Short-Term Money Market Instruments which constitute "Eligible Securities" within the meaning of rule 2a–7 under the Act.

5. All investments held by the joint account will be valued on an amortized cost basis.

6. Each participating Portfolio valuing its net assets in reliance upon rule 2a–7 under the Act will use the average maturity of the instrument(s) in the joint account in which such Portfolio has an interest for the purpose of computing the Portfolio's average portfolio maturity with respect to the portion of its assets held in the joint account on that day.

7. To ensure that there will be no opportunity for one participant to use any part of the balance of the joint account credited to another participant, no participant will be allowed to create a negative balance in the joint account for any reason, although a participant will be permitted to draw down its entire balance at any time.

8. FNBC will manage the joint account as part of its duties under its existing or any future investment advisory contracts with the Portfolios. FNBC will not collect an additional fee from any participant for managing the joint account.

9. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

10. The board members of each Fund will evaluate annually the joint account arrangements, and will continue a Portfolio's participation in the joint account only if they determine that there is a reasonable likelihood that the Portfolio and its shareholders will benefit from continued participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16377 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25844]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 2, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 28, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Energy Resources, Inc. (70–8215)

System Energy Resources, Inc. ("System Energy"), 1340 Echelon Parkway, Jackson, Mississippi 39213, an electric public-utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, has filed an application-declaration under Sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Pursuant to a Commission order dated December 23, 1988 (HCAR No. 24791), on December 28, 1988 System Energy sold and leased back from certain trusts acting as lessors ("Lessors"), on a long-term net lease basis, an approximate 11.5% aggregate ownership interest ("Undivided Interests") from its 90% ownership interest in Unit No. 1 of the Grand Gulf Steam Electric Generating Station in two substantially identical, but entirely separate, transactions. The purchase price of the Undivided Interests was $500 million, of which approximately $64.898 million was provided by the equity contributions of two owner participants in the two respective Lessor trusts and approximately $435.102 million was provided by loans from a group of interim lenders.

Pursuant to subsequent order dated April 13, 1989 (HCAR No. 24861), on April 13, 1989 GG1A Funding Corporation ("Funding Corporation") issued $435.102 million of Secured Lease Obligation Bonds ("Original Bonds") in an underwritten public offering in two series. The two series consisted of $163.666 million principal amount, maturing on January 15, 2004 ("Series 11.07% Bonds") and $271.436 million principal amount, maturing on January 15, 2014 ("Series 11.50% Bonds"). The proceeds from the sale of the Original Bonds were applied to refunding of the interim loans.

System Energy now proposes to cause Funding Corporation or a comparable entity to issue not in excess of $456,857,100 of its Secured Lease Obligation Bonds in one or more separate series ("Refunding Bonds") through December 31, 1995. The Refunding Bonds will be issued under the Funding Corporation's Collateral Trust Indenture, dated as of April 1, 1989, as amended ("Indenture"), among Funding Corporation, System Energy and Bankers Trust Company, as trustee ("Trustee"), or a comparable instrument in order to refund the Original Bonds. Alternatively, System Energy proposes to refund the Original Bonds with interim borrowings obtained from banks or other institutions by either the Funding Corporation or similar entity or by the Lessors ("Interim Borrowings") and then to issue the Refunding Bonds in order to retire the Interim Borrowings.

The proceeds from the sale of the Refunding Bonds or the Interim Borrowings, together with funds provided by System Energy, will be applied to the cost of redeeming the Original Bonds and may be applied to meet associated issuance costs. The Series 11.07% Bonds are first optionally redeemable on January 15, 1994 at 105.535%. The Series 11.50% Bonds are first optionally redeemable on January 15, 1994 at 108.625%. If the Original Bonds are retired with the proceeds of Interim Borrowings, then the proceeds of the Refunding Bonds will be used to retire Interim Borrowings. There may be redemption premiums associated with the Interim Borrowings.

Each series of Refunding Bonds and the Interim Borrowings will have such interest rate, maturity date, redemption and sinking fund provisions, be secured by such means, be sold in such manner and at such price and have such other terms and conditions as shall be determined through negotiation and approved by the Commission. It is expected that the term of the Refunding Bonds or the Interim Borrowings, if any, will be in excess of 10 years. The Refunding Bonds will be structured and issued under the documents and pursuant to the procedures applicable to the issuance of the Original Bonds, or comparable documents having similar terms and provisions. Any Interim Borrowings will be structured and issued under documents and pursuant to the procedures comparable to those applicable to the issuance of the original interim borrowings.

Should there be no Interim Borrowings, the proceeds of the sale of

the Refunding Bonds will be loaned by the Funding Corporation or a comparable entity to the Lessors, and the Lessors will issue lessor notes ("Lessor Notes") to the Funding Corporation or a comparable entity pursuant to the terms of two Trust Indentures, Deeds of Trust, Mortgages, Security Agreements and Assignments of Facility Lease, dated as of December 1, 1988 ("Lease Indentures"), as supplemented and to be supplemented by Lease Indenture Supplements ("Supplemental Lease Indentures"), or a comparable instrument. The Lessors in turn will apply the proceeds to repayment of similar Lessor Notes issued in 1989 to secure the Original Bonds, and the Funding Corporation or a comparable entity will repay the Original Bonds with such payments.

System Energy is unconditionally obligated to make payments under the Leases of the Undivided Interests ("Leases") in amounts that will be at least sufficient to provide for scheduled payments of the principal of and interest on such Lessor Notes, which amounts, in turn, will be sufficient to provide for scheduled payments of principal and of interest on the Refunding Bonds when due. Upon refunding of the Original Bonds, amounts payable by System Energy under the Leases will be adjusted pursuant to the terms of Lease Supplements, and a similar procedure would apply in the event Interim Borrowings are used first.

Neither the Refunding Bonds, the associated Lessor Notes nor any Interim Borrowings will be direct obligations of, or guaranteed by, System Energy. However, under certain circumstances System Energy may assume all, or a portion of, the Lessor Notes or the Interim Borrowings. The Refunding Bonds will be secured by the Lessor Notes, which will be held by the Trustee under the Indenture. Each Lessor Note will be secured by, among other things: (1) A lien on and security interest in the Undivided Interest of the Lessor issuing such Lessor Note; and (2) certain of the rights of such Lessor under its Lease with System Energy, including the right to receive the basic rent and certain other amounts payable by System Energy. Interim Borrowings would be, in all probability, direct obligations of the Lessors, evidenced by Lessor Notes.

As an alternative to using Refunding Bonds issued by Funding Corporation or a comparable entity, System Energy may choose to use a trust structure in which one or more pass through trusts would be established to hold the Lessor Notes issued under the Lease Indentures. In lieu of issuing Refunding Bonds, the trust would issue certificates evidencing ownership interests in the trust. If such a structure were used, the debt terms of the Refunding Bonds described above, would generally be terms of the Lessor Notes and the Lease Indentures.

System Energy states that it will not enter into any of the proposed transactions regarding the sale of the Refunding Bonds or the trust certificates or the incurring of the Interim Borrowings to refund the Original Bonds unless: (1) The estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate, determined on the basis of the then estimated after-tax cost of capital of Entergy and its subsidiaries, consolidated; or (2) System Energy shall have notified the Commission of the terms of the proposed refinancing transaction by amendment and obtained appropriate authorization from the Commission to consummate such transaction.

System Energy requests authorization, pursuant to paragraph (a)(5) of rule 50 under the Act, to undertake preliminary negotiations with respect to the issuance and sale of the Refunding Bonds or the trust certificates or arranging the Interim Borrowings. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16376 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19557; 812–8414]

Smith Barney, Harris Upham & Co. Inc.; Temporary Order and Notice of Application

July 2, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Temporary order and notice of application for permanent order of exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Barney, Harris Upham & Co. Inc.

RELEVANT ACT SECTIONS: Exemption from section 9(a) under section 9(c).

SUMMARY OF APPLICATION: Applicant has been granted a temporary conditional order, and has requested a permanent conditional order, under section 9(c) exempting applicant from section 9(a) to the extent necessary to permit applicant to employ an individual who is subject to a securities related injunction.

FILING DATE: The application was filed on June 3, 1993, and an amendment was filed on June 25, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 26, 1993, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, N.Y. 10105.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a securities brokerage and investment banking firm. Applicant also is a registered investment adviser. Applicant serves as (a) investment adviser to The Inefficient-Market Fund, Inc.; (b) sub-adviser to Smith Barney Equity Funds, Inc., Smith Barney Funds, Inc., Smith Barney Variable Account Funds, and Smith Barney World Funds, Inc.; (c) principal underwriter to the Smith Barney Funds, Smith Barney Money Funds, Inc., Smith Barney Muni Bond Funds, and Smith Barney Tax Free Money Fund, Inc.; and (d) a depositor and principal underwriter of numerous unit investment trusts.

2. Primerica Corporation is applicant's ultimate parent corporation. Other indirect subsidiaries of Primerica also are engaged in the broker-dealer, depositor, and investment advisory businesses, including with respect to registered investment companies.

3. On March 12, 1993, applicant entered into an acquisition agreement

pursuant to which, among other things, applicant agreed to acquire (the "Acquisition") the domestic retail brokerage and asset management businesses of Shearson Lehman Brothers Inc. ("Shearson"). Applicant expects to complete the Acquisition sometime in the third quarter of 1993. Applicant then will change its name to Smith Barney Shearson, Inc.

4. In April 1993 Paul J. Williams ("Williams") applied for employment as a financial consultant at Shearson. Williams is subject to a securities related injunction. Due to the existence of the injunction, and to avoid a violation of section 9(a), Shearson declined to process Williams' application for employment. Applicant proposes to employ Williams as a registered representative at the earliest possible time, subject to receiving the requested exemption.

5. In 1985, while employed by McDonald & Company Securities, Inc. ("McDonald"), Williams was permanently enjoyed from engaging in certain manipulative or deceptive practices in connection with the offer or sale of securities. Williams also was ordered to disgorge $7,500 in profits. Williams consented to the injunction in a suit brought by the Commission alleging violations of section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 thereunder. The Commission's complaint alleged that in 1980 Williams, upon receipt of information from an insider of an issuer, purchased shares on behalf of the insider, utilizing accounts without identifying the true purchaser of the securities, and purchased shares for his own benefit. Williams also was suspended from association with any broker, dealer, or investment company for a period of thirty days.

6. Williams was the subject of a censure by McDonald in 1984. The censure resulted from Williams' alleged violation of Regulation T of the Federal Reserve Board rules by borrowing municipal securities from customers, with their prior knowledge and consent, in order to support a debit balance in his own margin account. McDonald reported its action to the New York Stock Exchange, which determined that no further action on its part was necessary.

7. From February 1986 until April 1993, Williams was a registered representative of PaineWebber Incorporated ("PaineWebber").[1] Williams terminated his employment with PainWebber in April 1993 in connection with his application for employment at Shearson.

8. In April 1993, a complaint was filed against PaineWebber in an Ohio State Court alleging that Williams purchased unsuitable securities on behalf of a former client who was not mentally competent. *Zarlingo* v. *PaineWebber, Inc.*, No. 93–CV–811 (Ohio C.P. (Mahoning), filed Apr. 1, 1993). Applicant states that Williams has advised applicant that he believes the complaint is without merit.

9. Since the entry of the injunction and suspension, Williams has not been enjoined by a court or sanctioned by the Commission, any self-regulatory organization, or any state securities commission. During the same period, to the best of applicant's knowledge, except for the aforementioned customer lawsuit, there have been no customer complaints relating to Williams.

10. Applicant notes that it has extensive compliance and registration procedures to ensure that prospective employees who are subject to a statutory disqualification under section 9 of the Act do not become employed by any Smith Barney company involved in investment company activities until the section 9 issues are appropriately resolved. These policies and procedures will continue to be applicable to Smith Barney Shearson, Inc. following the Acquisition.

Applicant's Legal Analysis

1. If Williams becomes an employee of applicant, applicant will be subject to the disqualification provisions of section 9(a). Applicant requests (a) a temporary exemption from the provisions of section 9(a) for a period of up to 90 days following the date of entry of the temporary order to relieve applicant from any ineligibility under section 9(a) by reason of the employment by applicant of Williams; and (b) a permanent order granting the requested relief.

2. Section 9(a)(2) of the Act, in pertinent part, prohibits any person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company. A company with an employee or other affiliated person ineligible to serve in any of these capacities under section 9(a)(2) is similarly ineligible under section 9(a)(3).

3. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

4. Applicant asserts that the application of the prohibitions of section 9(a) to applicant by reason of the employment of Williams would be unduly and disproportionately severe. Applicant also asserts that the conduct of applicant and Williams has been such as to make it not against the public interest or the protection of investors to grant the requested relief.

5. Applicant states that Williams will not serve in any capacity related in any way to the provision of investment advice to any registered investment company or to acting as principal underwriter to any registered open-end investment company or as principal underwriter or depositor to any registered unit investment trust.[2] Williams will not be an officer of applicant or serve in a policy-making role or participate in the management or administrative activities of applicant relating to registered investment companies.

6. Applicant states that the conduct complained of by the Commission on the part of Williams does not relate to investment company activities. Applicant notes that the injunction against Williams was entered more than seven years ago. Williams has not been subject to similar action, nor to the knowledge of applicant have any complaints been filed against Williams (except as noted above) with the Commission, any self-regulatory organization, or any state securities commission, since the date of the injunction.

7. Applicant asserts that the balance of fairness requires that the requested relief be granted. If the exemption is not granted, applicant will not offer to employ Williams because to do so would subject applicant to a section 9(a)

[1] The Commission exempted PaineWebber from the disqualification provisions of section 9(a) with respect to its employment of Williams in 1990. *PaineWebber Incorporated*, Investment Company Act Release Nos. 17588 (Jul. 16, 1990) (notice) and 17789 (Oct. 10, 1990) (order).

[2] Applicant states that it expects that Williams will be involved to some degree in the retail sale of investment company securities.

bar on investment company activities. Consequently, Williams would be cut off from his livelihood.

8. Finally, as noted above, the Commission previously exempted PaineWebber from section 9(a) with respect to Williams. Applicant submits that, in the absence of evidence of wrongdoing by Williams subsequent to the granting of such relief to PaineWebber, the granting of the relief to PaineWebber should weigh heavily in favor of granting the requested relief to applicant.

Applicant's Condition

Applicant agrees that any order granted by the Commission pursuant to the application will be subject to the condition set forth below:

Applicant will not employ Williams in any capacity related directly to the provision of investment advisory services for registered investment companies, or acting as a principal underwriter for a registered open-end investment company, or as a principal underwriter or depositor for a registered unit investment trust.

Temporary Order

The Division of Investment Management, pursuant to delegated authority, has considered the matter and finds, under the standards of section 9(c), that applicant has made the necessary showing to justify granting a temporary exemption. Accordingly,

It is ordered, under section 9(c) of the Act, that applicant is hereby temporarily exempted from the provisions of section 9(a) of the Act until the earlier of September 30, 1993 or the date on which the Commission takes final action on the application for an order granting applicant a permanent exemption from the provisions of section 9(a).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16378 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19559; 812–8072]

Van Kampen Merritt Trust, et al.; Notice of Application

July 2, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Van Kampen Merritt Trust, Van Kampen Merritt U.S. Government Trust, Van Kampen Merritt Equity Trust, Van Kampen Merritt Tax Free Fund, Van Kampen Merritt Pennsylvania Tax Free Income Fund (collectively, the "Trusts"), Van Kampen Merritt Investment Advisory Corp. (the "Adviser"), and Van Kampen Merritt Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting certain open-end management investment companies to issue multiple classes of shares representing interests in the same portfolio of securities, and assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATES: The application was filed on August 28, 1992, and amended on December 31, 1992, March 3, 1993, March 31, 1993, and July 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 27, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants request relief on behalf of the Trusts and any existing or future sub-trust or series thereof (each a "Fund" and collectively the "Funds"), and any existing or future registered open-end investment companies and any future sub-trust or series thereof, that are part of the same "group of investment companies," as defined in rule 11a–3 under the Act, and (a) whose investment adviser is the Adviser or an investment adviser that is directly or indirectly controlling, controlled by, or under common control with the Adviser, (b) whose principal underwriter is the Distributor or a principal underwriter that is directly or indirectly controlling, controlled by, or under common control with the Distributor, (c) who hold themselves out to investors as being related for purposes of investment and investor services, and (d) whose shares are divided into two or more classes of securities with varying front-end sales charges, CDSCs, distribution fees, shareholder services fees, exchange privileges, conversion features, voting rights, expense allocations, and investment requirements.[1]

2. Each of the Trusts is a Massachusetts business trust, except for Van Kampen Merritt Pennsylvania Tax Free Income Fund, which is a Pennsylvania business trust. The Trusts reserve the right to, and may, from time to time, reorganize from business trust to corporate form and/or under the laws of different states, consistent with applicable state and federal law and with their Declarations of Trust. Any order granting the requested relief is intended to apply to such reorganized entities that are in the same "group of investment companies," as defined in rule 11a–3.

3. The Adviser acts as the Funds' investment adviser. The Distributor acts as principal underwriter of the Funds' shares.

4. Pursuant to an order issued by the SEC in 1991,[2] the Funds offer two classes of shares (referred to herein as

[1] Certain existing registered investment companies within the same "group of investment companies," as defined in rule 11a–3, have not signed the application and currently do not intend to rely on the requested relief. In the future, such investment companies may rely on any order granted pursuant to the application if they determine to create multiple classes of shares in accordance with the representations and conditions therein. In addition, the representations and conditions set forth in the application shall apply to all future investment companies and series and sub-trusts thereof described in the application.

[2] Investment Company Act Release Nos. 18166 (May 24, 1991) (notice) and 18209 (June 20, 1991) (order).

"Class A" and "Class B") representing interests in the same portfolio, and impose, and under certain circumstances, waive a CDSC on the redemption of Class B shares. Any order granting the requested relief will supersede and replace that order in its entirety.

A. The Alternative Distribution Plan

1. Applicants propose to establish a distribution plan (the "Alternative Distribution Plan"), pursuant to which each Fund initially intends to offer four classes of shares, as described below. Pursuant to the Alternative Distribution Plan, each Fund would also be able to create and sell new classes of shares, each class being subject to varying combinations of front-end sales charges, distribution fees, shareholder services fees, and CDSCs, or no front-end sales charges, distribution fees, shareholder services fees, or CDSCs.[3]

2. Each Fund will continue to sell Class A shares. Class A shares currently are sold at net asset value plus a front-end sales charge of 3.0% to 4.9% of the public offering price, and are subject to a rule 12b–1 plan and a non-rule 12b–1 shareholder services plan. A Fund may spend an aggregate amount of up to .30% per year of the average daily net assets attributable to its Class A shares under its rule 12b–1 plan and non-rule 12b–1 shareholder services plan. From such amount, a Fund, or the Distributor as agent thereof, may pay financial intermediaries, pursuant to its non-rule 12b–1 shareholder services plan, up to .25% per year of the Fund's average daily net assets attributable to the Class A shares maintained in the Fund by such intermediaries' customers. Pursuant to its rule 12b–1 plan, a Fund may pay the Distributor the lesser of the balance of the .30% not paid to such financial intermediaries or the amount of the Distributor's actual distribution-related expenses attributable to Class A shares during the year. The minimum initial investment for Class A shares currently ranges from $1,000 to $1,500.[4]

3. Each Fund will continue to sell Class B shares. Class B shares currently are sold at net asset value and are subject to a CDSC, as described below, a rule 12b–1 plan, and a non-rule 12b–1 shareholder services plan. A Fund, or the Distributor as agent thereof, may pay financial intermediaries, pursuant to its non-rule 12b–1 shareholder services plan, up to .25% per year of the Fund's average daily net assets attributable to the Class B shares maintained in the Fund by such intermediaries' customers. In addition, a Fund may spend, pursuant to its rule 12b–1 plan, the lesser of .75% of the average daily net assets attributable to its Class B shares or the amount of the Distributor's actual distribution-related expenses attributable to Class B shares during the year. The minimum initial investment for Class B shares currently ranges from $1,000 to $1,500.

4. Each Fund may sell Class C shares at net asset value, subject to a CDSC, as described below, a rule 12b–1 plan, and a non-rule 12b–1 shareholder services plan. A Fund may spend an aggregate amount of up to .30% per year of the average daily net assets attributable to its Class C shares pursuant to its rule 12b–1 plan and non-rule 12b–1 shareholder services plan. From such amount, a Fund, or the Distributor as agent thereof, will pay financial intermediaries, pursuant to its non-rule 12b–1 shareholder services plan, up to .25% per year of the Fund's average daily net assets attributable to the Class C shares maintained in the Fund by such intermediaries' customers. Pursuant to the its 12b–1 plan, each Fund may pay the Distributor the lesser of the balance of the .30% not paid to such financial intermediaries or the amount of the Distributor's actual distribution-related expenses attributable to Class C shares during the year. The anticipated minimum initial investment for Class C shares is $1 million.

5. Each Fund may sell Class D shares at net asset value, subject to a CDSC, as described below, and to a rule 12b–1 plan and non-rule 12b–1 shareholder services plan. A Fund, or the Distributor as agent thereof, may pay financial intermediaries, pursuant to its non-rule 12b–1 shareholder services plan, up to .25% per year of the Fund's average daily net assets attributable to the Class D shares maintained in the Fund by such intermediaries' customers. In addition, a Fund may spend up to .75% per year of the Fund's average daily net assets attributable to the Class D shares, pursuant to its rule 12b–1 plan. The anticipated minimum initial investment for Class D shares is $100,000.

6. The net asset value of all outstanding shares of all classes of a Fund will be computed separately for each class of shares of the Fund by first allocating gross income and expenses (other than fees under a rule 12b–1 plan, fees under a shareholder services plan, and other incremental expenses properly attributable to a particular class) to each class of shares based on the net assets attributable to each class at the beginning of the day, and then by allocating the differing rule 12b–1 fees, shareholder service fees, and other incremental expenses to the appropriate class. The net asset value attributable to each share of each class of the Fund will then be calculated by dividing the net assets calculated for each class by the number of shares outstanding in that class. Because of the different distribution expenses, shareholder service fees, and administration expenses that may be borne by each class of shares, the net income attributable to and the dividends payable on each class may be different than the net income attributable to and the dividends payable on other classes of the Fund.

7. Each Fund may issue one or more than one class of shares (each a "Purchase Class") that may convert to another class ("Target Class") after a specified period of time on the basis of the relative net asset value per share of the two classes without the imposition of an additional sales load, fee, or other charge. Shares of a Target Class will be subject to a lower distribution expense and/or service expense, in the aggregate, than the shares of the Purchase Class that converts to such Target Class.

8. Shares purchased through the reinvestment of dividends and other distributions with respect to a Purchase Class shall also be shares of such class, but will be considered held in a separate sub-account. Each time any Purchase Class shares in the shareholder's account, other than those in the sub-account, convert to shares of a Target Class, a proportionate number of shares in the sub-account also will convert to shares of the Target Class.

9. The Funds currently do not intend for Class A, Class C, or Class D shares to convert to another class. The Funds reserve the right to adopt a conversion feature with respect to such classes in accordance with the representations and conditions set forth in the application. Class B shares, other than those purchased through the reinvestment of dividends and distributions, currently convert to Class A shares after a certain specified number of years after the end of the calendar month in which the shareholder's order to purchase the Class B shares was accepted. Such number of years, which is the same with respect to all Class B shares of a Fund,

[3] Each Fund's rule 12b–1 fees and shareholder services fees, if any, applicable to each class of shares will comply with Article III, Section 26 of the NASD's Rules of Fair Practice, as amended from time to time.

[4] Under the proposed Alternative Distribution Plan, the Funds may establish different minimum initial investment requirements with respect to other classes of shares offered from time to time, and the minimum initial investment requirement with respect to a class of shares of a Fund may be reduced in connection with quantity of purchase discounts.

is at least three years but may not exceed eight years.

10. A shareholder of a Fund may exchange shares that have been registered in his or her name for at least 15 days for shares of the same class of any other fund distributed by the Distributor that offers an exchange privilege on the basis of the relative net asset value per share. In order to qualify for the exchange privilege without the approval of such Fund, the shares being exchanged are required to have a net asset value of at least $1,000. The Funds will approve all shareholder requests to exchange shares with a net asset value less than $1,000, provided that the shareholder is exchanging all of his or her shares of the original fund for shares of the acquired fund. Such policy will be applied consistently to all shareholders of each class of shares. The terms and conditions of any such exchange privilege will comply with rule 11a–3 as currently in effect and as amended from time to time, and will be set forth in the prospectus of each Fund.

B. The CDSC

1. Applicants propose to assess a CDSC on redemptions of certain classes of shares, and to waive or reduce the CDSC with respect to certain types of redemptions.

2. Proceeds from a redemption of Class B shares of a Fund made within a specified period of years of their purchase (which must be at least three years but may not exceed eight years) generally are subject to a CDSC. The CDSC is calculated as a specified percentage of the lesser of the then current net asset value or the original purchase price. The percentage may range from 3% to 7% on shares redeemed during the first year after purchase. The percentage is reduced each year over the applicable CDSC period.

3. The Funds initially contemplate that proceeds from a redemption of Class C shares within the first 12 months of their purchase will be subject to a CDSC equal to .75% of the lesser of the then current net asset value or the original purchase price of such shares. Proceeds from a redemption of Class C shares after the twelfth month but prior to the nineteenth month after their purchase generally will be subject to a CDSC equal to .25% of the lesser of the then current net asset value or the original purchase price. Class C shares redeemed thereafter will not be subject to a CDSC.

4. The Funds initially contemplate that proceeds from a redemption of Class D shares within the first year after purchase will be subject to a CDSC of up to 1.0% of the lesser of the then current net asset value or the original purchase price of such shares. Class D shares redeemed thereafter will not be subject to a CDSC.

5. No CDSC will be imposed on shares issued prior to any order granting the requested relief. A Fund that amends the terms and conditions of the applicable CDSC will amend or supplement its prospectus to reflect such changes. The changes will affect only those shares purchased subsequent to the prospectus being amended or supplemented, although changes that confer a benefit to the shareholder (*e.g.*, reduced fees) may apply to previously purchased shares.

6. No CDSC will be imposed on redemptions of shares purchased more than a specified period prior to redemption, shares derived from the reinvestment of dividends and other distributions, including capital gains distributions, or from an amount representing an increase resulting from capital appreciation above the amount paid for the shares. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares derived from reinvestment of dividends and distributions, then of shares held for a period longer than the CDSC period, then of shares subject to a front-end sales load, of any, and lastly of shares held by the investor for a period not longer than the applicable CDSC period. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made of shares held by the investor for the longest period of time within the CDSC period.

7. The Funds propose to waive or reduce the CDSC on redemptions of shares (a) made within one year following the death of a shareholder, provided that the shares were held at the time of such death and provided that the decedent was an individual shareholder or owned such shares with his or her spouse as a joint tenant with right of survivorship, (b) to the extent that the redemption represents a minimum required distribution from an individual retirement account, a custodial account maintained pursuant to section 403(b)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), or a qualified pension or profit-sharing plan, to a shareholder who has attained the age of 70½, or, in the case of a qualified pension or profit-sharing plan, after termination of employment after age 55, and (c) which results from (i) the tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code, (ii) the return of excess deferral amounts pursuant to section 401(i)(8) or 402(g)(2) of the Code, or (iii) the death or disability of the employee (*see* sections 72(m)(7) and 72(t)(2)(A)(iii) of the Code). If a Fund waives or reduces the CDSC, such action will be uniformly applied to all offerees in the specified class.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed Alternative Distribution Plan might be deemed (a) to result in a "senior security" within the meaning of section 18(g) and prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i). Applicants believe that the Alternative Distribution Plan would not involve borrowings, would not affect the Funds' existing assets or reserves, and would not increase the speculative character of the shares of the Funds. No class of shares would have a distribution or liquidation preference with respect to particular assets of a Fund, no class may require that lapsed dividends be paid before dividends are declared on another class, and no class would be protected by any reserve or other account. Applicants assert that a Fund's capital structure under the Alternative Distribution Plan would not induce shareholders to invest in risky securities to the detriment of other shareholders. A Fund's capital structure would not enable insiders to manipulate the expenses and profits among the various classes of shares because such Fund is not organized in a pyramid fashion.

2. Applicants further assert that the concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value Fund shares would not be present under the proposed Alternative Distribution Plan. Mutuality of risk would be preserved because all classes would have equal rights in the assets of the respective Fund.

3. Applicants believe that the Proposed Alternative Distribution Plan would enhance the ability of each Fund to select distribution alternatives that are more closely tailored to distribution costs for different groups of investors. Applicants believe that providing investors with various options in the same Fund would allow the investors to make the appropriate choice.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and will be

identical in all respects, except as set forth below. The only differences among the classes or shares will relate solely to (a) the impact of the disproportionate payments made under the rule 12b–1 distribution plans and the shareholder services plans, as applicable; (b) the following administrative expenses that may be allocated to a particular class of shares: (i) Transfer agent fees identified by applicants as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) SEC registration fees incurred by a class of shares; (iv) the expense of administrative personnel and services as required to support the shareholders of a specific class; (v) trustees' fees or expenses incurred as a result of issues relating to one class of shares; (vi) accounting expenses relating solely to one class of shares; and (vii) any other incremental expenses subsequently identified that should be properly allocated to one or more classes of shares that shall be approved by the SEC pursuant to an amended order; (c) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 plan and non-rule 12b–1 shareholder services plan, except as provided in condition 14; (d) the conversion feature applicable only to certain classes of shares; (e) the exchange privileges of the classes of shares of a Fund; and (f) the designations of the classes of shares of a Fund.

2. The trustees, including a majority of the independent trustees, will approve the Alternative Distribution Plan. The minutes of the meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the Alternative Distribution Plan will reflect in detail the reasons for the trustees' determination that the proposed Alternative Distribution Plan is in the best interests of both a Fund and its shareholders.

3. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Fund including a majority of the trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet class expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes of which such expenditures were made.

4. On an ongoing basis, the trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the various classes of shares of each respective Fund. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing new registered management investment companies.

5. The trustees will receive quarterly and annual statements with respect to each Fund concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of shares of a Fund will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to its various classes of shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that distribution fee and shareholder services fee payments relating to each respective class of shares will be borne exclusively by that class and any incremental administrative expenses relating to a class of shares set forth in condition 1 above and any other expenses determined by the trustees to be allocated to a class of shares and that shall have been approved by the SEC pursuant to an amended order will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of multiple classes of shares and the proper allocation of expenses among such classes were reviewed by the expert (the "Expert"), who rendered a report to applicants, which report was provided to the staff of the SEC prior to the issuance by the SEC of the notice of the proceeding initiated by this application, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to each Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon written request to the respective Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses between the various classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for

selling or servicing shares of such Fund may receive different compensation with respect to one particular class of shares over another in such Fund.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Alternative Distribution Plan will be set forth in guidelines that will be furnished to the trustees.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangements, shareholder services fees, front-end sales charges, deferred sales charges, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through its respective prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of its shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of a Fund's shares, it will also disclose the respective expenses and/or performance data applicable to all of its classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of its shares separately.

12. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to agree to conform to such standards.

13. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset value per share of the two classes of shares, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or shareholder services fee (as those terms are defined in article III, section 26, of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and shareholder services fee to which they were subject prior to the conversion.

14. If a Fund implements any amendments to its rule 12b–1 plan or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan that would increase materially the amount that may be borne by a Target Class, existing shares of any affected Purchase Class will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by the Adviser and the Distributor. The Purchase Class shares sold after the implementation of the proposal may convert to the Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

15. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that a Fund may make pursuant to its rule 12b–1 plan or non-rule 12b–1 shareholder services plan in reliance on the exemptive order.

16. The non-rule 12b–1 shareholder services plans adopted by the Funds will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16379 Filed 7–9–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, San Luis Obispo County, CA

AGENCY: Federal Highway Administration.

ACTION: Notice of intent.

SUMMARY: FHWA, in cooperation with the California Department of Transportation, is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in San Luis Obispo County, California. FHWA sent the original Notice of Intent for this project to the **Federal Register** in June 1992. However, FHWA has been unable to verify that the June 17, 1992 original Notice of Intent was published, therefore this Notice will serve as an updated version.

FOR FURTHER INFORMATION CONTACT: John R. Schultz, Chief, District Operations—A, 980 9th Street—Suite 400, Sacramento, California 95814–2724, Telephone (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the San Luis Obispo Council of Governments will prepare an Environmental Impact Statement (EIS) on a proposal to improve State Highway Route 101 from 1.1 miles north of Reservoir Canyon Road to the Cuesta Overhead, a distance of 3.3 miles. Route 101 which climbs on a 7.4 percent grade within the project limits, is a four-lane conventional highway which does not meet current geometric design standards. The facility is currently operating between Level of Service D and E, owing to congestion caused by trucks which move slowly up the grade. Truck lane(s) are needed to ease congestion. Alternatives under consideration are: (1) The "No-Build" alternative, (2) a "Minimum Build" alternative providing for 20 feet of

widening on the eastern side to include a new northbound truck lane and a new outside shoulder, (3) a "Limited Build" alternative providing the new northbound truck lane and outside shoulder through widening on either or both sides of the existing highway; and (4) a "Full Build" alternative increasing the existing roadway cross-section to six lanes, providing both north- and southbound truck lanes and new outside shoulders. No increase in access control is proposed, but local access improvements will be considered under the Limited and Full Build Alternatives. Transit, Transportation Systems Management (TSM) and Travel Demand Management (TDM) improvements are included in all build alternatives. New dedicated bike lanes shall also be provided in the three "build" proposals. Letters describing the proposed action and soliciting comments were sent to the appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed or are known to have interest in this proposal. Two public scoping meetings have been held, the first on June 17, 1992, at 6 p.m. at the Veterans Memorial Building (801 Grand Avenue), San Luis Obispo, and the second on June 18, 1992, at 6 p.m. at the Masonic Temple (6351 Olmeda), Atascadero. The Public Participation Program also provides for several community information meetings and a Public Hearing. To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 30, 1993.

John R. Schultz,

Chief, District Operations "A".

[FR Doc. 93–16391 Filed 7–9–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 6, 1993

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1212.

Form Number: IRS Form 706–QDT.

Type of Review: Extension.

Title: U.S. Estate Tax Return for Qualified Domestic Trusts.

Description: Form 706–QDT is used by the trustee or the designated filer to compute and report the Federal estate tax imposed on qualified domestic trusts by Internal Revenue Code (IRC) section 2056A. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents/Recordkeeper: 80.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 1 hour, 12 minutes.

Learning about the law or the form: 42 minutes.

Preparing the form: 1 hour, 34 minutes.

Copying, assembling, and sending the form to the IRS: 1 hour, 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 362 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–16418 Filed 7–9–93; 8:45 am]

BILLING CODE 4830–01–P

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: July 2, 1993.

Sam Sessions,

Deputy Assistant Secretary for Tax Policy.

[FR Doc. 93–16369 Filed 7–9–93; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and
(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 11, 1993.

Dated: June 29, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement in Support of Claim, VA Form 21–4138
2. The form is used by claimants to provide self-certified statements in support of various types of claims processed by VA.
3. Individuals or households
4. 188,000 hours
5. 15 minutes
6. On occasion
7. 752,000 respondents

Extension

1. Notice of Department of Veterans Affairs of Veterans or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193
2. The form is used to gather the necessary information to adjust or discontinue the award of any person in receipt of compensation or pension who has been incarcerated in a penal institution in excess of 60 days.
3. State or local governments
4. 416 hours
5. 15 minutes
6. On occasion
7. 1,664 respondents

Reinstatement

1. Transfer of (Scholastic) Credit (Schools), VA Form Letter 22–315
2. The form letter is used to gather information to determine whether an eligible person who is enrolled in a program of training is entitled to receive educational allowance for a supplemental enrollment pursued at a second training institution.
3. Individuals or households—State or local governments—Businesses or other for-profit—Non-profit institutions—Small businesses or organizations
4. 237 hours
5. 10 minutes
6. On occasion
7. 1,419 respondents

Extension

1. Fuel and Heating Systems Inspection Report (Manufactured Home), VA Form 26–8731c
2. The form serves as an inspection report on fuel and heating systems of used manufactured home units proposed as security for guaranteed loans. The information is used to determine acceptability of the units for VA guaranteed financing.
3. Individuals or households—Businesses or other for-profit—Small businesses or organizations
4. 100 hours
5. 2 hours
6. On occasion
7. 50 respondents

Extension

1. Request for Determination of Reasonable Value (Used Manufactured Home), VA Form 26–8728
2. The form is used to obtain appraisal of used manufactured home units proposed for guaranteed financing. It is also used to request liquidation appraisal of such units.
3. Individual or households—Businesses or other for-profit—Small businesses or organizations
4. 333 hours
5. 10 minutes
6. On occasion
7. 2,000 respondents

Reinstatement

1. Property Management Consolidated Invoice, VA Form 26–8974
2. The form is completed by property management brokers and identifies brokers bills for reimbursement of expenses and payment of fees incurred with the management of VA acquired properties.
3. Businesses or other for-profit—Small businesses or organizations
4. 52,800 hours
5. One hour and 50 minutes
6. On occasion
7. 2,400 respondents

Reinstatement

1. Report of Statement by Attending Physician, VA Form Letter 29–551a
2. The information collected on this form is from the attending physician and is used to determine the insured person's eligibility of disability insurance benefits.
3. Individuals or households
4. 5,069 hours
5. 15 minutes
6. On occasion
7. 20,277 respondents

Extension

1. Claim for Disability Insurance benefits, VA Form 29–357
2. This form is used by the policyholder to claim disability insurance benefits on NSLI (National Service Life Insurance) and USGLI (United States Government Life Insurance) policies. The information collected is used by VA to determine the insured person's eligibility for disability insurance benefits.
3. Individuals or households
4. 10,125 hours
5. One hour and 15 minutes
6. On occasion
7. 8,100 respondents

[FR Doc. 93–16360 Filed 7–9–93; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;
(2) A description of the need and its use;
(3) Who will be required or asked to respond;
(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;
(5) The estimated average burden hours per respondent;
(6) The frequency of response; and
(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 11, 1993.

Dated: June 29, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Verification of Eligibility for Burial in a National Cemetery, VA Form 40–4962
2. The form is used to process requests for burial in national cemeteries. Data collection also provides a means whereby other required forms can be completed which initiates headstone orders, schedules, interments, etc.
3. Individuals or households
4. 10,767 hours
5. 10 minutes
6. On occasion
7. 64,602 respondents.

[FR Doc. 93–16361 Filed 7–9–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 131
Monday, July 12, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), U.S.C. 552b:

DATE AND TIME: July 14, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 983rd Meeting—July 14, 1993, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 4669-029, Rancho Riata Hydro Partners, Inc.
CAH-2.
Project No. 1858-004, Beaver City Corporation
CAH-3.
Project No. 10468-009, Marsh Valley Hydroelectric Company
CAH-4.
Project No. 3623-090, Youghiogheny Hydroelectric Authority
CAH-5.
Project No. 6329-004, Intermountain Power Corporation
CAH-6.
Omitted
CAH-7.
Project No. 3451-039, Beaver Falls Municipal Authority
CAH-8.
Project No. 1862-011, City of Tacoma, Washington
Project No. 10703-002, City of Centralia, Washington
Docket No. E-6454-010, The Nisqually River Proceeding

Consent Agenda—Electric

CAE-1.
Docket No. ER93-557-000, Lakewood Cogeneration, L.P.
CAE-2.
Docket No. ER93-471-001, Cleveland Electric Illuminating Company
CAE-3.
Docket No. ER93-3-002, United Illuminating Company
CAE-4.
Docket No. ER92-436-004 and EL92-29-003, Florida Power Corporation
CAE-5.
Docket No. ER92-517-004, Southern Company Services, Inc.
CAE-6.
Docket Nos. ER93-491-001 and ER93-513-002, Idaho Power Company
CAE-7.
Docket No. ER93-254-001, Consolidated Edison Company of New York, Inc.
CAE-8.
Docket No. ER93-222-001, Northeast Utilities Service Company
CAE-9.
Docket No. ER91-195-010, Western Systems Power Pool
CAE-10.
Docket No. ER92-343-002, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE-11.
Docket No. ER93-295-001, Kentucky Power Company and Ohio Power Company
CAE-12.
Docket No. EL93-21-001, Vermont Yankee Nuclear Power Corporation
Docket No. EL93-32-001, Maine Yankee Atomic Power Company
Docket No. EL93-25-001, Town of Norwood, Massachusetts v. Vermont Yankee Nuclear Power Corporation and Maine Yankee Atomic Power Company
CAE-13.
Docket Nos. EG93-44-000 and EG93-53-000, Dominion Management Argentina S.A.
CAE-14.
Docket No. QF86-398-002, Pomona Cogeneration Limited Partnership
CAE-15.
Docket Nos. EL91-56-002, 003, ER92-774-002 and 003, Maine Public Service Company
CAE-16.
Docket No. ER85-477-013, Southwestern Public Service Company
CAE-17.
Docket No. ER93-401-000, Montaup Electric Company
CAE-18.
Omitted
CAE-19.
Docket No. ER81-177-008, Southern California Edison Company
CAE-20.
Docket No. EL92-38-000, Villages of Andover, Bergen, Boonville, Fairport, Freeport, Greenport, Jamestown, Lake Placid, Massena, Penn Yan, Rockville Centre, Solvay, and Westfield, New York v. Power Authority of the State of New York
CAE-21.
Docket No. RM93-20-000, Electronic Filing of FERC No. 1 and Delegation to Chief Accountant
CAE-22.
Docket No. RM93-22-000, Notice Provisions for Applications for Transmission Services Under Section 211 of the Federal Power Act
CAE-23.
Docket No. ER93-219-001, Western Massachusetts Electric Company

Consent Agenda—Oil and Gas

CAG-1.
Docket Nos. TM93-6-49-000, 001 and RP90-137-008, Williston Basin Interstate Pipeline Company
CAG-2.
Docket Nos. TQ93-6-22-000 and TM93-5-22-000, CNG Transmission Corporation
CAG-3.
Docket No. RP93-143-000, Carnegie Natural Gas Company
CAG-4.
Docket No. RP93-138-000, Granite State Gas Transmission, Inc.
CAG-5.
Docket No. RP93-111-001, Natural Gas Pipeline Company of America
CAG-6.
Docket No. CP91-2322-005, Paiute Pipeline Company
CAG-7.
Docket Nos. RP91-143-024 and RP92-159-003, Great Lakes Gas Transmission Limited Partnership
CAG-8.
Docket Nos. CP91-1186-002, CP91-2458-003 and RP91-143-011, Great Lakes Gas Transmission Limited Partnership
CAG-9.
Omitted
CAG-10.
Docket Nos. RP92-163-003, RP92-170-003 and RP92-236-001, Williston Basin Interstate Pipeline Company
CAG-11.
Docket No. RM87-34-067, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (In Re: Tennessee Gas Pipeline Company)
Docket Nos. TA91-1-21-003 and TM91-8-21-003, Columbia Gas Transmission Corporation
Docket No. RM85-1-184, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
Docket No. CP87-115-004, Tennessee Gas Pipeline Company
CAG-12.
Docket No. AC92-22-001, CNG Transmission Corporation
CAG-13.

Docket Nos. TA91–1–17–004 and TM91–1–17–001, Texas Eastern Transmission Corporation

CAG–14.
Docket No. RP93–79–000, Natural Gas Processing Company v. El Paso Natural Gas Company

CAG–15.
Docket No. PR93–2–000, Transok, Inc.

CAG–16.
Docket No. PR92–19–000, Delhi Gas Pipeline Corporation

CAG–17.
Docket No. PR93–1–000, FRM, Inc.

CAG–18.
Docket No. RS92–75–003, Paiute Pipeline Company

CAG–19.
Docket No. CP92–259–002, Sumas International Pipeline, Inc.
Docket Nos. CP92–336–003 and CP92–383–003, Northwest Pipeline Corporation
Docket No. CP92–247–003, Northwest Pipeline Corporation and Washington Water Power Corporation

CAG–20.
Docket No. CP88–760–016, Transcontinental Gas Pipe Line Corporation

CAG–21.
Docket Nos. CP87–75–000 and 007, Tennessee Gas Pipeline Company

CAG–22.
Docket No. CP91–2206–006, Tennessee Gas Pipeline Company

CAG–23.
Docket No. CP92–459–000, Texas Eastern Transmission Corporation
Docket No. CP92–460–000, Trunkline Gas Company

CAG–24.
Docket No. CP93–201–000, Williams Natural Gas Company

CAG–25.
Docket No. CP93–48–000, Columbia Gas Transmission Corporation

CAG–26.
Docket No. CP93–147–000, CNG Transmission Corporation

CAG–27.
Docket No. CP93–266–000, Trunkline Gas Company

CAG–28.
Docket No. CP93–186–000, Blue Ridge Pipeline Company
Docket No. CP93–187–000, Transcontinental Gas Pipe Line Corporation

CAG–29.
Docket No. CP93–334–000, Arkla Energy Resources Company

CAG–30.
Omitted

Hydro Agenda

H–1
Reserved

Electric Agenda

E–1.
Omitted

E–2.
Omitted

E–3
Docket No. PL93–3–000, Policy Statement Regarding Good Faith Requests for Transmission Service and Good Faith Responses by Transmitting Utilities Under Sections 211 and 213 of the Federal Power Act. Policy Statement as to what constitutes good faith for purposes of Title VII, Subtitle B of the Energy Policy Act of 1992.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Docket Nos. RS92–46–000 and 002, Pacific Gas Transmission Company. Order on Compliance.

RS–2.
Docket No. RS92–24–000, Texas Gas Transmission Corporation. Order on compliance.

RS–3.
Docket No. RS92–79–001, Sea Robin Pipeline Company. Order on Compliance.

RS–4.
Docket Nos. RS92–10–001, RP92–134–004, RP93–15–002 and CP71–273–004, Southern Natural Gas Company. Order on compliance.

RS–5.
Docket Nos. RS92–5–000, RP90–108–000, RP91–82–000, RP91–161–000, RP92–3–000, RP93–66–000 and RP93–115–000, Columbia Gas Transmission Corporation
Docket Nos. RS92–6–000, RP90–107–000, RP91–160–000 and RP92–2–000, Columbia Gulf Transmission Company. Order on compliance.

RS–6.
Docket Nos. RS92–14–002, CP93–39–000, CP93–147–000, CP93–149–000, G–1391–000, RP93–72–000, CP88–197–002, CP88–388–002, CP87–5–002, CP87–312–001, CP87–313–001, CP87–314–001, CP84–306–000, 001, 002, CP80–223–000, 001, 002, CP92–397–000, CP91–554–000, CP92–491–000, CP61–198–000, RP89–124–000, 005, RP91–51–000, 001, 002, 003, RP91–98–000, RP91–125–000, TM91–5–22–000, TM91–6–22–000, 001, TM91–7–22–000, 001, 002, TM91–9–22–000, 001, TM92–1–22–000, RP91–222–000, 001, RP92–7–000, TM92–3–22–000, TM92–4–22–000, TM92–5–22–000, 001, 002, TM92–7–22–000, TM92–10–22–000, RP93–69–000, TM93–3–22–000, TQ93–3–22–000, 001, TQ93–4–22–000, 001, TQ93–2–22–000, TF93–3–22–000, TF93–2–22–000, TF93–1–22–000, 001, TQ93–1–22–000, TA92–1–22–001, TQ92–4–22–000, 001, TQ92–1–22–000, TA91–1–22–000, 001, 002, 003, 004, 005, 006, TQ91–3–22–000, 001, 002, TQ91–4–22–000, TF91–2–22–000, TF91–1–22–000, TQ91–1–22–000, 001 and TQ91–2–22–000, CNG Transmission Corporation. Order on compliance.

RS–7.
Docket Nos. RS92–27–002 and 003, Alabama-Tennessee Natural Gas Company. Order on compliance and rehearing.

RS–8.
Docket No. RS92–93–000, Blue Lake Gas Storage Company. Order on compliance and rehearing.

RS–9.
Docket Nos. RS92–86–003, RP92–108–000 and RP92–137–000, Transcontinental Gas Pipe Line Corporation. Order on proposed joint stipulation and settlement agreement filed by Transcontinental Gas Pipe Line Corporation and CNG Transmission Corporation.

RS–10.
Docket No. RS92–41–001, Midwestern Gas Transmission Company. Order on compliance and rehearing.

RS–11.
Docket No. RS92–52–001, Viking Gas Transmission Company. Order on compliance and rehearing.

RS–12.
Docket Nos. RS92–8–001, 002, RP92–1–015, CP92–71–000, RP91–224–000, RP88–259–053, TA93–1–59–000 and RP93–52–000, Northern Natural Gas Company. Order on compliance.

III. Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 93–16562 Filed 7–8–93; 2:02 am]

BILLING CODE 6717–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 2 p.m., Thursday, July 15, 1993.

PLACE: Embassy Suites Hotel and Athletic Club, Remington B Room, 1881 Curtis Street, Denver, Colorado 80202, (303) 297–8888.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.
3. Communications—Electronic Bulletin Board.
4. Legislative Update.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meetings.
2. Final Rule: Amendments to Sections 701.21, 700.1, and 722.3, NCUA's Rules and Regulations, Regulatory Relief.
3. Final Rule: Amendment to Part 711, NCUA's Rules and Regulations, Management Official Interlocks.
4. Appeal by Columbus (Ohio) Teachers FCU of Regional Director's Denial of Overlap of Field of Membership.
5. Proposed Interpretive Ruling and Policy Statement on Chartering and Field of Membership.
6. Final Rule: Amendments to Section 701.12, NCUA's Rules and Regulations, Supervisory Committee Audits and Verifications.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–16557 Filed 7–8–93; 12:58 pm]

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federal register

Monday
July 12, 1993

Part II

Consumer Product Safety Commission

16 CFR Parts 1145 and 1210

Risks of Injury Associated With Lighters That Can Be Operated by Children; Safety Standard for Cigarette Lighters; Rules

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated With Lighters That Can Be Operated by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Elsewhere in this issue of the Federal Register, the Commission is issuing a safety standard for lighters to reduce risks of injury that are associated with cigarette lighters and similar lighters because such lighters can be operated by young children. In this document, the Commission determines by rule, under section 30(d) of the Consumer Product Safety Act ("CPSA"), that it is in the public interest to issue the safety standard, or to take any other regulatory action to address risks of injury that are associated with lighters due to the fact that they can be operated by children, under the CPSA, rather than under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

DATE: This rule is effective July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Harleigh Ewell, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301)504-0980.

SUPPLEMENTARY INFORMATION:

A. Introduction

The Commission determines by rule that it will regulate, under the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051-2084, those risks of death and injury that are associated with lighters intended for igniting smoking materials and that are due to the fact that the lighters can be operated by young children. Such risks will be regulated under the CPSA rather than under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1277, or the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471-1476,.

Section 30(d) of the CPSA, 15 U.S.C. 2079(d), provides that a risk of injury associated with a consumer product that could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA. Elsewhere in this issue of the Federal Register, the Commission is issuing a rule under the CPSA that will impose child-resistance requirements on disposable lighters and novelty lighters.

The Commission has considered (1) available information concerning risks of death and injury associated with lighters that can be operated by children and (2) the applicable provisions of the CPSA, the FHSA, and the PPPA. The Commission recognizes that it might be possible to adequately reduce those risks by action taken under the FHSA or the PPPA. Nevertheless, the Commission has determined that it is in the public interest to regulate those risks of injury under the CPSA rather than the FHSA or the PPPA because the authority of the CPSA is more appropriate to address risks of injury associated with a mechanical, flame-producing device than are the authorities of the FHSA or the PPPA.

B. Background

Lighters are flame-producing devices used by consumers primarily to light cigarettes and other smoking materials. More than 600 million lighters are sold each year in the United States. Disposable butane lighters account for over 95 per cent of those sales. These lighters are filled with liquid butane under pressure, which is released from a fuel reservoir in a gaseous state. Approximately five percent of all lighters sold in the United States are refillable, including some models defined in the rule as disposable. Some refillable lighters use petroleum distillate fuel; others use butane. Most lighters, both disposable and refillable, utilize a flint and thumb-activated roller mechanism to ignite the fuel. Others have an electronic ignition mechanism.

In the Federal Register of March 3, 1988 (53 FR 6833), the Commission published an advance notice of proposed rulemaking ("ANPR") to begin a proceeding for development of requirements for lighters to address risks of injuries from fires started by children playing with lighters. In the ANPR, the Commission estimated that during the years 1980 through 1985, residential fires started by children playing with lighters claimed an average of 120 lives each year. The Commission estimated that during the same period over 750 persons were injured each year, on average, in residential fires started by children playing with lighters.

The ANPR stated that the rulemaking proceeding which it initiated is authorized by the CPSA, the FHSA, and the PPPA. In the description of regulatory options under consideration by the Commission, the ANPR discussed the possibility of issuing a consumer product safety standard under provisions of the CPSA, a banning rule under provisions of the FHSA, and a rule to establish requirements to make lighters "significantly difficult for children under five years of age" to operate under provisions of the PPPA.

Pursuant to section 30(d) of the CPSA, the Commission proposed in the Federal Register of August 17, 1992, to regulate the risks that are associated with lighters because they can be operated by young children under the CPSA. 57 FR 36929. On the same day, the Commission proposed the safety standard for lighters. 57 FR 36932. Oral comments on the proposed safety standard were heard on October 21, 1992. On February 16, 1993, the Commission published a Federal Register notice announcing an opportunity to comment in writing on a report on tests of child-resistant lighters. 58 FR 8565. That comment period closed on March 18, 1993.

C. Statutory Authority

1. *The Consumer Product Safety Act.* A lighter is a "consumer product" as that term is defined by section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1), because it is an article that is produced or distributed for sale to consumers for use in or around a household, in recreation, or in other similar places and activities. Sections 7 and 9 of the CPSA, 15 U.S.C. 2056, 2058, authorize the Commission to issue a consumer product safety standard consisting of labeling or performance requirements for a consumer product if those requirements are "reasonably necessary to prevent or reduce an unreasonable risk of injury" associated with a consumer product.

Section 14(a) of the CPSA, 15 U.S.C. 2063(a), requires each manufacturer of a consumer product that is subject to a consumer product safety standard to issue a certificate of compliance stating that the product conforms to all applicable consumer product safety standards. Section 14(c) of the CPSA, 15 U.S.C. 2063(c), requires that the certificate of compliance must be based upon a test of each product or a "reasonable testing program." Section 14(b) of the CPSA, 15 U.S.C. 2063(b), also authorizes the Commission to issue rules to prescribe a reasonable testing program. Section 14(c) of the CPSA authorizes the Commission to issue rules requiring labels containing the date and place of manufacture and a suitable identification of the manufacturer, unless the product bears a private label. In that case, the label shall identify the private labeler and

contain a code mark that will permit the seller of the product to identify the manufacturer upon the request of the purchaser. Section 16(b) of the CPSA, 15 U.S.C. 2065(b), authorizes the Commission to issue rules requiring manufacturers to maintain records of the testing specified in any rule prescribing a reasonable testing program.

Section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of the consumer product safety rule and its effective date at a rate that is established by the rule and is significantly greater than the rate at which such product was produced or imported during a base period ending before the promulgation of the consumer product safety rule.

2. *The Federal Hazardous Substances Act.* Butane or petroleum distillate fuel contained within a lighter meets the definition of the term "hazardous substance" in section 2(f)1(A) of the FHSA, 15 U.S.C. 1261(f)1(A), because it is "flammable," and in some cases is "toxic" or "generates pressure," and may cause substantial personal injury or illness as a proximate result of customary or reasonably foreseeable use. Except for certain lighters containing petroleum distillate fuel that have been exempted at 16 CFR 1500.83(a)(20), lighters which contain fuel when sold to consumers are subject to the labeling provisions of section 2(p) of the FHSA, 15 U.S.C. 1261(p), because they contain a hazardous substance that is intended or packaged in a form suitable for use in the household.

Section 3(b) of the FHSA, 15 U.S.C. 1262(b), authorizes the Commission to issue rules to prescribe special labeling requirements for hazardous substances intended for use in the household if the Commission determines that the labeling specified by section 2(p) of the FHSA is not adequate to protect the public health and safety in view of the special hazard presented by that substance. Section 2(q)(1)(B) of the FHSA, 15 U.S.C. 1261(q)(1)(B), authorizes the Commission to issue a rule banning a hazardous substance intended for use in the household if the Commission determines that, notwithstanding any labeling which is or could be required by the FHSA, the degree or nature of the hazard is so great that protection of the public health and safety can be adequately served only by keeping the product out of channels of interstate commerce. A banning rule issued under section 2(q)(1)(B) of the FHSA could take the form of a conditional ban: that is, a rule banning all lighters that do not meet certain performance or design requirements specified in the rule.

3. *The Poison Prevention Packaging Act.* Sections 2, 3, and 5 of the PPPA, 15 U.S.C. 1471, 1472, and 1474, authorize the Commission to issue a rule to require packaging that is "significantly difficult" for children younger than 5 years of age to open or "obtain a toxic or harmful amount" of the substance contained therein for any substance that is a "hazardous substance" as that term is defined in the FHSA. To issue such a rule, the Commission must make and support findings that child-resistant packaging is required to protect children from serious personal injury or illness from "handling, using, or ingesting" the substance. As noted above, the fuel contained within a lighter is a "hazardous substance" as that term is defined in the FHSA. A lighter meets the definition of the term "package" set forth in section 2(3) of the PPPA, 15 U.S.C. 1471(3), because it is the "immediate container" in which a hazardous substance is contained for use by individuals in a household.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), provides that, for the purpose of making any substance that is subject to requirements for child-resistant packaging available to elderly or handicapped persons, the manufacturer may package that substance in conventional packaging in one size, provided that (1) the substance is also supplied in child-resistant packaging; and (2) the conventional packaging is labeled with the statement "This package for households without young children."

Discussion. In its proposed rule under section 30(d) of the CPSA, the Commission preliminarily determined that the provisions of the CPSA are most appropriate for development of requirements for lighters to address risks of injury associated with lighters that can be operated by children. Those risks of injury arise because lighters are mechanical devices intended to produce flame and can be operated by children who do not appreciate all of the consequences of using the product. Those consequences include the ignition of clothing and other articles in the household, and may result in injury or death of the child operating the lighter, or other persons.

The CPSA includes provisions authorizing the Commission to issue performance and labeling requirements applicable to the lighter when such requirements are "reasonably necessary" to eliminate or reduce an unreasonable risk of injury associated with that product. This authority is suitable for issuing requirements to address hazards associated with young children starting fires with lighters.

The CPSA also authorizes the Commission to issue certification rules for products subject to a consumer product safety standard. Such rules may contain a prescribed testing program upon which the certificate of the manufacturer or private labeler is based. The effectiveness of the rule for lighters that is issued elsewhere in this issue of the **Federal Register** depends in large part on the testing conducted by the manufacturer under the certification rule. It is possible that similar testing requirements could be promulgated under the authority of section 10(a) of the FHSA, 15 U.S.C. 1269(a), that the Commission may issue "regulations for the efficient enforcement" of the FHSA. However, the authority of the CPSA is explicit in this regard.

Section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), authorizes the Commission to issue stockpiling rules for products subject to a consumer product safety rule. Stockpiling rules prevent the manufacture or importation of excessive numbers of products that do not comply with the rule. The Commission has determined that a stockpiling rule is desirable for the standard for lighters. Such a rule could not be issued under either the FHSA or the PPPA.

The FHSA includes provisions that authorize the Commission to require special labeling for, and in some circumstances to ban, a household product that contains or consists of a "hazardous substance." Provisions of the FHSA authorize the Commission to regulate lighters because they are containers of lighter fuel, which is a "hazardous substance" as that term is defined in the FHSA. No provision of the FHSA authorizes the Commission to address any hazard which is associated with the mechanical operation of a lighter as a flame-producing device.

The PPPA authorizes the Commission to regulate a lighter as a "package" containing a "hazardous substance" — the lighter fuel. Under the PPPA, the Commission may issue a rule requiring the "package" — that is, the lighter — to be "significantly difficult" for children younger than 5 years of age "to open or obtain a toxic or harmful amount of the substance contained therein." However, the ability of young children "to open" the lighter or "obtain a toxic or harmful amount" of the fuel contained within the lighter is not the risk of injury associated with lighters under

consideration by the Commission. Rather, it is the risk of death and injury from fires started by children with lighters. This risk arises from the mechanical operation of the lighter, and the ability of young children to manipulate the lighter to produce a flame. Additionally, the PPPA allows the manufacturer of a substance subject to requirements for special packaging to package that substance in conventional packaging that is not child-resistant if (1) the substance is also distributed in child-resistant packages and (2) the packages that are not child resistant are labeled "This package for households without young children." This provision, by allowing the marketing of non-child-resistant lighters of the types covered by the rule, could significantly impair the effectiveness of the rule to reduce the risk of injury.

No comments on the proposed rule under section 30(d) of the CPSA opposed regulating this risk under the CPSA. Therefore, for the reasons given above, the Commission is issuing a final rule determining that it is in the public interest to regulate under the CPSA any risks of injury associated with the fact that lighters intended for igniting smoking materials can be operated by young children. This finding will be codified at 16 CFR 1145.16.

The Commission finds that it is in the public interest to issue the safety standard for lighters as soon as possible. Because this cannot be done until this rule under section 30(d) is issued, the Commission finds good cause for having the rule issued below become effective immediately. 5 U.S.C. 553(d)(3). (There is a 1-year delayed effective date for the safety standard itself.)

D. Impact on Small Businesses

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. A final regulatory analysis is required when a final rule is issued. 5 U.S.C. 604. The RFA further provides, however, that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The regulation issued below does not by itself impose any legal or other obligation on any person or firm. The rule would simply express the Commission's determination that any action taken to eliminate or reduce risks of injury associated with lighters that can be operated by children will be taken under the authority of the CPSA rather than the FHSA or the PPPA. In issuing the safety standard for lighters, the Commission has followed all applicable provisions of the CPSA. The provisions of the RFA also apply to the safety standard, and the Commission has prepared initial and final regulatory flexibility analyses for that rule.

Because the final rule under section 30(d) of the CPSA, published below, imposes no obligation on any person or firm, the Commission hereby certifies that the rule will not have a significant economic impact on a substantial number of small businesses.

E. Environmental Considerations

The rule issued below falls within the categories of Commission action described in 16 CFR 1021.5(c) as having little or no potential for affecting the human environment, and the Commission has no information that would indicate otherwise. Therefore, neither an environmental assessment nor an environmental impact statement is required.

F. Conclusion

After consideration of the information discussed above, the Commission finds that if regulatory action is needed to address risks of injury associated with lighters due to the fact that they can be operated by children, it is in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. This determination does not affect other hazards associated with lighters, such as that some lighters are subject to FHSA labeling because the lighters contain fuel that is flammable or toxic or generates pressure.

Provisions of the FHSA and the PPPA authorize the Commission to address risks of injury associated with the fuel contained within a lighter because the fuel is a "hazardous substance" as that term is defined by the FHSA. However, a lighter is more than a container or a package of a hazardous substance. It is a device that incorporates a mechanism for igniting the fuel and is intended to be operated to produce a flame.

The Commission determines that the provisions of the CPSA are the most appropriate to address risks of injury associated with a mechanical device due to the fact that it can be operated by children to produce flame. The Commission also determines that it is in the public interest to regulate this risk associated with lighters under the CPSA because it is desirable to issue certification and stockpiling rules in connection with the requirements applicable to the performance of lighters; such rules are most appropriate, or only available, under the CPSA.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children.

For the reasons given above, the Commission amends Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for Part 1145 continues to read as follows:

Authority: Sec. 30(d), Pub. L. 92-573, 86 Stat. 1231, as amended 90 Stat. 510; 15 U.S.C. 2079(d).

2. A new § 1145.16 is added to read as follows:

§ 1145.16 Lighters that are intended for igniting smoking materials and that can be operated by children; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act any risks of injury associated with the fact that lighters intended for igniting smoking materials can be operated by young children, rather than regulate such risks under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

(b) Therefore, if the Commission finds regulation to be necessary, risks of death or injury that are associated with lighters that are intended for igniting smoking materials, where such risks exist because the lighters can be operated by young children, shall be regulated under one or more provisions of the Consumer Product Safety Act. Other risks associated with such lighters, and that are based solely on the fact that the lighters contain a hazardous substance, shall continue to be regulated under the Federal Hazardous Substances Act.

Dated: June 24, 1993.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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CONSUMER PRODUCT SAFETY COMMISION

16 CFR Part 1210

Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Under the Consumer Product Safety Act, the Commission issues a safety standard that requires disposable and novelty lighters, as those terms are defined in the standard, to meet specified requirements for child resistance. The requirements are intended to reduce the risk of the injuries and deaths that occur from fires started by children under the age of 5 playing with cigarette lighters. The standard also includes labeling, testing, recordkeeping, reporting, and stockpiling requirements for manufacturers and importers.

DATES: The standard applies to all disposable and novelty lighters manufactured in the United States or imported on or after July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504-0400.

SUPPLEMENTARY INFORMATION:

I. Background

Introduction. The Commission voted 3-0 to issue this rule to require disposable and novelty lighters, as defined in the rule, to meet specified child-resistance requirements. Chairman Jacqueline Jones-Smith, Commissioner Carol Dawson, and Commissioner Mary Gall each issued a separate statement concerning this decision; copies of these statements are available from the Office of the Secretary.

The product: lighters. There are two common types of fuel and three basic operating methods among the various models of lighters available to consumers. In the most widely used operating method, a flint and spark wheel ignite a jet of butane gas (or, rarely, a propane gas mixture) released by a thumb-operated valve-and-lever assembly; this "roll and press" method has been predominant among disposable pocket lighters since their general introduction in the early 1960's. In a past variation of this method, a push-button mechanism was used to roll the wheel and release the gas with a single motion; this variant is commonly known as a "ratchet" lighter.

A second, more recently introduced operating method uses a push-button-activated piezoelectric ignition module to ignite the (typically butane) gas without mechanical spark generation. A past variation of this method used a touch-sensitive light beam circuit for activation.

In these first two methods, the flame is extinguished when the lever or push button is released and the flow of gas is interrupted.

In a third operating method, a flint and spark wheel ignites liquid fuel (typically naphtha) drawn through a wick; these may be operated by rolling the spark wheel or, less commonly, by means of a mechanical push button. Liquid-fuel lighters may have a cap or other means of shutting off the fuel or oxygen supply.

Petition and ANPR. In April 1985, Ms. Diane Denton, a nurse at Kosair Children's Hospital in Louisville, Kentucky, petitioned the Commission (Petition No. 85-2) to require that disposable butane lighters be child resistant. Information available to the Commission at the time it received the petition indicated that residential fires started by children playing with cigarette lighters claimed an estimated 140 lives each year. Information available in 1985 indicated that children younger than 5 years old were the principal victims of fires set by child play, accounting for 125 of the 140 deaths, but the information did not establish whether children younger than 5 were also the principal operators of the lighters involved in the fires. Additionally, the types of cigarette lighters involved could not be identified. Information about the patterns of how children used lighters that could indicate how the products might be changed to make them child resistant was also not available.

During 1986 and 1987, a field study was conducted by the Commission with the help of fire departments around the United States. Two hundred seventy-seven fires involving identified lighters and child play were investigated. Ninety-six percent of the lighters involved in the incidents were disposable butane models.

Most of the children who operated the lighters in the child-play incidents were less than 5 years old, primarily ages 3 and 4. The most common method of operation by children was with two hands, using one hand to steady the lighter and the thumb or index finger of the other hand to roll the wheel and press the fuel lever.

In 1987, the Commission contracted with COMSIS Corporation to develop strategies for improving the child resistance of cigarette lighters and to develop a draft test protocol for evaluating child resistance. The test protocol recommended by COMSIS was based on the testing procedure for child-resistant packaging in the Poison Prevention Packaging Act Regulations at 16 CFR 1700.20. The protocol included a test using panels of children to determine the child resistance of cigarette lighters and a test using panels of adults to determine the ease of operation of the lighters by adults. A report, "Recommendations for Evaluation of Cigarette Lighter Child-Resistance," was provided by COMSIS in June 1988.

When testing whether children can operate a cigarette lighter, a "surrogate" lighter without fuel that does not produce a flame, but that produces an audible or visible signal when operated in a manner that would produce a flame in an ordinary lighter, must be used to ensure the safety of the children. One type of surrogate lighter was developed by the Commission's Engineering Sciences Laboratory for use in a pilot test. This surrogate lighter consists of a small radio transmitter, which is located inside the lighter body, and a separate receiver that is capable of receiving the transmitted signal up to 30 feet from the lighter. When the signal is received, a buzzer sounds and a small light shines. ("Development of the Surrogate Lighter", R. Reichel and W. Stratton, May 1988.)

On December 31, 1987, the Commission voted to grant the petition. At the same time, the Commission voted to publish an advance notice of proposed rulemaking ("ANPR") for child-resistant cigarette lighters and to expand the project to consider whether all lighters should be covered, rather than just disposable lighters. The ANPR was published in the **Federal Register** on March 3, 1988. 53 FR 6833. The ANPR stated that the Commission was considering a number of alternatives that would prevent or reduce the deaths and injuries caused by children playing with cigarette lighters. The ANPR also stated that the Commission would consider establishing performance requirements for cigarette lighters, either under sections 7 and 9 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2056, 2058, section 2(q)(1)(B) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261(q)(1)(B), or sections 3 and 5 of the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1472, 1474. The Commission also said it would consider the possibility that the voluntary standard for cigarette lighters, ASTM F400-85, could be revised to include performance

requirements to make cigarette lighters resistant to operation by children or to require that lighters be marked with additional or revised warnings to keep these products out of the hands of children. Finally, the Commission stated that it would consider requirements for labeling cigarette lighters to warn adults to keep these products out of the hands of children.

The Commission received submissions from 13 commenters in response to the ANPR that was published in March 1988. In addition, some late submissions were received that were considered in the same manner as comments on the ANPR. The commenters raised the following major issues:

1. The need for a mandatory standard,
2. The relative risk of matches vs. lighters,
3. Alternative solutions to the problem,
4. The scope of the standard, and
5. Human factors issues.

The Commission's views on the major issues presented by the comments on the ANPR were explained in the preamble to the proposed rule. 57 FR 36932, 36936. A number of the same issues were also raised in the comments on the proposed rule, discussed below in Section VI of this notice.

Background of proposed rule. In September 1988, the Commission contracted with Perritt Laboratories, Inc., to conduct a pilot test of the draft protocol. The pilot test results indicated that the child and adult protocols recommended by COMSIS were suitable procedures for evaluating child-resistant lighters. ("Results of the Pilot Test of the Adult and Child Protocols for Testing Child-Resistant Cigarette Lighters". B.J. Jacobson, September 1, 1989.)

Subsequent to the pilot test, the staff stopped working on an adult test protocol. The Commission concludes that a mandatory performance test is not needed to assure that adults are able to operate child-resistant lighters. The Commission believes that the lighter manufacturers themselves will adequately ensure ease of use by adults so that their products will not be at a competitive disadvantage.

Baseline testing was conducted in 1989 and 1990 to determine the extent to which currently-marketed lighters can be operated by children and to support the establishment of an appropriate acceptance criterion for child-resistant lighters. The surrogate lighters used for the baseline testing were designed and provided by lighter manufacturers who serve on ASTM Task Group F15.02, Safety Standards for Lighters. Data were collected using two brands of roll-and-press lighters and two brands of push-button lighters. The proportion of children unable to operate currently available, non-child-resistant lighters was 55 percent for the roll and press lighters and 16 percent for the push-button lighters. When these results are weighted to reflect product usage, they indicate that the child resistance of "non-child-resistant" lighters is approximately 50 percent.

In January 1988, following the Commission's decision to grant petition PP 85-2, the Commission's staff wrote to ASTM's Task Group F15.02, Safety Standards for Lighters, requesting that they revise the current lighter standard to prohibit the design and marketing of lighters that are not child resistant. (Letter to Mr. Edward Lewiecki from Nicholas V. Marchica, January 22, 1988.)

In June of 1988, the ASTM Task Group formed a Technical Subcommittee to develop a voluntary requirement for child-resistant lighters. The first action by the Technical Subcommittee was a review of the protocol proposed by COMSIS. The protocol was reviewed at a meeting in July 1988, and a summary of the discussion and suggested changes were provided to the Commission's staff. (Edward M. Lewiecki memorandum to members of F15.02 Technical Subcommittee, July 30, 1988.)

The Technical Subcommittee began drafting a voluntary standard in September 1989, using the Commission's protocol as a base. Throughout the development of the test protocol, the staff worked closely with the Technical Subcommittee. The ASTM Task Group initially included an adult test protocol as an Appendix for advisory purposes. An adult test is not a requirement of the draft ASTM standard.

In July 1990, the Lighter Association Inc. requested that the Commission adopt the draft ASTM voluntary standard for child-resistant cigarette lighters as a mandatory consumer product safety standard under section 9 of the Consumer Product Safety Act. [86][1] The Association endorses a mandatory standard because this would assure that all lighter manufacturers and importers will comply and because a mandatory federal standard would preempt state-by-state regulations addressing this risk. The Association represents manufacturers, importers, and distributors of the majority of cigarette lighters sold in this country.

In March 1991, the members of ASTM Task Group F15.02 voted to suspend work on the voluntary standard and support the Commission's work on a mandatory standard. [124]

The Commission undertook tests to verify that the test results from the protocol are reproducible when the tests are conducted by different laboratories. (See CPSC staff report "Statistical Analysis of Non-Child-Resistant Roll and Press Cigarette Lighter Data," April 1992.) The CPSC's staff requested the cooperation of members of the ASTM Task Group F15.02 during their March 1990 meeting. One major lighter manufacturer and the Department of Consumer and Corporate Affairs of Canada offered to participate. The manufacturer completed a 50-child test and provided a report to the staff in July 1990. The results of those tests are consistent with the baseline testing conducted by the Commission. The initial testing in Canada was conducted in Montreal and Toronto; this testing was completed in December 1990. A preliminary analysis of the results of the Canadian testing indicated that the results of the tests in Montreal were consistent with the other results from the baseline testing and the tests by the manufacturer mentioned above. The tests from Toronto, however, showed that fewer of the children tested there were able to operate the surrogate lighters than would be expected from the previous test results and from the results of the Montreal tests.

A CPSC staff member went to observe some of the later testing in Toronto, and concluded that the testers there were not following the test protocol in the way that had been done for the baseline testing. In addition, the surrogate function of two lighters performed unreliably during this testing, and the lighters were returned to the manufacturer for repair. Because of these problems, the CPSC's staff concluded that the Toronto data should not be considered as part of the verification testing.

Because of the unexpected results from Toronto, the Canadian Government agreed to conduct additional tests there, using another contractor. Largely because of the need to determine that the test protocol for determining the child-resistance of cigarette lighters was repeatable and reproducible, the Commission voted in May 1991 to postpone a decision on whether to publish a proposed mandatory standard for child-resistant cigarette lighters until after receipt of the Toronto retest

[1] Numbers in brackets refer to the number of a document in the List of Relevant Documents at the end of this notice.

results. The staff received the final test data on March 2, 1992.

The results for this second round of testing in Toronto were consistent with the data from other test locations when two activations of the surrogate lighter are used as the criterion for whether a child has successfully operated the lighter (p=.097). (The symbol "p" represents the chi-square probability in a maximum likelihood analysis of variance. A factor, such as location, has a significant effect on the rate of success if p is 0.05 or less.) When one activation of the lighter is used as the criterion, the variation, while only slightly greater, became statistically significant (p=.043).

These borderline results around p=.05 for one and two lighter activations led the staff to investigate the effect of tester variability on the successful operation of lighters by children. The staff found that the results of the Toronto retest were affected by one tester (out of six) who was especially adept at obtaining the children's cooperation. That tester, who conducted 30 percent of the tests, had an excessive effect on the success rate. If that tester is weighted as having conducted one-sixth (17 percent) of the Toronto tests, the results in Toronto would have been consistent with the data from other sites for either definition of success (p=0.34 and p=0.12). As a result of the analysis of the verification testing data, changes were made in the proposed testing protocol so that future test results would be consistent. The changes include requiring panels of 100 children instead of panels of 50 children and requiring the testers to test approximately equal numbers of children (20 +or- 2 children each for 5 testers and 17 +or- 2 children each for 6 testers).

The verification tests show that the age and sex of the child being tested are significant factors affecting the likelihood of success, but that whether the child comes from a home with a smoker who uses a cigarette lighter is not a significant factor affecting the results. Therefore, the previous requirement in the draft test protocol that a minimum number of children be from homes with smokers who use cigarette lighters was deleted in the proposed rule.

Proposed rule. After the results of the Toronto retest had been analyzed and appropriate adjustments made to the draft test procedure, the Commission proposed a safety standard for lighters. 57 FR 36932 (August 17, 1992). The comments received on the proposal and the Commission's responses to those comments are discussed in Section VI of this notice.

The proposal discussed the general results of some tests of child-resistant lighters that had been performed prior to that time, but no formal report of such tests was then available. When the report was prepared, the Commission published a notice in the **Federal Register** of February 16, 1993, announcing the availability of the report and providing an opportunity for written comment on the report until March 18, 1993. 58 FR 8565. No additional comments were received.

II. Summary and Discussion of the Final Rule

A summary of the rule being issued and its statutory authorities is given below. Where there are differences between the final rule and the proposed rule, these are noted in the summary or discussed in the Commission's responses to comments received on the proposal. See Section VI of this notice.

A. Requirements for Lighters

1. Statutory Authority

In the ANPR of March 3, 1988, the Commission cited provisions of the CPSA, the FHSA, and the PPPA as authority for this rulemaking proceeding. Section 30(d) of the CPSA, 15 U.S.C. 2079(d), provides that a risk of injury associated with a consumer product which could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA. At the time of publication of the proposed safety standard, the Commission published a rule under the provisions of section 30(d) to express the Commission's finding that if regulatory action is needed to address the risk of injury associated with cigarette lighters that can be operated by children, it would be in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. Elsewhere in this issue of the **Federal Register**, the Commission is publishing its final rule under section 30(d) of the CPSA finding that it is in the public interest to regulate risks of injury associated with lighters, that can be operated by children, under the CPSA.

A cigarette lighter is a "consumer product" as that term is defined by section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1), because it is an article that is produced or distributed for sale to consumers for use in or around a household, in recreation, and in similar places and activities. Sections 7 and 9 of the CPSA, 15 U.S.C. 2056, 2058, authorize the Commission to issue a consumer product safety standard consisting of labeling or performance requirements for a consumer product if those requirements are "reasonably necessary to prevent or reduce an unreasonable risk of injury" associated with a consumer product.

2. Estimates of Benefits

The standard issued below will increase the minimum allowable child resistance of lighters to 85 percent. This constitutes at least a 70 percent improvement over the preexisting degree of child resistance (the new 85 percent minimum minus the existing 50 percent equals 35 percent additional child resistance, which when divided by the original 50 percent child resistance gives a 70 percent improvement).

Because large numbers of child-resistant lighters have not been on the market (and for other reasons discussed below), the presently-available fire-incident data do not establish how closely the results of the child testing correlate to the prevention of fires in the home. The Commission concludes, however, that the results of the child-panel tests provide a reasonable approximation of the ability of children to operate lighters in the home, which in turn should be directly reflected in the incidence of fires started by children with lighters.

The Commission reaches this conclusion for the following reasons. First, there has been no suggestion of another test that would both (1) more accurately reflect the likelihood that children will start house fires with lighters and (2) result in a lower estimate of benefits for a standard using that test.

Second, because large numbers of child-resistant lighters have not been on the market for a long period of time, fire-incident data cannot be analyzed to provide an empirical corroboration of the correlation between child-test results and child-play house fires. It is not feasible for the Commission to conduct a test to demonstrate this correlation. Such a test would require that the Commission (1) distribute a huge number of child-resistant lighters to a representative sample of lighter users, (2) somehow ensure that the users used the child-resistant lighters in the same way they would if all disposable and novelty lighters were required to be child resistant, and (3) obtain information on the rate of fires started by children playing with the child-resistant lighters.

In addition, the accuracy of the estimate of benefits need not be great in

order to support the rule. Even if the benefits of the standard are only half what the child test results indicate, the benefits would have the prerequisite reasonable relationship to the costs. See Section IV of this notice, below.

Furthermore, the Commission's experience with a similar type of test for child resistance under the Poison Prevention Packaging Act of 1970 has shown reductions in the ingestion rate of a magnitude sufficient to justify this rule. For example, PPPA regulations requiring child-resistant packaging for aspirin and oral prescription drugs became effective in 1972 and 1974, respectively. A Commission staff analysis of these requirements found that CR packaging reduced the aspirin-related child death rate by about 0.6-0.9 deaths per million children under age 5, and reduced the oral prescription drug-related death rate by about 1.2-1.3 deaths per million children under age 5. ("The Safety Effects of Child-Resistant Closures," CPSC Directorate for Economic Analysis, G. Rodgers, May 1992.)

The number of deaths of children under age 5 due to all household chemicals has declined 81 percent since 1972. (1992 National Poison Prevention Week Editor's Fact Sheet, Q. No. 12.) The number of deaths of children under age 5 from ingestion of aspirin products has declined 93 percent over the same period. *Id.* Although not all of these declines may be due to child-resistant packaging, it seems likely that much of the decline is due to such packaging.

The child-resistance requirements being issued for lighters in this notice may be even more effective than child-resistant packaging, because prescription products can be ordered in non-child-resistant packaging and manufacturers of nonprescription products subject to PPPA requirements can package one size of the product in non-child-resistant packaging pursuant to 15 U.S.C. 1473. In contrast, there are no exceptions from child resistance provided for the disposable and novelty lighters subject to the rule issued in this notice.

Furthermore, users often render child-resistant packaging ineffective by leaving the cap off or loose, in order to make it easier to obtain the substance in the package. In the case of cigarette lighters, however, the rule requires the child-resistant feature to reset after every operation of the lighter. Therefore, the child-resistance requirements for lighters may be even more effective than the similar requirements for child-resistant packaging for this reason also.

For the reasons discussed above, the Commission concludes that the results of the child tests will provide a reasonable approximation of the extent to which a lighter will be used by children to start house fires and demonstrate that the benefits to be obtained by the rule will have a reasonable relationship to the costs imposed by the rule.

3. Summary of Provisions

The standard applies to "disposable" lighters and "novelty" lighters. The standard defines disposable lighters as those that either (1) are nonrefillable with fuel or (2) use butane or similar fuels and have a Customs Valuation or ex-factory price under $2. Novelty lighters are defined as those that have entertaining audio or visual effects, or that depict (by logos, decals, art work, etc.) or resemble in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food, or beverages, or that play musical notes or have flashing lights or other entertaining features.

The rule provides that lighters shall be capable of resisting operation by at least 85 percent of children in a specified test. The test involves giving the children 5 minutes to attempt to successfully operate the lighter. If they do not successfully operate the lighter within that time, they are given two visual demonstrations of the operation of the lighter, followed by another 5-minute period during which they are to attempt to operate the lighter.

If more than 15 percent of the children successfully operate the lighter, it fails the acceptance criterion. This percentage is applied to 200 children, but it may not be necessary to test that many. The test provides that panels of 100 children shall be tested sequentially. As explained below, depending on the results with the first panel, it may be possible to demonstrate statistically with the results from one panel that 85 percent of the 200 children would be unable to operate the lighter. The children must live in the United States, and the test must be conducted in the United States. (In the proposal, it would have been possible to use children from another country if tests of one child-resistant lighter design in the United States and in the other country gave results that are not significantly different at p=.05.)

The pass/fail criteria for the first test panel were designed so that, if the probability of operating the lighter is 10 percent or less, the lighter will be accepted as child-resistant 95 percent of the time. If the probability of operating the lighter is greater than 20 percent, the cigarette lighter will be rejected 95 percent of the time. If the lighter is not accepted or rejected under these probabilities for the first panel, the second panel is tested. Accordingly, in the first test panel of 100 children, the lighter passes if 10 or fewer children operate it, the lighter fails if 19 or more children operate it, and testing continues if 11 to 18 children operate it.

Table 1 gives the pass, continue to test, and fail criteria for sequential testing.

Table 1.—Sequential Testing Criteria

Test panel	Cumulative Number of Children	Successful Lighter Operations		
		Pass	Continue	Fail
1	100	0-10	11-18	19 or more
1	200	11-30	—	31 or more

Thus, the child test protocol specifies the use of 100 children initially, and, depending on the results, it would be determined that the lighter is either child resistant or not child resistant or that further testing, with a total of 200 children, is needed.

The protocol also divides the children on each child-test panel into 3 age groups, 42-44, 45-48, and 49-51 months old, with approximately 30, 40, and 30 percent of the children in each age group, respectively. Each age group consists of approximately two-thirds boys and one-third girls.

Because using an operable lighter in these tests could expose children to a

risk of injury from fire, the child tests use "surrogate lighters," which are lighters that are without fuel and that produce an audible signal or visible signal when operated in each manner that would create a flame in the lighters that they represent. (The Commission recommends that if a visual signal is used, it be located away from the lighter. If the visible signal is not away from the lighter, when the visible signal is demonstrated to the children, as required at the beginning of the test, the lighter's operation may also be demonstrated. Although a visible signal that is not remote from the lighter is permissible, it could increase the number of children who can operate the lighter in the test, because the children in effect will get an additional demonstration of the lighter's operation at the beginning of the first 5-minute test period.) A successful operation in the test is defined as one operation of the surrogate signal, of any time duration, during the 10-minute test. Because of the variability in the success rates related to different testers in the verification test data, the test procedures include considerable detail on how to interact with the children.

Surrogate lighters must approximate the appearance, size, shape, and weight of the lighter intended for use and must be identical in all other factors that affect child resistance (including operation and the forces(s) required to operate the lighter) as the lighter intended for use.

The child-resistant features of the lighter must reset automatically after each operation of the ignition mechanism and be effective for the reasonably expected life of the lighter.

B. Certification, Recordkeeping, and Reporting Requirements

1. Statutory Authority

Section 14(a) of the CPSA, 15 U.S.C. 2063(a), requires each manufacturer of a consumer product that is subject to a consumer product safety standard to issue a certificate of compliance stating that the product conforms to all applicable consumer product safety standards. The statute specifies that such certificates shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Section 14(c) of the CPSA requires that the certificate of compliance must be based upon a test of each product or a "reasonable testing program." Section 14(b) of the CPSA authorizes the Commission to issue rules to prescribe a reasonable testing program. Section 14(c) of the CPSA authorizes the Commission to issue rules requiring labels containing the date and place of manufacture and a suitable identification of the manufacturer, unless the product bears a private label, in which case the label shall identify the private labeler and contain a code mark that will permit the seller of the product to identify the manufacturer upon the request of the purchaser. Section 16(b) of the CPSA, 15 U.S.C. 2065(b), authorizes the Commission to issue rules requiring manufacturers to maintain records of the testing specified in any rule prescribing a reasonable testing program.

In addition to the authority in section 14 of the CPSA, the Commission has used the authority of sections 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2065(b), 2066(g), and 2076(e). Section 16(b) gives the Commission the authority to require manufacturers, importers, and private labelers to establish and maintain such records, make such reports, and provide such information as may be necessary to determine compliance with rules prescribed under the CPSA. Section 17(g) allows the Commission to condition the importation of a product on the manufacturer's (including importer's) compliance with the recordkeeping requirements and with the Commission's reporting rules relating to such requirements. Section 27(e) authorizes the Commission to require manufacturers to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of the CPSA, which are specified at section 2(b) of the CPSA, 15 U.S.C. 2051(b). For the provisions under section 27(e), the Commission finds that the required information is performance and technical data and that its provision is required to protect the public against unreasonable risks of injury.

The recordkeeping and reporting requirements will allow the Commission's staff to ensure that lighters comply with the standard and will provide the Commission with important performance and technical data about product designs on the market.

2. Summary of Provisions

The cigarette lighter standard requires that cigarette lighters resist operation by children. The standard requires that surrogates of lighters subject to the standard be tested by children in order to determine that the surrogates meet the child-resistance requirement. 16 CFR 1210.5. For these tests to be meaningful, the surrogates must be identical, in all characteristics that affect child resistance, to the lighters that are produced for sale. It is, therefore, particularly important that manufacturers test surrogates, establish specifications, and maintain quality assurance programs to ensure that production lighters are identical in all crucial respects to the surrogates, within reasonable manufacturing tolerances.

The certification requirements include general requirements for certification, testing, recordkeeping, and reporting that are designed to ensure that manufacturers or importers (1) conduct tests with surrogate lighters, (2) develop reasonable specifications and manufacturing tolerances to ensure that production lighters are sufficiently identical to the surrogates, and (3) maintain those specifications and tolerances during production of their lighters. The Commission believes that these requirements reflect good engineering and manufacturing practice. Because the rule requires the manufacturer or importer of a cigarette lighter to issue the certificate of compliance, private labelers are exempted, pursuant to section 14(b) of the CPSA, from the requirement to issue a certificate. Private labelers must, however, ensure that any certificate that is provided with the product by the manufacturer or importer is provided to any distributor or retailer that receives the product directly from the private labeler.

The certification requirements will not only ensure that distributors and retailers will be aware that cigarette lighters comply with the standard but will also provide a mechanism for efficient monitoring and prompt enforcement of the requirements by the Commission. The provisions of the individual sections containing certification requirements are summarized below:

Section 1210.12 — *Certificate of Compliance.* This provision restates the requirement in section 14(a) of the CPSA that a certificate of compliance must accompany the product or be furnished to any distributor or retailer to whom the product is delivered by a manufacturer, importer, or private labeler. The provision also establishes labeling requirements and refers to the reporting and recordkeeping requirements described below. This section also summarizes the duties of parties subject to the regulation.

A certificate of compliance is required to accompany each shipping unit (for example, a case) of the product. This certificate is required to contain a statement that the product complies with the safety standard, the name and address of the manufacturer, importer,

or private labeler, the date(s) of manufacture, and, if it is not on the lighter, the address of the place of manufacture. Each lighter is required to bear a label, which may be in code, identifying the manufacturer or private labeler and identifying the time period, not to exceed 31 days, during which the lighter was manufactured.

Section 1210.13, .14 & .16 — *Certification testing.* These provisions establish minimum requirements for the reasonable testing program and require that manufacturers and importers perform qualification testing using surrogate lighters, followed by reasonable production testing. Corrective action or further testing must be undertaken when production testing indicates that lighters in a production interval may not comply with the standard. The Commission believes that this test scheme is consistent with normal manufacturing processes. The qualification testing and production testing required by this paragraph may be performed before the effective date of the standard.

Section 1210.15 — *Specifications.* This provision requires that manufacturers, private labelers, and importers establish specifications for their cigarette lighters to ensure that the production lighters will be as child resistant as the surrogates used in the child-based qualification tests. This will enable the Commission to compare actual production lighters to the firm's specifications to ascertain that the production lighters are identical, within reasonable manufacturing tolerances, to the surrogate lighters in all aspects that affect child resistance. The Commission has found that these provisions are necessary to ensure compliance with the standard, and issues them under the authority of sections 14(b) and 16(b) of the CPSA.

Section 1210.17(a) — *Recordkeeping requirements.* This provision, authorized by sections 16(b) and 27(e) of the CPSA, requires that the manufacturer or importer maintain records in English of its testing and specifications and provide the Commission's staff with access to these records. This will allow the Commission to determine whether the lighters being manufactured are sufficiently identical to the surrogate lighters and whether adequate controls have been placed on the manufacturing process.

Most of the required records and the surrogate lighters that were tested must be kept in the United States and be accessible to the Commission's staff within 48 hours of a request. This is so these records may be reviewed quickly to determine whether lighters comply with the standard, particularly where the lighters are being held by U. S. Customs. However, it may be convenient to maintain records of production testing at the production facility. Because many of the cigarette lighters subject to the standard are manufactured outside the United States, this provision allows these records to be kept outside the United States, so long as they can be provided to the Commission's staff within seven days of a request. The Commission may perform tests with the surrogate lighters in order to determine the accuracy of the records and the child resistance of the lighters.

The records and surrogate lighters are required to be kept for three years after the events to which they relate have ceased. Thus, records of qualification tests and surrogate specifications, and surrogate lighters, must be kept for three years after the production of that model has ceased, and records of production testing must be kept for three years after the date of testing.

Except for production records, records must be kept on paper, microfiche, or similar media that can be directly examined. Production records may be kept on these media or on computer tape or other retrievable media.

Section 1210.17(b) — *Reporting.* This section requires that the manufacturer or importer submit basic information about its product, and a prototype or production unit of the lighter model, at least 30 days prior to the initial importation or distribution in commerce of each model. This will make it easier to identify products that either do not comply with the standard or have not been properly certified. This will particularly assist the Commission and the U. S. Customs Service in recognizing noncomplying imports.

Section 1210.17(c) — *Confidentiality.* The Commission recognizes that some of the recordkeeping and reporting requirements may require firms to provide information to the Commission that the firms view as trade secret or as other confidential commercial information. Under section 6(a)(2) of the CPSA, information in the possession of the Commission that contains or relates to a trade secret or other matter referred to in 18 U.S.C. 1905 or subject to 5 U.S.C. 552(b)(4) shall be considered confidential and shall not be disclosed. 15 U.S.C. 2055(a)(2). Under this section, and in accordance with 16 CFR 1015.18-1015.19, persons submitting information for which they desire confidential treatment must request that the information be considered exempt from disclosure. If the Commission's staff nevertheless determines that the information may be disclosed because it is not confidential information, the person submitting the information will be given notice in writing of the staff's intention at least 10 working days before the information is released. This provision gives the submitter an opportunity to seek judicial review of the Commission's determination prior to release of the information. 16 CFR 1015.19; *see also,* 16 CFR part 1101.

C. Anti-Stockpiling Provision

1. Statutory Authority

Section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of the consumer product safety rule and its effective date at a rate that is established by the rule and is significantly greater than the rate at which such product was produced or imported during a base period ending before the promulgation of the consumer product safety rule. The rule includes a stockpiling provision in Subpart C.

2. Summary of Provision

Subpart C of the rule contains anti-stockpiling provisions of the standard that would limit the production or importation of noncomplying lighters between the promulgation of the rule and its effective date to 120 percent of each firm's rate during a base period; this base period could be any 1-year period of a firm's choosing during the 5 years prior to the publication date of the final rule. Noncomplying lighters manufactured in, or imported into, the United States before the promulgation date of the standard could be sold to consumers at any time without being affected by the stockpiling rule.

III. Effective Date

The rule shall become effective July 12, 1994. Lighters subject to the standard and manufactured in, or imported into, the United States on or after the effective date must comply. The 12-month period was selected in order to get child-resistant lighters into consumers' hands as quickly as reasonably possible, while allowing sufficient time for manufacturers and importers of most lighters to design, produce and import safer products. The 12-month period should also minimize any potential disruption that may occur among small importers of lighters subject to the standard. The potential effects on safety and on industry of this

and other effective dates are discussed in Sections IV-VI of this notice.

IV. Statutory Findings and Final Regulatory Analysis

A. Introduction

The rule is published under the authority of the CPSA. Section 9(f)(1) of the CPSA, 15 U.S.C. 2058(f)(1), requires the Commission, when issuing a final rule, to consider and make appropriate findings for inclusion in the rule regarding:

1. The degree and nature of the risk of injury the rule is designed to eliminate or reduce;
2. The approximate number of consumer products, or types or classes thereof, subject to such rule;
3. The need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and
4. Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.Because these findings are required to be in the final rule, they are included in § 1210.5 of the rule below.

Section 9(f)(2) of the CPSA, 15 U.S.C. 2058(f)(2), requires that the Commission publish a regulatory analysis containing:

1. A description of the potential benefits and potential costs of the rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;
2. A description of any reasonable alternatives to the rule, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a rule; and
3. A summary of any significant issues raised by the comments on the proposed rule's preliminary regulatory analysis, and a summary of the Commission's assessment of such issues.

The following additional specific findings are required to be included in a final consumer product safety standard by section 9(f)(3) of the CPSA, 15 U.S.C. 2058(f)(3):

1. That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;
2. That the promulgation of the rule is in the public interest;
3. If the rule relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary safety standard, that either (a) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury or (b) it is unlikely that there will be substantial compliance with such voluntary safety standard;
4. That the benefits of the rule bear a reasonable relationship to its costs; and
5. That the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

The following discussion addresses the subjects about which the Commission is required by section 9(f) of the CPSA to make appropriate findings. The findings that are required by the CPSA to be in the final rule are at § 1210.5.

B. Product and Market Information

Consumers purchased more than 600 million lighters in the United States in 1991. About 95 percent of these were nonrefillable disposable pocket cigarette lighters. The number of lighters sold in the United States is expected to increase somewhat during the early 1990's.

All nonrefillable lighters use butane fuel. These lighters are widely available through a variety of mass-merchandise retailers and are inexpensive (from under 50 cents to about $3.00 each).

About five percent of the lighters purchased by consumers in 1991 were refillable. Refillable lighters use butane or liquid fuel. About two percent of all lighters sold were inexpensive ($1.49-$4.00) pocket refillables. About three percent were luxury lighters, which are often distributed through higher-end retailers such as jewelers. Luxury lighters generally retail for above $10 and include pocket and table lighters. Less than one percent of all lighters sold were novelty lighters, which retail for about $5 and up.

There are about 50 lighter importers in the U.S. One firm manufactures disposable lighters in the United States, and another firm manufactures luxury lighters in the United States. In 1989, three firms marketed more than 95 percent of all disposable lighters (90 percent of all lighters) sold in the United States. By the end of 1991, these three firms marketed about 70 percent of all disposable lighters. The decline in their market share is the result of a steady market penetration by recently introduced, very low-priced ($0.35-$0.75 retail), disposable roll-and-press lighters. The estimated 1991 sales are shown in Table 2.

Table 2

Lighter Sales—Projected 1993 Sales*

Type	Units (millions)	Percent of Sales
Disposable		
Nonrefillable (roll & press)	600	88
Nonrefillable (pushbutton)	50	70
Inexpensive refillable**	10	2
Subtotal	660	97
Novelty	1	< 1
Luxury refillables		
Pocket butane**	9	1
Pocket Liquid**	7	1
Table	1	< 1
Subtotal	17	< 3
TOTAL***	678	100

* figures represent point estimates within ranges

** categories each include some pipe lighters, all of which total less than 1 million units and 0.2 percent

*** proportions are rounded within each category

Source: Lighter Association and individual company data and CPSC/Economic Analysis estimates

The popularity of the various lighter types is reflected in the composition of the stock of lighters in consumers' hands. Over one-half billion lighters are estimated to be "consumed" annually in the United States. The vast majority of lighters in use consists of butane-fueled nonrefillables. A CPSC-sponsored national household survey (L. Smith, C. Smith, & D. Ray, "Lighters and Matches: An Assessment of Risks Associated With Household Ownership and Use," CPSC, June 1991) revealed that in 1990:

* 29 million households owned one or more working lighters; average ownership was about 3.5 lighters per household;
* 104 million lighters were in consumers' hands, over 88 percent of which were disposable (72 percent roll and press, and 16 percent pushbutton); all types of pocket refillables accounted for about 10 percent of all owned lighters;
* Although many more households (a total of 60 million) owned matches, and matches in homes outnumbered lighters 10 to 1, lighters were used more than 600 million times per day, compared to about 200 million times per day for matches; and
* Lighting smoking materials accounted for 90 percent of lighter use, and about 60 percent of match use.

Based on the survey data and on historical sales figures, it is estimated that roughly 3 to 5 percent of all lighters in use are inexpensive "refillable disposables," and that about 5 to 8 percent are "luxury" pocket refillables. Novelty lighters and table lighters

probably account for less than 1 percent each.

There are about 50 manufacturers and importers of lighters in the U.S. In 1989, three firms marketing traditional major brands — Bic Corp., Wilkinson Sword (Cricket/Feudor), and Scripto/Tokai — accounted for over 90 percent of all units, including over 95 percent of all disposables, shipped in the U.S. By the end of 1991, however, these proportions had changed significantly: the traditional "big three" accounted for about 70 percent of unit shipments. Since the late 1980's, there has been a steady market penetration of very low-priced ($0.35-$0.75 retail) disposable butane roll-and-press lighters, principally from Korea, China, Thailand, and the Philippines. Low labor costs in these nations and competition among local component part suppliers reportedly allow per-unit production costs of 10 cents or less for standard-size models. The market share of one importer, Westco, reportedly rivals those of the big three. The estimated market share of low-priced disposables was over 30 percent in 1991. Two firms, Ronson and Zippo, are dominant in the pocket refillables market, though their overall market shares are very low.

All of the major firms are importers. Bic also manufactures disposable butane lighters in the U.S. Zippo is the only known supplier of domestically-manufactured refillable lighters; there are roughly 10 other firms that import only "luxury" refillables. Though production estimates from industry sources vary, most lighters sold in the U.S. are imported. Each of the major firms manufactures or imports other products in addition to lighters; however, lighters constitute a significant portion of their total revenues.

C. Potential Benefits of the Rule

The product safety standard on cigarette lighters will reduce the unreasonable risk of death and injury from fires started by young children playing with lighters. The rule primarily addresses the risk of fire started by children under age 5; for the period 1988-90, these fires caused an annual average of 150 deaths, approximately 1,100 injuries, and nearly $70 million in property damage.

The total cost to the public of these child-play fires is roughly $385 million annually. The rule will substantially lower this cost. The savings to society comprise the benefits of the rule. Although the rule may prevent some fires started by older children, the extent to which this will occur is uncertain; therefore, this potential effect is not included in the estimate of likely benefits of the rule.

The rule will require disposable and novelty lighters to be child resistant. This covers about 98 percent of all lighters sold to consumers each year. Complying lighters will be resistant to operation by at least 85 percent of young children when tested in accordance with the test protocol in the rule. The Commission's test data show that previously-marketed "non-child-resistant" disposable lighters to be resistant to operation by roughly 50 percent of children in tests; thus, the 85 percent acceptance criterion in the rule could eventually reduce child-play fire losses by up to (85-50)/50=70 percent.

Not all child-play fire casualties will be eliminated after the effective date of the rule. Large numbers of non-child-resistant lighters, including some refillables not subject to the rule, will still be in use. Further, consumers may find the child-resistant features of some complying lighters unacceptably inconvenient and switch to matches instead. Although the extent of the influence of these factors is uncertain, both may reduce safety benefits somewhat. A range of adjustments to reflect these factors is therefore incorporated into the benefits estimate. It is assumed non-child-resistant lighters may comprise up to 20 percent of all disposable and novelty lighters in use after the issuance of the rule, and up to 10 percent of lighters subject to the rule may be replaced by matches (the match-substitution factor will reduce benefits by a less-than-proportional amount, since, for this age group, the rate of child-play fire deaths for matches is less than one-third the rate for lighters). The upper limits of the adjustment ranges are generous; the point estimate of annual safety benefits, which reflects the midpoints of the ranges, is therefore somewhat conservative.

Assuming full compliance with the rule and no substantial change in the relative market shares of the various available types of lighters, between 80 and 105 deaths per year may be averted by the issuance of the rule. The total annual value of reductions in deaths (valued for statistical comparison purposes at $2 million each), injuries, and property damage is approximately $205-270 million. Under the best point estimate, using the assumptions above, about 95 deaths will be avoided and total annual savings to the public will be about $230 million.

Manufacturers will probably strive to make lighters more child resistant than required, in order to assure compliance. This may vary with the quality-control practices of individual companies. Thus, the effectiveness of complying lighters at reducing child-play fire losses may be greater than estimated. To the extent this situation exists, the annual safety benefits of the rule could be increased.

The rule will have substantial annual net benefits to the public. As noted in the cost discussion below, the rule may cost consumers approximately $90 million per year. Thus, annual net benefits of $115-180 may accrue. Under the point estimate of about $235 million in safety benefits, expected yearly net benefits of the rule will be $145 million.

D. Potential Costs of the Rule

The rule will require disposable and novelty lighters to be modified from their existing designs to incorporate effective child-resistant features. Significant costs to industry and to consumers will accompany this rule. Industry costs of developing, producing, testing, and certifying complying lighters will be passed on through the chain of distribution to consumers in the form of higher prices. The utility derived from lighters by consumers may be slightly decreased, to the extent child-resistant products are less convenient to operate. Many lighter models, especially novelty lighters, will probably be discontinued. Small importers may be particularly affected, since their foreign suppliers may not be able to ship adequate numbers of complying products by the effective date of the rule. Small firms may also be adversely affected by the certification and anti-stockpiling provisions of the rule.

Effects on industry. Manufacturers will have to modify their disposable and novelty lighter designs to comply with the rule. Self-resetting, child-resistant features will have to be incorporated into all such lighters intended for distribution to consumers in the U.S. Child-resistant lighters currently on the market use a spring-loaded button or lever as part of the child-resistant mechanism.

In order to achieve compliance with the rule, producers will incur costs associated with research and development, product redesign, prototype assembly and testing, unscheduled tooling changes, new component production and assembly procedures, certification, production testing and recordkeeping, and other administrative and legal support. Some firms may lose sales or market share, at least temporarily, if distributors or consumers view complying lighters as too high in price or too inconvenient.

Based on information from manufacturers and importers, initial costs to develop, design, and produce, and test prototypes of, child-resistant lighters may approach $50 million. This cost, incurred over a period of 2-3 years, will be amortized over years of lighter production. Many producers will establish separate production facilities for U.S.-market child-resistant lighters and non-child-resistant lighters intended for other world markets. Some of the major firms marketing disposable lighters are already producing child-resistant models. Other companies are in the development stage. Some smaller firms are just beginning to develop complying designs. In addition, the cost of materials, components, and new assembly procedures may raise total variable costs somewhat. Recurring, production-related variable costs to domestic and foreign manufacturers are estimated to be roughly $20 million annually.

In addition to production-related costs, all manufacturers and importers subject to the rule will incur costs associated with the various certification, testing, and recordkeeping requirements in Subpart B of the rule. Firms will be required to certify compliance based on a reasonable testing program, which the rule specifies will include building surrogate test lighters, conducting child-panel tests of surrogates, conducting tests of production lighters, maintaining records, and reporting information and providing samples to CPSC. The largest component of this cost involves conducting tests with panels of children; such test series cost $5,000-10,000 each. Similar activities may be undertaken by some firms normally as a part of any new model development; however, the rule will require such activities to be performed and recorded. Industry costs associated with these certification activities are estimated to be approximately $2-5 million annually.

The overall, per-unit cost of producing disposable and novelty lighters will increase as a result of the rule. A wide range of manufacturing costs exists for the various kinds of lighters affected; some butane nonrefillables cost less than 10 cents each to produce. Most disposables cost about 15-25 cents each to produce, though some covered refillable models may cost 50 cents or more. Novelties may range in cost from 25 cents on up; the production cost of most models is probably under $2.00. The likely increase in total per-unit manufacturing cost attributable to the rule is roughly estimated at 1-5 cents for disposables, and 5-50 cents for most novelties.

These estimates do not reveal the entire cost to industry, since the value of lost sales of discontinued models is excluded. This potential adverse impact of the rule may be greater on small firms unable to arrive at commercially acceptable complying designs, despite the rule's 12-month effective date. For disposables, this effect will probably be temporary. Many novelties, however, may be discontinued indefinitely. Up to roughly $5-10 million in annual sales could be lost if, for example, half of all novelties were discontinued; the precise extent of this loss is unknown. Many discontinued novelties will still be marketed in other countries. No importer's entire novelty line will be covered by the rule. All known novelty importers also offer disposables, most of which can be made to comply with less difficulty, or other novelty or luxury lighters not subject to the rule. No firms are expected to leave the U.S. lighter market as a result of the rule.

The rule incorporates a cost cutoff in the definition of disposable lighters. Butane lighters that are refillable, are not novelty lighters, and are over $2.00 in Customs Valuation, or ex-factory price in the case of domestically-manufactured units (none presently exists), will not be subject to the rule. It is likely some foreign exporters will raise U.S. importers' prices of lighters with Customs Valuations just under this $2.00 cutoff, in order to avoid compliance with the rule. This will effectively add to the cost of the rule. The degree to which this may occur is uncertain. There are relatively few butane refillables with Customs Valuations in the $1.50-2.00 range (probably about 1-3 million units per year). Importers' prices of some — *e.g.*, those over $1.90 — may be raised, although the additional duty (9 percent of landed value) on higher-priced items may discourage such action. As noted in the discussion of alternatives below, alternate cost cutoff figures were considered; the potential for price-raising would exist regardless of the specific cost cutoff in the final rule.

The rule contains anti-stockpiling provisions, authorized by section 9(g)(2) of the CPSA, to prohibit excessive production or importation of noncomplying lighters during the 12-month period between the publication date and the effective date of the rule. These provisions limit production or importation to 120 percent of the rate in any selected 1-year base period within 5 years prior to the publication date of the rule. The anti-stockpiling provisions will have no significant impact on most firms, but could restrict sales growth for some small importers. There will probably not be any significant, long-term adverse effects on small firms, although some temporary disruption may occur.

Effects on competition and international trade. Most lighters subject to the rule are imported. All firms marketing disposable or novelty lighters are importers; only one of these (Bic Corporation, which markets only nonrefillable butane lighters) manufactures any of its lighters in the U.S. Thus, although the rule may have adverse competitive effects, there will not be a significant differential impact on domestic *vs.* foreign producers of covered lighters. The competitive position of Zippo Manufacturing Company, a luxury lighter manufacturer and the only nonimporter among U.S. firms, will not be adversely affected, since luxury lighters and liquid-fueled lighters are not subject to the rule.

The several largest firms marketing disposable lighters may gain some temporary competitive advantage in the U.S. market. These firms were involved more heavily in the development of the ASTM draft voluntary standard; they were also generally more aware of the details of CPSC's regulatory proceeding, through either ASTM or the Lighter Association. Some of these major firms expended resources to develop and test child-resistant lighter designs; two companies (Bic and Cricket) began marketing disposable lighters with child-resistant features around the time of the Commission's proposal, and others are expected to have done so by the time this final rule is issued.

The Commission gives special consideration to the potential impact of its rules on small businesses. An estimated 30-35 of the 40-45 covered importers, including all known importers of novelties, could be considered to be small firms. The rule may lead to some disruption of sales among smaller importers, to the extent their foreign suppliers are unable to furnish adequate numbers of complying lighters before the rule's effective date. Many models, especially novelties, may be discontinued as a result of the rule. The rule's anti-stockpiling provisions may have particular adverse effects on some small firms experiencing recent sales increases. This impact will tend to be greatest on importers of the least expensive models. The rule incorporates a number of provisions, related to the scope, performance requirements, and effective date, designed to minimize the potential adverse effect on small importers.

The rule may also have some differential effects on importers of lighters from certain countries. For

example, importers of lighters from Korea — a major supplier of low-cost refillables covered by the rule — may be disproportionately affected, since a greater proportion of their total sales is comprised of lighters required to comply, compared to the sales of importers of Japanese or European lighters. Similarly, virtually all lighters produced in China, the Philippines, and Thailand will be subject to the rule. No importers are expected to leave the U.S. lighter market or go out of business as a result of the rule.

Since luxury pocket lighters (refillable, non-novelty lighters above $2.00 in Customs Valuation) will not be covered by the rule, some market shift toward greater use of these products may occur, especially if consumers view child-resistant models as very inconvenient. The market share of luxury lighters could increase slightly as a result, presumably at the expense of low-cost refillables (or, to a lesser extent, the highest-cost nonrefillables). Since significant price differences will continue to exist between disposable and luxury lighters, and since most complying disposables are not expected to be very inconvenient, the magnitude of this effect is estimated to be small.

Effects on consumers. The Commission's rule may have the following adverse effects on consumers:

a. The increased cost of producing child-resistant lighters will be largely passed on to consumers in the form of higher retail lighter prices. These increases will vary by lighter type.

b. Some lighter models, particularly novelties, will probably be discontinued. While most disposables will simply be replaced by complying models, some disposables and many novelties may be dropped indefinitely from importers' product lines, thereby limiting consumer choice.

c. The utility derived from lighters may be adversely affected, depending on the extent to which consumers perceive child-resistant lighters to be less convenient to operate.

The approximate retail price ranges for covered lighters before the imposition of the rule, and the estimated ranges of price increases attributable to the rule, are given in Table 3.

Table 3

Existing Retail Prices of Disposable and Novelty Lighters and Expected Price Increases Attributable to CPSC Rule (Dollars)

Type	Overall Pre-rule Price Range	Typical Pre-rule Prices*	Overall Increase	Typical Increase*
Disposables				
Nonrefillable	.39—4.00	.79—1.79	.10—.40	.15—.20
refillable	.80—8.00	2.00—4.00	.10—1.00	.25—.50
Novelties	2.00 & up	5.00—10.00	.50—5.00	.75—1.00

* Majority of units in each category believed to be within "typical" ranges of prices and projected increases
Source: CPSC/Economic Analysis and industry estimates

As shown in the table, retail prices of nonrefillable lighters, which before the rule ranged from 39 cents to nearly $4.00 (and averaged about $1.00) will likely rise by 10-40 cents per unit. Price increases among inexpensive refillables, which before the rule ranged from 89 cents to over $8.00, could be up to nearly $1.00 per unit, though 20-50 cents will be more typical. Overall, most disposables will be replaced with child-resistant models priced about 15-20 percent higher. The projected price increases are higher for novelties than for disposables, since many novelty models have unusual ignition mechanisms not readily adaptable to the kinds of child-resistant features developed for disposables.

The total estimated annual cost of the rule to consumers is approximately $90 million. For the estimated range of 80-105 deaths avoided per year, the cost of the rule per life saved will be well under $1 million after considering the benefits of reduced injuries and property damage. This is well below the consensus of estimates of the statistical value of life.

A number of lighter models will probably be discontinued by importers after the rule's effective date. This will occur primarily among novelty lighters, which reportedly declined in sales since their popularity peaked in the late 1980's. Over 100 different novelty models, accounting for 100,000-500,000 units annually, could be covered by the rule. Many of these, particularly the least expensive ones, will likely not be modified to incorporate child-resistant features, and will no longer be available to U.S. consumers. Since novelty sales are declining, the magnitude of the potential loss to consumers is not great; however, purchase choices for some consumers will be restricted to those kinds of lighters not subject to the rule.

An even less quantifiable cost of the rule is the potential adverse impact on the utility derived from lighters by consumers. Child-resistant lighters may be viewed as less convenient for adults to use, due to the multi-action nature of child-resistant features. Some such features may incorporate small or hard-to-manipulate buttons or levers, and may be especially difficult for elderly or physically impaired consumers (e.g., with arthritis) to operate with one hand. This potential loss to adult users may diminish over time as improved child-resistant mechanisms are developed by manufacturers, and as consumers become accustomed to child-resistant operating mechanisms. As noted above, some consumers may switch, at least temporarily, to matches or to other lighters not subject to the rule if complying designs are perceived as unacceptably inconvenient.

E. Alternatives to the Rule

1. Scope

The Commission considered broadening or narrowing the scope of the rule. The considered alternatives included a rule that could be broadened in scope to cover more types of lighters, including some or all luxury lighters, low-cost liquid-fuel lighters, and novelty lighters. Another alternative is a rule that would be narrowed in scope to exclude some or all low-cost butane refillables, or to exclude some or all novelties.

a. *Broader scope.*

Luxury lighters. The final rule covers about 98 percent of all lighters sold annually in the U.S. If the rule were expanded to cover all lighters, roughly 15-20 million additional luxury units would have to be made child resistant. This would maximize the potential safety benefits of the rule.

As noted in the preliminary regulatory analysis, however, most child-play fire deaths and injuries

involve nonrefillable butane pocket lighters. The available fire data reveal no fatal fires started by children under age 5 involving any butane luxury lighters now on the market, and only one involving a liquid-fuel model. The number of child-play fire injuries associated with luxury lighters is also very small, despite the existence of millions of luxury lighters in use and their long service lives. The available data do not show that luxury lighters, as a class of products, pose a significant risk of fire death or injury.

Luxury lighters differ from disposables in certain characteristics affecting risk:

1. Though some luxuries may retail for as little as $5.00-6.00, they generally retail for $10.00 or more, or have equivalent value as promotional premiums. Consumers will therefore be less likely to (a) treat them like throwaway items and leave them in household locations accessible to young children or (b) view them as close substitutes for child-resistant disposables retailing for as little as $1.00 (nonrefillable) to $2.00 (refillable).

2. Luxury lighters are not sold to consumers in multi-packs, as are many disposables; thus, multiple product use (e.g., several working lighters in various locations around the household) is not encouraged.

3. Some luxuries have unusual ignition mechanisms, the operation of which may not be readily apparent or easily understood by young children; for example, most liquid-fuel luxury models have caps which must be opened before use.

These factors tend to reduce the likelihood of luxury lighter involvement in child-play fires. Allowing for the possibility that a few deaths and injuries could be averted if luxuries were covered, such an expansion of the scope of the rule might yield at most $5-10 million in increased annual benefits.

The estimated cost of the rule would also increase, however, if luxuries were covered. Even though child-resistant features could be incorporated readily into some luxury models, the unusual or complicated components and case configurations of others, combined with the low production volume of these products generally, tend to make the adoption of child-resistant features more difficult and costly per lighter than for disposables. The establishment of separate assembly lines for child-resistant and non-child-resistant models may also be especially costly for small, low-volume firms marketing luxury lighters.

Production, testing, and certification costs will be passed on to consumers in the form of higher retail prices. Using conservative estimates of $1.00 per unit for all luxury lighters and of 15 million units affected annually, the increased annual estimated cost to consumers of a rule covering all luxury lighters is at least $15 million. With increased annual safety benefits of at most $5-10 million, the estimated annual net benefits of such a rule are still slightly (at least $5-10 million) less than those of a rule covering only disposables and novelties.

Under another alternative, the Commission could, by deleting any reference to butane fuel in the rule's definition, have included liquid-fuel lighters in the scope of the rule. This would substantially disrupt the supply of such products to consumers, again without significant safety benefits. The least expensive liquid-fuel models might be discontinued, at least temporarily. There might be significant short-term adverse effects on the single domestic manufacturer (Zippo). Although this firm would probably not go out of business if its lighters were required to comply, sales could be substantially disrupted until successful child-resistant designs were developed and marketed.

Another way the scope of the rule could be broadened would have been to include the least costly butane luxury refillables. This could be achieved by raising the cost cutoff in the definition of disposable lighters above $2.00 in Customs Valuation or ex-factory price. A rule incorporating a $3.00 cutoff would cover approximately 3-4 million additional, moderately-priced ($5.00-12.00 retail) units; a $4.00 cutoff would cover about 4-5 million more moderately-priced units (mostly retailing for $5.00-15.00, but some up to about $20.00) than would a $2.00-cutoff rule.

Raising the cost cutoff would make it less likely that non-child-resistant lighters could be marketed at retail prices approaching those of child-resistant nonrefillables. The most expensive complying nonrefillables could retail for between $3.00 and $4.00. If non-child-resistant models were viewed as reasonably close in price, and if child-resistant models were viewed as unreasonably inconvenient, some consumers might prefer the convenience of the former to the lower price of the latter. Such substitution could reduce the effectiveness of the rule slightly, although the combined annual volume of sales of expensive nonrefillables and moderate ($2.00-4.00 Customs Valuation) refillables accounts for only 2-3 percent of all lighters sold.

Price markups in the chain of distribution are typically higher for refillables than for nonrefillables. Even at unusually low markup percentages averaging only 50 percent for importers and retailers, $2.00 Customs Valuation refillable lighters will retail for at least $4.50. Many lighters, particularly the relatively low-volume refillables, are distributed through wholesalers, who add an intermediate markup. If markups for inexpensive refillables approached typical markups for nonrefillables, products at $2.00 in Customs Valuation will likely retail for at least triple that figure, or approximately $6.00. The available information from importers suggests the potential volume of refillable lighters will probably not be sufficient to sustain very low markups on a long-term basis. Very few non-child-resistant lighters will be available to consumers in the $5.00-6.00 retail range. It is, therefore, unlikely that significant substitution will occur under any cutoff at or above $2.00. Even if some substitution resulted, the cost cutoff will have a negligible effect on safety benefits; it is estimated that less than $5 million in annual benefits will accompany an increase in the cost cutoff to either $3.00 or $4.00.

The cost of the rule to consumers, however, would increase with a rise in the cost cutoff, depending on the cost figure chosen. At roughly $1.00-2.00 per refillable lighter affected, a $3.00-cutoff rule may add roughly $6-8 million to consumers' annual retail expenditures; a $4.00-cutoff rule may add $8-10 million per year.

As noted above, the potential safety benefits of including all lighters were generously estimated at $5-10 million per year. If all of this were attributable to the lowest-cost luxury models, then the expected net benefits of the rule will not be significantly affected by a higher cost cutoff. Expected net benefits would be reduced to the extent potential benefits were allocated among higher-cost models. No information other than importers' sales estimates exists upon which such an allocation might be made; however, estimated net benefits will not increase, even if all benefits were associated with lighters under the cutoff. The most likely outcome of adopting a cutoff higher than $2.00 is a slight reduction in the annual net benefits of the rule.

In addition, adopting a higher cutoff will probably have some temporary disruptive effects on the short-term sales and profits of affected small importers and on the availability to consumers of moderately-priced luxury lighters. As noted above, if low-cost liquid-fuel lighters (which are not considered close substitutes for butane disposables) were covered, some would be discontinued,

at least temporarily, due to the relative difficulty of incorporating child-resistant features into these products. A small number of pushbutton butane refillables, including some premium lighters, may also be discontinued if their sales volumes is judged to be too low to justify the additional expense. Even if the net benefits of a higher-cutoff rule were equal to those of the $2.00-cutoff rule, the latter will be less burdensome to industry, particularly to small importers.

Low-cost liquid-fuel lighters. The Commission considered the alternative of including non-luxury liquid-fuel lighters in the scope of the rule by deleting the reference to butane fuel in the definition of disposable lighters. While liquid-fuel luxury lighters (such as those produced by Zippo, the only domestic firm that does not import any of its lighters) would not be covered, up to 1 million low-cost (under $2.00 in Customs Valuation) imported liquid-fuel lighters would be covered. This would prevent low-cost, non-child-resistant, liquid-fuel lighters from being substituted for child-resistant, butane disposables after the issuance of a rule.

The least expensive liquid-fuel lighters are price-competitive with the most expensive butane disposables. Liquid-fuel lighters are not particularly close substitutes for butane disposables, however, due to other, non-price, differences. The liquid fuel refilling procedure is relatively inconvenient and messy; the liquid fuel is unpressurized, and tends to evaporate. Thus, unlike butane lighters, liquid-fuel lighters are shipped and sold to consumers without fuel; consumers must purchase fuel and fill the lighters before initial use; liquid-fuel lighters are not sold to consumers in multi-packs; and the operation of liquid-fuel lighters is generally less convenient.

Unless child-resistant butane lighters are very difficult to use, most butane-lighter users will probably not give up the convenience of butane lighters for liquid-fuel models without child-resistant features. Non-child-resistant butane luxuries, some of which may retail for $5.00-6.00, will still be available after the issuance of the rule. Most child-resistant disposables will still be lower in price than any liquid-fuel models. A substantial consumer shift to the use of non-child-resistant liquid-fuel lighters is unlikely, given the fairly convenient child-resistant mechanisms being employed or developed for butane disposables. Thus, it is unlikely that safety benefits would increase as a result of adding low-cost liquid-fuel lighters to the rule's scope.

Adding low-cost liquid-fuel lighters to the scope of the rule would affect up to roughly 1 million such lighters, retailing for up to about $8.00-9.00 (or with equivalent value as promotional giveaways). It may be particularly difficult to incorporate child-resistant features into these designs; no such features currently exist. Most, if not all, low-cost liquid-fuel models would probably be discontinued, at least temporarily. Liquid-fuel luxury lighters could still be available, but consumer expenditures on liquid-fuel lighters would increase slightly. The annual cost of the rule to consumers would be on the order of $1-5 million, depending on the extent to which consumers substituted higher-cost liquid-fuel models for discontinued low-cost ones.

The estimated cost of including low-cost liquid-fuel lighters in the scope of the rule is slight; however, the likely benefits are negligible. The estimated annual net benefits of the rule would probably not increase if liquid-fuel lighters were covered, and could decrease slightly.

Novelty lighters. The rule covers novelty lighters depicting or resembling in physical form or function articles recognized as appealing to or intended for use by children under 5, including lighters with entertaining audio or visual effects. This definition has been changed from that in the proposal, which defined novelties as being lighters that resemble any other object in physical form or function. Regardless of whether a lighter meets the definition of novelty lighter in either the proposed or final rule, it is covered if it meets the definition of disposable by virtue of being nonrefillable or a refillable butane lighter under $2.00 in Customs Valuation or ex-factory price. The Commission considered whether the rule should cover all novelties included in the proposed definition; this would obviate the need to determine which refillable novelty models are appealing to or intended for use by children under 5. It would also cover numerous (possibly over 100) novelty models resembling ostensibly "adult" items, including tobacco-premium lighters in the form of cigarette packs and other articles; many of these are considered to be less appealing to young children.

No deaths in the Commission's child-play fire data are associated with any novelties. The potential safety benefits of the rule might be slightly increased if adult novelties were included, but any such increase would be negligible.

Most novelties included within the scope of the rule will probably be discontinued. Under 500,000 refillable adult novelties above the $2.00 disposable cost cutoff are estimated to be imported annually. Including these products would effectively increase the cost of the rule to consumers by up to $1 million, depending on the extent to which such lighters were modified to comply or were discontinued.

The likely impact of including "adult" novelties on the estimated overall yearly net benefits of the rule would probably be negligible. The burden of the rule on small importers, however, could be increased. The final rule's definition covering novelties resembling articles appealing to children will have less potential adverse impact on small firms, while covering those lighters presenting the greatest potential risk.

b. *Narrower scope.*

Low-cost refillable lighters. The rule's $2.00 cost cutoff in the definition of disposable lighters could have been lowered in order to reduce the potential economic burden on importers marketing low-cost refillable butane lighters. The Commission also considered whether it should not cover any refillable lighters, since the overall risk of child-play fires associated with refillables generally is low — and could eliminate refillables and their cost cutoff entirely from the definition of disposable lighters.

Price and operating convenience are the major factors influencing consumer purchases of disposable butane lighters. Low-cost refillable butane lighters are included in the scope of the rule because they may be reasonable substitutes for many nonrefillables. These two groups both use the same fuel; they use the same convenient ignition mechanisms; they are often sold in multi-packs; and they are often similarly priced. Price increases among nonrefillables after the imposition of the rule may make inexpensive non-child-resistant refillables even more attractive as potential substitutes. The inclusion in the rule of low-cost butane refillables will also discourage manufacturers from adding refill ports to nonrefillable models (a reportedly simple and inexpensive modification) in order to circumvent the rule.

The $2.00 cost cutoff for refillable lighters will cover existing models whose retail prices approach those of the most expensive nonrefillables. The highest observed retail price for nonrefillables is $4.00 (though almost all are under $3.00); the least expensive butane refillables retail for as little as $1.00, which is within the price range for nonrefillables. There may be 50 or more refillable models retailing for under $4.00; these may be considered by some consumers to be reasonable

substitutes for child-resistant nonrefillables. Although some refillables retailing for up to $8.00-9.00 may be covered by the rule due to price markups in the channels of distribution, the vast majority of products covered will be under $6.00 retail.

An estimated 8-10 million butane refillables were imported at under $2.00 in Customs Valuation in 1992; roughly 5-6 million of these were between $1.00 and $2.00. Thus, if the Commission adopted a $1.00 cutoff, a majority of low-cost refillable lighters whose retail prices are competitive with nonrefillables would be exempt from coverage by the rule. If some low-cost novelty lighters were also exempted from coverage, compliance costs would be reduced or eliminated for at least 50 foreign (mostly Korean) manufacturers, 5-10 U.S. importers, and numerous distributors of these products. The annual reduction in the total cost of the rule to consumers could be on the order of $5-10 million. If no refillables were covered, the annual cost of the rule could decrease by a total of up to $10-15 million.

The potential adverse effect of the rule on competition among imported lighters will also be affected by lowering or eliminating the cutoff. At $1.00, any advantage conferred upon manufacturers and importers of costlier lighters would simply be shifted down the cost scale. Some disincentive for manufacturing efficiency and lower prices will probably exist regardless of the cutoff level. Reducing the cutoff or exempting refillable lighters may provide a somewhat greater incentive for foreign suppliers to circumvent the rule (by either raising prices above the cutoff level or, if refillables were not covered, by modifying nonrefillables with refill ports), since price competition with child-resistant models could be more readily maintained.

Under a $1.00 Customs Valuation/ex-factory price cutoff, non-child-resistant butane refillable lighters would be available for as little as $3.00 retail. If no refillables were covered, non-child-resistant lighters would be available at $1.00 or less. The total cost of the rule to the public would be reduced, partly because cost increases for refillables would be avoided, but mainly because consumers would be more likely to substitute such products for child-resistant nonrefillables. Since some complying refillables and virtually all complying nonrefillables will still be available at lower prices, however, the impact of substitution on total costs to consumers might not be large. Costs to consumers may also be reduced to the extent competition from non-child-resistant lighters exerted downward pressure on prices of complying models.

The potential effect of lowering or eliminating the cost cutoff for refillable lighters on the safety benefits of the proposed rule also depends largely on the extent of consumer substitution of non-child-resistant refillables for child-resistant models. A low level of substitution would probably have little adverse impact. A higher level of substitution (e.g., a doubling or more of the market share of low-cost refillables, which was less than 5 percent in 1992) would result in a somewhat greater reduction in potential safety benefits. If the market share for inexpensive refillables grew dramatically (e.g., to 20 percent), the benefits of the rule could be reduced by $20 million or more.

With non-child-resistant refillable lighters retailing for as little as $3.00 after the issuance of a $1.00-cutoff rule, some substitution would be likely to occur. This could reduce the annual net benefits of the rule slightly — probably less than $5 million. An unknown but much greater reduction in net benefits might occur if no refillables were required to be child resistant and refillables were heavily substituted for complying nonrefillables. Significant substitution will be less likely under the $2.00 cutoff. Annual net benefits probably would not increase under any circumstances if the cost cutoff were lowered or eliminated, though the burden of the rule on some small firms could be reduced. Issuing the rule with the $2.00 cost cutoff will nearly minimize potential substitution without imposing a substantial economic burden on small importers, and without penalizing firms marketing complying lighters.

Novelty lighters. As noted above, the scope of the rule with respect to novelty lighters is narrower in the final rule than in the proposed rule. The Commission considered narrowing the scope further by eliminating the specific reference to novelties in the description of the scope of coverage of the rule.

Novelties that are not required by the rule to be child-resistant will probably not be. Excluding novelties from the rule could reduce the economic impact of the rule on importers of novelties, and many novelty models facing discontinuation from the U.S. market would remain unregulated. However, up to roughly half of all novelty shipments would still be covered, since they will meet the rule's definition of disposable lighters (i.e., nonrefillable or butane refillable under $2.00 in Customs Valuation).

Less than 1 million novelties were imported into the U.S. in 1992. If novelty lighters were not explicitly covered by the rule, estimated annual shipments of roughly 200,000-300,000 butane refillable novelties over $2.00 in Customs Valuation (plus a very small number of liquid-fuel novelties), which will otherwise have to be modified or discontinued, would remain unaffected. Raising or lowering the cost cutoff could affect this estimate by up to 100,000-200,000 units. The annual cost of the rule to consumers could be reduced by up to $1-5 million, depending on the compliance cost otherwise attributable to the various models affected, and on the extent of the potential loss to consumers if such models will otherwise be discontinued.

The potential safety benefits of the rule would also be reduced slightly if novelties were not explicitly covered. Since the number of products involved is very small, this potential reduction would be slight; however, some toy-like or otherwise appealing novelties would escape coverage by virtue of being refillable and above the cost cutoff.

Relying on the general definition of disposable lighters, including the cost cutoff, to identify covered novelties would obviate the need for judgments about which lighters are novelties and which are appealing to children. It also, however, would allow the marketing of some novelties that appeal to young children. Many novelty lighters the CPSC's staff regards as attractive to children are above the $2.00 cutoff.

The preliminary regulatory analysis estimated that $5-10 million in reduced benefits, and up to $5 million in reduced net benefits, would be associated with a rule excluding all novelties. As noted above, however, many novelties will still be covered as disposable, even if novelties were not explicitly subject to the rule. Some child-play fires could occur if novelties over $2.00 in Customs Valuation and considered appealing to young children were not required to be child-resistant. The expected annual net benefits of the rule could be reduced slightly (probably by less than $5 million) if the rule only applied to disposable lighters, which include only low-cost or nonrefillable novelties.

2. Performance and Technical Requirements

a. *Introduction.* The rule incorporates a test protocol for surrogate lighters representing each model or type of lighter subject to the rule. The rule requires such surrogates to be resistant to operation by 85 percent of tested children under specific test conditions. The rule also requires qualification tests for subject lighters be conducted in the

U.S. (the proposal did not restrict such tests to the U.S., if specified conditions were met). In order to increase safety or decrease costs, the Commission considered promulgating the rule with either a higher or a lower acceptance criterion than the 85 percent level; similarly, certain key technical aspects of the test procedure could be strengthened or relaxed. In addition, the Commission could have allowed foreign testing in order to reduce potential costs to small importers.

b. *Acceptance criterion.* As noted in the proposal, the Commission's baseline test data show that existing disposable lighters (i.e., those with no specific child-resistant feature) are about 50 percent child resistant. The proposed 85 percent level represents a balance of safety benefits and technical and economic feasibility for most manufacturers and importers. Information from a number of firms indicates the 85 percent criterion — which will essentially require surrogate lighters to exceed 90 percent child resistance in tests — is generally achievable.

Requiring lighters subject to the rule to meet a higher acceptance criterion may, on its face, appear to increase safety, but the Commission cannot show that it is either technically or economically feasible. Lighters would probably be so difficult to operate that many adults could not operate them. Nearly-child-proof lighters (as might be required under a 90 or 95 percent acceptance criterion) reportedly cannot be produced under reasonable manufacturing and quality control conditions. Such a requirement could virtually ban disposable lighters. This will have a serious adverse impact on manufacturers and importers, some of which could go out of business. The cost of a 90 or 95 percent rule to the public is uncertain; however, substantial adverse effects on the availability of disposable lighters will probably result.

Even a rule that ensures that the covered lighters are 100 percent child resistant would not guarantee the elimination of a number of child-play fires, deaths, and injuries equal to that currently involving disposable lighters. Deaths and injuries may be associated with an increased use of matches — the closest substitute for disposable lighters — and perhaps of non-child-resistant lighters, to the extent these products replaced disposable lighters in the stock of products in use. The extent to which such replacement occurs can be expected to be related to the degree of difficulty that complying lighters present to adults.

Substantially greater costs to industry and to consumers would result from a higher acceptance criterion; most, if not all, firms would be unable to comply with such a requirement. It is uncertain whether benefits will be significantly increased under this alternative. The annual net benefits of the rule could decrease significantly if an unattainably high acceptance criterion were adopted and consumers were limited to higher-priced, non-child-resistant refillable lighters or matches as substitutes for most disposables.

Lowering the acceptance criterion may increase the probability that some small firms' designs will comply, but many small firms will be able to meet the 85 percent proposal without significant disruption. The total cost savings associated with a 75 or 80 percent rule would not be substantial; many firms would offer similar or identical products to meet any criterion of at least 75 percent. Some cost reduction would probably result; annual cost savings to consumers are generously estimated at up to $10-20 million. Annual safety benefits, however, could also decrease by up to $10-30 million, depending on the extent to which complying lighters were actually less child resistant. The annual net benefits of the rule would probably be reduced slightly if the acceptance criterion were lowered to 75 or 80 percent.

c. *Test protocol specifications.* The test protocol in the rule calls for two demonstrations of the operation of the lighter surrogate being tested, and defines a successful operation as any single activation of the surrogate. The proposed rule, which called for three demonstrations and one activation, was slightly more stringent. Generally, a more stringent test will incorporate more demonstrations or fewer activations; a less stringent test will incorporate fewer demonstrations or more activations.

To the extent any combination of these elements in the test procedure discriminated among lighter designs (i.e., a surrogate will pass the less stringent test but fail the more stringent one), some models already under development or on the market might have to be modified or redesigned in order to comply with a more stringent alternative. This would increase costs for the affected firms. The availability of complying lighters from these firms could be delayed until any necessary improvements were made. The potential impact on total industry costs or on competition is uncertain; however, there is no information to suggest such impacts will be significant. Costs to consumers probably will not increase due to these factors. The potential benefits of the rule presumably would be greater under a more stringent test, although the likely increase is slight. A more stringent test will probably have a negligible overall impact on the expected annual net benefits of the rule.

A less stringent test might reduce the cost of the rule slightly, and might eliminate potential disruption among firms whose lighters might not otherwise be acceptable. Such lighters, however, need not be as child resistant. Thus, potential safety benefits of the rule may be slightly lower under a less stringent test, depending on the actual level of child resistance among lighters on the market after the rule became effective. Since child-resistant lighters are generally expected to comply when tested in accordance with the two-demonstration, one-activation scheme in the final rule, the potential adverse impact of a less stringent test on benefits is probably very small. In view of the small potential reductions in both costs and benefits, the likely effect of a less stringent test on the annual net benefits of the rule is negligible.

d. *Testing in the U.S.* The rule requires qualification testing of lighters to be conducted in the U.S. This minimizes the potential effects on test results of cultural or other differences among children in different countries, and helps ensure proper testing by affording CPSC ready access to testing facilities and records. The proposal did not restrict such testing to the U.S., if equivalency between the countries was demonstrated. The Commission considered whether to allow foreign testing to ease the potential burden of the rule on small importers and foreign suppliers.

Firms accounting for over 80 percent of all lighters subject to the rule, including all the major firms, reported they will conduct all their testing in the U.S., even if not required to do so. Allowing testing outside the country might reduce compliance costs for some small importers whose foreign suppliers are willing and able to conduct tests near their production facilities. Testing in foreign countries, however, is reportedly not appreciably less costly than in the U.S. Further, testing costs account for a relatively minor portion of total industry costs of compliance. Thus, even sizeable differences between foreign and domestic testing costs will not significantly affect total costs or importers' ability to obtain and market complying lighters. The cost of child-resistant lighters to consumers will also be unaffected.

If testing were not limited to the U.S., there may be a greater likelihood of improper tests being used to establish the child resistance of imported lighters. If improper tests were used, some lighters could be less child resistant than claimed, and the safety benefits of the rule may be lessened. Although most lighters subject to the rule would probably be tested in the U.S. anyway, a significant number — possibly up to 20 percent — of all lighters otherwise would be certified based on foreign tests.

3. Certification

Manufacturers and importers will be required to issue certificates of compliance with each shipping unit of lighters intended to be distributed to consumers; such certificates will go to the first purchaser in the chain of U.S. distribution. The rule will also require dates of manufacture to appear on all subject lighters and on certificates of compliance. Certificates of compliance will most likely be printed on shipping containers or on product packaging. Date codes (e.g., month and year) will be molded or stamped into the case of each lighter. Date coding will presumably be done in advance of anticipated assembly dates, since components of a given production batch of lighters are often manufactured over a period of weeks, or even months. Matching or inclusive dates will also have to be printed on each certificate of compliance.

Importers often package lighters from bulk shipments for sale to distributors or retailers. Shipments received by importers generally contain lighters from many assembly dates. Importers will have to establish detailed inventory controls to ascertain the appropriate range of dates for each certificate of compliance. This may involve checking individual lighters or small boxes (typically 50 units for the smallest) within a shipping container. Each shipping container may hold several hundred thousand individual lighters. The Commission considered the possibility of deleting the date code requirement for certificates of compliance in order to reduce importers' costs.

Dropping the date code requirement for certificates of compliance could lessen inventory control costs for some importers, and would eliminate the cost of multiple-date-code labels and certificates. Some major firms are expected to label every shipping container, including outer crates, inner cartons, and prepackaged cards or trays of lighters, whether required to do so or not. Most other firms probably could institute the appropriate inventory controls, though some small importers may have limited labor resources to perform extra, manual inventory checks. Total cost savings to importers associated with dropping the date code requirement would probably be under $1 million per year.

The date code requirement does not increase the child-resistancy of lighters. There may be benefits to consumers, however, if recalls or other corrective actions are facilitated by the presence of date codes on certificates of compliance in the possession of distributors or retailers. Some such corrective actions may be necessary, particularly during the first years following the issuance of the rule. The presence of a date code could also be an advantage to firms that had to recall noncomplying lighters by enabling the firms to limit the scope of the recall to specific coded units.

4. Stockpiling

The rule restricts the production or importation of noncomplying lighters of the types subject to the rule between the rule's promulgation date and effective date. Some small firms that are experiencing significant sales growth may be adversely affected by these anti-stockpiling provisions. Narrowing the application of these requirements might reduce the burden of the rule on some small importers.

If a higher allowable importation or production rate (e.g., 200 percent of the base period rate) were incorporated into the anti-stockpiling provisions, the potential disruption of small firms' sales would probably be eliminated. This would effectively lift the restriction on any reasonable amount of sales growth, but will also allow firms to increase the manufacture or importation of non-child-resistant lighters substantially, thereby giving potential price and convenience advantages over child-resistant lighters. In the short run (1-2 years), this could reduce the safety benefits of the rule significantly if major suppliers continued to offer mostly noncomplying units. Whether large firms will be likely to stockpile noncomplying lighters is uncertain. Although the commercial incentive to do so will exist, so will the disincentives of higher inventory and distribution costs and, possibly, greater liability exposure.

Exempting small firms (e.g., those with annual sales under $5 million) would have a similar salutary effect on up to 30-35 small importers, without allowing larger firms to stockpile noncomplying units. There could still be some adverse effect on potential benefits, if large sales increases among small firms for 1 year temporarily increased the proportion of non-child-resistant lighters otherwise available to consumers.

Exempting or raising the allowable increase for novelty lighters would reduce the short-term burden on roughly 5-10 small importers of these products. Since novelty lighters' sales are generally not increasing (and reportedly declined substantially for some firms in recent years), however, the reduction in costs for small firms would probably be slight.

The volume of sales for novelties is very small (under 1 million units per year of all types). It is very unlikely that non-child-resistant novelties will be substituted in significant quantities for child-resistant disposables (which will still be much lower in average retail price). Thus, even substantial increases in the number of novelty lighters imported without child-resistant features will probably have a negligible adverse impact on the safety benefits of the rule.

The potential effect on the expected net benefits of the rule of any burden-reducing modification to or exemption from the anti-stockpiling provisions depends on whether firms would produce or import significant additional quantities of noncomplying lighters. Assuming most firms will exploit the potential price and convenience advantages of non-child-resistant models, some reduction in net benefits could accompany a general rate raising or an exemption for small importers of refillables. A higher rate (or an exemption) for novelty lighters will probably have virtually no impact on net benefits, although the likely burden reduction for small importers will be slight.

5. Effective Date

The rule incorporates an effective date of 12 months from the date of publication of the final rule in the **Federal Register**. The Commission considered shorter and longer effective dates. Section 9(g)(1) of the CPSA calls for product safety rules to become effective not more than 6 months from their publication dates, unless the Commission extends the time period and finds that such an extension will be in the public interest. The 12-month effective date will lessen the economic burden of the rule while providing protection to consumers in a reasonably expeditious manner and, as discussed in more detail below is in the public interest.

Since the rule's anti-stockpiling provisions will limit the production or importation of noncomplying lighters between the promulgation and effective

dates of the rule, even the 12-month effective date will temporarily disrupt the sales of a small number (perhaps 5-10) of the 30-35 small firms importing lighters whose foreign suppliers could not develop commercially acceptable complying lighters by that time. The Commission could find 12 months insufficient to minimize potential adverse effects on small firms. An extension beyond 12 months could reduce, or at least delay, this disruption.

Most firms will probably be able to market complying products within 12 months. Even small companies will probably be able to obtain child-resistant versions of most models. Thus, the availability and cost of child-resistant lighters to consumers will probably not be significantly affected by extending the effective date beyond 12 months. Further, most small firms will not be substantially harmed by the 12-month effective date.

Delaying the effective date beyond 12 months would also delay the full measure of benefits to consumers. The amount of any reduction in benefits will depend on the extent to which consumers with young children purchase and use child-resistant lighters on the market before the effective date. The potential adverse impact on benefits could be significant if most consumers continued to use non-child-resistant lighters.

The Commission also considered whether 12 months provides inadequate protection to the public, and whether the effective date should be 6 months. Shortening the effective date to 6 months would substantially disrupt the sales of most firms, including some of the major importers, and would temporarily restrict the availability of lighters to consumers. This would probably confer a competitive advantage upon those large firms already marketing child-resistant disposable lighters. It is unlikely that any small firms, including all importers of novelty lighters, would be able to obtain complying models within 6 months.

Under a 6-month effective date, the benefits of the rule could be increased during the first year after the rule became effective. Substantial adverse effects on industry, especially on small firms, would also result. The likely extent of any increase in expected net benefits is uncertain.

Although extending the effective date beyond 12 months might reduce the burden of the rule on a few small firms, the 12-month effective date provides near-minimum adverse effects while providing a reasonable level of safety. The estimated first-year net benefits of the rule would probably not increase — and could decrease somewhat — if the effective date were extended beyond 12 months.

6. Labeling

The rule requires subject lighters to bear marks or labels identifying the manufacturer or importer and the date of manufacture. Many lighters currently carry warning or other labels with safety messages such as "keep out of the reach of children;" such labeling is part of the existing ASTM voluntary standard (not the ASTM draft child-resistance standard). The Commission could mandate the use of this or other safety messages on labels, either on lighter packaging or on lighters themselves. This labeling could be mandated instead of the performance rule or in addition to it.

The cost of the rule would be reduced to near zero if only labeling were required, even for all lighters. Since most disposable lighters marketed by all the major firms now carry such a label, any cost increase will affect only those small firms whose lighters are not now labeled. This cost will be negligible, and would not add to the retail prices of lighters.

On the other hand, since most lighters (including most lighters involved in child-play fires) already carry warning labels, a label-only rule will have slight benefits, if any. The estimated annual net benefits of such a rule would be verysmall — probably near zero; the annual net benefits of the Commission's performance rule will be much greater.

The cost to consumers of requiring additional or different warnings or other labeling would be very small (probably much less than one cent per lighter); again, this cost would add only slightly, if at all, to the cost of the rule to consumers. By the same token, no information exists to suggest that mandating additional warning or other labels — on an already crowded lighter case surface, in many instances — would measurably improve the safety afforded by the rule. Expected annual net benefits would probably not increase as a result of mandating additional labels.

7. No Action/Voluntary Standard

The draft voluntary safety standard for the child resistance of lighters developed by the ASTM F15.02 Task Group on Safety Standards for Lighters is similar in most respects to the final CPSC mandatory rule. Although the draft was not adopted as a final ASTM standard, lighters designed and produced to meet the draft standard are presently available to consumers. Conforming products were introduced by Cricket and Bic in 1992. It is assumed the Cricket and Bic products will meet the CPSC rule as well. Other firms are developing competitive lighters with child-resistant features. The Commission considered whether such voluntary action would adequately reduce the unreasonable risk of child-play lighter fires; if so, the Commission could find a mandatory rule is no longer reasonably necessary.

In the absence of a mandatory rule, the major firms will probably continue to offer lighters conforming to the ASTM draft. Some of the ASTM provisions (e.g., acceptance criterion, coverage of refillable butane and novelty lighters, and various technical specifications of the test protocol) are less stringent than CPSC's rule. Most of the safety benefits associated with the CPSC rule would, however, accompany widespread adoption of the draft ASTM standard.

The likely level of voluntary conformance, however, is not high. Most, if not all, firms offering child-resistant lighters will also market non-child-resistant ones. With suggested retail prices of up to 20 percent higher for child-resistant models, their market share may not be large. In the absence of a mandatory rule, or of high conformance expectations for the draft voluntary standard, many firms could not justify the development costs for child-resistant lighters.

Substantial voluntary conformance would probably occur only among higher-priced disposables; the lowest-priced models would probably not conform. If the overall voluntary conformance rate among disposable lighters purchased by consumers were generously estimated at 50 percent, total annual costs to consumers would be reduced to roughly $50 million. Consumer choice among low-priced lighters would be enhanced. The potential adverse impact of a mandatory rule on small businesses would be essentially eliminated. Benefits would also be reduced, however, and could decrease over time if child-resistant lighters were not widely accepted by consumers with young children. Voluntary action could avert at most 35-45 deaths per year, and have annual net benefits of up to $40-65 million. Decreases in the use of child-resistant models would reduce the likely net benefits. Although voluntary action could have significant net benefits to consumers, the CPSC mandatory rule will have far greater net benefits.

8. Issues Raised by Public Comments on the Proposal

A number of economic issues were discussed in the public comments on the proposal. These generally involved the potential benefits, costs, and overall economic burden of the rule. Many commenters recommended changes to the proposed rule in several areas. For example, different commenters recommended:

broader or narrower scope of coverage;
more or less stringent performance and test protocol requirements;
less burdensome certification requirements;
narrower coverage for anti-stockpiling provisions;
longer effective date; and
additional labeling requirements.

These comments are addressed generally in the discussion of the various alternatives to the rule above. Comments on specific aspects of the preliminary regulatory analysis centered on scope issues, and questioned the Commission's justification in the proposal for:

excluding luxury lighters and liquid-fuel lighters;
setting a $2.00 cost cutoff and a 5-year cost adjustment period in the definition of disposable lighters; and
including all novelty lighters.

These comments are specifically responded to in Section VI of this notice.

9. Conclusion

Substantial net benefits to the public will accompany the Commission's rule requiring lighters to be child resistant. Safety benefits, in terms of reduced deaths, injuries, and property damage from child-play fires, are estimated at $205-270 million per year. The cost of the rule to consumers, in terms of increased retail expenditures for lighters, is estimated at about $90 million per year. Thus, $115-180 million in annual net benefits may result. Using a cost point estimate of $235 million, annual net benefits will be $145 million. The rule will reach near-maximum effectiveness in a relatively short time — perhaps 1-2 years — since most lighters are replaced every few months.

Most manufacturers and importers will likely be able to market commercially acceptable, child-resistant lighters by the time the rule goes into effect July 12, 1994. Some small importers may have difficulty in obtaining complying lighters within 12 months, but any disruption of sales will be temporary; no firms are expected to leave the U.S. market or go out of business as a result of the rule.

A number of alternatives to the rule exist, including options regarding various aspects of the rule itself. While these alternatives may increase potential benefits slightly or reduce costs, none will increase expected net benefits. In cases where net benefits are unaffected, no alternative will significantly increase safety to consumers.

Some comments on the preliminary regulatory analysis in the proposal suggested improvements in the way benefits and costs were estimated, or recommended alternatives to various aspects of the proposed rule. In some instances, these suggestions and recommendations were incorporated into the final regulatory analysis and the rule. Chief among these alternatives was the narrowing of the coverage of novelty lighters in the scope of the rule; this change will reduce the potential adverse impact on small firms without reducing safety.

After considering the foregoing information, the Commission concludes that:

1. The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;

2. The promulgation of the rule is in the public interest;

3. The benefits of the rule bear a reasonable relationship to its costs; and

4. The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

V. Final Regulatory Flexibility Analysis

A. Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that rules be reviewed for their potential economic impact on small entities, including small businesses. The RFA, at 5 U.S.C. 603, requires agencies at the time a rule is proposed to prepare and make available for public comment an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities and identifying impact-reducing alternatives, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposal contained the Commission's Initial Regulatory Flexibility Analysis.

Section 604 of the RFA requires agencies issuing final rules to prepare and make available a final regulatory flexibility analysis containing:

1. a succinct statement of the need for, and the objectives of, the rule;

2. a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

3. a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

About 40-45 firms produce or import lighters subject to the rule; all of these firms, including the single company manufacturing lighters domestically, are importers. An estimated 30-35 of these importers reportedly have annual sales of less than $5 million and fewer than 50 employees; these are considered to be small firms by the Commission. The single domestic producer affected by the rule is not small. One other domestic lighter manufacturer exists; this firm, which is also not considered to be small, markets no products known to be subject to the rule.

The Commission routinely considers potential effects on competition and small businesses as part of the agency's overall evaluation of the potential economic impact of its rulemaking actions. A summary of these effects is included in the final regulatory analysis required for rules issued under the Consumer Product Safety Act. Since a large proportion of the firms affected by this safety standard for cigarette lighters is comprised of small companies, the Commission gives particular consideration to the potential economic impact of the rule on small firms. The Commission's final regulatory flexibility analysis for this rule is set forth below.

The Commission took various steps to include small firms in the regulatory development proceeding. These steps include publishing and distributing the preliminary regulatory analysis with the proposal, directly notifying and soliciting comments from all known firms, and holding a public hearing on the proposal. Written comments were received from small firms; representatives of a number of these firms also attended the public hearing.

The rule on lighters may have significant short-term economic effects on small businesses, i.e., importers of disposable and novelty lighters, though the likely long-term impact on most such firms is small. The foreign suppliers of some small importers may lack the technical capability to develop complying, child-resistant lighters.

These importers may leave the U.S. market temporarily, or experience disruption in the supply of complying lighters; either outcome could adversely affect the competitive positions of some small companies.

The Commission considered a number of alternatives to the rule, some of which would lessen potential effects on small firms. As noted below, alternatives were generally adopted if they would not reduce the expected annual net benefits of the rule to consumers.

B. Small Business Impact

Objectives of the Rule. The safety rule on lighters would substantially reduce the risk of accidental death and injury from residential fires started by young children playing with lighters. This would be achieved by requiring lighters subject to the rule to be child resistant. The rule primarily addresses the risk of fires started by children under age 5; during 1988-90, an annual average of 150 deaths, about 1,100 injuries and nearly $70 million in property damage resulted from such fires. The total cost to the public is estimated at about $385 million per year.

Voluntary industry action to address this risk was undertaken during 1989-91 by members of ASTM Subcommittee F15.02, Safety Standards for Lighters. This group includes representatives of firms producing or importing lighters, including some small firms. Work to develop a voluntary child-resistance standard was undertaken in cooperation with CPSC and the Lighter Association, Inc., a group representing several of the firms. A draft standard, similar in many respects to the CPSC mandatory rule, was developed; however, work on implementing the draft voluntary standard was suspended in 1991, and the Lighter Association requested that the Commission adopt the ASTM draft's principal provisions as a mandatory rule. Although some of the major firms now market child-resistant lighters, and would probably continue to do so in the absence of a mandatory rule, the estimated overall level of conformance to a voluntary standard would be unacceptably low.

The rule specifies a test protocol by which the child-resistance of lighters may be established. All manufacturers and importers of subject lighters must perform tests to support certificates of compliance, which must be issued for each model of lighter intended for distribution to consumers in the U.S. The rule also contains labeling, reporting, recordkeeping and other certification requirements, and anti-stockpiling provisions designed to prevent the importation or manufacture of excessive numbers of non-complying lighters between the publication date and effective date of the rule.

The rule may save an estimated 80-105 lives per year. In addition, substantial reductions in injuries and fire-related property damage would result Estimated annual fire losses of about $205-270 million may be averted by the rule. The cost of the rule in terms of increased retail outlays by consumers is estimated to be about $90 million per year. This cost reflects the likely impact on small importers whose products may be subject to the rule. Thus, approximately $115-180 million in annual net benefits to the public would accompany the rule.

C. Public Comments

No public comments on the proposal criticized or responded specifically to the initial regulatory flexibility analysis. The comments did, however, raise economic issues bearing on the rule's potential impact on small firms. These issues include:

the scope of the rule;

various performance and technical requirements;

certification and anti-stockpiling requirements; and

the effective date.

A number of commenters recommended narrowing the scope of coverage, lowering the rule's acceptance criterion, narrowing the application of certain certification or anti-stockpiling provisions, or extending the effective date. Changes consistent with these recommendations may reduce the rule's potential adverse impact on small importers. Each of these issues is discussed in the Commission's final regulatory analysis in Section IV of this notice. The responses to the public comments are given in Section VI of this notice.

D. Significant Alternatives to the Rule

The Commission considered a number of alternatives to the rule; some of these could reduce the potential impact on small firms. The alternatives considered were:

the scope of the rule (broader to cover more lighters or narrower to cover fewer);

certain performance and technical requirements (acceptance criterion, testing in the U.S.);

certification and stockpiling requirements (date coding, certificates of compliance); and

the effective date (longer or shorter).

These alternatives are summarized in the discussion of public comments in Section VI of this notice. Generally, the Commission adopted changes in the final rule to reduce potential economic effects on small firms when such changes would not significantly reduce expected net benefits to consumers. An example of such a change is the treatment of novelty lighters in the scope of the rule. Alternatives for which significant reductions in expected net benefits might occur were rejected. The proposal incorporated various provisions (e.g., regarding scope, acceptance criterion, and effective date) designed to minimize potential adverse impacts on small firms; these were not changed in the final rule.

In addition, the Commission considered separately the general categories of (1) labeling requirements and (2) voluntary action as alternative means of achieving the safety objective of the rule. Either of these alternatives, if substituted for the performance rule, would virtually eliminate the potential economic impact on small firms.

If the Commission issued a labeling rule instead of child-resistance performance requirements, small importers would still incur some costs of compliance, depending chiefly on whether their products were previously labeled (some are). Costs would, however, be only a small fraction of the costs likely to be attributable to the performance rule. On the other hand, no information exists that would demonstrate that labeling alone would be effective in reducing the risk of child-play fires. The number of deaths and injuries is unacceptably high, despite the fact most lighters already carry such labels. The performance rule was developed to reduce the unreasonable risk of death and injury without relying on behavioral responses to safety messages on product or packaging labels. Although it is possible a labeling rule would have net benefits to consumers, the performance rule would have much greater net benefits.

If the Commission opted to rely on voluntary action to provide safety to consumers, most of the larger firms would probably market at least some child-resistant lighters. Smaller firms would generally not, although some may market child-resistant versions of higher-priced models. Some child-resistant lighters reportedly meeting the Commission's rule were introduced in 1992, and others are expected. Almost all firms would, however, continue to offer at least some non-child-resistant models. Although a draft voluntary standard was prepared by ASTM during 1989-90, the level of voluntary conformance to that standard among lighters available to consumers is expected to be low. Although small firms would incur very low, if any, costs under this alternative, safety benefits to consumers would be substantially lower

than under the mandatory rule. Although widespread voluntary action could have significant net benefits to consumers, the CPSC mandatory rule would have far greater net benefits.

E. Conclusion

The Commission's product safety rule on cigarette lighters may have significant, temporary adverse effects on some of the 30-35 small importers. Small firms may lack the technical capability to develop or obtain complying child-resistant lighters by the effective date of the rule. Sales revenues may be lost to the extent supplies from foreign manufacturers are disrupted. Although no small importers are expected to exit the U.S. market completely as a result of the rule, some may cease shipments of some types of lighters, at least temporarily. Larger firms with greater resources to invest in the development of child-resistant lighters may gain some competitive advantage once the rule is effective; two firms already market disposable lighters that are believed to comply with the performance requirements of the rule.

The proposed rule incorporated a number of provisions designed to minimize the potential impact on small firms. These included limiting the scope of the rule to exempt categories of lighters (luxury lighters, liquid-fuel lighters) typically marketed by small firms and not presenting significant risks of death or injury; establishing a reasonable acceptance criterion attainable by most small firms; and extending the effective date to give affected firms — especially small importers — more time to develop and obtain complying products.

Some of the recommendations in the public comments on the proposal were adopted in the final rule, in order to reduce further the potential impact on small importers. For example, the definition of novelty lighters was narrowed to exclude many novelty models marketed by small firms and presenting little risk of death or injury. Changing the final rule to require qualification testing in the U.S., suggested by commenters on the proposal, will have little or no effect on small firms' costs or ability to obtain complying lighters.

Several potentially burden-reducing alternatives (e.g., further narrowing the definitions of products covered, lowering the acceptance criterion for acceptable performance, further extending the effective date) were rejected. These alternatives would either reduce the safety benefits of the rule disproportionate to potential cost reductions, or would not reduce the burden on small firms. The final rule maximizes potential net benefits to consumers while nearly minimizing potential adverse impacts on industry, including small importers.

VI. Comments on the Proposal

A. Introduction

The public comment period on the Proposed Rule to Regulate under the Consumer Product Safety Act closed on September 16, 1992. The comment period on the Proposed Safety Standard for Cigarette Lighters closed on November 2, 1992. The comment period on the Report of Results of Child-Resistant Lighter Testing closed on March 18, 1993.

Twenty-two organizations, including the four who made oral presentations at the October 21, 1992, meeting, submitted written comments on the Proposed Safety Standard for Cigarette Lighters (one organization submitted two comments).

No commenters opposed promulgation of a final rule under the Consumer Product Safety Act, instead of under other possibly applicable Commission statutes. Fourteen commenters, including nine lighter importers, a research and development firm, the Lighter Association, Inc., and ASTM Subcommittee F15.02, Safety Standards for Lighters, specifically expressed support for a mandatory standard for child-resistant lighters.

The International Association of Fire Chiefs unanimously passed a resolution on September 18, 1992, to recognize the critical need for a comprehensive standard for child-resistant cigarette lighters and to support the CPSC's efforts to develop such a standard. The American Academy of Pediatrics submitted a letter strongly endorsing the proposed standard and requesting the standard be adopted in a most expeditious manner. The Executive Board of the South Carolina Chapter of the International Association of Arson Investigators voted to support the proposed standard.

After considering the comments and other available information, the final standard was changed to:

modify the definition of novelty lighter;

change the number of times the operation of the lighter is demonstrated to the children during the protocol test from three to two;

require the tester to use each child's lighter once to conduct the demonstrations during the protocol test;

require a photograph or videotape of the demonstration of the lighter's operation to be in the test report to record how testers hold the lighter to conduct the demonstration;

allow protocol testing to be conducted at one or more centralized locations as an alternative to conducting testing at 5 or more day care centers;

allow more flexibility in the number of children required in each age and sex category;

require protocol testing required for certification of lighters to be conducted in the United States;

clarify the legal obligations of importers; and

change the lighter date code labeling requirement to allow a manufacturing period of 31 instead of 30 days; and

provide a definition of lighter "model."

B. Comments and the Commission's Responses

A summary of the significant issues raised by the commenters and the Commission's responses is provided below.

1. *Relative risk of lighters and matches.* One commenter urged the Commission not to lose sight of the fact that matches are very available and account for a tremendous amount of fire losses and death among children under age 5. Two commenters maintained that matches are significantly more dangerous than cigarette lighters, that matches have been a greater cause of fires and fire deaths for many years, and that the CPSC's position that the risk is greater for lighters can mislead consumers. One of these commenters also stated the staff's risk analysis was based on a limited field study and on an erroneous assumption about the "accessibility" of the product to children.

The risks associated with both lighter and match child-play are matters of concern. However, the Commission believes the data used to estimate the relative risk of children playing with lighters and matches are both adequate and appropriate.

The commenters inappropriately cited CPSC fire loss data that include child-play fires started by children age 5 and older to support the argument that matches are more dangerous than lighters. Child-resistant features are likely to be most effective for addressing fires started by children under age 5. Therefore, it is appropriate to cite only data involving children under 5 when evaluating both the size of the hazard and the ability to reduce it.

Assessment of risk should consider both frequency of injury and consumer exposure to the product. The most appropriate measure in estimating risk among children under age 5 should

focus on products accessible to them. Using the number of lighters in accessible locations and the number of boxes or books of matches in accessible locations as the measure of exposure to the products, the risk of death caused by children under age 5 playing with a lighter is more than three times that of death caused by children under age 5 playing with matches.

2. *Effective date.* The proposed rule specified an effective date of 12 months from the date of publication of the final rule in the **Federal Register**. Two commenters requested prompt issuance of a final rule with an effective date by January 1, 1994, the effective date for state laws requiring child-resistant lighters in California and New Jersey.

One commenter requested a 30-month effective date (from the date a final rule is issued) to allow small manufacturers time to make necessary tooling or other production changes, and to allow sufficient time for importers to obtain complying lighters.

By the time a final rule is promulgated, a 6-month effective date would be required to coincide with the effective date of the state laws. The Commission believes a 6-month effective date would place an unreasonable burden on manufacturers and importers, especially small firms.

The 30-month effective date suggested by the commenter might further reduce the burden of the rule for some small firms but would result in a significant delay in achieving the full measure of benefits to consumers.

The effective date in the proposed rule was set at 12 months to minimize the likely adverse impact on small firms, while delivering the safety benefits of a rule to the public as expeditiously as possible. Most small firms would be able to obtain and market complying lighters within 12 months. The Commission believes a 12-month effective date will not have substantial long-term adverse effects on the profits or continued viability of small firms — most of which also produce or import products other than lighters.

3. *Scope of the standard.* The proposed rule covers "disposable" and "novelty" lighters. The proposed definition of disposable lighters included nonrefillable lighters and inexpensive refillable butane lighters (those under $2.00 in Customs Valuation if imported or under $2.00 in ex-factory price if manufactured domestically). The proposed definition of novelty lighter covered lighters resembling any other object in physical form or function. The proposed rule did not include any liquid-fuel lighters or refillable butane luxury lighters ($2.00 or more in Customs Valuation or ex-factory price).

a. *Luxury lighters.* One commenter supports the exclusion of luxury lighters from the scope on the basis they do not present an unreasonable child-play fire risk. The commenter stated the economic burden of the rule would be significantly greater if luxury lighters were covered due to the expense of changes in tooling to incorporate child-resistant features on lighters with limited production.

Another commenter stated all lighters sold in the United States should be covered by the standard. The commenter believes that luxury lighters present a greater hazard than described in the proposed standard due to their long useful lives. The commenter believes the Commission understated the benefits and overstated the costs of including luxury lighters in the proposed standard. This commenter stated that the Commission's estimate of a $5.00 maximum per-unit price increase from making certain liquid-fuel luxury models child resistant is too high.

Luxury lighters account for an estimated two percent of residential structural fires started by children under 5 years of age and for approximately 5 to 8 percent of lighters in use in the United States. This indicates that luxury lighters have a relatively low risk of involvement in lighter fire incidents, despite their long useful lives. The Commission is not aware of any deaths or injuries involving children under age 5 playing with luxury lighters that are currently on the market. The one death the staff is aware of involved a lighter with a unique operating mechanism. This lighter, which sold in low numbers, was withdrawn from the market in 1991.

The Commission believes the $5-10 million estimate of additional benefits for a rule including luxury lighters is generous rather than underestimated. The estimate assumes some deaths and injuries related to luxury lighters would be addressed by the rule.

The latest available industry information indicates that $1.00-3.00 would be a more appropriate range of per-unit retail cost increases for child-resistant luxury lighters. The best current estimate of the number of luxury lighters affected is 15-20 million units. Even using the most conservative cost increase of $1.00 per unit, for 15 million units, the total additional annual cost of a rule including luxury lighters would be approximately $15 million.

Therefore, the estimated annual net benefits of a rule that included luxury lighters would still be $5-10 million less than a rule covering only disposable and novelty lighters.

b. *Definition of disposable lighters.* Six commenters discussed the cost cutoff in the definition of disposable lighter. Two of these commenters supported the proposed definition, which requires refillable lighters under $2.00 in Customs Valuation or ex-factory price to be child resistant. Three commenters recommended a $1.00 cutoff, and one commenter recommended a $4.00 cutoff.

The cost cutoff in the proposed rule of $2.00 in Customs Valuation or ex-factory price covers refillable butane lighters the Commission considers to be reasonable, price-competitive substitutes for child-resistant nonrefillables. Complying nonrefillables are expected to retail for about $0.50-4.00. The vast majority would retail for under $3.00. Non-child-resistant refillables currently retail for as low as $1.00; many models retail for $3.00 or less. Under the proposed $2.00 cost cutoff, non-child-resistant models would probably not retail in significant numbers for less than about $5.00.

With a $1.00 cost cutoff, the majority of currently-available refillable lighters the Commission considers to be price-competitive with nonrefillables would not be covered by the rule. The least expensive non-child-resistant lighters could realistically be sold at retail for $3.00, a level considered price-competitive with some nonrefillables. Consumers might substitute significant numbers of such non-child-resistant lighters for complying lighters. In addition, a $1.00 cutoff may encourage manufacturers to add refill ports to nonrefillable lighters, at reportedly little cost or effort, to circumvent the rule. Such a practice is more likely at the $1.00 level since the lighters could be competitive with a larger proportion of complying lighters. Although the cost of the rule would be reduced with a $1.00 cost cutoff, the potential benefits could be reduced significantly. Estimated annual net benefits would probably be reduced by up to about $5 million.

With a $4.00 cost cutoff, the possibility that noncomplying refillable lighters could be sold at retail prices approaching those of nonrefillables would be minimized. Many refillable lighters the Commission does not consider to be price-competitive with nonrefillables would be covered. Up to 4-5 million additional units, including many retailing for over $15, could be subject to the rule. Up to about $8-10 million could be added to the annual cost of the rule to consumers. Given the small number of deaths and injuries

associated with any luxury lighters, it is unlikely the benefits of the rule would be greatly increased. Even if potential additional benefits were generously estimated at up to $10 million, expected net benefits would not significantly increase, and could decrease slightly. In addition, a $4.00 cutoff would have significant disruptive effects on the sales of small importers of moderately-priced refillable lighters, and on the availability of such lighters to consumers.

Issuing the rule with the proposed cost cutoff of $2.00 in Customs Valuation or ex-factory price would minimize potential consumer substitution of non-child-resistant lighters for complying models, without imposing a substantial economic burden on small businesses and without penalizing firms marketing complying lighters. The estimated annual net benefits of the rule would probably also be maximized. The Commission believes the proposed $2.00 cutoff provides the most reasonable balance of safety and commercial interests.

c. *Liquid-fuel lighters.* One commenter stated that inexpensive liquid-fuel lighters should be covered by the rule to prevent low-cost non-child-resistant liquid-fuel models from being substituted for complying lighters.

The Commission does not consider liquid-fuel lighters to be close substitutes for nonrefillable disposable lighters. Liquid-fuel lighters may be viewed as inconvenient to refill, do not use pressurized butane fuel, do not contain fuel when purchased, may have different, less convenient ignition mechanisms, are not sold in multi-packs, and, in general, are more expensive. Unless child-resistant butane lighters are very difficult to use, it is unlikely consumers would give up the convenience of butane lighters for non-child-resistant liquid-fuel lighters. The Commission believes that manufacturers in the highly-competitive lighter market will assure their child-resistant lighters are convenient to use.

The additional safety benefits for a rule including inexpensive liquid-fuel lighters would be negligible. The Commission is aware of one child-play fire death and one injury over the past 10 years involving a liquid-fuel lighter.

The cost of the rule to consumers would increase by up to approximately $1-5 million; many such lighters would probably be discontinued if required to be child resistant. Including inexpensive liquid-fuel lighters could decrease the estimated annual net benefits of the rule slightly.

d. *Definition of novelty lighters.* One commenter supported the definition of novelty lighter in the proposed rule, which is any lighter that resembles any other object in physical form or function. Four commenters asserted that the proposed definition is too broad or too subjective. One of the four recommended a definition that would include lighters with shapes that resemble toys or adult products, such as watches, that are adapted to toy-like uses. This commenter is concerned that regular lighters, if adorned with graphics, might be considered novelty lighters. The other three commenters supported the draft ASTM voluntary standard definition that was submitted to the Commission by the Lighter Association in July 1990. The ASTM novelty definition includes lighters that resemble a product "normally associated with children playing."

Two commenters requested a definition that excludes from the rule those novelty lighters whose Customs Valuation or ex-factory price is $1.00 or more and suggested that the industry could voluntarily incorporate a manual on-off switch for novelty lighters that are not required to be child resistant.

The Commission's primary intention is to assure that the scope of the rule includes novelty lighters that appeal to children. The Commission agrees that the proposed definition could include some lighters, such as crystal vases, that would not necessarily appeal to young children. Although the Commission did not use the draft voluntary standard definition of novelty lighter in the proposed rule, it did revise the scope of the definition to more closely distinguish the lighters that present higher risks from child-play.

The suggested cost cutoff of $1.00 for novelty lighters is not appropriate because most novelty lighters, including many considered to be appealing to children, are above $1.00 in Customs Valuation. The concept of a definition limited to the shape of the lighter is not acceptable because the Commission believes that lighters with appealing logos or graphics also are likely to be played with by children and thus should be considered novelty lighters. In addition, the Commission believes lighters with entertaining audio or visual effects, such as music or flashing lights, also would appeal to children and should be covered. Such lighters may not have modified shapes.

After considering these comments, the Commission developed the following revised definition:Novelty lighter means a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food, or beverages, or that play musical notes or have flashing lights or other entertaining features.

The Commission's staff for many years has provided guidance on age appropriateness of toys and children's products in support of regulations under the Federal Hazardous Substances Act. The staff is prepared to make similar interpretations about the appeal of novelty lighters to children under 5.

Any reduction in potential safety benefits of a rule with the revised definition would be slight. The Commission is aware of no deaths or injuries involving novelty lighters that were covered by the proposed rule but that are not included in the revised definition. Lighters in the form of a cigarette pack and a gold brick, which were involved in child-play fire incidents, would have been covered under the proposal but will not, by virtue of their appearance alone, be covered under the revised novelty definition. However, these particular lighters would have been within the scope of the final rule because they are disposable because they either were nonrefillable or were refillable butane and under $2.00 in Customs Valuation or ex-factory price.

The Commission supports a revised definition largely because the burden on importers, particularly small importers, would be reduced without reducing the expected net benefits of the rule. If finalized, the definition that was proposed might result in the discontinuation of many, if not most, novelty lighters. Although the revised definition might also result in the discontinuation of many novelty lighters, it would allow a continued market for a larger number of novelty lighters.

Excluding some novelty lighters from the scope of the rule may reduce the annual cost of the rule to consumers by up to $1 million. The impact on annual net benefits would likely be negligible.

The revised definition of novelty lighter is at § 1210.2(d) of the final rule.

4. *Test protocol.* The rule requires subject lighters to be tested using panels of young children. The lighters are considered child resistant if at least 85 percent of the children are unable to operate them during a 10-minute test period.

a. *Acceptance criterion.* Three commenters supported the proposed 85 percent acceptance criterion. Two of the

three strongly opposed an acceptance criterion above 85 percent, stating that it would be an unreasonable burden on the industry.

One commenter requested that the Commission reduce the acceptance criterion to 65 percent because small firms with less technical resources to develop child-resistant lighters may be at a competitive disadvantage.

One commenter stated that no child under the age of 5 should be able to activate a lighter, implying a recommendation for a 100-percent acceptance criterion.

The commenters provide no basis for reducing the acceptance criterion to 65 percent or for increasing the acceptance criterion to 100 percent. A 65 percent acceptance criterion would not adequately reduce the risk of fires started by young children, since the average child resistance of currently marketed, non-child-resistant lighters is about 50 percent.

The child-resistant lighter test results clearly support the feasibility of an acceptance criterion of 85 percent. The data do not support the feasibility of an acceptance criterion of 100 percent. A lighter that no child under 5 could operate would likely be very difficult for adults to operate as well. In order for child-resistant lighters to address the risk of injury most effectively, adults must be willing to use them. If adults are unable or unwilling to use child-resistant lighters, they may switch to available non-child-resistant lighters.

Minimizing the potential for adverse competitive effects on small firms was considered when the 85-percent acceptance criterion was recommended; 85 percent is the highest acceptance criterion the Commission considers technically and commercially feasible for most firms.

b. *Definition of successful operation.* Three commenters opposed the proposed one-signal definition of successful operation and recommended a two-signal definition. These commenters argued that one instantaneous activation does not indicate a child's ability to start a fire and that electronic surrogate lighters may produce erroneous signals. One of the commenters stated that a change from a two-signal definition to one-signal definition can make as much as a 12 percent difference in the test results and can mean the difference between a lighter passing or failing the 85 percent acceptance criterion requirement.

One commenter supported the proposed one-signal definition. This commenter's testing experience shows a high percentage of the children who operated the lighter once operated it a second time.

The Commission does not find arguments against defining successful operation as one signal of the lighter persuasive. The final report of the results of the Commission's child-resistant lighter testing shows the majority (75 percent) of the children who operated the lighters once were able to operate the lighters a second time. Therefore, although a brief signal may not represent maintenance of a flame, it is a strong predictor of future success.

The test protocol procedures guard against reporting an erroneous signal as a successful operation. The tester is required to verify the surrogate lighter is functioning properly by operating the lighter before and after each child participates. In addition, if the tester hears a signal during the test without the child actually overcoming the child-resistant mechanism, the data for that child are eliminated from the test and replaced with results from another eligible child.

The statement by the commenter about one manufacturer obtaining a 12 percent difference in results between one and two operations also is not persuasive. These data appear to support a one signal definition as a more stringent requirement. In any event, the commenter did not supply sufficient data for any independent evaluation to be made of the possible reasons for a 12 percent difference, which is not consistent with the results from Commission-sponsored testing.

c. *Number of demonstrations of lighter operation.* Four commenters stated there is no adequate basis for requiring three demonstrations of lighter operation as proposed. They state the low number of successes after one demonstration in the child-resistant lighter test results is insufficient justification. The commenters state that there is no evidence that three demonstrations will enhance the safety of lighters.

Two commenters with experience conducting cigarette lighter testing supported the need for more than one demonstration to assure that the children have observed the lighter operation. However, one of these commenters expressed concern that three demonstrations is too stringent because it encourages the children to concentrate on the lighter in an unnatural fashion. The commenter stated the first demonstration serves to attract the children's attention with the "noise." The second demonstration shows them where to focus their attention, and the third demonstration literally teaches them how to use the lighter. This commenter recommended two demonstrations.

The final report of the results of the child-resistant lighter tests shows that, although more children were successful after three demonstrations than after one demonstration, the differences are not statistically significant. In addition, for the lighters tested, the number of demonstrations does not affect the final result — whether a lighter meets, or fails to meet, an 85 percent acceptance criterion. Although these data do not support the need for three demonstrations, the Commission believes it is important to assure that the children are provided with an adequate opportunity to observe lighter operation. The two demonstrations recommended by one commenter would accomplish this objective. The Commission revised § 1210.4(f)(3) of the final rule to require two demonstrations.

d. *Conducting the demonstration.* One commenter stated that the requirement in the proposed standard to use one of the children's lighters to conduct the demonstration could bias the test results. If the other child is disappointed because the tester did not operate his or her lighter too, the child's frustration may affect his or her performance in the second 5-minute period. This commenter recommended using a separate lighter to conduct the demonstration.

A second commenter recommended the tester demonstrate the lighter while kneeling between the two children being tested to assure that the children have a normal view of the operation and the child-resistant mechanism is not hidden from view.

A third commenter recommended specific guidelines for orientation of the lighter during the demonstration to assure uniformity among the testers. This commenter also recommended that, after one demonstration, the children switch places for the second demonstration, since one child may be on the opposite side of the child-resistant feature.

The purpose of using one of the children's lighters for the demonstration is to assure them the lighters they are using will make the signal. When a separate lighter is used to conduct the demonstration, some children still want the tester to try their lighter. To address the concern of potential bias, each child's lighter can be demonstrated one time in conducting the two demonstrations in the test procedure. This will assure each child that his or her own lighter is capable of making the signal.

Conducting the demonstration from a position between the children may not be the best orientation for all lighters. It would also be difficult for the tester to verify the children are watching the demonstration since he or she will be behind the children. Having the children switch places would assure both children have observed the mechanism from the same perspective. However, switching has the potential for adding confusion to the test and may result in mixing up the children's lighters and/or the data corresponding to each child. Accordingly, the Commission has not included these requirements in the final rule. However, the Commission has included more specific requirements for orientation of the lighter.

Revised § 1210.4(f)(3) of the final rule requires the use of each child's lighter once during the two demonstrations.

e. *Documentation of the demonstration.* One commenter recommended that the test require a photograph to be taken to show how the lighter is held during the demonstration.

Since how the demonstration is conducted could be critical to the test's ability to determine whether a lighter is child-resistant, the Commission decided to include such documentation in the qualification testing records required under § 1210.17(a). As an alternative to a photograph, a video tape would also be acceptable. For the same reason, the Commission decided to include documentation of the orientation of the tester's body and hand to the children during the demonstration. Revised sections 1210.5(g) and 1210.17(a) of the final rule require such documentation of the demonstration. Section 1210.5(g) has been revised to include conditions intended to ensure that any video taping or photographing does not distract the children during the test.

f. *Number of testers and maximum and minimum number of children per tester.* One commenter recommended that the five or six testers required in the proposed standard be reduced to three testers for each 100-child test panel.

A second commenter recommended allowing a 20 percent maximum number of children per tester whether 5 or 6 testers are used. This would preclude exceeding the maximum allowance when a test is begun with 5 testers (proposed maximum of 20 +or- 2 children), but completed with 6 testers (proposed maximum of 17 +or- 2 children), if one of the original 5 testers drops out because of illness or some other reason.

No rationale is provided for the recommendation for three testers instead of five or six. The results of the Toronto retest in the verification testing were affected by one tester (out of six) who was particularly adept at obtaining the children's cooperation. That tester, who conducted 30 percent of the test, had an excessive effect on the success rate. In order to minimize the potential for bias, the Commission determined the number of children tested by an individual tester should be approximately 20 percent of the panel for 5 testers, or approximately 17 percent of the panel for 6 testers.

The Commission does not support a revision to allow a maximum of 20 percent for all tests. Such a revision would be restrictive, since it would require each of 5 testers to test exactly 20 children. Currently, each tester of five is allowed to test 20 +or- 2 children (i.e., 18, 19, 20, 21, or 22 children). This flexibility facilitates expeditious testing and allows totals to be an odd number (i.e., 19 or 21) for circumstances where results for one child in a pair are dropped from the test. However, there is a need to address the very likely situation where a test is initiated with five testers but completed with six testers. When testing is initiated with 5 testers, no tester should test more than 19 children until it is certain that the test can be completed with 5 testers. This will preclude exceeding the maximum requirement in case six testers are needed.

The Commission added a "Note" to § 1210.4(b)(3) to discuss how the protocol applies to the circumstances when a tester drops out.

g. *Number of surrogate lighters.* One commenter asked (1) can the same 6 surrogate lighters be used in more than one 100-child panel and (2) if a surrogate lighter is damaged during testing, should it be replaced with an additional surrogate lighter or should the testing continue with less than 6 surrogate lighters?

If the surrogate lighters meet all of the requirements in § 1210.4(c), they may be used in more than one 100-child panel test. If a surrogate lighter is permanently damaged and/or no longer represents the production lighter intended for use, testing should continue using the remaining lighters.

To address these issues, and to make the minimum and maximum requirements equivalent to the requirements for testers, the Commission revised § 1210.4(c) in the final standard.

h. *Test site.* One commenter requested a modification of the test site requirement to allow testing at centralized locations.

The Commission agrees that this alternative methodology would improve the efficiency of test completion; accordingly, the Commission revised the final rule to allow testing at centralized locations. If a central facility is allowed, it is important the participating children be drawn from various locations throughout the geographical area to achieve the same objective as multiple test sites — varied economic and social backgrounds. Accordingly, the Commission included this limitation on the use of centralized locations in the final rule.

In order to accommodate a central test facility, the Commission revised § 1210.4(b) of the final standard.

i. *Test environment.* One commenter recommended the test be conducted with the children sitting on the floor, but with a table in the room so they can use it if desired.

The Commission does not support conducting the test with the children sitting on the floor. The purpose of seating children a specified distance apart at a table is to standardize the test and to facilitate the interaction of the tester with the children. The test procedure at § 1210.4(b)(2) does allow children freedom of movement to work with their lighters, so long as the tester can watch both children at the same time. Therefore, a child could get down on the floor and roll the lighter if he or she chose to.

The Commission revised the test environment requirement to change the specified distance between the children's chairs from 1.5 feet to 6 inches. In actual practice, the testers place the children approximately 6 inches apart in order to better observe both of the children. The Commission revised § 1210.4(b)(2) of the final rule accordingly.

j. *Age and sex distribution of child-test panel.* One commenter requested some flexibility in the age and sex quotas in the child-test panel. The commenter suggested the quotas allow for +or- 1 child in each age and sex category.

Allowing flexibility in the age and sex quotas is acceptable and would help expedite completion of test panels. To address this request, the Commission revised § 1210.4(a)(4) of the final rule. To ensure uniformity, the Commission also added a "Note" to provide a formula for calculating a child's age in months.

k. *Panel size.* One commenter supported the requirement in the proposed standard for a 100-child test panel.

A second commenter requested that the test be conducted with sequential panels of 50 children each, instead of 100 children each, in order to ease the

burden on testing organizations as well as providing efficient testing for manufacturers.

Sequential testing has been used successfully with panels of 50 children to test child-resistant packaging under the Poison Prevention Packaging Act. Initially, 50-child panels were also considered for cigarette lighter testing. During the statistical analysis of the verification testing, the effect of panel size on success rates was evaluated. Panels of 50 were significantly different, while panels of 100 were not. Due to the potentially higher variability associated with lighter testing than with child-resistant packaging, the Commission increased the panel size to 100 children. There is currently no basis for changing this provision.

l. *Testing in countries outside the United States.* Five commenters expressed concern about the comparability of results from testing outside the United States with results from testing within the United States. Two of the commenters were concerned that the differences in cultures, educational systems, laws, and attitudes of the various countries manufacturing lighters will make it difficult to achieve comparable results. Two commenters were concerned about the differences in abilities of children from different countries, since children in many countries outside the United States are not exposed to the types and variety of mechanical devices, toys, video games, etc., available in the United States that require a high degree of hand-eye coordination and problem-solving abilities.

Most of these commenters stated that the Commission should require testing to be performed in the United States in order to ensure compliance with the rule.

One commenter did not oppose testing outside the United States. However, this commenter recommended that foreign testing laboratories be approved (certified) by the Commission. Several other commenters also suggested testing be conducted by certified laboratories that have met criteria established by the Commission.

The Commission shares these commenters' concerns. Cultural differences, such as attitudes about fire, may influence the testers and/or the children and bias the test results. The potential for bias is a substantial concern, since tester bias was identified as a significant influence on test results during verification testing conducted in Canada. The proposed rule attempts to address this issue by requiring at least one test of a lighter in both the U.S. and the other country to confirm that results equivalent to those obtained in the United States can be obtained in the other country. Under the proposal, tests of other lighters could then be performed in the other country. However, restricting testing to the United States is the only certain way to assure the results represent the capabilities of children in the United States to operate lighters.

The Commission agrees that restricting testing to the United States would facilitate enforcement of the rule. The Commission staff can visit domestic testing firms, witness tests, and question testers and test subjects. Records and personnel of foreign testing firms are not subject to the Commission's authority.

The Commission is not planning to develop a program to certify or accredit testing facilities. The Commission would support the development of such a program by the Lighter Association, Inc., or other interested parties. The Commission does plan to conduct programs to educate manufacturers, importers, and testing organizations about the requirements of the rule.

Restricting testing to the U.S. would result in virtually no adverse impact on small firms. This is because: (1) testing costs are similar either in or out of the U.S., (2) all firms, including small firms, would have access to test facilities or services in the U.S., (3) testing costs are a minor portion of total compliance costs, and (4) there would be no effect on the availability of child-resistant lighters to the public. In view of this lack of impact and the possibility that not restricting testing to the U.S. could bias the test results, the Commission revised § 1210.4(a)(3) and § 1210.4(b)(2) of the final rule to restrict testing to the United States.

m. *Lighter label.* Two commenters recommended a requirement for a mandatory permanent warning label on the lighter stating "Keep lighters out of the reach of children." One of the commenters also recommended an information label to inform parents and care-givers that complying lighters are only 85 percent child resistant for children up to 51 months of age. One of the commenters stated the labeling requirement in the ASTM voluntary standard is not sufficient because it allows the warning label to be on the package, which is often discarded.

As stated in the preamble to the proposal, most lighters or their packaging, including virtually all disposables, are already labeled "keep away from children." ASTM Subcommittee F15.02, Safety Standards for Lighters, just completed revisions of the voluntary standard, ASTM F-400, to strengthen and emphasize this warning. The Commission does not see a need for an additional, and potentially confusing, warning that complying lighters are only 85 percent child resistant for children up to 51 months of age. The warning required by the voluntary standard is intended to inform parents and care-givers to keep lighters away from children of all ages. Although a mandatory label would not add significantly to manufacturers' costs, the benefits may also be negligible. To the extent that labeling would be effective, the benefits should be achieved by voluntary compliance with ASTM F-400.

n. *Consumer education.* One commenter asked the Commission to remember to continue efforts in the area of consumer education to further reduce the number of child-play fire incidents.

The Commission intends to take part in an aggressive and comprehensive public information and education campaign to increase consumer awareness of the involvement of lighters and matches in child-play fires. This information will make consumers aware of the availability and beneficial effects of child-resistant lighters. Consumer acceptance is critical to the effectiveness of the standard.

o. *Two-motion feature.* One commenter stated that single-motion child-resistant devices provide an unnecessarily low level of safety and recommended requiring the child-resistant mechanism to operate consecutively in at least two different directions. The commenter stated that well-known knowledge of child behavior provides the basis for this recommendation. The commenter submitted several patents for child-resistant designs to show the state of the art supports the recommended requirement.

This commenter does not provide facts to show a two-direction action is necessary to address the risk of injury associated with children playing with lighters. The recommended action is one of many effective child-resistant strategies described in the March 1988 COMSIS Corporation report "Abilities of Young Children to Operate Butane Cigarette Lighters." In addition, a lighter design that does not require a two-direction action exceeded the proposed 85 percent acceptance criterion in the Commission child-resistant lighter testing. The final rule is based on the conclusion that the child-panel testing is an adequate measure of the child-resistant effectiveness of a lighter design. The Commission can see no reason to limit the range of designs that could be utilized by imposing specific design requirements in the rule. Lastly,

and dispositively, section 7(a)(1) of the CPSA requires that, for other than labeling, warning, and instructions requirements, a "consumer product safety standard shall consist of ... [r]equirements expressed in terms of performance requirements." 15 U.S.C. 2056(a)(1). This statutory prohibition prevents adoption of this commenter's suggestion for a two-motion child-resistant mechanism.

p. *Lighter flame characteristics.* A commenter noted that the casualty rates in child-play fires started by children under 5 were higher for lighters than matches, and suggested that excessive lighter flame height or contaminated gas could be factors.

This commenter does not provide data to show that specifications for flame height or fuel composition would address the child-play hazard. Available investigative data indicated that, on average, children who started fires with lighters were younger than those who started fires with matches. This difference in age may indicate that once a fire has started, fewer of the children who started fires with lighters were able to respond to prevent injury or death than were the older children who started fires with matches. This could contribute to the higher casualty rates in lighter child-play fires.

In addition, the ASTM standard — F400, Consumer Safety Specification for Lighters — includes requirements for flame height and for the characteristics of the fuel mixture. Since conformance to this voluntary standard is reported to be high, many lighters currently on the market already meet such requirements.

5. *Certification requirements.*

a. *Legal obligations of the importer.* One commenter noted that different provisions of the certification requirements state "either the manufacturer or importer" or the "manufacturer and importer" have certain responsibilities. They requested clarification of who specifically is responsible.

For imported lighters, the importer is responsible for the certification that the lighters comply and for compliance with the appropriate certification label, testing, and recordkeeping requirements. Although importers may meet these obligations through actions by the foreign manufacturer, the importer is legally responsible for the products that it imports. (The Commission does not have jurisdiction over the manufacture of products in foreign countries, as such. Section 3(a)(4) of the CPSA defines the term "manufacturer" as including importers. 15 U.S.C. 2052(a)4).) The Commission made minor changes to § 1210.12(a)(1) to clarify the role of the importer.

b. *Certificate of compliance.* One commenter asked whether the certificate of compliance can be printed on the shipping carton. Another asked whether a certificate of compliance is required for lighter samples. Three commenters stated that requiring the date(s) of manufacture on the certificate of compliance is unduly burdensome because any shipping unit may contain lighters manufactured on many different dates. The commenters questioned the need for this requirement, since each individual lighter is date coded.

As long as the shipping carton is the shipping unit sent to distributors or retailers, or is included within the shipping unit, the practice of printing the certificate of compliance on the shipping carton is acceptable.

The standard applies only to lighters that are consumer products, i.e., those that are intended for consumers, or that are likely to be distributed to consumers more than occasionally. 15 U.S.C. 2052(a)(1). Samples shipped to distributors or retailers (for example, as promotional items not intended for resale), would not require a certificate of compliance unless they meet these criteria.

Section 14 of the CPSA states that a certificate of compliance shall include the date of manufacture. In addition, date(s) on the certificate of compliance will facilitate the identification of suspect merchandise in the event of a recall. Manufacturers may meet this requirement by providing a range of production dates. With proper inventory control, manufacturers should be able to identify the date(s) of manufacture at the time the lighters are boxed for shipping.

c. *Lighter date code labeling requirement.* One commenter requested a change to the lighter labeling requirement to allow a 31-day manufacturing period instead of the proposed 30 days, so calendar months can be used in date codes. The commenter also asked if the identification of the manufacturer can be met by the current industry practice of stamping the name on the plastic or metal lighter case.

The Commission changed the requirement, at § 1210.12(c)(1) in the final standard, to 31 days. The current practice of identification of the manufacturer on the lighter, described by the commenter, is acceptable.

d. *Definition of lighter "model."* One commenter recommended defining "model" in terms set forth under section 37 of the CPSA to identify the lighters a manufacturer must test. Section 37 defines model as "one that is distinctive in functional design, construction, warnings or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance." 15 U.S.C. 2084(e)(2).

The section 37 definition is unsuitable since it does not provide specific guidance on which variations in the design of lighters could affect child resistance. However, the Commission added the following definition of model at § 1210.2 of the final standard:

A "model" is one or more cigarette lighter(s) from the same manufacturer or importer that do not differ from each other in design or other characteristics in any manner that may affect child resistance. Lighter characteristics that may affect child-resistance include, but are not limited to, size, shape, case material, and ignition mechanism (including child-resistant features).

The Commission also revised § 1210.15 to require the product specification to include the model name(s) or number(s) that correspond to the surrogate lighters used for qualification testing.

e. *Qualification testing.* One commenter requested a revision to the provision that requires new qualification testing if a corrective action changes the product in a manner that could affect its child- resistance. They suggest new testing is only required if the change "adversely" affects the child-resistance.

The Commission made this clarification in § 1210.14(b) but notes the manufacturer or importer must be able to establish that a change will not adversely affect child resistance. A similar clarification has been added to § 1210.14(a) to make it clear that a model that differs from a previously qualified model only by differences that do not have an adverse effect on child resistance need not be separately qualified.

f. *Production testing.* One manufacturer requested a modification to the production testing provision that would allow manufacturers to continue distribution of lighters unless a "statistically significant" population of failures is identified.

Such a modification is not necessary, because the provision allows manufacturers to devise production testing programs that work best for their products. The Commission encourages firms to use rigorous, statistically based quality assurance systems to ensure compliance with the standard. If the manufacturer's system discloses a real possibility that the product does not comply, manufacturing should cease

until corrective measures have been taken.

h. *Production records.* Two commenters requested that manufacturers be allowed to maintain production records in languages other than English and provide translations within thirty days of a Commission request instead of one week.

The Commission does not support these changes. Most production records are likely to be forms, which could be bilingual to allow employees to record data in a manner that can be understood by both the firm's employees and the Commission's staff. In addition, Commission staff may need to review records expeditiously if a potentially noncomplying product is being held at a Port of Entry by the U.S. Customs Service. Under the procedures governing cooperation between the CPSC's staff and Customs, staff must notify Customs within two weeks if a product violates a Commission rule.

i. *Reporting.* One commenter requested that the reporting provision be changed to delete the requirement for submission of surrogate lighter specifications at least 30 days before importation. The commenter stated that such specifications are sensitive, confidential commercial information and could be provided during an inspection if required by the Commission.

The Commission does not support this change. The specifications are important for the staff review of lighters being introduced into commerce. The Commission has established extensive procedures under section 6(a) of the CPSA to safeguard trade secret information. 16 CFR 1015, Subpart B. Trade secret specifications would be protected from public disclosure.

j. *Authority to request records.* One commenter requested that the provision requiring manufacturers or importers to provide records to "any designated officer or employee of the Commission" be changed to "employees of the Commission authorized or designated under 15 U.S.C. § 2065(a) to make inspections of firms."

The Commission believes that this revision would be too limiting. Legitimate requests for records may also be made by other field or headquarters staff charged with responsibility for monitoring compliance with the standard.

k. *Confidentiality.* One commenter requested clarification of the confidentiality provisions to provide automatic confidential treatment of production records and product specifications submitted to the Commission.

The Commission can withhold records only if the records fit into one of the exceptions to the Freedom of Information Act. Bona fide trade secrets fit into one of these exceptions. 5 U.S.C. 552(b)(4). A blanket finding of confidentiality cannot be added to the rule, because a determination of whether production records and product specifications are trade secret depends on each firm's handling of such information.

6. *Anti-stockpiling.* The proposed rule includes anti-stockpiling provisions designed to prevent the importation or manufacture of excessive numbers of noncomplying lighters between publication of the final rule and the effective date.

One commenter requested the Commission to exempt all refillable lighters, including novelty lighters, from the anti-stockpiling rule in cases where there are actual purchase orders to be filled. The commenter stated that the market share of these lighters is insignificant compared to the total amount of lighters produced. The commenter stated that for the smaller companies involved in this market, the filling of purchase orders during this period is crucial.

The Commission has not exempted refillable lighters, including novelty lighters, from the anti-stockpiling provisions. If such an exemption were provided, reductions in the safety benefits of the rule could result in the short term (1-2 years after issuance of a final rule) if large sales of noncomplying refillable lighters increased the proportion of non-child-resistant lighters available to consumers. Although some small firms experiencing significant sales growth may be limited by these provisions, the adverse impact would probably not be substantial. The stockpiling provision allows each firm to produce or import, during the 1-year period between publication of the final rule and its effective date, a total number of noncomplying "disposable" and "novelty" lighters that does not exceed 120 percent of the total number of such lighters produced or imported during any 1-year period during the 5 years prior to the publication date of the final rule. So long as the overall 120 percent limitation is observed, the number of lighters of a given model or type could exceed 120 percent of the number of lighters of that model or type during the 1-year base period chosen by the manufacturer or importer. The stockpiling rule does not limit the number of lighters that comply with the rule that are manufactured or imported prior to the rule's effective date.

7. *Lighters as packages of fuel.* One commenter objected to the Commission's statement in the proposal that a "cigarette lighter meets the definition of the term 'package' in section 2(3) of the PPPA, 15 U.S.C. 1471(3), because it is the 'immediate container' in which a hazardous substance is contained for use by individuals in a household." The commenter argues that the PPPA was intended primarily to address poisonings and that a lighter, instead of being a package, is a mechanical device intended to produce a flame.

Commission jurisdiction under the PPPA extends to any "household substance, which means any substance which is customarily produced or distributed for sale for ... use, or customarily stored, by individuals in or about the household and which is — (A) a hazardous substance as that term is defined in section 2(f) of the [FHSA] (15 U.S.C. 1261(f) ...." The FHSA confers jurisdiction over a number of hazards in addition to toxicity, including that the substance "is flammable or combustible ... [or] generate pressure." Thus, hazards other than poisonings can be addressed under the PPPA.

The Commission agrees with the commenter that a lighter can be viewed as a mechanical device intended to produce a flame. That is largely the reason the Commission decided to regulate lighters under the CPSA, rather than under the PPPA or FHSA, as to *the risk of children starting fires by operating lighters during child-play.* However, this does not detract from the fact that the lighter meets the definition in the PPPA of a package for the butane fuel, which is a hazardous substance. The Commission points out, however, that there is no requirement issued under the PPPA that would apply to lighters.

8. *Preemption.* A commenter expresses concern that some state regulations may prohibit the sale of stockpiled non-child-resistant lighters after the effective date of CPSC's safety standard. The commenter requests that the following statement be incorporated into § 1210.1 of the standard: "These requirements are intended to eliminate diverse, nonuniform and confusing state and local laws and regulations relating to the child resistant performance of disposable and novelty lighters."

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides: "[w]henever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or *to*

continue in effect any provision of a safety standard or regulation which prescribes any requirements ... which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard" (emphasis added). Because the standard allows the sale after the effective date of properly stockpiled disposable and novelty lighters manufactured before the effective date, a state regulation could not be applied to prevent the sale of such lighters after the standard's effective date. Thus, the statement requested by this commenter is unnecessary.

VII. Environmental Assessment

Pursuant to the National Environmental Policy Act and in accordance with CPSC's procedures, consideration was given to the potential environmental effects of the consumer product safety rule for lighters.

Most of the over 600 million lighters sold annually in the U.S. and subject to the rule are imported; only one firm presently manufactures lighters that will be subject to the rule in the United States. To achieve compliance with the rule, most producing firms will likely add mechanical child-resistant features to their products. Some models of lighters, accounting for less than one percent of all lighter shipments, may be discontinued as a result of the rule. The rule is prospective in nature, and will not require the recall, destruction, or disposal of existing units. Products manufactured or imported before the effective date of the rule can be sold after the effective date, so existing product inventories will be unaffected. Anti-stockpiling provisions of the rule will limit the production or importation of noncomplying lighters between the rule's promulgation date and effective date.

Molds used in the production of component parts are replaced periodically by manufacturers. While some of these may be replaced more quickly than normal for some firms, the effective date of 12 months after publication of a final rule will allow most firms ample time for such changes.

No changes in the amounts of butane or other fuels used in lighters will result from the issuance of the rule. Production of prototype test lighters may require occasional emptying of butane gas from production line samples, but the extent of this practice will be very slight (typically under 100 individual lighters per production facility; there are probably fewer than 5 such facilities in the U.S.).

The rule contains no labeling or packaging requirements that will change the way lighters are packaged for sale. There will be no significant impact on either domestic consumption of or domestic and foreign suppliers of raw materials used in the manufacture of the various plastic and metal lighter components. No significant change in the consumption or disposal of lighters by consumers is anticipated as a result.

It is concluded from the available information that the rule for lighters will not significantly affect raw material use, air or water quality, manufacturing processes, or disposal practices in a way that will cause any significant impact on the environment.

VIII. Paperwork Reduction Act

As explained above, the standard and certification provisions will require manufacturers and importers of disposable and novelty lighters to perform testing, maintain records, and report data to the Commission relating to the lighters that they produce or import. For this reason, the rule published below contains "collection of information requirements," as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501-3520. Therefore, the proposed rule was submitted to the Office of Management and Budget ("OMB") in accordance with 44 U.S.C. 3504(h) and implementing regulations codified at 5 CFR 1320.13. The proposal also indicated that any person who desired to comment to OMB on the collection of information requirements in the proposal should address those comments to OMB's Office of Information and Regulatory Policy. No comments on the proposal were submitted to OMB, and OMB approved the collection of information requirements (OMB Control No. 3041-0116).

IX. Extension of Time To Issue Final Rule

Section 9(d)(1) of the CPSA, 15 U.S.C. 2058(d)(1), provides that a final consumer product safety rule must be published within 60 days of publication of the proposed rule unless the Commission extends the 60-day period for good cause and publishes its reasons for the extension in the **Federal Register**.

Executive Order 12662, which implements the United States-Canada Free-Trade Implementation Act, provides that publication of standards-related measures shall ordinarily be at least 75 days before the comment due date. Accordingly, the Commission provided a comment period of 75 days for the proposal. Additional time was required to analyze the comments and to prepare a briefing package for the Commission's consideration that described the comments received, the staff's recommended responses to the issues in the comments, new information concerning the relevant issues and findings, and the staff's recommendation that a final rule be issued. In addition, time was required for the Commission to consider and vote on whether to issue a final rule and approve a **Federal Register** notice responding to the comments on the proposal and containing the required findings to issue the rule.

In anticipation of these activities, the Commission in the proposal found that these activities constituted good cause for extending the 60-day period after publication of a rule that is provided by the CPSA as the time during which a final rule shall be published. Accordingly, in the proposal, the Commission extended the time during which it may publish the final rule to April 30, 1993.

Although the comment period on the proposal closed on November 2, 1992, comments were received as late as February 22, 1993. In addition, the Commission allowed an opportunity for comment on a report of results of child-resistant lighter testing; that comment period closed on March 18, 1993. These factors prevented the completion of the briefing package in time for the Commission to publish a final rule by April 30, 1993. The Commission finds that this constitutes good cause for extending by another 3 months the period during which a final rule will be published. Accordingly, the Commission extends the time during which it will publish the final rule to July 31, 1993.

Pub. L. No. 101-608 amended section 9(c) of the CPSA to require that a rule be issued within 12 months of the publication of an ANPR, unless the Commission determined that a rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury or that a rule is not in the public interest. Consumer Product Safety Improvement Act of 1990, Pub. L. No. 101-608, § 109, 1990 U.S. CODE CONG. & ADMIN. NEWS (104 Stat.) 3113. The Commission also may extend the 12-month period for good cause. *Id.*

Since the ANPR in this proceeding was issued more than 1 year before the enactment of Pub. L. No. 101-608, the Commission concludes that the requirement that a rule be published within 12 months of its ANPR is inapplicable to this proceeding and that it is unnecessary to formally extend the period for issuing the proposal. In any

event, the following facts constitute good cause for issuing this rule more than 12 months after publication of the ANPR:

1. that the statutory amendment was enacted more than 1 year after the publication of the ANPR, and

2. that additional testing was required to resolve inconsistent results obtained in the verification testing and to determine the performance of various designs in tests of child-resistant lighters.

List of Subjects in 16 CFR Part 1210

Cigarette lighters, Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations is amended as set forth below.

1. A new part 1210 is added to read as follows:

PART 1210—SAFETY STANDARD FOR CIGARETTE LIGHTERS

Subpart A—Requirements for Child Resistance

Sec.
1210.1 Scope and application.
1210.2 Definitions.
1210.3 Requirements for cigarette lighters.
1210.4 Test protocol.
1210.5 Findings.

Subpart B—Certification Requirements

Sec.
1210.11 General.
1210.12 Certificate of compliance.
1210.13 Certification tests.
1210.14 Qualification testing.
1210.15 Specifications.
1210.16 Production testing.
1210.17 Recordkeeping and reporting.
1210.18 Refusal of importation.

Subpart C— Stockpiling

Sec.
1210.20 Stockpiling.

Subpart A—Requirements for Child Resistance

Authority: 15 U.S.C. 2056, 2058, 2079(d).

§ 1210.1 Scope, application, and effective date.

This part 1210, a consumer product safety standard, prescribes requirements for disposable and novelty lighters. These requirements are intended to make the lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all disposable and novelty lighters, as defined in § 1210.2, that are manufactured or imported after July 12, 1994.

§ 1210.2 Definitions.

As used in this part 1210:

(a) *Cigarette lighter.* See *lighter.*

(b) *Disposable lighter*—means a lighter that either is:

(1) not refillable with fuel or

(2)(i) its fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75°F (24°C) exceeds a gage pressure of 15 psi (103 kPa), and

(ii) it has a Customs Valuation or ex-factory price under $2.00, as adjusted every 5 years, to the nearest $0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from June 1993.

(c) *Lighter,* also referred to as *cigarette lighter,* means a flame-producing product commonly used by consumers to ignite cigarettes, cigars, and pipes, although they may be used to ignite other materials. This term does not include matches or any other lighting device intended primarily for igniting materials other than smoking materials, such as fuel for fireplaces or for charcoal or gas-fired grills. When used in this part 1210, the term *lighter* includes only the disposable and novelty lighters to which this regulation applies.

(d) *Novelty lighter* means a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel.

(e) *Successful operation* means one signal of any duration from a surrogate lighter within either of the two 5-minute test periods specified in § 1210.4(f).

(f) *Surrogate lighter* means a device that: approximates the appearance, size, shape, and weight of, and is identical in all other factors that affect child resistance (including operation and the force(s) required for operation), within reasonable manufacturing tolerances, to, a lighter intended for use by consumers; has no fuel; does not produce a flame; and produces an audible or visual signal that will be clearly discernible when the surrogate lighter is activated in each manner that would normally produce a flame in a production lighter. (This definition does not require a lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a lighter without fuel as a surrogate lighter if a distinct signal such as a "click" can be heard clearly when the mechanism is operated in each manner that would produce a flame in a production lighter and if a flame cannot be produced in a production lighter without the signal. *But see* § 1210.4(f)(1).)

(g) *Model* means one or more cigarette lighters from the same manufacturer or importer that do not differ in design or other characteristics in any manner that may affect child-resistance. Lighter characteristics that may affect child-resistance include, but are not limited to, size, shape, case material, and ignition mechanism (including child-resistant features).

§ 1210.3 Requirements for cigarette lighters.

(a) A lighter subject to this part 1210 shall be resistant to successful operation by at least 85 percent of the child-test panel when tested in the manner prescribed by § 1210.4.

(b) The mechanism or system of a lighter subject to this part 1210 that makes the product resist successful operation by children must:

(1) reset itself automatically after each operation of the ignition mechanism of the lighter,

(2) not impair safe operation of the lighter when used in a normal and convenient manner,

(3) be effective for the reasonably expected life of the lighter, and

(4) not be easily overriden or deactivated.

§ 1210.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a lighter is resistant to successful operation by children uses a panel of children to test a surrogate lighter representing the production lighter intended for use. Written informed consent shall be obtained from a parent or legal guardian of a child before the child participates in the test.

(2) The test shall be conducted using at least one, but no more than two, 100-child test panels in accordance with the provisions of § 1210.4(f).

(3) The children for the test panel shall live within the United States.

(4) The age and sex distribution of each 100-child panel shall be:

(i) 30 +or- 2 children (20 +or- 1 males; 10 +or- 1 females) 42 through 44 months old;

(ii) 40 +or- 2 children (26 +or- 1 males; 14 +or- 1 females) 45 through 48 months old;

(iii) 30 +or- 2 children (20 +or- 1 males; 10 +or- 1 females) 49 through 51 months old.

Note: To calculate a child's age in months:

1. Subtract the child's birth date from the test date.

	Month	Day	Year
Test Date	8	3	94
Birth Date	6	23	90
Difference	2	-20	4

2. Multiply the difference in years by 12 months.

4 years X 12 months = 48 months.

3. Add the difference in months.

48 months + 2 months = 50 months.

4. If the difference in days is greater than 15 (e.g. 16, 17), add 1 month.

If the difference in days is less than -15 (e.g., -16, -17) subtract 1 month.

50 months - 1 month = 49 months.

If the difference in days is between -15 and 15 (e.g., -15, -14, ... 14, 15), do *not* add or subtract 1 month.

(5) No child with a permanent or temporary illness, injury, or handicap that would interfere with the child's ability to operate the surrogate lighter shall be selected for participation.

(6) Two children at a time shall participate in testing of surrogate lighters. Extra children whose results will not be counted in the test may be used if necessary to provide the required partner for test subjects, if the extra children are within the required age range and a parent or guardian of each such child has signed a consent form.

(7) No child shall participate in more than one test panel or test more than one surrogate lighter. No child shall participate in both child-resistant package testing and surrogate lighter testing on the same day.

(b) *Test sites, environment, and adult testers.* (1) Surrogate lighters shall be tested within the United States at 5 or more test sites throughout the geographical area for each 100-child panel if the sites are the customary nursery schools or day care centers of the participating children. No more than 20 children shall be tested at each site. In the alternative, surrogate lighters may be tested within the United States at one or more central locations, provided the participating children are drawn from a variety of locations within the geographical area.

(2) Testing of surrogate lighters shall be conducted in a room that is familiar to the children on the test panel (for example, a room the children frequent at their customary nursery school or day care center). If the testing is conducted in a room that initially is unfamiliar to the children (for example, a room at a central location), the tester shall allow at least 5 minutes for the children to become accustomed to the new environment before starting the test. The area in which the testing is conducted shall be well-lighted and isolated from distractions. The children shall be allowed freedom of movement to work with their surrogate lighters, as long as the tester can watch both children at the same time. Two children at a time shall participate in testing of surrogate lighters. The children shall be seated side by side in chairs approximately 6 inches apart, across a table from the tester. The table shall be normal table height for the children, so that they can sit up at the table with their legs underneath and so that their arms will be at a comfortable height when on top of the table. The children's chairs shall be "child-size."

(3) Each tester shall be at least 18 years old. Five or 6 adult testers shall be used for each 100-child test panel. Each tester shall test an approximately equal number of children from a 100-child test panel (20 +or- 2 children each for 5 testers and 17 +or- 2 children each for 6 testers).

Note: When a test is initiated with five testers and one tester drops out, a sixth tester may be added to complete the testing. When a test is initiated with six testers and one tester drops out, the test shall be completed using the five remaining testers. When a tester drops out, the requirement for each tester to test an approximately equal number of children does not apply to that tester. When testing is initiated with five testers, no tester shall test more than 19 children until it is certain that the test can be completed with five testers.

(c) *Surrogate lighters.* (1) Six surrogate lighters shall be used for each 100-child panel. The six lighters shall represent the range of forces required for operation of lighters intended for use. All surrogate lighters shall be the same color. The surrogate lighters shall be labeled with sequential numbers beginning with the number one. The same six surrogate lighters shall be used for the entire 100-child panel. The surrogate lighters may be used in more than one 100-child panel test. The surrogate lighters shall not be damaged or jarred during storage or transportation. The surrogate lighters shall not be exposed to extreme heat or cold. The surrogate lighters shall be tested at room temperature. No surrogate lighter shall be left unattended.

(2) Each surrogate lighter shall be tested by an approximately equal number of children in a 100-child test panel (17 +or- 2 children).

Note: If a surrogate lighter is permanently damaged, testing shall continue with the remaining lighters. When a lighter is dropped out, the requirement that each lighter be tested by an approximately equal number of children does not apply to that lighter.

(3) Before each 100-child panel is tested, each surrogate lighter shall be examined to verify that it approximates the appearance, size, shape, and weight of a production lighter intended for use.

(4) Before and after each 100-child panel is tested, force measurements shall be taken on all operating components that could affect child resistance to verify that they are within reasonable operating tolerances for a production lighter intended for use.

(5) Before and after testing surrogate lighters with each child, each surrogate lighter shall be operated outside the presence of any child participating in the test to verify that the lighters produce a signal. If the surrogate lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate lighter does not produce a signal when it is operated after the test, the results for the preceding test with that lighter shall be eliminated. The lighter shall be repaired and tested with another eligible child (as one of a pair of children) to complete the test panel.

(d) *Encouragement.* (1) Prior to the test, the tester shall talk to the children in a normal and friendly tone to make them feel at ease and to gain their confidence.

(2) The tester shall tell the children that he or she needs their help for a special job. The children shall not be promised a reward of any kind for participating, and shall not be told that the test is a game or contest or that it is fun.

(3) The tester shall not discourage a child from attempting to operate the surrogate lighter at any time unless a child is in danger of hurting himself or another child. The tester shall not discuss the dangers of lighters or matches with the children to be tested prior to the end of the 10-minute test.

(4) Whenever a child has stopped attempting to operate the surrogate lighter for a period of approximately one minute, the tester shall encourage the child to try by saying "keep trying for just a little longer."

(5) Whenever a child says that his or her parent, grandparent, guardian, etc., said never to touch lighters, say "that's right — never touch a real lighter — but

your [parent, etc.] said it was OK for you to try to make a noise with this special lighter because it can't hurt you."

(6) The children in a pair being tested may encourage each other to operate the surrogate lighter and may tell or show each other how to operate it. (This interaction is *not* considered to be disruption as described in paragraph (e)(2) below.) However, neither child shall be allowed to operate the other child's lighter. If one child takes the other child's surrogate lighter, that surrogate lighter shall be immediately returned to the proper child. If this occurs, the tester shall say "No. He(she) has to try to do it himself(herself)."

(e) *Children who refuse to participate.* (1) If a child becomes upset or afraid, and cannot be reassured before the test starts, select another eligible child for participation in that pair.

(2) If a child disrupts the participation of another child for more than one minute during the test, the test shall be stopped and both children eliminated from the results. An explanation shall be recorded on the data collection record. These two children should be replaced with other eligible children to complete the test panel.

(3) If a child is not disruptive but refuses to attempt to operate the surrogate lighter throughout the entire test period, that child shall be eliminated from the test results and an explanation shall be recorded on the data collection record. The child shall be replaced with another eligible child (as one of a pair of children) to complete the test panel.

(f) *Test procedure.* (1) To begin the test, the tester shall say "I have a special lighter that will not make a flame. It makes a noise like this." Except where doing so would block the child's view of a visual signal, the adult tester shall place a 8½ by 11 inch sheet of cardboard or other rigid opaque material upright on the table in front of the surrogate lighter, so that the surrogate lighter cannot be seen by the child, and shall operate the surrogate lighter once to produce its signal. The tester shall say "Your parents [or other guardian, if applicable] said it is OK for you to try to make that noise with your lighter." The tester shall place a surrogate lighter in each child's hand and say "now *you* try to make a noise with your lighter. Keep trying until I tell you to stop."

(2) The adult tester shall observe the children for 5 minutes to determine if either or both of the children can successfully operate the surrogate lighter by producing one signal of any duration. If a child achieves a spark without defeating the child-resistant feature, say "that's a spark — it won't hurt you — try to make the noise with your lighter." If any child successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(3) If either or both of the children are unable to successfully operate the surrogate lighter during the 5-minute period specified in § 1210.4(f)(2), the adult tester shall demonstrate the operation of the surrogate lighter. To conduct the demonstration, secure the children's full attention by saying "Okay, give me your lighters now." Take the lighters and place them on the table in front of you out of the children's reach. Then say, "I'll show you how to make the noise with your lighters. First I'll show you with (child's name)'s lighter and then I'll show you with (child's name)'s lighter." Pick up the first child's lighter. Hold the lighter approximately two feet in front of the children at their eye level. Hold the lighter in a vertical position in one hand with the child-resistant feature exposed (not covered by fingers, thumb, etc.) Orient the child-resistant mechanism on the lighter toward the children. [This may require a change in your orientation to the children such as sitting sideways in the chair to allow a normal hand position for holding the lighter while assuring that both children have a clear view of the mechanism. You may also need to reposition your chair so your hand is centered between the children] Say "now watch the lighter." Look at each child to verify that they are looking at the lighter. Operate the lighter one time in a normal manner according to the manufacturer's instructions. Do not exaggerate operating movements. Do not verbally describe the lighter's operation. Place the first child's lighter back on the table in front of you and pick up the second child's lighter. Say, "Okay, now watch this lighter." Repeat the demonstration as described above using the second child's lighter. Note: Testers shall be trained to conduct the demonstration in a uniform manner, including the words spoken to the children, the way the lighter is held and operated, and how the tester's hand and body is oriented to the children. All testers must be able to operate the surrogate lighters using only appropriate operating movements in accordance with the manufacturer's instructions. If any of these requirements are not met during the demonstration for any pair of children, the results for that pair of children shall be eliminated from the test. Another pair of eligible children shall be used to complete the test panel.

(4) Each child who fails to successfully operate the surrogate lighter in the first 5 minutes is then given another 5 minutes in which to attempt the successful operation of the surrogate lighter. After the demonstrations give their original lighters back to the children by placing a lighter in each child's hand. Say "Okay, now you try to make the noise with your lighters - keep trying until I tell you to stop." If any child successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(5) At the end of the second 5-minute test period, take the surrogate lighter from any child who has not successfully operated it.

(6) After the test is over, ask the children to stand next to you. Look at the children's faces and say: "These are special lighters that don't make fire. Real lighters can burn you. Will you both promise me that you'll never try to work a real lighter?" Wait for an affirmative response from each child; then thank the children for helping.

(7) Escort the children out of the room used for testing.

(8) After a child has participated in the testing of a surrogate lighter, and on the same day, provide written notice of that fact to the child's parent or guardian. This notification may be in the form of a letter provided to the school to be given to the parents or guardian of each child. The notification shall state that the child participated, shall ask the parent or guardian to warn the child not to play with lighters, and shall remind the parent or guardian to keep all lighters and matches, whether child resistant or not, out of the reach of children. For children who operated the surrogate lighter, the notification shall state that the child was able to operate the child-resistant lighter. For children who do not defeat the child-resistant feature, the notification shall state that, although the child did not defeat the child-resistant feature, the child may be able to do so in the future.

(g) *Data collection and recording.* Except for recording the times required for the children to activate the signal, recording of data should be avoided while the children are trying to operate the lighters, so that the tester's full attention is on the children during the test period. If actual testing is

videotaped, the camera shall be stationary and shall be operated remotely in order to avoid distracting the children. Any photographs shall be taken *after* actual testing and shall simulate actual test procedure(s) (for example, the demonstration). The following data shall be collected and recorded for each child in the 100-child test panel:

(1) Sex (male or female).

(2) Date of birth (month, day, year).

(3) Age (in months, to the nearest month, as specified in § 1210.4(a)(4)).

(4) The number of the lighter tested by that child.

(5) Date of participation in the test (month, day, year).

(6) Location where the test was given (city, state, country, and the name of the site or an unique number or letter code that identifies the test site).

(7) The name of the tester who conducted the test.

(8) The elapsed time (to the nearest second) at which the child achieved any operation of the surrogate signal in the first 5-minute test period.

(9) The elapsed time (to the nearest second) at which the child achieved any operation of the surrogate signal in the second 5-minute test period.

(10) For a single pair of children from each 100-child test panel, photograph(s) or video tape to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration.

(h) *Evaluation of test results and acceptance criterion.* To determine whether a surrogate lighter resists operation by at least 85 percent of the children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered to be resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate lighter, the test results are inconclusive, and the surrogate lighter shall be tested with a second 100-child test panel in accordance with this § 1210.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted.

(2) If additional testing of the surrogate lighter is required by § 1210.4(h)(1), conduct the test specified by this § 1210.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered resistant to successful operation by at least 85 percent of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate lighter, the lighter represented by the surrogate lighter shall be considered not resistant to successful operation by 85 percent of the child test panel, and no further testing is conducted.

Table 1.—Evaluation of Test Results—§ 1210.4(e)

Test panel	Cumulative Number of Children	Successful Lighter Operations		
		Pass	Continue	Fail
1	100	0-10	11-18	19 or more
1	200	11-30	—	31 or more

§ 1210.5 Findings.

Section 9(f) of the Consumer Product Safety Act, 15 U.S.C. 2058(f), requires the Commission to make findings concerning the following topics and to include the findings in the rule.

(a) *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The standard is designed to reduce the risk of death and injury from accidental fires started by children playing with lighters. From 1988 to 1990, an estimated 160 deaths per year resulted from such fires. About 150 of these deaths, plus nearly 1,100 injuries and nearly $70 million in property damage, resulted from fires started by children under the age of 5. Fire-related injuries include thermal burns — many of high severity — as well as anoxia and other, less serious injuries. The annual cost of such fires to the public is estimated at about $385 million (in 1990 dollars). Fires started by young children (under age 5) are those which the standard would be most effective at reducing.

(b) *The approximate number of consumer products, or types or classes thereof, subject to the rule.* The standard covers certain flame-producing devices, commonly known as lighters, which are primarily intended for use in lighting cigarettes and other smoking materials. Lighters may be gas- or liquid-fueled, mechanical or electric, and of various physical configurations. Over 600 million lighters are sold annually to consumers in the U.S.; over 100 million are estimated to be in use at any given time. Over 95 percent of all lighters sold are pocket-sized disposable butane models; of the remaining 5 percent, most are pocket refillable butane models. A small proportion of refillables is comprised of pocket liquid-fuel models; still smaller proportions are represented by table lighters and by "novelty" lighters, that is, those having the physical appearance of other specific objects. Approximately 600 million pocket butane disposables (nonrefillable), 15-20 million pocket butane refillables, 5-10 million pocket liquid-fuel refillables, and 1-3 million novelty and other lighters were sold to consumers in 1991. The standard covers disposable lighters, including inexpensive butane refillables, and novelty lighters. Roughly 30 million households have at least one lighter; ownership of more than one lighter is typical, especially among smoking households.

(c) *The need of the public for the consumer products subject to the rule, and the probable effect of the rule on the utility, cost, or availability of such products to meet such need.* Consumers use lighters primarily to light smoking materials. Most other lighting needs that could be filled by matches may also be filled by lighters. Disposable butane lighters are, chiefly by virtue of their low price and convenience, the closest available substitutes for matches. Although matches are found in far more

households, lighters have steadily replaced matches since the 1960's as the primary light source among American consumers. The standard generally requires that lighters not be operable by most children under 52 months of age. This would likely be achieved by modifying products to incorporate additional-action switches, levers, or buttons, thereby increasing the difficulty of product activation. Depending on the method of compliance chosen by manufacturers, there could be some adverse effect on the utility of lighters. This may occur to the extent that operation of the products by adult users is made more difficult by the incorporation of child-resistant features. This may lead some consumers to switch to matches, at least temporarily, which could reduce the expected level of safety provided by the standard. In addition, some "novelty" lighters will probably be discontinued, due to the technical difficulty of incorporating child-resistant features or designs. Some loss of utility derived from those products by collectors or other users may result, though many novelty models will probably remain on the market. The cost of producing lighters subject to the standard is expected to increase due to manufacturers' and importers' expenditures in the areas of research and development, product redesign, tooling and assembly process changes, certification and testing, and other administrative activities. Total per-unit production costs for the various lighter types may increase by 10-40 percent, with an average of less than 20 percent. Cost increases will likely be passed on to consumers in the form of higher retail prices. Disposable lighters may increase in price by 10-40 cents per unit; prices of other lighters may increase by as much as $1-3. The estimated average per-unit price increase for all lighters subject to the standard is about 20 cents. The total annual cost of the standard to consumers is estimated at about $90 million. The estimated cost of the standard per life saved is well under $1 million after considering the benefits of reduced injuries and property damage; this is well below the consensus of estimates of the statistical value of life. A wide range of lighter types and models will continue to be available to consumers. As noted above, some models of novelty lighters — all of which account for less than 1 percent of lighters sold — will likely be discontinued; this should not have a significant impact on the overall availability of lighters to consumers.

(d) Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices *consistent with the public health and safety.* The Commission considered the potential effects on competition and business practices of various aspects of the standard, and, as noted below, incorporated some burden-reducing elements into the proposal. The Commission also encouraged and participated in the development of a draft voluntary standard addressing the risk of child-play fires. A draft voluntary safety standard was developed by members of an ASTM task group (now a subcommittee) to address much of the risk addressed by the proposed CPSC rule. This draft voluntary standard contained performance requirements similar, but not identical, to those in the CPSC proposal. Development work on the voluntary standard ceased in 1991; industry representatives requested that the Commission issue the draft ASTM provisions in a mandatory rule. One possible alternative to this mandatory standard would be for the Commission to rely on voluntary conformance to this draft standard to provide safety to consumers. The expected level of conformance to a voluntary standard is uncertain, however; although some of the largest firms may market some child-resistant lighters that conform to these requirements, most firms (possibly including some of the largest) probably would not. Even under generous assumptions about the level of voluntary conformance, net benefits to consumers would be substantially lower under this alternative than under the standard. Thus, the Commission finds that reliance on voluntary conformance to the draft ASTM standard would not adequately reduce the unreasonable risk associated with lighters.

(e) *The rule (including its effective date) is reasonably necessary to e*liminate or reduce an unreasonable risk. The Commission's hazard data and regulatory analysis demonstrate that lighters covered by the standard pose an unreasonable risk of death and injury to consumers. The Commission considered a number of alternatives to address this risk, and believes that the standard strikes the most reasonable balance between risk reduction benefits and potential costs. Further, the amount of time before the standard becomes effective will provide manufacturers and importers of most products adequate time to design, produce, and market safer lighters. Thus, the Commission finds that the standard and its effective date are reasonably necessary to reduce the risk of fire-related death and injury associated with young children playing with lighters.

(f) *The benefits expected from the rule bear a reasonable relationship to its costs.* The standard will substantially reduce the number of fire-related deaths, injuries, and property damage associated with young children playing with lighters. The cost of these accidents, which is estimated to be about $385 million annually, will also be greatly reduced. Estimated annual benefits of the standard are $205-$270 million; estimated annual costs to the public are about $90 million. Expected annual net benefits would therefore be $115-$180 million. Thus, the Commission finds that a reasonable relationship exists between potential benefits and potential costs of the standard.

(g) *The rule imposes the least b*urdensome requirement which prevents or adequately reduces the risk of injury for which the *rule is being promulgated.* (1) In the final rule, the Commission incorporated a number of changes from the proposed rule in order to minimize the potential burden of the rule on industry and consumers. The Commission also considered and rejected several alternatives during the development of the standard to reduce the potential burden on industry (especially small importers) and on consumers. These alternatives involve different performance and test requirements and different definitions determining the scope of coverage among products. Other alternatives generally would be more burdensome to industry and would have higher costs to consumers. Some less burdensome alternatives would have lower risk-reduction benefits to consumers; none has been identified that would have higher expected net benefits than the standard.

(2) The scope of this mandatory standard is limited to disposable lighters and novelty lighters; it does not apply to "luxury" lighters (including most higher priced refillable butane and liquid-fuel models). This is similar but not identical to the scope of a draft voluntary industry standard developed in response to the Commission's advance notice of proposed rulemaking of March 3, 1988 (53 FR 6833). This exclusion significantly reduces the potential cost of the standard without significantly affecting potential benefits.

(3) The Commission narrowed the scope of the final rule with respect to novelty lighters, and considered limiting the scope further to exclude all nondisposable novelty lighters. Though

further limiting the scope would ease the potential burden of the standard on manufacturers and importers slightly, inherently less safe non-child-resistant lighters that are considered to be especially appealing to children would remain on the market, thereby reducing the potential safety benefits to the public. The Commission finds that it would not be in the public interest to exclude novelty lighters.

(4) The Commission considered the potential effect of alternate performance requirements during the development of the standard. A less stringent acceptance criterion of 80 percent (rather than the standard's 85 percent) might slightly reduce costs to industry and consumers. The safety benefits of this alternative, however, would likely be reduced disproportionately to the potential reduction in costs. A higher (90 percent) acceptance criterion was also considered. This higher performance level is not commercially or technically feasible for many firms, however; the Commission believes that this more stringent alternative would have substantial adverse effects on manufacturing and competition, and would increase costs disproportionate to benefits. The Commission believes that the requirement that complying lighters not be operable by at least 85 percent of children in prescribed tests strikes a reasonable balance between improved safety for a substantial majority of young children and other potential fire victims and the potential for adverse competitive effects and manufacturing disruption.

(5) The Commission believes that the standard should become effective as soon as reasonably possible. The standard will become effective 12 months from its date of publication in the Federal Register. The Commission also considered an effective date of 6 months after the date of issuance of the final rule. While most lighters sold in the U.S. could probably be made child resistant within 6 months, some disruptive effects on the supply of some imported lighters would result; this could have a temporary adverse impact on the competitive positions of some U.S. importers. The 12-month period in the standard would tend to minimize this potential effect, and would allow more time for firms to design, produce, and import complying lighters. The Commission estimates that there would be no significant adverse impact on the overall supply of lighters for the U.S. market.

(h) *The promulgation of the rule is in the public interest.* As required by the CPSA and the Regulatory Flexibility Act, the Commission considered the potential benefits and costs of the standard and various alternatives. While certain alternatives to the final rule are estimated to have net benefits to consumers, the adopted rule maximizes these net benefits. Thus, the Commission finds that the standard, if promulgated on a final basis, would be in the public interest.

Subpart B——Certification Requirements

Authority: 15 U.S.C. 2063, 2065(b), 2066(g), 2076(e), 2079(d).

§ 1210.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 1263(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this subpart B of part 1210 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Cigarette Lighters. This subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

§ 1210.12 Certificate of compliance.

(a) *General requirements.*

(1) *Manufacturers (including importers).* Manufacturers of any lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1210.13-1210.14 and 1210.16. Manufacturers must also label each lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1210.15 and 1210.17. For purposes of this requirement, an importer of lighters shall be considered the "manufacturer."

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of lighters in accordance with paragraph (b) of this section is supplied to any distributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that the importer is a resident of the United States or has a resident agent in the United States, the records are in English, and the records and the surrogate lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1210.17(a)) or, in the case of production records, can be provided to the Commission within 7 calendar days in accordance with § 1210.17(a)(3). The importer is responsible for ensuring that the foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1210.14-1210.16), the records provide a reasonable assurance that all lighters imported comply with the standard (§ 1210.13(b)(1)), the records exist in English (§ 1210.17(a)), (4) the importer knows where the required records and lighters are located and that records required to be located in the United States are located there, arrangements have been made so that any records required to be kept in the United States will be provided to the Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days (§ 1210.17(a)), and the information required by § 1210.17(b) to be provided to the Commission's Division of Regulatory Management has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state:

(1) That the product "complies with the Consumer Product Safety Standard for Cigarette Lighters (16 CFR 1210),"

(2) The name and address of the manufacturer or importer issuing the certificate or of the private labeler, and

(3) The date(s) of manufacture and, if different from the address in paragraph (c)(2) of this section, the address of the place of manufacture.

(c) *Labeling.* The manufacturer or importer must label each lighter with

the following information, which may be in code.

(1) An identification of the period of time, not to exceed 31 days, during which the lighter was manufactured.

(2) An identification of the manufacturer of the lighter, unless the lighter bears a private label. If the lighter bears a private label, it shall bear a code mark or other label which will permit the seller of the lighter to identify the manufacturer to the purchaser upon request.

§ 1210.13 Certification tests.

(a) *General.* As explained in § 1210.11 of this subpart, certificates of compliance required by section 14(a) of the CPSA must be based on a reasonable testing program.

(b) *Reasonable testing programs.*

(1) *Requirements.* (i) A reasonable testing program for lighters is one that demonstrates with a high degree of assurance that all lighters manufactured for sale or distributed in commerce will meet the requirements of the standard, including the requirements of § 1210.3. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program should be sufficiently stringent that it will detect any variations in production or performance during the production interval that would cause any lighters to fail to meet the requirements of the standard.

(ii) All reasonable testing programs shall include qualification tests, which must be performed on surrogates of each model of lighter produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard (see § 1210.14), and production tests, which must be performed during appropriate production intervals as long as the product is being manufactured (see § 1210.16).

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all lighters manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each lighter or lighter surrogate may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer must ensure that all certification testing has been properly performed with passing results and that all records of such tests are maintained in accordance with § 1210.17 of this subpart.

§ 1210.14 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of lighters distributes lighters in commerce in the United States, surrogate lighters of each model shall be tested in accordance with § 1210.4, above, to ensure that all such lighters comply with the standard. However, if a manufacturer has tested one model of lighter, and then wishes to distribute another model of lighter that differs from the first model only by differences that would not have an *adverse* effect on child resistance, the second model need not be tested in accordance with § 1210.4.

(b) *Product modifications.* If any changes are made to a product after initial qualification testing that could adversely affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made on surrogates for the changed product before the changed lighters are distributed in commerce.

(c) *Requalification.* If a manufacturer or importer chooses to requalify a lighter design after it has been in production, this may be done by following the testing procedures at § 1210.4.

§ 1210.15 Specifications.

(a) *Requirement.* Before any lighters that are subject to the standard are distributed in commerce, the manufacturer or importer shall ensure that the surrogate lighters used for qualification testing under § 1210.14 are described in a written product specification. (Section 1210.4(c) requires that six surrogate lighters be used for testing each 100-child panel.)

(b) *Contents of specification.* The product specification shall include the following information:

(1) A complete description of the lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistant features.

(2) A detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the lighter, including the manufacturer's tolerances for each such dimension or force requirement.

(3) Any further information, including, but not limited to, model names or numbers, necessary to adequately describe the lighters and any child-resistant features.

§ 1210.16 Production testing.

(a) *General.* Manufacturers and importers shall test samples of lighters subject to the standard as they are manufactured, to demonstrate that the lighters meet the specifications, required under § 1210.15, of the surrogate that has been shown by qualification testing to meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other lighters produced during the interval will meet the standard.

(c) *Test failure.*

(1) *Sale of lighters.* If any test yields results which indicate that any lighters manufactured during the production interval may not meet the standard, production and distribution in commerce of lighters that may not comply with the standard must cease until it is determined that the lighters meet the standard or until corrective action is taken. (It may be necessary to modify the lighters or perform additional tests to ensure that only complying lighters are distributed in commerce. Lighters from other production intervals having test results showing that lighters from that interval comply with the standard could be produced and distributed unless there was some reason to believe that they might not comply with the standard.)

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all lighters comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing process, the assembly process, the equipment used to manufacture the product, or the product's materials or design. The corrective action must provide a high degree of assurance that all lighters produced after the corrective action will comply with the standard. If the corrective action changes the product from the surrogate used for qualification testing in a manner that could adversely affect its child resistance, the lighter must undergo new qualification tests in accordance with § 1210.14, above.

§ 1210.17 Recordkeeping and reporting.

(a) *Records.* Every manufacturer and importer of lighters subject to the standard shall maintain the following records in English on paper, microfiche, or similar media and make such records available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act, 15 U.S.C.

2065(b). Such records must also be kept in the United States and provided to the Commission within 48 hours of receipt of a request from any employee of the Commission, except as provided in paragraph (b)(3) of this section. Legible copies of original records may be used to comply with these requirements.

(1) Records of qualification testing, including a description of the tests, photograph(s) or a video tape for a single pair of children from each 100-child test panel to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration, the dates of the tests, the data required by § 1210.4(d), the actual surrogate lighters tested, and the results of the tests, including video tape records, if any. These records shall be kept until 3 years after the production of the particular model to which such tests relate has ceased. If requalification tests are undertaken in accordance with § 1210.14(c), the original qualification test results may be discarded 3 years after the requalification testing, and the requalification test results and surrogates, and the other information required in this subsection for qualifications tests, shall be kept in lieu thereof.

(2) Records of procedures used for production testing required by this subpart B, including a description of the types of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme, and the pass/reject criterion. These records shall be kept until 3 years after production of the lighter has ceased.

(3) Records of production testing, including the test results, the date and location of testing, and records of corrective actions taken, which in turn includes the specific actions taken to improve the design or manufacture or to correct any noncomplying lighter, the date the actions were taken, the test result or failure that triggered the actions, and the additional actions taken to ensure that the corrective action had the intended effect. These records shall be kept for 3 years following the date of testing. Records of production testing results may be kept on paper, microfiche, computer tape, or other retrievable media. Where records are kept on computer tape or other retrievable media, however, the records shall be made available to the Commission on paper copies upon request. A manufacturer or importer of a lighter that is not manufactured in the United States may maintain the production records required by paragraph (a)(3) of this section outside the United States, but shall make such records available to the Commission in the United States within 1 week of a request from a Commission employee for access to those records under section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(4) Records of specifications required under § 1210.15 shall be kept until 3 years after production of each lighter model has ceased.

(b) *Reporting.* At least 30 days before it first imports or distributes in commerce any model of lighter subject to the standard, every manufacturer and importer must provide a written report to the Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207. Such report shall include:

(1) The name, address, and principal place of business of the manufacturer or importer,

(2) A detailed description of the lighter model and the child-resistant feature(s) used in that model,

(3) A description of the qualification testing, including a description of the surrogate lighters tested, the specification of the surrogate lighter required by § 1210.15, a summary of the results of all such tests, the dates the tests were performed, the location(s) of such tests, and the identity of the organization that conducted the tests,

(4) An identification of the place or places that the lighters were or will be manufactured,

(5) The location(s) where the records required to be maintained by paragraph (a) of this section are kept, and

(6) A prototype or production unit of that lighter model.

(c) *Confidentiality.* Persons who believe that any information required to be submitted or made available to the Commission is trade secret or otherwise confidential shall request that the information be considered exempt from disclosure by the Commission, in accordance with 16 CFR 1015.18. Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), the Freedom of Information Act as amended, 5 U.S.C. 552, and the Commission's regulations under that act, 16 CFR part 1015.

§ 1210.18 Refusal of importation.

(a) *For noncompliance with reporting and recordkeeping requirements.* The Commission has determined that compliance with the recordkeeping and reporting requirements of this subpart is necessary to ensure that lighters comply with this part 1210. Therefore, pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), the Commission may refuse to permit importation of any lighters with respect to which the manufacturer or importer has not complied with the recordkeeping and reporting requirements of this subpart. Since the records are required to demonstrate that production lighters comply with the specifications for the surrogate, the Commission may refuse importation of lighters if production lighters do not comply with the specifications required by this subpart or if any other recordkeeping or reporting requirement in this part is violated.

(b) *For noncompliance with this standard and for lack of a certification certificate.* As provided in section 17(a) of the CPSA, 15 U.S.C. 2066(a), products subject to this standard shall be refused admission into the customs territory of the United States if, among other reasons, the product fails to comply with this standard or is not accompanied by the certificate required by this standard.

Subpart C—Stockpiling

Authority: 15 U.S.C. 2058(g)(2), 2079(d).

§ 1210.20 Stockpiling.

(a) *Definition.* "Stockpiling" means to manufacture or import a product that is subject to a consumer product safety rule between the date of issuance of the rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period.

(b) *Base Period.* For purposes of this rule, "base period" means, at the option of the manufacturer or importer, any 1-year period during the 5-year period prior to July 12, 1993.

(c) *Prohibited act.* Manufacturers and importers of disposable and novelty cigarette lighters shall not manufacture or import lighters that do not comply with the requirements of this part between July 12, 1993 and July 12, 1994, at a rate that is greater than the rate of production or importation during the base period plus 20 per cent of that rate.

Dated: July 1, 1993.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note: This list of relevant documents will not be printed in the Code of Federal Regulations.)

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82. Memorandum from D. Ray, EC, to J. Hoebel, EXPB, "Analysis of Public Comments on Lighters," July 2, 1990.

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88. Letter from M. Schuler, President and Chief Executive Officer, Zippo Manufacturing Company, to Chairman J. Jones-Smith, CPSC, re: request to narrow the scope of the draft NPR to disposable butane lighters and novelty lighters, July 27, 1990.

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117. Memorandum from L. Smith, EPHA, to B. Jacobson, HS, "Fire Losses Associated with Children Playing with Cigarette Lighters," February 6, 1991.

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119. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, re: "Lighters: Proposed Effective Date," February 8, 1991.

120. Memorandum from D. Schmeltzer, EXCE, to B. Jacobson, Project Manager, HS, re: "Request for sign-off on extension of effective date of cigarette lighter rule," February 14, 1991.

121. Briefing Package, "Supplemental Information on Cigarette Lighters," B. Jacobson, Project Manager, February 19, 1991.

122. Letter from M. Fise, Product Safety Director, Consumer Federation of America, to Chairman J. Jones-Smith, CPSC, re: the staff-proposed notice of proposed rulemaking on cigarette lighters, March 1, 1991.

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155. Memorandum from R. Newman, EP to B. Jacobson, HS, "Statistical Analysis of Non-Child-Resistant Roll and Press Cigarette Lighter Data Including Toronto Retest," April 8, 1992.

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159. Letter from F. Levinger, President, Colibri Corporation, to D. Ray, CPSC, re: definition of disposable lighters, May 4, 1992.

160. Memorandum from B. Jacobson, HS, to A. Ulsamer, HS, "Protocol for Testing Child-Resistant Lighters - Discussion of Outstanding Issues," May 8, 1992.

161. Letter from J. Bouchand, Ministere de L'Economie et des Finances, Paris, France, to E. Peterson, Executive Director, CPSC, re: concern about Commission action on child-resistant cigarette lighters, May 19, 1992.

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173. NPR Comment CC 92-1-8, L. Dixon, Ph.D., Great Lakes Marketing Associates, Inc., October 26, 1992.

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175. NPR Comment CC 92-1-10, M. Forys, Senior Vice President, Administration, Scripto Tokai, October 27, 1992.

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179. NPR Comment CC 92-1-14, D. Baker, Esq., Holland & Knight, Attorneys for Lighter Association, Inc., October 2, 1992.

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183. NPR Comment CC 92-1-19, M. Buie, President, Consumer Product Testing, Inc., November 2, 1992.

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190. Memorandum from Warren J. Prunella, AED/EC, to the Commission, "Closure Effectiveness Study," July 20, 1992.

191. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Inclusion of Liquid-Fuel Lighters in Scope of Proposed Rule," January 11, 1993.

192. Memorandum from B. Jacobson, HS, to The Commission, "Report of Results of Child-Resistant Lighter Testing," January 14, 1993.

193. Memorandum from L. Smith, EPHA, to B. Jacobson, HSPS, "Response to Public Comments on the Cigarette Lighter Notice of Proposed Rulemaking," January 15, 1993.

194. Memorandum from W. Mathers, EPHF, to B. Jacobson, HS, "Response to Comments on Notice of Proposed Rule (NPR) for Child-Resistant Cigarette Lighters," January 27, 1993.

195. Memorandum from E. Perry, ESME, to B. Jacobson, HSPS, "Response to Public Comments on the Notice of Proposed Rulemaking for Cigarette Lighters," February 1, 1993.

196. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Analysis of Public Comments on Notice of Proposed Rulemaking on Lighters," February 5, 1993.

197. Proposed Safety Standard for Cigarette Lighters; Opportunity to Comment on Report of Tests of Lighters, 58 Fed. Reg. 8565 (February 16, 1993)

198. Memorandum from E. Stone, CEAL, & M. Bogumill, CERM, to B. Jacobson, Project Manager, Cigarette Lighters, "Analysis of comments on cigarette lighter proposal," March 5, 1993.

199. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Final Regulatory Analysis on Lighters," March 9, 1993.

200. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Final Regulatory Flexibility Analysis on Lighters," March 9, 1993.

201. Memorandum from B. Jacobson, HS, to J. Hoebel, HS, "Protocol for Testing Child-Resistant Lighters—Discussion of Comments Received in Response to the Notice of Proposed Rulemaking," March 30, 1993.

202. Briefing Package, "Draft Final Standard for Child-Resistant Lighters," B. Jacobson, Project Manager, May 13, 1993.

Tab A — Draft **Federal Register** notices.

Tab B — Memorandum from L. Smith, EPHA, to B. Jacobson, HSPS, "Response to Public Comments on the Cigarette Lighter Notice of Proposed Rulemaking," January 15, 1993.

Tab C — 1. Memorandum from D. Ray, ECPA to B. Jacobson, HS, "Analysis of Public Comments on Notice of Proposed Rulemaking on Lighters," February 5, 1993.

2. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Inclusion of Liquid-Fuel Lighters in Scope of Proposed Rule," January 11, 1993.

Tab D — Memorandum from W. Mathers, EPHF, to B. Jacobson, HS, "Response to Comments on Notice of Proposed Rule (NPR) for Child-Resistant Cigarette Lighters," January 27, 1993.

Tab E — Memorandum from B. Jacobson, HS, to J. Hoebel, HS, "Protocol for Testing Child Resistant Lighters — Discussion of Comments Received in Response to the Notice of Proposed Rulemaking," March 30, 1993.

Tab F — Memorandum from E. Stone, CEAL, and M. Bogumill, CERM, to B. Jacobson, HS, "Analysis of comments on cigarette lighter proposal," March 5, 1993.

Tab G — Memorandum from E. Perry, ESME, to B. Jacobson, HSPS, "Response to Public Comments on the Notice of Proposed Rulemaking for Cigarette Lighters," February 1, 1993.

Tab H — Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Final Regulatory Analysis on Lighters," March 9, 1993.

Tab I — Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Final Regulatory Flexibility Analysis on Lighters," March 9, 1993.

203. OMB Form SF-83 and justification for OMB approval of proposed rule.

204. Letter from Jin Ki Kim, President of Bultina America Corp., to Barbara Jacobson, June 2, 1993.

205. Memorandum to the Commission from Barbara Jacobson, Project Manager, "Follow-up to the May 26, 1993, Commission Briefing on the Final Standard for Child-Resistant Lighters," June 8, 1993.

206. Letter transmitting copy of final rule to OMB.

[FR Doc. 93–16181 Filed 7–9–93; 8:45 am]

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federal register

Monday
July 12, 1993

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 16

Privacy Act of 1974; Exemption and System of Records; Proposed Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 16

[Docket No. R-93-1669; FR-3436-P-01]

RIN 2501-AB60

Exemption of System of Records Under Privacy Act of 1974

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt a new system of records entitled "Tenant Eligibility Verification Files" from compliance with the applicable provisions of the Privacy Act. This additional exemption is necessary because the Department has created a new system of records to add to the Privacy Act system of records. The notification of the new system of records for "Tenant Eligibility Verification Files" is published today else where in this issue.

DATES: Comment due date: September 10, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are *not* acceptable.

FOR FURTHER INFORMATION CONTACT: David L. Decker, Director, Computer Matching Activities Division, Office of the Public and Indian Housing Comptroller, Room 4122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0099. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-0850. (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION:

I. Background

Except for the Office of Inspector General, the Department's implementation of the Privacy Act (5 U.S.C. 552a) is set forth in 24 CFR part 16. (The implementation of the Privacy Act for the Office of Inspector General appears in 24 CFR part 2003). The implementation of the Privacy Act includes the publication of a system of records which are exempt from certain requirements of the Privacy Act, as determined by the Secretary under the specific exemption authority of the Act, 5 U.S.C. 552a(k). The specific exemption provision of the Privacy Act authorizes exemption for systems of records from many of the notice and access requirements of the Privacy Act, but does not affect the applicability of the remaining Privacy Act requirements. The Department's specific exemptions appear at 24 CFR 16.15.

The establishment of the new system of records and this rule are necessary as a result of the recent transfer of computer matching/tenant eligibility verification functions from the Office of Inspector General to the Assistant Secretary for Public and Indian Housing. The transfer affects only rental assistance programs administered by the Assistant Secretary for Public and Indian Housing.

The proposed addition to section 16.15 clarifies the scope of the exemptions applicable to the Assistant Secretary for Public and Indian Housing's system of records entitled "Tenant Eligibility Verification Files" and provides reasons for the exemptions from particular subsections of the Privacy Act that are more detailed than those currently found at 24 CFR 16.15. The tenant records and other records referenced in the new "Tenant Eligibility Verification Files" system of records notice were previously included in the "Investigative Files of the Office of the Inspector General" (HUD/OIG-1, see 57 FR 25070). The Assistant Secretary for Public and Indian Housing will be adding records to the proposed new system based on computer matching results and verification of those results with tenant case files and records supplied by Federal agencies and private employers.

II. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

B. Regulatory Impact

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule only affects the way the Department implements the Privacy Act.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. Specifically, the requirements of this rule are directed to the Department of Housing and Urban Development, and do not impinge upon the relationship between the Federal government and State and local governments.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

F. Regulatory Agenda

This proposed rule was listed as item no. 1360 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24390) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 16

Privacy.

Accordingly, 24 CFR part 16 would be amended to read as follows:

PART 16—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 16 would be revised to read as follows:

Authority: 5 U.S.C. 552a; 42 U.S.C. 3535(d).

2. Section 16.15 would be amended by adding new paragraphs (c) and (d) as follows:

§16.15 Specific exemptions.

* * * * *

(c) The system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" consists in part of investigatory material compiled for law enforcement purposes. Relevant records will be used by appropriate Federal, state or local agencies charged with the responsibility for investigating or prosecuting violations of law. Therefore, to the extent that information in the system falls within the coverage of subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), the system is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of an accounting of disclosures to an individual who may be the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1) because release of the records to an individual who may become or has become the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2) because amendment or correction of the records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the office that maintains the records to continuously retrograde its verifications of tenant eligibility attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1) because it is often impossible to determine relevance or necessity of information in pre-investigative early stages. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the Assistant Secretary for Public and Indian Housing, or investigators, may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Assistant Secretary for Public and Indian Housing, or investigators, should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining the evidence, information may be provided which relates to matters incidental to the main purpose of the inquiry or investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(d) The system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" consists in part of material that may be used for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in this system falls within the coverage of subsection (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), the system is exempt from the requirements of the following subsection of the Privacy Act, for the reasons stated below.

(1) From subsection (d)(1) because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: June 30, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–16384 Filed 7–9–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3646; FR–3435–N–01]

Privacy Act of 1974—Notice of New System of Records

AGENCY: Office of Secretary, HUD.

ACTION: Notification of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Assistant Secretary for Public and Indian Housing proposes to establish a new system of records maintained by the Assistant Secretary for Public and Indian Housing. The system of records is entitled, "HUD/PIH–1. Tenant Eligibility Verification Files." It will contain the computer matching and tenant eligibility verification records necessary to support Government identification of tenants who have been or may be obtaining excessive housing assistance, and to support referrals of information concerning those tenants to law enforcement agencies or public housing agencies for possible legal and administrative actions, as appropriate.

DATES: Effective Date: This proposal shall become effective without further notice on August 11, 1993, unless comments are received on or before that date which would result in a contrary determination.

Comment Due Date: August 11, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374. For program: David L. Decker, Director, Computer Matching Activities Division, Office of the Public and Indian Housing Comptroller, Telephone Number (202) 708–0099. [These are not toll free numbers.]

SUPPLEMENTARY INFORMATION: The establishment of a new system of records entitled, "HUD/PIH–1. Tenant Eligibility Verification Files" is necessary because of the recent transfer of computer matching/tenant income verification functions from the Office of Inspector General (OIG) to the Assistant Secretary for Public and Indian Housing. Computer matching/tenant eligibility verification records created by the OIG, and transferred to the Assistant Secretary for Public and Indian Housing and new records obtained or created by the Assistant Secretary for Public and Indian Housing will be included in the Tenant Eligibility Verification Files. The OIG previously maintained the computer matching/tenant eligibility records as part of its Investigative Files (see 57 FR 25070, June 12, 1992). The new system of records for the proposed new Tenant Eligibility Verification Files is published in its entirety below.

A report of the Department's intention to establish the system has been submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Authority: 5 U.S.C. 552a; 41 U.S.C. 3535(d).

Dated: June 30, 1993.

Henry G. Cisneros,

Secretary.

HUD/PIH–1

SYSTEM NAME:

Tenant Eligibility Verification Files.

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Tenants receiving assisted housing benefits provided by programs administered by the Assistant Secretary for Public and Indian Housing, or information on tenants obtained from other Federal or state agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of: (1) Automated tenant data obtained from HUD's Multifamily Tenant Characteristics System; (2) automated tenant data provided by public housing agencies; (3) automated wage, salary and annuity data from state wage information collection agencies, the Office of Personnel Management's General Personnel Records (OPM/GOVT–1), the Civil Service Retirement and Insurance Records System (OPM/Central–1), the Department of Defense's Manpower Data Center (S322.10.DLA–LZ), the United States Postal Service's Finance Record-Payroll (USPS050.020); (4) automated records from the Social Security Administration's Master Files of Social Security Number Holders, known as the Enumeration Verification System; (5) applications for housing assistance and other related documentation obtained from tenant case files maintained by public housing agencies or Indian housing agencies; (6) data received from Federal and private employers confirming income or deductions supporting determinations of eligibility and the amount of housing assistance benefits; and (7) automated records provided by other Federal agencies for matching to tenant data under the investigative exclusion of the Computer Matching and Privacy Protection Act of 1988.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records will be obtained to detect excessive benefit payments under section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628; section 165 of the Housing and Community Development Act of 1987, Pub. L. 100–242; the National Housing Act, 12 U.S.C. 1701–1750g; the United States Housing Act of 1937, 42 U.S.C. 1437–1437o; and section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s.

The McKinney Amendments of 1988 authorized HUD to request wage and claim information for the state agency responsible for the administration of state unemployment law in order to undertake computer matching in HUD's rental assistance programs. The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (including all members of their household six (6) years of age and older) in HUD-administered programs involving rental assistance to disclose to HUD their Social Security Numbers (SSNs) as a condition of initial or continuing eligibility for participation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. In the event that records indicate a potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate Federal, state or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing a statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to public housing agencies in order to assist them in determining tenants' eligibility for housing assistance, and the amount of that assistance. The records may also be disclosed to public housing agencies to facilitate recovery of money or property or other administrative actions, i.e., eviction, necessary to promote the integrity of programs or operations of HUD or public housing agencies.

4. Records may be disclosed during the course of an administrative proceeding where HUD or a public housing agency is a party to the litigation and disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

6. Records may be disclosed to a Federal agency to initiate Federal salary or annuity offsets as necessary to collect excessive housing assistance received by the tenant.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in tenant case files and electronically in office automation equipment and mainframe computer facilities.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices by the name, social security number, or public housing agency.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer files and printed listings are maintained in locked cabinets. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Only those computer files and printouts created from the computer matching that meet predetermined criteria are maintained. All records created from the matching which do not meet these criteria will be erased as soon as possible within 6 months except for those records necessary to complete pending investigative or other law enforcement activities, or administrative actions taken by HUD or public housing agencies. Paper listings containing personal identifiers will be shredded. Computer source files provided by other organizations will be returned to those organizations in accordance with computer matching agreements.

Information obtained through computer matching and tenant case file reviews will be destroyed as soon as follow up processing of this information is completed, unless the information is required for evidentiary reasons or needed by public housing agencies for use in program eligibility determinations. When needed for evidentiary documentation, the information will be referred to the HUD OIG or other appropriate federal, state or local agencies charged with the responsibility for investigating or prosecuting such violation. When referred to the HUD OIG the information then becomes a part of the Investigative Files of the Office of Inspector General, HUD/OIG–1. The information may also be referred to public housing agencies for administrative actions, i.e., recoupment of excessive housing assistance.

SYSTEM MANAGER AND ADDRESS:

Director, Computer Matching Activities Division, Office of the Public and Indian Housing Comptroller, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410.

NOTIFICATION PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in 24 CFR part 16.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for amendment or correction of records appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

The Assistant Secretary for Public and Indian Housing collects information from a variety of sources, including from HUD, public housing agencies, state wage information collection agencies, other Federal and state agencies, law enforcement agencies, program participants, complainants, and other nongovernmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from the requirements of: subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2); and from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5).

[FR Doc. 93–16380 Filed 7–9–93; 8:45 am]
BILLING CODE 4210–32–M

federal register

Monday
July 12, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approval of Agreement Between Crow Indian Tribe and State of Montana; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[KOO160–93–35150]

Indian Gaming; Approval of Agreement Between the Crow Indian Tribe and the State of Montana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority, has approved the Agreement Between the Crow Indian Tribe and the State of Montana Concerning Class III Gaming, which was enacted on March 25, 1993.

DATES: This action is effective July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 30, 1993.

Ron Eden,

Assistant Secretary-Indian Affairs.

[FR Doc. 93–16461 Filed 7–9–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
July 12, 1993

Part V

Department of Defense

Department of the Army
Corps of Engineers

33 CFR Part 334
Danger Zone and Restricted Area Regulations; Rule

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Danger Zone and Restricted Area Regulations

AGENCY: Army Corps of Engineers, DoD.
ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending the regulations in 33 CFR part 334 to add procedural requirements used by the Corps in formulating, amending and repealing danger zone and restricted area regulations. The promulgation of these procedural type regulations will provide detailed direction to the Corps Divisions and Districts regarding danger zones and restricted areas and will replace some of the existing guidance in 33 CFR 209.200. We are also eliminating the designation "prohibited area" and redesignating those areas as restricted areas.

EFFECTIVE DATE: August 11, 1993.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C.1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending the regulations in 33 CFR part 334 by adding the procedures to be used by the Corps in formulating, amending and repealing danger zone and restricted area (DZ/RA) regulations.

On October 2, 1989, we published the proposed procedural changes to DZ/RA's in the notice of proposed rulemaking section of the **Federal Register** (54 FR 40572 *et al.*), with the comment period ending on November 1, 1989. We received comments from the State of North Carolina, Department of Environment, Health and Natural Resources. No other comments were received. We will address the comments submitted by the State of North Carolina and make appropriate changes, where noted.

We will first describe, in a very brief and general manner, the normal sequence of events that leads to an action on a DZ/RA by the Corps. That action is to establish a DZ/RA, amend an existing DZ/RA or to delete the DZ/RA, due to a specific need identified, normally by a local base commander. That need may have arisen due to the installation of new equipment; a change in operations or training methodology or for security concerns at an existing or new facility. The local base commander requests the Corps District Engineer having jurisdiction in that area, to take appropriate action to effect the desired change. After the District Engineer completes his/her review which may include public notices and public hearings, the matter is referred for further review through the Division Engineer and to Headquarters, U.S. Army Corps of Engineers, for final decision.

The following is a summary of the changes we are making in the DZ/RA regulations. Certain changes are made as proposed; other changes are made as a result of our further review of this matter and other changes are being made in response to the comments. In § 334.1, we are adding the purpose of this part as proposed; in § 334.2, we are adding the definitions of "restricted area" and "danger zone." As indicated in the definitions of danger zones and restricted areas, the areas may be closed to the public on a full time basis or on an intermittent basis. The time or schedule in months, days, and/or times of day may be specified, depending on the Government's planned operations in, or use of the area. The duration of the restriction or closure should not greatly exceed the actual time(s) that use of the area is required by the Government. The DZ/RA regulations may also specify certain activities that are not compatible with ongoing Government operations or activities and are not allowed within the area, e.g., anchoring, fishing, stopping, waterskiing, towing of underwater devices, etc., The "degree" of the restriction to be placed on the operation of vessels will be clearly stated in proposed rules and public notices issued by the Corps and will be directly related to the risks associated with the Government's activities within the area or the sensitivity of the Government property that is to be protected. In addition, it is the Corps policy that it will impose restrictions on the public's use of waterways sufficient to protect the interests of the Government and safety of the public while assuring the public of maximum use of the Nation's waters. This policy is added to § 334.3 *Special policies.* Concerning the potential for inconsistent decision-making on the DZ/RA regulations between the Corps Divisions and Districts, all final decisions to approve or disapprove the final regulations are made by the Director of Civil Works, Office of the Chief of Engineers, Washington, DC.

In § 334.3, we are re-promulgating special policies which concern the establishment of DZ/RA's. In accordance with the Corps statutory authority in the 33 U.S.C. 3, the authority to establish DZ/RA's must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. We are expanding on existing regulations in 33 CFR 209.200 that require the District Engineers to consult with the Regional Director, U.S. Fish and Wildlife Service whenever a proposed DZ/RA may affect fishing operations by requiring that all public notices for DZ/RA's be furnished to all parties on the District's regulatory program mailing list for that geographic area. That would include, but is not limited to posting of the public notice at the local post office or other appropriate public places in the vicinity of the proposed DZ/RA, State and local agencies. This would include the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the State agency responsible for fish and wildlife resources, the U.S. Senators and the Representatives for the area and navigational and fishery organizations in the area. In addition, the Corps considers the Government's proposed use of the area and any long term or permanent affects the proposed use may have on the fisheries in the area.

We have also considered the comment(s) that the establishment of DZ/RA's must comply with the Resource Consideration and Recovery Act (RCRA), and that proposed sites should not be viewed in isolation, consistent with the National Environmental Policy Act (NEPA). With regard to RCRA, the Agencies involved are responsible for compliance with that statute and it would be inappropriate and redundant for the Corps to require compliance through its regulations. Furthermore, we are satisfied that the inclusion of an in-depth review pursuant to 33 CFR part 320 and the preparation of an environmental assessment or environmental impact statement in accordance with NEPA will address this comment without duplicating the contents of existing Corps regulations.

It should be noted that Corps regulations 33 CFR 325.2(b)(2)(i) address the responsible agency requirements for complying with the Coastal Zone Management Act.

In response to a comment regarding responsibility for an area if a danger zone is removed and the area is opened up for public use, we are adding the

requirement to these regulations that in the event an Agency has requested the disestablishment of a danger zone, the responsible Agency named in the regulation, shall certify that the area is safe for return to the public use before the danger zone regulations are removed. The Agency shall be responsible for clean-up or removal of any materials that may be hazardous to the public before an area is disestablished. These procedures are added in § 334.5.

It was suggested that the Corps establish a schedule for review of all DZ/RA regulations to determine their continuing need. We have considered this suggestion but believe that it would add a considerable amount of paperwork and expense to the program and rarely achieve results that would not occur under the existing practice. The establishment of DZ/RA's are normally for an extended period of time and needed for the life of the Government facility. In practice, the closure of a base or other facility is well publicized and if the Corps is not contacted by the affected Agency, the Corps District would investigate on its own initiative to determine the continuing need for the area.

The term "prohibited area" is being deleted because the function of denying access to a defined area is also achieved by designating the area as a restricted area.

The term "Temporary, occasional or intermittent use" in § 334.3(c) was described in comments as lacking in clarity regarding what constitutes temporary, occasional or intermittent use. This is a seldom used authority for the District Engineers to allow minor, short term, non-scheduled and low risk activities to occur. These procedures are intended to authorize activities with minimal paperwork, delays and costs to the public. We are amending this section to allow events that will not occur in successive years nor exceed thirty days in duration. District Engineers will provide information to the Coast Guard and other Agencies at least 14 days, or with enough advance notification prior to the date of commencement of the planned activity, to allow time for publication of notices to mariners.

Notes

1. The U.S. Army Corps of Engineers has determined that this rule is not a major rule within the meaning of Executive Order 12291 and is in accordance with the exemption provided military functions.

2. These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. We do not believe that the establishment of these rules will have an impact on any small entities first because most of the procedures codified here are already agency policies and will not result in any increased regulatory burden on the public, including small businesses. In addition, although there may be minor impacts on private and commercial fisheries as well as vessel operations by controlling vessel access into certain water areas, the food fishing industry is specifically considered by the Corps in establishing these areas. Pursuant to these regulations, the authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. Finally, no reporting or record-keeping requirements are imposed on any small entity as the result of the establishment of a danger zone/restricted area. Therefore, we have determined that this rule will not have significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

Accordingly, we propose to amend part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; 33 U.S.C. 1 and 40 Stat. 892; 33 U.S.C. 3.

2. Section 334.1 *Purpose* is added as follows:

§ 334.1 Purpose.

The purpose of this part is to:

(a) Prescribe procedures for establishing, amending and disestablishing danger zones and restricted areas;

(b) List the specific danger zones and restricted areas and their boundaries; and

(c) Prescribe specific requirements, access limitations and controlled activities within the danger zones and restricted areas.

3. Section 334.2 *Definitions* is added as follows:

§ 334.2 Definitions.

(a) *Danger zone.* A defined water area (or areas) used for target practice, bombing, rocket firing or other especially hazardous operations, normally for the armed forces. The danger zones may be closed to the public on a full-time or intermittent basis, as stated in the regulations.

(b) *Restricted area.* A defined water area for the purpose of prohibiting or limiting public access to the area. Restricted areas generally provide security for Government property and/or protection to the public from the risks of damage or injury arising from the Government's use of that area.

4. Section 334.3 Special policies is added as follows:

§ 334.3 Special policies.

(a) *General.* The general regulatory policies stated in 33 CFR part 320 will be followed as appropriate. In addition, danger zone and restricted area regulations shall provide for public access to the area to the maximum extent practicable.

(b) *Food fishing industry.* The authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. Whenever the proposed establishment of a danger zone or restricted area may affect fishing operations, the District Engineer will consult with the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior and the Regional Director, National Marine Fisheries Service, National Oceanic & Atmospheric Administration (NOAA).

(c) *Temporary, occasional or intermittent use.* If the use of the water area is desired for a short period of time, not to exceed thirty days in duration, and that planned operations can be conducted safely without imposing unreasonable restrictions on navigation, and without promulgating restricted area regulations in accordance with the regulations in this section, applicants may be informed that formal regulations are not required. Activities of this type shall not reoccur more often than biennially (every other year), unless danger zone/restricted area rules are promulgated under this Part. Proper notices for mariners requesting that vessels avoid the area will be issued by the Agency requesting such use of the water area, or if appropriate, by the District Engineer, to all known interested persons. Copies will also be sent to appropriate State agencies, the Commandant, U.S. Coast Guard, Washington, DC 20590, and Director, Defense Mapping Agency, Hydrographic

Center, Washington, DC 20390, ATTN: Code NS 12. Notification to all parties and Agencies shall be made at least two weeks prior to the planned event, or earlier, if required for distribution of Local Notice to Mariners by the Coast Guard.

5. Section 334.4 *Establishment and amendment procedures* is added as follows:

§ 334.4 Establishment and amendment procedures.

(a) *Application.* Any request for the establishment, amendment or revocation of a danger zone or restricted area must contain sufficient information for the District Engineer to issue a public notice, and as a minimum must contain the following:

(1) Name, address and telephone number of requestor including the identity of the command and DoD facility and the identity of a point of contact with phone number.

(2) Name of waterway and if a small tributary, the name of a larger connecting waterbody.

(3) Name of closest city or town, county/parish and state.

(4) Location of proposed or existing danger zone or restricted area with a map showing the location, if possible.

(5) A brief statement of the need for the area, its intended use and detailed description of the times, dates and extent of restriction.

(b) *Public notice.* (1) The Corps will normally publish public notices and **Federal Register** documents concurrently. Upon receipt of a request for the establishment, amendment or revocation of a danger zone or restricted area, the District Engineer should forward a copy of the request with his/her recommendation, a copy of the draft public notice and a draft **Federal Register** document to the Office of the Chief of Engineers, ATTN: CECW–OR. The Chief of Engineers will publish the proposal in the **Federal Register** concurrent with the public notice issued by the District Engineer.

(2) *Content.* The public notice and **Federal Register** documents must include sufficient information to give a clear understanding of the proposed action and should include the following items of information:

(i) Applicable statutory authority or authorities; (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3)

(ii) A reasonable comment period. The public notice should fix a limiting date within which comments will be received, normally a period not less than 30 days after publication of the notice.

(iii) The address of the District Engineer as the recipient of any comments received.

(iv) The identity of the applicant/proponent;

(v) The name or title, address and telephone number of the Corps employee from whom additional information concerning the proposal may be obtained;

(vi) The location of the proposed activity accompanied by a map of sufficient detail to show the boundaries of the area(s) and its relationship to the surrounding area.

(3) *Distribution.* Public notice will be distributed in accordance with 33 CFR 325.3(d)(1). In addition to this general distribution, public notices will be sent to the following Agencies:

(i) The Federal Aviation Administration (FAA) where the use of airspace is involved.

(ii) The Commander, Service Force, U.S. Atlantic Fleet, if a proposed action involves a danger zone off the U.S. Atlantic coast.

(iii) Proposed danger zones on the U.S. Pacific coast must be coordinated with the applicable commands as follows:

Alaska, Oregon and Washington:
Commander, Naval Base, Seattle
California:
Commander, Naval Base, San Diego
Hawaii and Trust Territories:
Commander, Naval Base, Pearl Harbor

(c) *Public hearing.* The District Engineer may conduct a public hearing in accordance with 33 CFR part 327.

(d) *Environmental documentation.* The District Engineer shall prepare environmental documentation in accordance with appendix B to 33 CFR part 325.

(e) *District Engineer's recommendation.* After closure of the comment period, and upon completion of the District Engineer's review he/she shall forward the case through channels to the Office of the Chief of Engineers, ATTN: CECW–OR with a recommendation of whether or not the danger zone or restricted area regulation should be promulgated. The District Engineer shall include a copy of environmental documentation prepared in accordance with appendix B to 33 CFR part 325, the record of any public hearings, if held, a summary of any comments received and a response thereto, and a draft of the regulation as it is to appear in the **Federal Register**.

(f) *Final decision.* The Chief of Engineers will notify the District Engineer of the final decision to either approve or disapprove the regulations. The District Engineer will notify the applicant/proponent and publish a public notice of the final decision. Concurrent with issuance of the public notice the Office of the Chief of Engineers will publish the final decision in the **Federal Register** and either withdraw the proposed regulation or issue the final regulation, as appropriate. The final rule shall become effective no sooner than 30 days after publication in the **Federal Register** unless the Chief of Engineers finds that sufficient cause exists and publishes that rationale with the regulations.

6. Section 334.5 *Disestablishment of a danger zone* is added as follows:

§ 334.5 Disestablishment of a danger zone.

(a) Upon receipt of a request from any agency for the disestablishment of a danger zone, the District Engineer shall notify that agency of its responsibility for returning the area to a condition suitable for use by the public. The agency must either certify that it has not used the area for a purpose that requires cleanup or that it has removed all hazardous materials and munitions, before the Corps will disestablish the area. The agency will remain responsible for the enforcement of the danger zone regulations to prevent unauthorized entry into the area until the area is deemed safe for use by the public and the area is disestablished by the Corps.

(b) Upon receipt of the certification required in paragraph (a) of this section, the District shall forward the request for disestablishment of the danger zone through channels to CECW–OR, with its recommendations. Notice of proposed rulemaking and public procedures as outlined in § 334.4 are not normally required before publication of the final rule revoking a restricted area or danger zone regulation. The disestablishment/revocation of the danger zone or restricted area regulation removes a restriction on a waterway.

(7) Sections 334.80, 334.260, 334.400, 334.500, 334.540 and 334.560 are amended by revising the section headings by replacing "prohibited area" with "restricted area", to read as follows:

§ 334.80 Narragansett Bay, R.I.; restricted area.

* * * * *

§ 334.260 York River, Va.; naval restricted areas.

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§ 334.400 Atlantic Ocean south of entrance to Chesapeake Bay off Camp Pendleton, Virginia; naval restricted area.

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§ 334.500 St. Johns River, Fla. Ribault Bay; restricted area.

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§ 334.540 Banana River at Cape Canaveral Missile Test Annex, Fla.; restricted area.

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§ 334.560 Banana River at Patrick Air Force Base, Fla.; restricted area.

* * * * *

Stanley G. Genega,

Brigadier General, (P) U.S. Army, Director of Civil Works.

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Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.
Performance-Oriented Packaging Standards; Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 177 and 179

[Docket No. HM–181F, Notice No. 93–16]

RIN 2137–AC40

Performance-Oriented Packaging Standards; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing changes to certain provisions of the Hazardous Materials Regulations (HMR). The proposed changes are based on petitions for rulemaking and RSPA initiative. The intended effect of this action is to update the regulations, relax certain regulatory requirements, and reduce unnecessary economic burdens on industry without an adverse effect on safety.

DATES: Comments must be received by August 11, 1993.

ADDRESSES: Comments to this NPRM should be addressed to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the Docket (HM–181F) and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: (202) 366–5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Beth Romo or John Gale, telephone (202) 366–4488, Office of Hazardous Materials Standards, or Charles Hochman, Office of Hazardous Materials Technology (202) 366–4545, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule [Docket HM–181; 55 FR 52402], which comprehensively revised the HMR with respect to hazard communication, classification, and packaging requirements based on the United Nations (UN) Recommendations on the Transport of Dangerous Goods. A document responding to petitions for reconsideration and containing editorial and substantive revisions to the final rule was published on December 20, 1991 [56 FR 66124]. On October 1, 1992, under Dockets HM–181 and HM–189, RSPA issued editorial and technical corrections to the 1991 49 CFR parts 107–180. RSPA has received several petitions for rulemaking since the publication of the December 20, 1991 response to petitions for reconsideration. In addition, RSPA has identified other issues that merit public comment. This document proposes changes to the HMR based on either petitions for rulemaking or agency initiative. These proposed changes pertain primarily to requirements with a mandatory compliance date of October 1, 1993, as provided in the transitional provisions in § 171.14(b)(4). It is RSPA's goal to issue a final rule under Docket HM–181F prior to October 1, 1993; therefore, the comment period is limited to 30 days.

II. Summary of Petitions for Rulemaking

This summary addresses only those petitions which merit more extensive discussion because of their significance or general applicability. RSPA also has received other petitions, telephone calls, and letters requesting clarification of new requirements or minor revisions to the regulations. A discussion of these issues, and other proposed changes, is contained in the section-by-section review.

A. Petitions Requesting Revisions to Bulk Packaging Requirements for Poisonous by Inhalation Materials

The requirement to insulate bulk packagings for materials poisonous by inhalation which are also corrosive was the major concern of petitioners. Additionally, the petitions requested changes in various special provisions and a delay of the October 1, 1993 implementation date.

1. Revise Special Provisions B14 and T38 for Bulk Packagings Containing Materials That are Poisonous by Inhalation

Under the transitional provisions of § 171.14(b)(4), new packaging standards for materials which are poisonous by inhalation (referred to herein as PIH materials) must be met by October 1, 1993. This includes conformance to Special Provisions B14 and T38, which are assigned in Column 7 of the § 172.101 Hazardous Materials Table and contained in § 172.102. Special Provision B14 applies to all bulk packagings, except intermodal portable tanks; Special Provision T38 only applies to intermodal portable tanks. These special provisions read as follows:

B14—Each tank, except a multi-unit tank car tank, must be insulated with at least 100 mm (3.9 inches) of cork or other suitable insulation material of sufficient thickness that the overall thermal conductance at 15.5 °C (60 °F) is not more than 1.533 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. Insulation systems must not promote corrosion to steel when wet. Tank and jacket protective coatings are required. Additionally, all tank car tanks constructed after October 1, 1988 and tanks repaired after October 1, 1993, where the entire jacket is removed during repair, must have tank and jacket protective coatings. The jacket must be flashed around all openings so as to be weather tight.

T38—Each tank, except a multi-unit tank car tank, must be insulated with at least 100 mm (3.9 inches) of cork or other suitable insulation material of sufficient thickness that the overall thermal conductance at 15.5 °C (60 °F) is not more than 1.533 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. The exterior surface of a carbon steel tank and the interior surface of a carbon steel jacket must be given a protective coating. The jacket must be flashed around all openings so as to be weather tight.

It is important to note that the insulation system on bulk packagings for materials poisonous by inhalation serves two purposes. The first purpose is to offer accident damage protection (impact resistance), and the second is to provide the packaging with thermal protection in the event of a fire situation.

RSPA received one petition for rulemaking (P–1144) requesting an alternative to insulation requirements on bulk packagings containing materials that are both corrosive and poisonous by inhalation. This petitioner suggested that a proportional increase in container shell and head thicknesses would compensate for the puncture resistance provided by the insulation and protective jacket.

The petitioner maintained that the § 172.101 Hazardous Material Table lists 49 combination corrosive/poisonous by inhalation materials, and noted a potential problem with undetected corrosion under an insulation blanket when transporting these combination

materials. Certain of these materials, such as chlorosulfonic acid or dimethyl sulfate, exhibit higher corrosivity when diluted with water. If such a material gets under the insulation, it can form a highly corrosive weak sulfuric acid if the integrity of the jacket flashing around the nozzles is breached by mechanical or chemical attack. The petitioner also described the difficulty in detecting a failure of the weather-tightness of flashing. This petitioner claimed that a 50% increase in tank shell and head thickness, especially with stainless steel, provides equal or greater product containment than current insulation requirements. A series of puncture tests conducted on bare and insulated ISO tank heads by the Association of American Railroads Transportation Test Center were provided as substantiating evidence. These tests concluded that a ⅜" thick stainless steel head was more resistant to puncture than the combination of a ¼" thick stainless steel head covered with 4¼" fiber glass insulation (in accordance with Special Provision B14) and a 20 gage aluminum jacket. As a result, the petitioner requested that two new special provisions, a B note and a T note, be assigned to these combination materials, allowing non-insulated bulk containers if the container shell and head thickness are increased a proportionate amount to compensate for puncture resistance provided by the insulation and protective jacket.

Another petitioner, the Compressed Gas Association (CGA) (P–1155), focused on insulation requirements for cargo tanks containing sulfur dioxide. This petitioner asked that: (1) Special Provision B14 be removed for bulk shipments of liquefied sulfur dioxide; (2) existing liquefied sulfur dioxide cargo tanks be grandfathered; or (3) RSPA delay implementation of the B14 insulation requirements for at least two years to provide adequate time to convert or replace existing cargo tanks. Alternatively, CGA asked RSPA to clarify if it is possible to leave an opening in the insulation for valves and fittings to provide clearance where there is insufficient clearance for flange bolts and valve handle movement.

The CGA claimed that currently all sulfur dioxide cargo tanks are built to MC 330 or MC 331 specifications, but are not insulated and are not designed for insulation. It asserted that, to comply with B14 requirements, nozzles, piping, valving and guards must be retrofitted or removed and replaced to accommodate four inches of insulation and weather-tight jacket flashing.

The petitioner cited the significant expense and insufficient time to retrofit all tanks by October 1, 1993, as justification for adoption of its recommendations. The CGA claimed that insulation will add about 2500 lbs to the tank, thus causing a 5% increase in the number of shipments and a proportionate increase in risk. It also alleged that insulation prevents external inspection of a tank, thus requiring more frequent internal inspections and resulting in higher operating costs and risk of release. The CGA was not aware of any puncture-related accidents in transporting sulfur dioxide.

RSPA has funded an on-going multi-year research effort at Sandia National Laboratory to study bulk packagings used to transport PIH materials. This effort is a systematic approach to development of specific accident survival performance criteria for PIH materials transported in bulk quantities. Except for radioactive materials, there are currently no standardized accident performance requirements for packages containing bulk quantities of hazardous materials in transport. Nor are there any requirements on the permitted leakage of package contents if an accident occurs.

The criteria developed in this effort will be supported by assessment and analyses of the existing regulatory structure, accident environments and survivability, release scenarios and release consequences. The final result will be accident survivability performance criteria, performance tests, pass/fail criteria, and specific acceptable designs for packaging of bulk quantities of PIH materials. It is anticipated that the contractor will finish work and submit a draft final report on this project to RSPA within six months.

Although RSPA believes that these petitions deserve further consideration, it would be premature to propose any major regulatory changes to the bulk packaging requirements until the final report on this research project is completed. In the interim, RSPA proposes to amend Special Provision B14 to delay compliance with this provision until October 1, 1994, for bulk packagings containing PIH materials which, when in contact with moisture, become highly corrosive and could cause corrosion under an insulation blanket.

2. Revise the Insulation Requirements in Special Provisions B14 To Exclude Tank Cars

The HMR requires shippers of PIH liquids to use packagings authorized in § 173.244. In addition, nearly all of these materials are assigned Special Provision B14, as well as either Special Provision B72 (for Hazard Zone A liquid materials) or Special Provision B74 (for Hazard Zone B liquid materials). As a result, only two tank specifications (i.e., DOT 105J300W and 105J300ALW tank cars) are authorized for these PIH liquids.

For example, sulfuric acid, fuming, greater than 30 percent free sulfur trioxide is assigned § 173.244 for bulk packaging authorizations. This section lists all DOT Class pressure tank cars (i.e., DOT 105, 109, 112, and 114 tank cars). The entry for sulfuric acid, fuming also is assigned Special Provisions B9 (no bottom outlets), B14 (requiring insulation), and B74 (thermally protected DOT 105J, 112J, 112T, 114J and 114T pressure tank cars with tank test pressures ≥300 psi.) as additional requirements. Class DOT 112 and 114 tank cars do not conform to Special Provision B14 because, prior to Docket HM–181, they were defined as non-insulated pressure tank cars. Class DOT 105 tank cars are defined as insulated pressure tank cars which conform to Special Provision B14. Therefore, based on the bulk packaging authorization and the special provisions, the only existing tank cars authorized for sulfuric acid, fuming are DOT 105J300W and 105J300ALW.

Based on recent requests for exceptions from the regulations (including requests for special approval) and FRA research, RSPA and FRA believe there is no need for a PIH packaging to have both a thermal protection system and an insulation system. As mentioned earlier, the purpose of applying an insulation system on tank cars was to offer accident damage protection and thermal protection in an accident or fire situation. Accident damage protection is provided by the use of an 11 gauge metal jacket and head shields on DOT 105S tank cars and DOT 112J and 114J tank cars. The metal jacket and head shields on these tank cars blunt the impacting forces from couplers, wheels, track, and infrastructures along the carrier's right-of-way that may result from an accident. Also, according to FRA research, this blunting effect is directly proportional to the thickness of the tank jacket or head shield and is effective in preventing tank punctures. Increasing the jacket thickness, or the tank head thickness, does increase the puncture resistance of the tank, but increasing the jacket thickness produces the larger effect for the same amount of added steel (see Coltman, M. & Hazel, M., Jr. (1992), Chlorine Tank Car Puncture Resistance Evaluation (DOT/FRA/ORD–92–11) Washington, DC: Federal Railroad Administration (NTIS DOT/FRA/ORD–92–11)). Fire protection

for these materials is provided by a jacketed insulation system, such as required for cargo tanks, portable tanks and DOT 105 tank cars and, to a greater extent, by a thermal protection system, such as required on DOT 105J, 112J and 114J tank cars. Below is a summary of the accident performance safeguards of DOT specification tank cars.

SUMMARY OF TANK CAR ACCIDENT PERFORMANCE SAFEGUARDS

Class	Head shields	Insulation	Thermal protection	Tank jacket	Large capacity relief valve
112/114 A					
112/114 S	x				
112/114 T	x		x		x
112/114 J	x		x	x	x
105 A		x		x	
105 S	x	x		x	
105 J	x	x	x	x	x

In this proposed rule, RSPA first is proposing to exclude tank cars from Special Provision B14. In conjunction with this proposal, RSPA is proposing to amend Special Provision B74 to authorize: (1) insulated, head shield equipped, Class DOT 105S tank cars; and, (2) non-insulated (or insulated), but thermally protected, head shield equipped, Class DOT 112J, and 114J tank cars. The proposed rule does not authorize DOT 105A, 112/114A, 112/114S, or 112/114T tank cars since these tank cars are not afforded the protection provided by a metal jacket or head shields.

3. Delay October 1, 1993 Implementation of New Packaging Standards for Tank Cars Containing PIH Materials

Any delay of the mandatory compliance date for packagings containing PIH materials will not apply to tank car shipments. Tank cars must conform to the new requirements by October 1, 1993. The continued use of specific existing tank cars will be considered, if it can be demonstrated (i.e., through the exemption process) that those existing tank cars provide an equivalent level of safety to DOT 105S, 112J, or 114J tank cars. Factors that will be considered include the type of material used in the construction of the tank, any increase in the overall shell and head thickness, the use of insulation or thermal protection, the thickness of any tank jacket, the use of fitting protection, and the vapor pressure to burst pressure ratio after subjecting the tank car and the commodity to a 100-minute pool fire. Fire modelling is acceptable.

4. Allow Chlorine (and Other Non-Flammable Gases) Tank Cars To Meet Class DOT 105S Requirements Rather Than Class DOT 105J Requirements.

A petition from the Chlorine Institute (P–1159) indirectly addressed Special Provision B14, but its major area of concern was Note 30 in § 173.314(c), which requires Class DOT 105 tank cars built after September 30, 1991, to meet 105J requirements. In order to meet the "J" requirement, the car must have a thermal protection system that conforms to § 179.105–4 and a tank head puncture resistance system conforming to § 179.105–5. The petitioner asked RSPA to revise Note 30 to allow tank cars containing chlorine and other non-flammable gases to conform to the requirements of DOT Class 105S rather than the 105J requirements. The Class DOT 105S tank car requirements specify only a tank head puncture resistance system. The petitioner also requested, for chlorine, the replacement of Special Provision B14 with a new provision allowing the use of certain types of insulation for chlorine tank cars.

As noted earlier, RSPA is proposing to exclude tank cars from the B14 requirement. In 1981, a joint effort between the Chlorine Institute and the Railway Progress Institute-Association of American Railroads Tank Car Safety Research and Test Project resulted in the development of an insulation system to protect a chlorine tank car involved in a fire. This insulation system maintains back plate (inside surface of the tank shell) temperatures below 250.56 °C (483 °F). Since 1985, chlorine tank cars have been equipped with full head shields and an insulation system that meets the above requirements (the system consists of two inches of ceramic fiber covered by two inches of glass fiber encased in an eleven gauge steel jacket). The insulation system was incorporated into the HMR under Docket HM–166U. After reviewing the Chlorine Institute's petition, RSPA and FRA have concluded that the current system is acceptable for the transportation of chlorine. The current system nearly conforms to the "J" requirement with the exception that chlorine tank cars do not have a thermal protection system applied to the discontinuities on the tank. Such discontinuities may provide a heat path into the commodity, but the overall heat input would be rather low, especially with the chlorine insulation system. Therefore, it is unlikely that the car will rupture in a 100-minute pool fire environment.

RSPA is proposing to amend § 173.314(c) to require, for all commodities subject to Note 30, that tank cars built after September 30, 1991, must conform to the requirements of Class DOT 105S. For chlorine, the note would further specify insulation requirements adopted under Docket HM–166U.

In an advance notice of proposed rulemaking issued under Docket HM–175A (Specifications for Tank Cars, 55 FR 20252, May 15, 1990), comments were solicited on the use of full head shields and thermal protection for new and existing tank cars transporting compressed gases, materials that meet the criteria of poisonous by inhalation, and reactive materials on tank cars constructed from aluminum or nickel plate. The interested reader is referred to Docket HM–175A for additional information.

B. Petitions Requesting Revisions to Non-Bulk Packaging Requirements for PIH Materials

RSPA received several petitions requesting revisions to non-bulk packaging requirements for materials poisonous by inhalation. These requests included changes to current minimum

thickness and cushioning requirements, additional packaging authorizations, and delay of the October 1, 1993 implementation date.

Authorize UN 1H1 Drums Used as Inner Packagings and UN 6HA1 Composite Drums Inside Metal Packagings for Hazard Zone A Materials

In the December 21, 1990 final rule, RSPA stated in the preamble that the use of 1H1 drums as inner packagings and 6HA1 composite packagings (plastic receptacles within steel drums) was authorized for Hazard Zone A materials. However, the regulatory text of § 173.226 did not include provisions for use of these packagings. Therefore, § 173.226(b) would be revised to include these packagings.

2. Use of Plastic Drums as Single Packagings for Materials Poisonous by Inhalation in Hazard Zones A and B

RSPA received one petition (P–1163) requesting authorization for use of plastic drums as single packagings for PIH materials in Hazard Zones A and B, if in dedicated transportation systems (i.e., a shipment from one origin to one destination where the shipper loads the material, blocks and braces the drums, and seals the transport vehicle). Another petitioner (P–1166) submitted a similar request, but limited to Hazard Zone B materials. The first petitioner (P–1163) noted a current unavailability of cost-effective double-drum packaging and cited the safety record of poison inhalation hazard materials packaged in DOT 34 and 2S/6D plastic packagings. Both petitioners claimed that a 110-gallon drum is the smallest commercially-available outer packaging meeting cushioning requirements in §§ 173.226(b)(5) and 173.227(b)(4), which require a minimum of two inches of cushioning material around the body of the inner drum and at least three inches on the top and bottom, between the inner and outer drum. Using a 110-gallon drum would significantly increase operational costs and create substantial reuse and disposal problems, according to one petitioner.

The other petitioner (P–1166) also noted potential difficulties and the additional expense of using 110-gallon drums. Claiming an excellent safety record in shipping materials poisonous by inhalation in this type of packaging, this petitioner requested that RSPA authorize an 85-gallon drum without minimum cushioning requirements.

RSPA does not agree with the petitioner's request (P–1163) to authorize plastic drums as single packagings for poison inhalation hazard materials in Hazard Zone A, even if in a dedicated transportation system, because single plastic drums do not provide an equivalent level of safety to double drums for Hazard Zone A PIH materials. However, RSPA is proposing plastic drums as single packagings for less toxic PIH materials in Hazard Zone B under highly-controlled conditions. Therefore, § 173.227(c) would be revised to include 1H1 plastic drums in the array of authorized single packagings in dedicated transportation systems.

In addition, based on a review of technical data concerning minimum cushioning thickness requirements between inner and outer drums, RSPA is proposing to remove the minimum cushioning thickness requirement in §§ 173.226 and 173.227.

3. Revise Certain Minimum Thickness Requirements for 1A1 and 6HA1 Drums

One petitioner (P–1166) asked RSPA to change the minimum thickness requirement for 1A1 drums in § 173.226(b)(4) for consistency with § 173.227(b)(3). This would change the minimum thickness for packagings over 120 L from 1.7 mm to 1.35 mm. For packagings under 120 L, the minimum thickness would be changed from 1.3 mm to 0.69 mm or 1.08 mm, depending on the size of the packaging. The petitioner also requested that the minimum thickness requirement for 6HA1 drums in § 173.227(b)(3)(i)(D) be changed to 0.69 mm (0.027 inch). This change would allow a 6HA1 drum used as an inner packaging to have the same required thickness as a 1A1 drum used as an inner packaging. According to this petitioner, both changes are necessary to ensure availability from normal commercial sources.

RSPA partially agrees with this petition and is proposing to revise § 173.227(b)(3)(i)(D) to require a minimum thickness of 0.70 mm (0.027 inch) for 6HA1 drums used as inner packaging. Because the 6HA1 is a two-part packaging, with the plastic inner packaging providing additional containment and structural support, there is no reason why the steel portion of it should be thicker than a single steel drum used in the same service.

The second request, to change the minimum thickness requirements in § 173.226(b)(4) for inner steel drums, for consistency with § 173.227(b)(3), is denied. There is no need for complete consistency between §§ 173.226 and 173.227. Section 173.226 is for materials which are more hazardous than the Hazard Zone B materials covered by § 173.227. A higher packaging integrity should be maintained for Hazard Zone A materials.

4. Delay Mandatory Compliance Date for Ethylene Oxide Packaging Requirements

One petitioner (P–1160), representing two producers of drummed ethylene oxide, requested a one-year delay in the October 1, 1993 mandatory compliance date for new ethylene oxide packaging requirements to facilitate reconsideration of the hazard classification of this material. The petitioner claimed that test data filed with RSPA indicates the toxicity of ethylene oxide to be far less than originally believed. The petitioner noted that the U.S. has proposed to make certain changes in the UN Recommendations for ethylene oxide mixtures. These proposals were adopted by the UN Committee of Experts in its December 1992 session. The petitioner believed this data may lead to a new rulemaking action revising the classification of ethylene oxide, and suggested delaying the October 1, 1993, packaging compliance date for ethylene oxide for one year to allow time for completion of any reclassification efforts. RSPA is not granting a one-year delay in compliance with new ethylene oxide packaging requirements. Packagings that meet the new requirements for ethylene oxide can be obtained, and the use of such packagings is encouraged. RSPA believes that the hazards of ethylene oxide warrant the level of packaging specified in § 173.323, whether the material is classified as poisonous by inhalation or flammable.

C. Other Petitions of Significance or General Applicability

In addition to petitions addressing packaging requirements for materials poisonous by inhalation, RSPA has received petitions and correspondence on various other issues such as classification changes for certain PIH materials, a Class 9 placarding exception, confusion over lithium battery provisions, and separation and segregation requirements for highway and rail shipments. Other miscellaneous issues that require clarification or correction, but do not merit a detailed discussion, are addressed in the section-by-section review.

1. Revisions to Classification and Hazard Zones for Certain Materials Poisonous by Inhalation

Based on acute inhalation toxicity data and related information obtained by RSPA, the Hazardous Materials Table would be amended to change the hazard zone for a number of materials poisonous by inhalation, and to remove or to add a number of materials to the

list of materials poisonous by inhalation. For certain materials, this revision would impose more stringent hazard communication and packaging requirements. Because hazard communication requirements are already in effect for materials poisonous by inhalation and new packaging requirements become mandatory October 1, 1993, immediate conformance to more stringent requirements could create a hardship. RSPA is aware of this potential problem and could delay the mandatory compliance date for those materials poisonous by inhalation for which a change in the hazard zone would result in more stringent requirements.

Those materials and a description of the data on which these proposals are based are listed as follows:

a. Boron trifluoride (UN1741). This material is a gas at 20°C and is currently listed as a Hazard Zone A inhalation hazard. The acute inhalation toxicity data used to designate boron trifluoride as a material poisonous by inhalation was: Rat; LCLo:20 ppm/7H (hours). The data was obtained from the Registry of Toxic Effects of Chemical Substances (RTECS) (RTECS: ED1925000). This value, converted to one hour, was approximately: Rat; LCLo:60 ppm/1H, and estimated to fall within Hazard Zone A. The Compressed Gas Association (CGA) submitted data indicating that boron trichloride is less toxic than previously believed (rat; LC50:2051 ppm/1H) and falls within Hazard Zone C. RSPA agrees with the CGA data and is proposing to identify boron trifluoride as a Hazard Zone C material poisonous by inhalation.

b. Carbonyl sulfide (UN2204). This material is a gas at 20°C and is currently listed as a Hazard Zone B inhalation hazard. The acute inhalation toxicity data used to designate carbonyl sulfide as material poisonous by inhalation was: Mouse; LCLo:1200 ppm/35M (minutes). The data was obtained from the RTECS (RTECS: FG6400000). This value, converted to one hour, was approximately: Mouse; LCLo:700 ppm/1H, and estimated to fall within Hazard Zone B. The CGA submitted data indicating that carbonyl sulfide is less toxic than previously believed (rat; LC50:1700 ppm/1H) and falls within Hazard Zone C. RSPA agrees with the CGA data and is proposing to identify carbonyl sulfide as a Hazard Zone C inhalation hazard.

c. *Chlorine trifluoride (UN1749).* This material is a gas at 20°C and is currently listed as a Hazard Zone A inhalation hazard. The acute inhalation toxicity data used to designate chlorine trifluoride as material poisonous by inhalation was: Human; LCLo:50 ppm. This value was estimated to be for a one hour exposure and fall within Hazard Zone A. Also, data on rats was available: Rat; LCLo:400 ppm/4H. This value, converted to one hour, was approximately: Rat; LCLo:200 ppm/1H, and estimated to fall within Hazard Zone B. The data was obtained from the RTECS (RTECS: FO2800000). The CGA submitted data indicating that chlorine trifluoride is less toxic than previously thought (rat; LC50:299 ppm/1H), and falls within Hazard Zone B. RSPA agrees with the CGA data and is proposing to identify chlorine trifluoride as a Hazard Zone B inhalation hazard.

d. Ethylene oxide, pure or with nitrogen (UN1040). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate ethylene oxide as a material poisonous by inhalation was: Rat; LC50:800 ppm/4H. The data was obtained from the RTECS (RTECS: KX2450000). This value, converted to one hour, was: Rat; LC50:1600 ppm/1H. Copies of two recent studies on the acute vapor inhalation toxicity of ethylene oxide in rats were submitted to RSPA. One study was a one-hour exposure; the other study was a four-hour exposure. The one-hour LC50 values were: 5748 ppm for males, 4439 ppm for females, and 5029 ppm for the combined sexes. The four-hour LC50 values were: 1972 ppm for males, 1537 ppm for females, and 1741 ppm for the combined sexes. The four-hour values, converted to one hour, gave the following one-hour LC50 values: 3944 ppm for males, 3074 ppm for females, and 3482 ppm for the combined sexes. Data from these studies indicate that ethylene oxide is less toxic than previously believed and falls within Hazard Zone D. RSPA agrees with this data and is proposing to identify ethylene oxide as a Hazard Zone D inhalation hazard.

e. Hydrogen chloride, anhydrous (UN1050). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate hydrogen chloride as a material poisonous by inhalation was: Rat; LC50:4701 ppm/30M. The data was obtained from the RTECS (RTECS: MW9610000). This value, converted to one hour, was approximately: Rat; LC50:2350 ppm/1H, and falls within Hazard Zone C. The CGA submitted data indicating that hydrogen chloride is less toxic than previously believed (rat; LC50:3120 ppm/1H), and falls within Hazard Zone D. RSPA agrees with the data and has proposed to identify hydrogen chloride, anhydrous as a Hazard Zone D inhalation hazard.

f. Hydrogen chloride, refrigerated liquid (UN2186). The data that applies to Hydrogen chloride, anhydrous (UN1050) applies to this material. Therefore, RSPA is proposing to identify hydrogen chloride, refrigerated liquid as a Hazard Zone D.

g. Hydrogen fluoride, anhydrous (UN1052). This material is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate hydrogen fluoride as material poisonous by inhalation was: Rat; LC50:1276 ppm/1H. The data was obtained from the RTECS (RTECS: MW7875000). The CGA submitted data indicating that hydrogen fluoride is more toxic than previously thought (rat; LC50:976 ppm/1H), and falls within Hazard Zone B. RSPA agrees with the CGA data and, therefore, has proposed to identify hydrogen fluoride, anhydrous as a Hazard Zone B inhalation hazard.

h. Hydrogen iodide, anhydrous (UN2197). This material is a gas at 20°C and is currently identified as a Division 2.2 material; however, in the UN Recommendations (seventh revised edition), it is classed as a toxic gas (Class 2, Division 2.3). The RTECS and other sources did not list any acute inhalation toxicity data for hydrogen iodide (RTECS: MW3760000). The CGA submitted data indicating that hydrogen iodide is a gas poisonous by inhalation (rat: LC50:2860 ppm/1H (estimated)), and falls within Hazard Zone C. The CGA estimated the toxicity of hydrogen iodide by analogy with the toxicity of hydrogen bromide (rat; LC50:2860 ppm/1H) (RTECS: MW3850000; LC50 rounded up). The estimated toxicity of this material meets criteria in the HMR for a gas poisonous by inhalation (Class 2, Division 2.3) in Hazard Zone C. Anyone having test data on the acute inhalation toxicity of hydrogen iodide is encouraged to submit the data to RSPA.

i. Methyl bromide (UN1062). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate methyl bromide as material poisonous by inhalation was: Rat; LC50:302 ppm/8H. The data was obtained from the RTECS (RTECS: PA4900000). This value, converted to one hour, was approximately: Rat; LC50:1007 ppm/1H. The CGA submitted data that was based on a recalculation of the data from the RTECS, indicating that methyl bromide is more toxic than previously believed (rat; LC50:850 ppm/1H), and falls within Hazard Zone B. RSPA agrees with the CGA calculation

and is proposing to identify methyl bromide as a Hazard Zone B inhalation hazard.

j. Methyl isothiocyanate (UN2477). This material is a solid at 20°C, with a melting point of 35–36°C. It readily sublimes at room temperature and is treated as a liquid under the HMR. The acute inhalation toxicity data used to designate methyl isothiocyanate as material poisonous by inhalation, Hazard Zone A, was: Rat; LC50:20 ppm/1H. This data was obtained from information on file for a Special Approval that RSPA had issued. The RTECS and other sources did not list any acute inhalation toxicity data for methyl isothiocyanate (RTECS: PA9625000). A copy of a study on the acute inhalation toxicity of methyl isothiocyanate in rats for a one hour exposure was submitted to RSPA. The data indicate that methyl isothiocyanate is less toxic than previously believed (rat; LC50:635 ppm/1H), and falls within Hazard Zone B. RSPA agrees with this data and is proposing to identify methyl isothiocyanate as a Hazard Zone B inhalation hazard.

k. Methyl mercaptan (UN1064). This material is a gas at 20°C and is currently identified as a Hazard Zone B inhalation hazard. The acute inhalation toxicity data used to designate methyl mercaptan as material poisonous by inhalation was: Rat; LC50:675 ppm. This value was estimated to be for a one hour exposure and fall within Hazard Zone B. The data was obtained from the RTECS (RTECS: PB4375000). The CGA reviewed the RTECS data and found that the exposure time was four hours. The value, converted to one hour, was: Rat; LC50:1350 ppm/1H. This information indicates that methyl mercaptan is less toxic than previously believed and falls within Hazard Zone C. RSPA agrees with the data and is proposing to identify methyl mercaptan as a Hazard Zone C inhalation hazard.

l. Methylamine, anhydrous (UN1061). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate methylamine as a material poisonous by inhalation was: Mouse; LC50:1889 ppm/2H (converted from: LC50:2400 mg/m^3/2H). The data was obtained from the RTECS (RTECS: PF6300000). This value, converted to one hour, was approximately: Rat; LC50:2523 ppm/1H. A copy of a study on the acute inhalation toxicity of methylamine in rats for a one-hour exposure was submitted to RSPA. The data indicated that methylamine is less toxic than previously thought (rat; LC50:7110 ppm/1H), and does not meet criteria in the HMR to be classified as a gas poisonous by inhalation (Class 2, Division 2.3). RSPA agrees with the data. Therefore, the hazard class and division assigned to methylamine, anhydrous would be changed from a gas poisonous by inhalation (Class 2, Division 2.3) to a flammable gas (Class 2, Division 2.1).

m. Nitric oxide (UN1660). This material is a gas at 20°C and is currently identified as Hazard Zone B inhalation hazard. The acute inhalation toxicity data used to designate nitric oxide as material poisonous by inhalation was: Rat; LC50:870 ppm (converted from: Rat; LC50:1068 mg/m^3). The data was obtained from the RTECS (RTECS: QX0525000). The CGA submitted data indicating that nitric oxide is a gas poisonous by inhalation (rat; LC50:115 ppm/1H (estimated)) and falls within Hazard Zone A. The CGA estimated the acute inhalation toxicity of nitric oxide by analogy with the toxicity of nitrogen dioxide (rat; LC50:115 ppm/1H) (CGA data); RTECS data (RTECS: QW9800000): Rat; LC50: 88 ppm/4H). RSPA agrees with the CGA. Therefore, RSPA is proposing to identify nitric oxide as a Hazard Zone A inhalation hazard.

n. Nitric oxide and dinitrogen tetroxide mixtures (Nitric oxide and nitrogen dioxide mixtures) (UN1975). This material is a gas at 20°C and is currently identified as a Hazard Zone B inhalation hazard. The acute inhalation toxicity of this material is not "fixed" and depends on the concentration of nitric oxide and dinitrogen tetroxide in each mixture. The data used to designate the mixtures as material poisonous by inhalation was based on each component of the mixture. The acute inhalation toxicity for nitric oxide was: Rat; LC50: 870 ppm (RTECS: QX0525000) and for dinitrogen tetroxide was: Rat; LC50:88 ppm/4H (RTECS: QW9800000), which, converted to one hour, was: Rat; LC50:176 ppm/1H. Based on acute inhalation toxicity data submitted by the CGA on nitric oxide (rat; LC50:115 ppm/1H (estimated)) and nitrogen dioxide (rat; LC50:115 ppm/1H), the mixtures are more toxic than previously thought and fall within Hazard Zone A. RSPA agrees with the CGA and is proposing to identify this material as a Hazard Zone A inhalation hazard.

o. Perchloryl fluoride (UN3083). This material is a gas at 20°C and is currently identified as a Hazard Zone C inhalation hazard. The acute inhalation toxicity data used to designate perchloryl fluoride as a material poisonous by inhalation was: Rat; LCLo:2000 ppm/40M. The data was obtained from the RTECS (RTECS: SD1925000). This value, converted to one hour, was approximately: Rat; LCLo:1333 ppm/1H and estimated to fall within Hazard Zone C. The CGA submitted data indicating that perchloryl fluoride is more toxic than previously thought (Rat; LC50:770 ppm/1H, which was converted from: Rat; LC50:385 ppm/4H), and falls within Hazard Zone B. RSPA agrees with the CGA data and, therefore, is proposing to identify perchloryl fluoride as a Hazard Zone B inhalation hazard.

p. Silicon tetrafluoride (UN1859). This material is a gas at 20°C and is currently identified as a Hazard Zone D inhalation hazard. The RTECS and other sources did not list any acute inhalation toxicity data for silicon tetrafluoride (RTECS: VW2327000). However, the material was classed as a poisonous gas in the UN Recommendations. Therefore, under Docket HM–181, silicon tetrafluoride was classed as a gas poisonous by inhalation (Class 2, Division 2.3) and estimated to fall within Hazard Zone D. The CGA submitted data indicating that silicon tetrafluoride is more toxic than was estimated (mouse; LC50:450 ppm/1H) and falls within Hazard Zone B. RSPA agrees with the CGA data and, therefore, is proposing to identify silicon tetrafluoride as a Hazard Zone B inhalation hazard.

q. Thionyl chloride (UN1836). This material is a liquid at 20°C and is currently identified as a Hazard Zone B inhalation hazard. The acute inhalation toxicity data used to designate thionyl chloride as material poisonous by inhalation was: Rat; LC50:500 ppm/1H, and falls within Hazard Zone B. The data was obtained from the RTECS (RTECS: XM5151000). Copies of two studies on the acute inhalation toxicity of thionyl chloride in rats were submitted to RSPA. One study was a one hour exposure; the other study was a four hour exposure. The one hour value was approximately: Rat; LC50:1274 ppm/1H. The four hour value was: Rat; LC5 0:558 ppm/4H. The four hour value, converted to one hour, was: Rat; LC50:1176 ppm/1H. Data from these studies indicate that thionyl chloride is less toxic than previously thought. RSPA agrees with the data and is proposing to remove thionyl chloride from the list of materials poisonous by inhalation.

r. Trifluoroacetyl chloride (UN3057). This material is a gas at 20°C and is currently classified as a Division 2.2 material. In the UN Recommendations it is classed as a toxic gas (Division 2.3). The RTECS and other sources did not list any acute inhalation toxicity data for

trifluorochloroacetyl chloride. Data was submitted to RSPA indicating that the acute inhalation toxicity of trichloroacetyl chloride is as follows: Rat; LC50:>200 ppm but <1000 ppm/1H. Data was obtained from a four hour test, as follows: Rat; LC50:78 ppm/4H. The value, converted to one hour, was: Rat; LC50:156 ppm/1H. However, a limit test conducted on ten rats (5 male and 5 female) indicated that trifluoroacetyl chloride is not as toxic for a shorter exposure time. The rats were exposed to 208 ppm of trifluoroacetyl chloride for one hour. None of the rats died during the exposure or the 14-day post-exposure observation period. RSPA agrees with the data and concludes that trifluoroacetyl chloride is a material poisonous by inhalation and falls within Hazard Zone B.

s. Trifluorochloroethylene, inhibited, R1113 (UN1082). This material is a gas at 20°C and is currently classified as a Division 2.1 material. Acute inhalation toxicity data for trifluorochloroethylene was listed in the RTECS (RTECS: KV0505000), as follows: Rat; LC50:1000 ppm/4H. The value, converted to one hour, was: Rat; LC50:2000 ppm/1H, indicating that trifluorochloroethylene is a material poisonous by inhalation and falls within Hazard Zone C. RSPA agrees with this data and is proposing to identify trifluorochloroethylene, inhibited, as Hazard Zone C inhalation hazard.

2. Reinstate the Placarding Requirement for Class 9 Materials

In the October 1, 1992 revisions under Docket HM–181, RSPA provided a domestic exception from placarding for Class 9 materials. This exception was based on RSPA's agreement with petitions and comments stating that the Class 9 placard is unnecessary and unduly burdensome in domestic commerce. RSPA received three petitions for reconsideration in response to this action, submitted by the Chemical Waste Transportation Institute (CWTI), the Public Utilities Commission of Ohio (PUCO), and the State of Idaho. A subsequent letter was received from the Conference on Safe Transportation of Hazardous Articles (COSTHA) stating its opposition to the three petitions for reconsideration. PUCO promptly submitted a rebuttal comment to the COSTHA letter, claiming that petitioners opposing the Class 9 placarding exception were never provided evidence justifying the placarding exception nor were they offered an opportunity to comment prior to adoption of the exception.

The three petitioners requesting reconsideration of the domestic exception from Class 9 placarding requirements stated that the benefits of the Class 9 placards to emergency responders and enforcement personnel outweigh the regulatory burden on industry. The State of Idaho maintained that emergency responders and enforcement personnel need to be aware of the presence of potential health and environmental hazards. CWTI and PUCO claimed that exempting offerors and carriers from additional regulatory burdens, such as registration and fees, routing, permitting, commercial drivers' license (CDL) hazardous materials endorsement, and drug and alcohol testing requirements, does not promote public safety. CWTI suggested that "substantive negative outcomes will result from the abandonment of the Class 9 placard for domestic shipments."

Both PUCO and CWTI suggested narrowing the Class 9 placarding exception. PUCO emphasized that Class 9 hazardous wastes and hazardous substances should not be excepted from placarding requirements. CWTI thought that emergency responders should be consulted about the need for a Class 9 placard. It urged RSPA to open a docket before the October 1, 1994 placarding compliance date to consider a reversal of the Class 9 placarding exception and to solicit comments on this issue.

COSTHA stated that the minimal enhancement of safety does not justify the operational and administrative costs that will be incurred if the Class 9 placarding requirement is reinstated. Furthermore, COSTHA maintained that CWTI and PUCO did not provide any new evidence to support their claims that the Class 9 placard is necessary in domestic transportation. In conclusion, COSTHA urged RSPA to handle any further discussion of the Class 9 placarding exception in a rulemaking action under Docket HM–206.

RSPA continues to believe that the Class 9 placard is unnecessary and unduly burdensome in domestic commerce and, therefore, is denying these petitions for reconsideration. The decision to except Class 9 materials from placarding requirements was based on petitions and comments received from shippers, carriers, and their representatives. These petitioners claimed that the Class 9 placarding requirement imposed an unnecessary burden with no demonstrated safety benefit. One petitioner urged RSPA to consider specifically enumerated secondary costs. Another petitioner referenced small service and consumer-type vehicles carrying only Class 9 materials. The size of these vehicles and loads of less acutely hazardous commodities are small, yet they are subject to the identical hazard communication system relegated to long-range, heavy hauling, interstate industry. The petitioner emphasized that the issue is not whether the materials should be identified, but rather that the means of identification should be evaluated for additional requirements imposed by other regulations.

In developing the final rule under Docket HM–181, RSPA did not consider all the secondary costs associated with mandatory placarding for Class 9 materials. These secondary costs relate to compliance with additional requirements imposed by the Federal Motor Carrier Safety Regulations (FMCSR), such as the CDL hazardous materials endorsement, routing restrictions in certain States, drug testing, and other applicable FMCSR requirements. With the recent promulgation of regulations under Dockets HM–198A and HM–211 (which expand the scope of the HMR to include elevated temperature materials and marine pollutants), the economic impact of reinstating Class 9 placarding requirements would be dramatic. In addition, regulatory requirements for marking identification numbers on packages containing Class 9 materials provide emergency responders with sufficient information to assess potentially hazardous situations. The overall costs associated with requiring placards for Class 9 materials outweigh the benefits and, therefore, RSPA is denying those petitions which request reinstatement of the Class 9 placarding requirements.

3. Clarification of Compliance Date for Limited Quantities and Reclassification to ORM–D

RSPA has learned that there is some confusion as to the applicable compliance date for limited quantity and consumer commodity provisions. The Docket HM–181 final rule imposed a gross weight limit of 30 kg (66 pounds) per package for the "limited quantity" exceptions and the option to reclassify a material as a consumer commodity, ORM–D. The transitional provisions in § 171.14 allow for the continued use of both specification and non-specification packagings authorized under the pre-HM–181 regulations until October 1, 1996. However, there is some concern that, because reclassification of a material to ORM–D includes a weight limitation of 30 kg (66 pounds) per package, new requirements for limited quantities and consumer commodities will become mandatory on October 1, 1993.

Any new requirement effecting a change to packagings for limited quantities or consumer commodities goes into effect October 1, 1996. Until that time, either the pre-HM–181 quantity limits and packagings or the new Docket HM–181 quantity limits and packagings may be used, as long as consistency is maintained. In other words, if the new requirements authorize a greater capacity for each inner packaging than the comparable pre-HM–181 inner packaging quantity limit, and the new, larger packaging is selected, then the 30 kg (66 pounds) gross weight per package limit also applies.

4. Revise Lithium Battery Provisions for Consistency and Clarity

RSPA is proposing several editorial changes to clarify requirements for lithium batteries. First, the cargo aircraft quantity limitation in the § 172.101 Table would be corrected to read "35 kg gross" for solid and liquid cathode lithium batteries. Special provision A12 in § 172.102 would be separated into two special provisions to clarify the requirements on cargo and passenger carrying aircraft. In addition, § 173.185 would be revised to clarify that the exception provided in paragraph (i) applies to all lithium batteries, including rechargeable batteries and batteries contained in equipment.

5. Revise Separation and Segregation Requirements for Rail and Highway Transportation

RSPA adopted, under Docket HM–181, a revised Segregation and Separation Chart of Hazardous Materials (Chart) in §§ 174.81 and 177.848. The revised chart prohibits certain hazardous materials from being transported on the same transport vehicle and requires other categories of hazardous materials to be separated from each other. Two alternatives to accomplish separation are provided. First, transporters can implement systems that achieve separation so that, in the event of leakage from packagings, no commingling of hazardous materials would occur. This alternative is consistent with the philosophy of implementing performance standards in Docket HM–181. Alternatively, transporters can separate specified hazardous materials by a distance of 1.2 meters (4 feet) from each other at a minimum height of 10 centimeters (4 inches) off the floor, without development of performance systems.

Since the issuance of the revised chart, RSPA has received comments from the American Trucking Associations, Inc., the United Parcel Service, Yellow Freight Systems, and others critical of the 1.2 meter by 10 centimeter separation alternative. Commenters indicate that this alternative places unnecessary burdens on their operations and could cause unnecessary delays. There also is concern that enforcement will be based on the alternative rather than on the performance standard.

Based on the concerns expressed by these commenters, RSPA is proposing to revise §§ 174.81(e)(3) and 177.841(e)(3) by removing the references to the separation distances of 1.2 meters by 10 centimeters. The means of separation used by carriers, thereafter, must ensure that commingling of materials will not occur in the event of leakage from packagings of hazardous materials. Separation must be accomplished by some means of physical separation, such as by the use of non-permeable barriers, non-reactive freight, or non-combustible, non-reactive adsorbents between packagings of materials required to be separated. Restrictions on commingling Class 8 liquids and Classes 4 and 5 materials would be retained so that Class 8 liquids could not be loaded or stored above Class 4 and Class 5 materials.

To provide relief, RSPA also is proposing to allow carload and truckload shipments of Class 8 (corrosive) liquids and Class 4 (flammable solid) and Class 5 (oxidizer) materials, based on the shipper's determination that no dangerous evolution of heat or gas would occur should the contents of the packagings commingle.

Commenters suggested that RSPA remove the requirement to separate Class 8 liquids from Division 2.1 gases. RSPA agrees with these comments and is proposing to remove the letter "O" at the intersecting columns for Division 2.1 gas and Class 8 liquids.

6. Construction of Stainless Steel Pressure Tank Cars

RSPA has received several petitions for rulemaking and exemption applications requesting that stainless steel be authorized in the construction of pressure tank cars for materials such as chlorosulfonic acid and nitrogen tetroxide. RSPA and FRA agree with petitioners that there is a need to amend the regulations to authorize Type 304L and 316L stainless steel in the construction of pressure tank cars. Therefore, RSPA is proposing to add Type 304L and 316L as authorized materials for the construction of DOT 105, 109, 112 and 114 tank cars.

III. Review by Section

Part 171

Section 171.8. Definitions would be added for "Explosive material," "Miscellaneous hazardous material," "Nonflammable gas," and "Poisonous gas" to reference the appropriate hazard class definition section in part 173. In addition, the definitions for "Flash point" and "Etiologic agent" would be revised to correctly reference the applicable hazard class definition in part 173.

Part 172

Section 172.101. Based on the merits of a petition for rulemaking (P–1152), paragraphs (c)(12)(i) and (c)(12)(ii) would be revised to add a requirement to consider hazard zone, if applicable, when selecting a proper shipping name for a material.

In the § 172.101 Hazardous Materials Table, the entries for "Lithium battery, liquid cathode" and "Lithium battery, solid cathode" would be amended by correcting the cargo aircraft quantity limitation to read "35 kg gross" for solid and liquid cathode lithium batteries.

Entries for "Boron trichloride," "Carbonyl sulfide," "Chlorine trifluoride," "Ethylene oxide," "Hydrogen chloride, anhydrous," "Hydrogen chloride, refrigerated liquid," "Hydrogen fluoride, anhydrous," "Hydrogen iodide, anhydrous," "Methyl bromide," "Methyl isothiocyanate," "Methyl mercaptan," "Methylamine, anhydrous," "Nitric oxide," "Nitric oxide and dinitrogen tetroxide mixtures," "Perchloryl fluoride," "Silicon tetrafluoride," "Thionyl chloride," "Trifluoroacetylchloride," and "Trifluorochloroethylene, inhibited" would be revised as a result of new toxicity data which changes their hazard classification or hazard zone. In addition, for consistency with the proposed hazard zone change for ethylene oxide, carbon dioxide and ethylene oxide mixtures consisting of more than 6 percent ethylene oxide would be classed in Division 2.1 with a Special Provision 5 in Column 7 to indicate a potential poisonous-by-inhalation hazard.

RSPA is proposing new domestic entries for "Methanol or Methyl alcohol" and "Methyl cyanide" that would not specify a "POISON" subsidiary hazard label. These materials do not meet the hazard classification criteria for a Division 6.1 material under the HMR. In addition, RSPA is proposing a new domestic entry for "Chloroform" to change the hazard classification of this material from

Division 6.1, PG II to Division 6.1, PG III. The proposals for "Methyl cyanide" and "Chloroform" are consistent with recent amendments to the UN Recommendations.

By adding a new Special Provision 30 to the domestic entry for "Sulfur", RSPA is proposing to except from the HMR sulfur which is transported domestically in non-bulk packagings and sulfur which is formed to a specific shape (e.g., prills, granules, pellets, pastilles, or flakes). Data supplied to RSPA indicates that the hazards of sulfur are far less than originally believed. In addition, in the future, RSPA will examine the issue of regulating all other forms of sulfur in domestic transportation.

RSPA is proposing to reclassify PETN as a Division 1.1D explosive. Recent data received by RSPA substantiates the UN classification of PETN; therefore, RSPA is proposing to reclassify PETN as a Division 1.1D explosive.

For the entry "Poisonous liquid, oxidizing, n.o.s. *Inhalation hazard, packing group I, Zone A*", RSPA is proposing to correct Column 9(b), which authorizes a 2.5 L quantity limitation on cargo aircraft. This entry is not consistent with the quantity limits for other poisonous by inhalation liquids, which prohibit any quantity of these materials on passenger or cargo aircraft. RSPA, therefore, proposes to revise the Column 9(b) entry from "2.5 L" to "Forbidden".

Section 172.102. Special Provision A12 would be separated into two special provisions to clarify the requirements for lithium batteries on cargo and passenger carrying aircraft. Under this separation, Special Provision 29 would be added and Special Provision A12 would be revised.

Based on the merits of petitions, Special Provisions B14 and T38 would be revised to delay, until October 1, 1994, compliance with these provisions for bulk packagings containing poisonous by inhalation materials which, when in contact with moisture, become highly corrosive and could cause corrosion under an insulation blanket. In addition, the applicability of Special Provision B14 to tank cars would be removed.

Special Provision B42 would be revised by removing the authorizations for DOT 105A and 105S tank cars to clarify that the only tank car authorized for acrolein, inhibited is the DOT 105J500W specification tank car. This clarification is needed because acrolein, inhibited is assigned both Special Provisions B42 and B72. Special Provision B42 currently authorizes DOT 105A and 105S tank cars, in addition to a DOT 105J tank car, but B72 restricts the packaging authorization to a DOT 105J500W tank car.

Special Provision B65 would be amended by revising the first sentence to read "Notwithstanding the provisions of § 173.244 of this subchapter, only DOT 105A500W tank cars are authorized." This revision would clarify that, despite the authorization in § 173.244 for use of other tank cars, the only tank car authorized for hydrocyanic acid, aqueous solutions, and hydrogen cyanide, anhydrous, stabilized is the DOT 105A500W tank car. However, this restriction does not supersede § 173.31(a)(3), which permits a class DOT 105S or 105J tank car (a higher-integrity tank car) to be used if it has an equal or higher marked test pressure than the DOT 105A500W.

"Acetone cyanohydrin, stabilized" is assigned Special Provisions B74 and B76. Special Provision B74 currently authorizes DOT 105J300W, 105J300ALW, 112J340W, 112T340W, 114J340W, and 114T340W tank cars. However, Special Provision B76 authorizes DOT 105S500W tank cars, but the safety relief devices on such cars must have a start-to-discharge pressure of 1,034 kPa (150 psi). Therefore, Special Provision B74 would be removed from Column 7 of the § 172.101 Hazardous Materials Table for "Acetone cyanohydrin, stabilized" and Special Provision B76 would be revised to include the tank cars currently in Special Provision B74, provided the safety relief devices on those cars have a set-to-discharge pressure setting of 1,034 kPa.

Part 173

Section 173.34. Various sources have informed RSPA that the terminology "Poison A gas or liquid" in § 173.34(d)(3) should be revised to reflect consistency with the new hazard classification nomenclature. RSPA agrees and is proposing that the phrase "Poison A gas or liquid" be revised to read "Division 2.3 gas in Hazard Zone A or a Division 6.1 PG I liquid in Hazard Zone A". RSPA is soliciting comments on the potential implications of this terminology change. Previously, safety relief devices were prohibited on cylinders containing Poison A gases or liquids but generally were required on cylinders containing other gases or liquids. Based on the defining criteria for materials poisonous by inhalation, some materials previously classed as Poison A materials are now in Hazard Zones B or C and thus might be required to be packaged in cylinders having safety relief devices. Conversely, certain gases and liquids fall into Hazard Zone A that previously were not classed as Poison A materials. Cylinders for these Hazard Zone A materials would be prohibited from having safety relief devices. Detailed comments addressing the specific impacts of this proposed terminology change are requested. Is the prohibition against safety relief devices on cylinders containing Hazard Zone A materials necessary? If warranted, RSPA may delay (beyond October 1, 1993) any retrofitting requirements involving safety relief devices that might result from the adoption of this terminology change.

Section 173.54. RSPA is proposing to add new paragraph (l), "Forbidden explosives," to clarify that explosive articles shipped with their means of initiation or ignition installed must be approved in accordance with § 173.56. In conjunction with this proposed addition, RSPA would revise Special Provision 109 and remove paragraph (b) of § 173.63.

Section 173.63. RSPA has learned that certain offerors of Class 1 detonating cords cannot utilize a packaging exception in § 173.63 because carriers refuse to accept this material when classed as Division 1.4D and marked "UN 0065". To resolve this problem, RSPA proposes to add a provision in § 173.63(a) to clarify that if detonating cord is offered or transported domestically as Division 1.4D, the identification number "UN 0289" should be used.

Section 173.185. Paragraph (i) would be revised to clarify that the exception provided in this paragraph applies to all lithium batteries, including rechargeables, and those contained in equipment.

Section 173.226. In the December 21, 1990 final rule, RSPA stated in the preamble that the use of 1H1 drums as inner packaging and 6HA1 composite drums inside metal packagings were authorized for Hazard Zone A materials. However, the regulatory text of § 173.226 did not include provisions for use of these packagings. Therefore, § 173.226(b) would be revised to include these packagings.

Sections 173.226 and 173.227. The required minimum thickness for cushioning in paragraphs (b)(5) and (b)(4), respectively, would be removed. This proposed revision is based on the merits of two petitions for rulemaking (P–1163 and P–1166), discussed earlier in this document, which noted the unavailability of cost-effective outer drums having a capacity less than 110 gallons for materials poisonous by inhalation.

Section 173.227. Proposed revisions to this section are based on the merit of

petitions (P–1163 and P–1166). First, the minimum thickness requirement in paragraph (b)(3)(i)(D) for a 6HA1 drum used as an inner packaging would be decreased to 0.70 mm (0.027 inch). In addition, paragraph (c) would be revised to authorize 1H1 plastic drums as single packagings under the provisions of this section.

Section 173.306. In the December 20, 1991 revisions to the HM–181 final rule, paragraphs (a)(3)(i) and (b)(1) were amended to increase the capacity of aerosols to one liter. Currently, the one liter SI measurement is shown in parentheses, preceded by "50 cubic inches". As prescribed in § 171.10, where SI units appear, they are the regulatory standard, with U.S. customary units to be shown for information only. Therefore, RSPA is proposing to revise § 173.306(a)(3)(i) and (b)(1) to clarify that one liter is the regulatory standard. In addition, the equivalent customary measurement of 50 cubic inches is incorrect, and RSPA is proposing "61.0 cubic inches" as the approximate equivalent of one liter.

RSPA also is proposing a revision to paragraph (h)(3) to reference the exception provided in § 173.156 for ORM–D materials. Adding this reference would be consistent with other packaging sections addressing ORM–D materials.

Section 173.314. Note 30 in paragraph (c) would be revised to specify insulation requirements for chlorine and to require that tank cars built after September 30, 1991, must conform to the requirements of Class DOT 105S. A proposed editorial correction to Note 21 would remove the parentheses in "§ 173.24(b)" to correctly read "§ 173.24b".

Section 173.323. Currently the HMR contains a requirement that drums intended to contain ethylene oxide must be fire-tested in accordance with CGA Pamphlet C–14 or other equivalent method. Ethylene oxide vapor, when exposed to fire, becomes very unstable and poses a danger of explosion. Tests conducted in the 1940s indicated the failure of ethylene oxide containers when exposed to fire. Subsequently, drums essentially the same as the DOT 5P successfully withstood fire exposure testing. Furthermore, safety relief devices used today are basically identical to those tested in the 1940s. Because there is a proven record of drums successfully passing the fire test, RSPA proposes to remove the requirement contained in § 173.323(b)(5) that drums be fire-tested. Instead, RSPA would require that these drums be capable of passing such a test.

Part 174

Section 174.83. This section was revised under the Docket HM–181 final rule, and incorporated text from the former § 174.84. A change in the wording of paragraph (b) may result in a misinterpretation that could affect the safe handling of placarded Trailers-On-Flatcars (TOFC) and Containers-On-Flatcars (COFC). The revised paragraph (b) could be interpreted to allow cars moving under their own momentum to strike cars placarded in Division 1.1 or 1.2, tank cars placarded in Division 2.3 Hazard Zone A or Division 6.1 PG I Hazard Zone A, Class DOT 113 tank cars placarded in Division 2.1, placarded flatcars, or flatcars transporting placarded vehicles or containers. Therefore, RSPA is proposing that paragraph (b) be revised to clarify that such a practice is not permitted.

Parts 174 and 177

Sections 174.81 and 177.848. RSPA is proposing to revise §§ 174.81(e)(3) and 177.848(e)(3) by removing the references to the separation distances of 1.2 meters by 10 centimeters. The means of separation used by carriers must ensure that commingling of materials will not occur in the event of leakage from packagings of hazardous materials. Separation must be accomplished by some means of physical separation, such as by the use of non-permeable barriers, non-reactive freight, or non-combustible, non-reactive adsorbents between packagings of materials required to be separated. However, in no case may Class 8 (corrosive) liquids be loaded or stored above Class 4 (flammable solid) and Class 5 (oxidizing) materials.

RSPA is also proposing a provision that authorizes carload or truckload shipments of Class 8 (corrosive) liquids and Class 4 (flammable) and Class 5 (oxidizers), based on the shipper's determination that no dangerous evolution of heat or gas would occur should the contents of the packagings commingle. In addition, RSPA is proposing to remove the letter "O" at the intersecting columns for Division 2.1 (flammable) gas and Class 8 (corrosive) liquids.

Part 179

Section 179.100–7. Based on petitions for rulemaking and applications for exemptions, this section would be amended to add Type 304L and 316L as an authorized material for the construction of DOT 105, 109, 112 and 114 tank cars.

Section 179.100–10. RSPA is proposing, in § 179.100–7, to authorize Type 304L and 316L stainless steels for construction of DOT pressure tank cars. In conjunction with this proposal, a new paragraph (c) would be added to § 179.100–10 to not require postweld heat treatment of Type 304L and 316L stainless steels.

IV. Rulemaking Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. The proposed rule is not considered significant under the regulatory procedures of the Department of Transportation. A regulatory evaluation is available for review in the Docket.

Executive Order 12612

The proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act (49 U.S.C. App. 1801 et. seq.) contains an express preemption provision (49 U.S.C. App. 1804(a)(4)) that preempts State, local, and Indian tribe requirements on certain covered subjects. With certain exceptions, a non-Federal requirement is preempted if: (1) Compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under 49 U.S.C. App. 1804(a)(4), concerning certain covered subjects, or 49 U.S.C. App. 1804(b), concerning highway routing. Covered subjects include:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials. (49 U.S.C. App. 1804(a)(4) (A) and (B)).

Section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political

subdivision thereof or an Indian tribe * * * " which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations promulgated pursuant to the HMTA. (State and Indian tribe hazardous materials highway routing requirements governed by 49 U.S.C. App. 1804(b), and requirements "otherwise authorized by Federal law" are excepted.) In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d). Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

The proposed rule concerns the following covered subjects:

The designation, description, and classification of hazardous materials: definitions added or revised in § 171.8; requirement added to consider hazard zone of material when selecting proper shipping name; changes to hazard classification and/or hazard zone for 18 PIH materials; chloroform hazard classification change from PG II to PG III; reclassification of PETN to Division 1.1D explosive; clarification to lithium batteries provision that the exception from the regulations applies to all lithium batteries, including rechargeables and those contained in equipment; and clarification on ORM-D exceptions for gases.

The packing, repacking, handling, labeling, marking, and placarding of hazardous materials: Correct cargo aircraft quantity limitations for lithium batteries and for poisonous liquid, oxidizing, n.o.s. in PG I Hazard Zone A; removal of POISON label for methanol and methyl cyanide; special provisions revisions for lithium batteries on cargo and passenger carrying aircraft; delay in compliance date for insulation requirements for PIH bulk packagings; changes to tank car packaging authorizations for acrolein, hydrocyanic acid/hydrogen cyanide, and acetone cyanohydrin; terminology change for PIH materials in cylinders which may result in changes to safety relief valve requirements; relief for certain DoD Class 1 materials shipments; change in identification number prefix; clarification on exception for detonating cords; new packaging authorizations and other relief for PIH packagings; clarification on ORM-D packagings for gases; changes to tank car note for compressed gases in tank cars; delay in mandatory compliance date for segregation table; and clarification on switching placarded cars.

The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials: Capability requirement rather than fire test for ethylene oxide drums; and authorization to use stainless steel in constructing certain tank cars for PIH materials and exception for postweld heat treatment.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements relating to covered subjects that are not "substantively the same" as Federal requirements. Section 1804(a)(5)(B) states that the effective date of Federal preemption "may not be earlier than the 90th day following the date [a final rule is issued] and may not be later than the last day of the two-year period beginning on the date of such issuance." RSPA invites comments on when this Federal preemption should take effect.

Regulatory Flexibility Act

I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations. This certification is subject to modification as a result of a review of comments received in response to this proposal.

Paperwork Reduction Act

There are no new information collection requirements in this proposed rule.

National Environmental Policy Act

This proposed rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, does not require the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321).

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Oil, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Oil, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 49 CFR part 1.

2. In § 171.8, the following definitions would be added or revised as indicated, in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

[Add:]

* * * * *

Explosive. See § 173.50 of this subchapter.

* * * * *

Miscellaneous hazardous material. See § 173.140 of this subchapter.

* * * * *

Nonflammable gas. See § 173.115 of this subchapter.

* * * * *

Poisonous gas. See § 173.115 of this subchapter.

* * * * *

[Revise:]

* * * * *

Etiologic agent. See § 173.134 of this subchapter.

* * * * *

Flash point. See § 173.120 of this subchapter.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

4. In § 172.101, paragraph (c)(12)(i) and the first sentence of paragraph (c)(12)(ii) would be revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(12) * * *

(i) If it is specifically determined that a material meets the definition of a hazard class, packing group or hazard zone, other than the class, packing group or hazard zone shown in association with the proper shipping name, or does not meet the defining criteria for a subsidiary hazard shown in Column 6 of the Table, the material shall be described by an appropriate proper shipping name listed in association with the correct hazard class, packing group, hazard zone, or subsidiary hazard for the material.

(ii) *Generic or n.o.s. descriptions.* If an appropriate technical name is not shown in the Table, selection of a proper shipping name shall be made from the generic or n.o.s. descriptions corresponding to the specific hazard class, packing group, hazard zone, or subsidiary hazard, if any, for the material. * * *

* * * * *

5. In § 172.101, the Hazardous Materials Table would be amended by removing, adding, or revising, in appropriate alphabetical sequence, the following entries to read as follows:

SECTION 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required if not excepted	Special provisions	Packaging authorizations (§ 173.***)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8A)	(9A)	(9B)	(10A)	(10B)
	[Remove]												
	Carbon dioxide and ethylene oxide mixtures with more than 6 per cent but not more than 25 percent ethylene oxide.	2.2	UN1041		Flammable Gas		None	304	314, 315.	Forbidden.	25 kg	D	40
	Carbon dioxide and ethylene oxide mixtures with more than 25 percent ethylene oxide.	2.3	UN1041		Poison Gas	6, B9, B14.	None	304	314, 315.	Forbidden.	25 kg	D	40
	* * * * * * * * * * * * *												
	Chloroform	6.1	UN1888	II	Poison	N36, T14.	None	202	243	5 L	60 L	A	40
	* * * * * * * * * * * * *												
	Methanol or Methyl alcohol.	3	UN1230	II	Flammable Liquid, Poison	T8	None	202	242	1 L	60 L	B	40
	* * * * * * * * * * * * *												
	Methyl cyanide	3	UN1648	II	Flammable Liquid, Poison	T14	None	202	243	1 L	60 L	B	40
	* * * * * * * * * * * * *												
	[Add]												
	* * * * * * * * * * * * *												
	Carbon dioxide and ethylene oxide mixtures with more than 6% ethylene oxide.	2.1	UN1041		Flammable Gas	5	None	304	314, 315.	Forbidden.	25 kg	D	40
	* * * * * * * * * * * * *												
D	Chloroform	6.1	UN1888	III	Keep Away From Food	N36, T14.	153	203	241	5 L	60 L	A	40
I	Chloroform	6.1	UN1888	II	Poison	N36, T14.	None	202	241	5 L	60 L	A	40
	* * * * * * * * * * * * *												
D	Methanol or Methyl alcohol.	3	UN1230	II	Flammable Liquid	T8	150	202	242	1 L	60 L	B	40
I	Methanol or Methyl alcohol.	3	UN1230	II	Flammable Liquid, Poison	T8	None	202	242	1 L	60 L	B	40
	* * * * * * * * * * * * *												
D	Methyl cyanide	3	UN1648	II	Flammable Liquid	T14	150	202	242	1 L	60 L	B	40
I	Methyl cyanide	3	UN1648	II	Flammable Liquid, Poison	T14	None	202	242	11	60 L	B	40

[Revise]

	Hydrogen iodide, anhydrous.	2.3	UN2197	.....	Poison Gas	3, B14 ..	None	304	314, 315.	Forbidden.	Forbidden.	D	40
	Lithium battery, contained in equipment.	9	UN3091	II	Class 9	18, 29, A12.	185(i) ...	185	None	Forbidden.	See A12.	A.	
	Lithium battery, liquid cathode.	9	UN3090	II	Class 9	29	185(i) ...	185	None	Forbidden.	35 kg gross ...	A.	
	Lithium battery, solid cathode.	9	UN3090	II	Class 9	29	185(i) ...	185	None	Forbidden.	35 kg gross ...	A.	
+	Methyl isothiocyanate	3	UN2477	II	Flammable Liquid, Poison	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden.	60 L	A	
	Methylamine, anhydrous .	2.1	UN1061	.....	Flammable Gas	.....	306	304	314, 315.	Forbidden.	150 kg .	B	40
	Pentaerythrite tetranitrate or Pentaerythritol tetranitrate or PETN, wetted with not less than 25 percent water, by mass or Pentaerythrite tetranitrate or Pentaerythritol tetranitrate or PETN, desensitized with not less than 15 percent phlegmatizer by mass.	1.1D	UN0150	II	Explosive 1.1D	117	None	62	None	Forbidden.	Forbidden.	B	1E, 5E
D	Sulfur	9	NA1350	III	Class 9	30, A1 ..	None	None	240	25 kg ...	100 kg .	A	19, 74
	Thionyl chloride	8	UN1836	I	Corrosive	A7, B6, B10, N34, T42.	None	201	243	Forbidden.	2.5 L	C	8, 40
	Trifluoroacetylchloride	2.3	UN3057	.....	Poison Gas	2, B9, B14.	None	304	314, 315.	Forbidden.	25 kg ...	D	40

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required if not excepted	Special provisions	Packaging authorizations (§ 173.***)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8A)	(9A)	(9B)	(10A)	(10B)
	*	*	*	*	*	*	*		*				
	Trifluorochloroethylene, inhibited, R1113.	2.3	UN1082	.....	Poison Gas	3, B14 ..	None	304	314, 315.	Forbidden.	150 kg .	B	40
	*	*	*	*	*	*	*		*				

§ 172.101 [Amended]

6. In addition, in the § 172.101 Hazardous Materials Table, the following changes would be made:

a. For the entry "Acetone cyanohydrin, stabilized", in Column (7), Special Provision "B74," would be removed.

b. For the entry "Boron trichloride", in Column (7), Special Provision "1," would be revised to read "3,".

c. For the entry "Carbonyl sulfide", in Column (7), Special Provisions "2, B9," would be revised to read "3,".

d. For the entry "Chlorine trifluoride", in Column (7), Special Provision "1," would be revised to read "2,".

e. For the entry "Ethylene oxide, *pure or with nitrogen*", in Column (7), Special Provision "3" would be revised to read "4".

f. For the entry "Hydrogen chloride, anhydrous", in Column (7), Special Provision "3" would be revised to read "4".

g. For the entry "Hydrogen chloride, refrigerated liquid", in Column (7), Special Provision "3," would be revised to read "4,".

h. For the entry "Hydrogen fluoride, anhydrous", in Column (7), Special Provision "3," would be revised to read "2,".

i. For the entry "Methyl bromide", in Column (7), Special Provision "3," would be revised to read "2, B9,".

j. For the entry "Methyl mercaptan", in Column (7), Special Provisions "2," and "B9," would be removed and Special Provision "3," would be added in appropriate alpha-numeric order.

k. For the entry "Nitric oxide", in Column (7), Special Provision "2," would be revised to read "1,".

l. For the entry "Nitric oxide and dinitrogen tetroxide mixtures", in Column (7), Special Provision "2" would be revised to read "1".

m. For the entry "Perchloryl fluoride", in Column (7), Special Provision "3," would be removed and Special Provisions "2," and "B9," would be added in appropriate alpha-numeric order.

n. For the entry "Silicon tetrafluoride", in Column (7), Special Provision "4" would be revised to read "2".

6a. In § 172.102, the following special provisions would be added, removed, or revised, as indicated:

a. In paragraph (c)(1), Special Provisions 29 and 30 would be added and Special Provision 109 would be revised.

b. In paragraph (c)(2), Special Provision A12 would be revised.

c. In paragraph (c)(3), Special Provisions B14, B42, B65, B74, and B76 would be revised.

d. In paragraph (c)(7)(ii), Special T38 would be revised.

The revisions and additions would read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

29 Lithium batteries or lithium batteries contained in equipment are forbidden for transportation by passenger-carrying aircraft and passenger-carrying rail car unless approved by the Associate Administrator for Hazardous Materials Safety.

30 Sulfur which is transported domestically is not subject to the requirements of this subchapter if transported in a non-bulk packaging or is formed to a specific shape (e.g., prills, granules, pellets, pastilles, or flakes).

* * * * *

109 Rocket motors must be nonpropulsive in transportation unless approved in accordance with § 173.56 of this subchapter. A rocket motor to be considered "nonpropulsive" must be capable of unrestrained burning and must not appreciably move in any direction when ignited by any means.

* * * * *

(2) * * *

Code/Special Provisions

* * * * *

A12 Lithium batteries in equipment, which have been approved by the Associate Administrator for Hazardous Materials Safety, must not exceed, in any piece of equipment, 12 g of lithium or lithium alloy per cell and 500 g of lithium or lithium alloy per battery.

* * * * *

(3) * * *

Code/Special Provisions

* * * * *

B14 Each bulk packaging, except a tank car or a multi-unit-tank car tank, must be insulated with an insulating material so that the overall thermal conductance at 15.5°C (60°F) is no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. Insulating materials must not promote corrosion to steel when wet. Notwithstanding the requirements in § 171.14(b)(4)(ii) of this subchapter, compliance with this provision is delayed until October 1, 1994, for a bulk packaging containing a material poisonous by inhalation which, when in contact with moisture, becomes highly corrosive and could cause corrosion under an insulation blanket.

* * * * *

B42 Each 105J500W tank car must be marked as 105J200W. Each tank car must have a safety relief valve with a start-to-discharge pressure of 1,034 kPa (150 psig).

* * * * *

B65 Notwithstanding the provisions of § 173.244 of this subchapter, only DOT 105A500W tank cars are authorized. Each 105J500W tank car must be marked as 105J300W. Each tank car must have a safety relief valve with a start-to-discharge pressure of 1,551 kPa (225 psig).

* * * * *

B74 Notwithstanding the requirements of § 173.244 of this subchapter, only the following are authorized: DOT 105S300W, 105S300ALW, 112J340W, and 114J340W tank cars; and Class DOT 106 and 110 multi-unit-tank car tanks.

B76 Each tank car must be marked DOT 105S200W, 105S200ALW, 112J200W, and 114J200. Each tank car must have a safety relief valve with a start-to-discharge pressure of 1,034 kPa (150 psig).

* * * * *

(7) * * *

(ii) * * *

Code/Special Provisions

* * * * *

T38 Each tank must be insulated with an insulating material so that the overall thermal conductance at 15.5 °C (60 °F) is no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. Insulating materials must not promote corrosion to steel when wet. Notwithstanding the requirements in § 171.14(b)(4)(ii) of this subchapter, compliance with this provision is delayed until October 1, 1994, for a bulk packaging containing a material poisonous by inhalation which, when in contact with moisture, becomes highly corrosive and could cause corrosion under an insulation blanket.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.34 [Amended]

8. In § 173.34, in paragraph (d)(3), the wording "Poison A gas or liquid" would be revised to read "Division 2.3 or Division 6.1 materials in Hazard Zone A".

9. In § 173.54, paragraph (l) would be added to read as follows:

§ 173.54 Forbidden explosives.

* * * * *

(l) An explosive article with its means of initiation or ignition installed, unless approved in accordance with § 173.56.

§ 173.62 [Amended]

10. In § 173.62, the "Explosives Table" in paragraph (b) would be amended by removing the entry "NA0150 * * * E–3" and adding, in appropriate alpha-numerical order, the entry "UN0150 * * * E–3".

§ 173.63 [Amended]

11. In § 173.63, the following changes would be made:

a. In paragraph (a) introductory text, the wording "offered for transportation domestically and transported as Division 1.4 Compatibility Group D (1.4D) explosives," would be revised to read "offered for transportation domestically and transported as Cord, detonating (UN 0289), Division 1.4 Compatibility Group D (1.4D) explosives,".

b. Paragraph (b) would be removed and reserved.

12. In § 173.185, paragraph (a), paragraph (g)(1), the introductory text of paragraph (i), and paragraph (j)(1) would be revised, and paragraph (l) would be added to read as follows:

§ 173.185 Lithium batteries and cells.

(a) Except as otherwise provided in this subpart, lithium batteries and cells described in this section are authorized for transportation by highway, rail, vessel and cargo-only aircraft. Rechargeable lithium batteries and cells and devices containing regulated lithium batteries (including lithium batteries contained in equipment) and cells may not be transported except as approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

(g) * * *

(1) In strong inner fiberboard packagings containing not more than 500 g (17.6 ounces) of lithium or lithium alloy per inner packaging.

* * * * *

(i) Lithium batteries and cells, rechargeable and devices containing lithium batteries and cells, are not subject to this subchapter if they meet the following requirements:

* * * * *

(j) * * *

(1) When new, contained no more than 12.0 g (0.42 ounces) of lithium or lithium alloy per cell;

* * * * *

(l) Lithium batteries and cells which do not comply with the provisions of this section may be transported only if they are approved by the Associate Administrator for Hazardous Materials Safety.

§ 173.226 [Amended]

13. In § 173.226, the following changes would be made:

a. In paragraph (b) introductory text, in the first sentence, the wording "In 1A1, 1B1, or 1N1 drums" would be revised to read "In 1A1, 1B1, 1H1, 1N1, or 6HA1 drums".

b. In paragraph (b)(5), the second sentence would be removed.

§ 173.227 [Amended]

14. In § 173.227, the following changes would be made:

a. In paragraph (b)(3)(i)(D), the wording "0.96 mm (0.038 inch)" would be revised to read "0.70 mm (0.027 inch)".

b. In paragraph (b)(4), the period would be removed and replaced with "; and" at the end of the first sentence and the second sentence would be removed.

c. In paragraph (c), in the first sentence, the wording "1H1," would be added immediately following "1B1," and immediately preceding "1N1".

15. In § 173.306, paragraph (h)(3) would be revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(h) * * *

(3) Shipments of ORM–D materials are eligible for the exceptions provided in § 173.156.

* * * * * *

§ 173.306 [Amended]

16. In addition, in § 173.306, the following changes would be made:

a. In paragraph (a)(3)(i), the wording "50 cubic inches (1 liter)" would be revised to read "one liter (61.0 cubic inches)".

b. In paragraph (b)(1) introductory text, the wording "50 cubic inches capacity (1 liter)" would be revised to read "one liter (61.0 cubic inches)".

17. In § 173.314, in paragraph (c) table, Note 21 would be amended by revising the wording "§ 173.24(b)" to read "§ 173.24b", and Note 30 would be revised to read as follows:

§ 173.314 Requirements for compressed gases in tank car tanks.

* * * * *

(c) * * *

Notes:

* * * * *

30 Tank cars must conform to Class DOT 105S and have an insulation system consisting of 10.16 cm (4 inches) of cork board, or 10.16 cm (4 inches) of polyurethane foam, or 5.08 cm (2 inches) of ceramic fiber placed over 5.08 cm (2 inches) of glass fiber. Tank cars used for chlorine and built after September 30, 1991, must conform to Class DOT 105S and have an insulation system consisting of 5.08 cm (2 inches) ceramic fiber placed over 5.08 cm (2 inches) of glass fiber.

* * * * *

§ 173.323 [Amended]

18. In § 173.323, in paragraph (b)(5), in the last sentence, the wording "the filled drum will not rupture when tested by the method described in CGA Pamphlet C–14 or other equivalent method." would be revised to read "the filled drum is capable of passing, without rupture, the test method described in CGA Pamphlet C–14 or other equivalent method."

PART 174—CARRIAGE BY RAIL

19. The authority citation for part 174 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to part 1.

20. In § 174.81, paragraph (e)(3) would be revised to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(e) * * *

(3) The letter "O" in the Table indicates that these materials may not be loaded, transported, or stored together in the same rail car or storage facility during the course of transportation unless separated in a manner that, in the event of leakage from packages under conditions normally incident to transportation, commingling of hazardous materials would not occur. Notwithstanding the methods of separation employed, Class 8 (corrosive) liquids may not be loaded above or adjacent to Class 4 (flammable) or Class 5 (oxidizing) materials; except that shippers may load carload shipments of such materials together when it is known that the mixture of contents would not cause a fire or a dangerous evolution of heat or gas.

* * * * *

§ 174.81 [Amended]

21. In addition, in the Segregation Table in paragraph (d), in the column "8 liquids only", for the entry "Flammable gases", the letter "O" would be removed and in the column "2.1", for the entry "Corrosive liquids", the letter "O" would be removed.

22. In § 174.83, paragraph (b) introductory text would be revised to read as follows:

§ 174.83 Switching placarded rail cars, transport vehicles, freight containers, and bulk packagings.

* * * * *

(b) A rail car must not move under its own momentum, strike any other rail car, or couple to another rail car with

more force than necessary to complete coupling, when any rail car is:

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

23. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805; 49 CFR part 1.

24. In § 177.848, paragraph (e)(3) would be revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(e) * * *

(3) The letter "O" in the Table indicates that these materials may not be loaded, transported, or stored together in the same transport vehicle or storage facility during the course of transportation unless separated in a manner that, in the event of leakage from packages under conditions normally incident to transportation, commingling of hazardous materials would not occur. Notwithstanding the methods of separation employed, Class 8 (corrosive) liquids may not be loaded above or adjacent to Class 4 (flammable) or Class 5 (oxidizing) materials; except that shippers may load truckload shipments of such materials together when it is known that the mixture of contents would not cause a fire or a dangerous evolution of heat or gas.

* * * * *

§ 177.848 [Amended]

25. In addition, in the Segregation Table in paragraph (d), in the column "8 liquids only", for the entry "Flammable gases", the letter "O" would be removed and in the column "2.1", for the entry "Corrosive liquids", the letter "O" would be removed.

PART 179—SPECIFICATIONS FOR TANK CARS

26. The authority citation for part 179 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

27. Section 179.100–7 would be amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 179.100–7 Materials.

* * * * *

(c) *High alloy steel plate.* (1) High alloy steel plate must conform to the following specifications:

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)
ASTM A240–70, Type 304L	70,000	30
ASTM A240–70, Type 316L	70,000	30

[1] Maximum stresses to be used in calculations.

(2)(i) High alloy steels used to fabricate tank must be tested in accordance with the following procedures in ASTM Specification A262–68 titled, "Recommended Practices for Detecting Susceptibility to Intergranular Attack in Stainless Steel," and must exhibit corrosion rates not exceeding the following:

Test procedures	Material	Corrosion rate i.p.m.
Practice B	Types 304L and 316L.	0.0040
Practice C	Type 304L	0.0020

(ii) Type 304L and 316L test specimens must be given a sensitizing treatment prior to testing.

* * * * *

28. In § 179.100–10, a new paragraph (c) would be added to read as follows:

§ 179.100–10 Postweld heat treatment.

* * * * *

(c) Tank and welded attachments, fabricated from ASTM A240–70 Type 304L or Type 316L materials do not require postweld heat treatment, but these materials do require a corrosion resistance test as specified in § 179.100–7(c)(2).

Issued in Washington, DC on July 1, 1993, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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Reader Aids

Federal Register

Vol. 58, No. 131

Monday, July 12, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials. **202–275–1538, or 275–0920**

FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2
36117–36300.....6
36301–36588.....7
36589–36852.....8
36853–37412.....9
37413–37630.....12

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12846 (See DOT final rule of June 25).....35828
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
12854.....36587

Administrative Orders:
Determinations:
93–29 of June 29, 1993.....35357

Proclamations:
6515 (See Proc. 6579).....36839
6576.....36117
6577.....36301
6578.....36585
6579.....36839

5 CFR

230.....36119
250.....36119
581.....35845
1201.....36345
1209.....36345

7 CFR

2.....35359
301.....36589, 36590, 36591
400.....36592
723.....36853, 36857
1097.....34359
1098.....35361
1099.....34362
1108.....36859
1464.....36857, 36861
1435.....36120
1755.....36252

8 CFR

245.....35832

9 CFR

78.....36593
94.....36593, 36594

Proposed Rules:
94.....36624
98.....36625

10 CFR

Proposed Rules:
60.....36901

11 CFR

Proposed Rules:
4.....36764
5.....36764
7.....36764
102.....36764
111.....36764

12 CFR

710.....35363

14 CFR

25.....36345, 36348, 36350, 36352
39.....35860, 36130, 36131, 36863, 36865
71.....36596
72.....36298
108.....36802

Proposed Rules:
Ch. I.....36626
1.....36738
25.....36116, 36738
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905, 36627
71.....36157, 36158, 36628
91.....36738
121.....36116, 36738
135.....36116, 36738
1272.....36159

15 CFR

770.....36353
775.....36353
777.....36353
785.....36353
787.....36353
788.....36353
790.....36353

16 CFR

1145.....37554
1210.....37557

Proposed Rules:
244.....35414
412.....35907

17 CFR

239.....35367
240.....36866, 37413
249.....35367

Proposed Rules:
240.....37445

18 CFR

Proposed Rules:
35.....36172
284.....37447
375.....35415

19 CFR

148.....35862

20 CFR

404.....36008, 36133
416.....36059

21 CFR

73.....36134
510.....36134
520.....36134
Proposed Rules:
870.....36290
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369
572.....36518, 36546
Proposed Rules:
16.....37598
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416
888.....36175
3500.....36176

26 CFR

Proposed Rules:
31.....35419

27 CFR

9.....35865, 35877
Proposed Rules:
4.....35908
5.....35908, 36516

28 CFR

0.....35371
5.....37417
14.....36867
55.....35371
Proposed Rules:
36.....37052

29 CFR

1400.....35377
1915.....35512
2606.....35377
2612.....35377
2615.....35377
2616.....35377
2622.....35377
2623.....35377

30 CFR

202.....37420
206.....37420
920.....36135
938.....36139
Proposed Rules:
916.....37447
934.....37449
935.....36177, 36178

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400
706.....36867

33 CFR

100.....36355
110.....36356
117.....36357
164.....36141
165.....36357, 36597, 36868
334.....37606
Proposed Rules:
117.....36629

34 CFR

12.....36869
74.....36869
75.....36869
76.....36869
77.....36869
81.....36869
86.....36869
99.....36869
200.....36869
201.....36869
206.....36869
208.....36869
212.....36869
218.....36869
221.....36869
222.....36869
230.....36869
231.....36869
236.....36869
237.....36869
238.....36869
263.....36869
280.....36869
282.....36869
300.....36869
301.....36869
303.....36869
305.....36869
307.....36869
309.....36869
315.....36869
316.....36869
318.....36869
319.....36869
324.....36869
327.....36869
356.....36869
361.....36869
363.....36869
376.....36869
378.....35762
380.....36869
400.....36869
401.....36869
402.....36869
403.....36869
405.....36869
406.....36869
407.....36869
408.....36869
409.....36869
410.....36869
411.....36869
412.....36869
413.....36869
414.....36869
415.....36869
416.....36869
417.....36869
418.....36869
419.....36869
421.....36869
422.....36869
423.....36869
424.....36869
425.....36869
426.....36869
427.....36869
428.....36869
431.....36869
432.....36869
433.....36869
434.....36869
435.....36869
436.....36869
437.....36869
438.....36869
441.....36869
460.....36869
461.....36869
462.....36869
463.....36869
464.....36869
471.....36869
472.....36869
473.....36869
474.....36869
475.....36869
476.....36869
477.....36869
489.....36869
490.....36869
491.....36869
555.....36869
562.....36869
581.....36869
600.....36869
612.....36869
617.....36869
624.....36869
625.....36869
626.....36869
627.....36869
628.....36869
630.....36869
636.....36869
637.....36869
639.....36869
648.....36869
653.....36869
654.....36869
664.....36869
668.....36869
671.....36869
674.....36869
675.....36869
676.....36869
682.....36869
685.....36008
690.....36869
755.....36869
757.....36869
758.....36869
762.....36869
769.....36869
770.....36869
Proposed Rules:
692.....36110

36 CFR

51.....36598
Proposed Rules:
1191.....37052

39 CFR

233.....36598

40 CFR

52.....37421, 37423, 37426
82.....36516
85.....36871
131.....36141
180.....36358, 36359
185.....36358
228.....35884
414.....36872
Proposed Rules:
Ch. I.....37450
52.....36904, 37450, 37453
81.....36907, 37453
88.....35420
180.....36366
186.....36366
261.....36367
372.....36180

43 CFR

Public Land Orders:
6986.....35408
6988.....35409

44 CFR

354.....35770

45 CFR

Proposed Rules:
1602.....36909

46 CFR

170.....36601
Proposed Rules:
15.....36913
171.....36374

47 CFR

1.....36142
2.....37429
15.....37429
34.....36142
35.....36142
43.....36142
61.....36143, 36145
64.....36143
65.....36145
69.....36143, 36145
73.....35409, 35410, 37431
76.....36604
90.....36362
Proposed Rules:
Ch. I.....36630
73.....35420, 35421, 36184, 36374, 36375, 36376, 37455

48 CFR

904.....36363
906.....36363
913.....36363
915.....36363
916.....36363
919.....36363
922.....36149, 36363
937.....36149
952.....36149, 36363
970.....36149, 36363
Proposed Rules:
917.....36917

49 CFR

218.....36605
229.....36605
541.....36376
571.....36152, 36615

604.....36894

Proposed Rules:

37.....37052
171.....36919, 37612
172.....37612
173.....37612
174.....37612
177.....37612
179.....37612
543.....35422

50 CFR

17.....35887, 37432
85.....36619
285.....36154
625.....35891
630.....37443
646.....35895, 36155
658.....35897
671.....36900
672.....35897
675.....35897

Proposed Rules:

17.....36184, 36379, 36387, 36923
24.....36924
642.....36632
659.....37456

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 8, 1993

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	[1] Jan. 1, 1993
4	(869-019-00003-8)	5.50	Jan. 1, 1993
5 Parts:			
1-699	(869-019-00004-6)	21.00	Jan. 1, 1993
700-1199	(869-019-00005-4)	17.00	Jan. 1, 1993
1200-End, 6 (6 Reserved)	(869-019-00006-2)	21.00	Jan. 1, 1993
7 Parts:			
0-26	(869-019-00007-1)	20.00	Jan. 1, 1993
27-45	(869-019-00008-9)	13.00	Jan. 1, 1993
46-51	(869-019-00009-7)	20.00	Jan. 1, 1993
52	(869-019-00010-1)	28.00	Jan. 1, 1993
53-209	(869-019-00011-9)	21.00	Jan. 1, 1993
210-299	(869-019-00012-7)	30.00	Jan. 1, 1993
300-399	(869-019-00013-5)	15.00	Jan. 1, 1993
400-699	(869-019-00014-3)	17.00	Jan. 1, 1993
700-899	(869-019-00015-1)	21.00	Jan. 1, 1993
900-999	(869-019-00016-0)	33.00	Jan. 1, 1993
1000-1059	(869-019-00017-8)	20.00	Jan. 1, 1993
1060-1119	(869-019-00018-6)	13.00	Jan. 1, 1993
1120-1199	(869-019-00019-4)	11.00	Jan. 1, 1993
1200-1499	(869-019-00020-8)	27.00	Jan. 1, 1993
1500-1899	(869-019-00021-6)	17.00	Jan. 1, 1993
1900-1939	(869-019-00022-4)	13.00	Jan. 1, 1993
1940-1949	(869-019-00023-2)	27.00	Jan. 1, 1993
1950-1999	(869-019-00024-1)	32.00	Jan. 1, 1993
2000-End	(869-019-00025-9)	12.00	Jan. 1, 1993
8	(869-019-00026-7)	20.00	Jan. 1, 1993
9 Parts:			
1-199	(869-019-00027-5)	27.00	Jan. 1, 1993
200-End	(869-019-00028-3)	21.00	Jan. 1, 1993
10 Parts:			
0-50	(869-019-00029-1)	29.00	Jan. 1, 1993
51-199	(869-019-00030-5)	21.00	Jan. 1, 1993
200-399	(869-019-00031-3)	15.00	Jan. 1, 1993
400-499	(869-019-00032-1)	20.00	Jan. 1, 1993
500-End	(869-019-00033-0)	33.00	Jan. 1, 1993
11	(869-019-00034-8)	13.00	Jan. 1, 1993
12 Parts:			
1-199	(869-019-00035-6)	11.00	Jan. 1, 1993
200-219	(869-019-00036-4)	15.00	Jan. 1, 1993
220-299	(869-019-00037-2)	26.00	Jan. 1, 1993
300-499	(869-019-00038-1)	21.00	Jan. 1, 1993
500-599	(869-019-00039-9)	19.00	Jan. 1, 1993
600-End	(869-019-00040-2)	28.00	Jan. 1, 1993
13	(869-019-00041-1)	28.00	Jan. 1, 1993
14 Parts:			
1-59	(869-019-00042-9)	29.00	Jan. 1, 1993
60-139	(869-019-00043-7)	26.00	Jan. 1, 1993
140-199	(869-019-00044-5)	12.00	Jan. 1, 1993
200-1199	(869-019-00045-3)	22.00	Jan. 1, 1993
1200-End	(869-019-00046-1)	16.00	Jan. 1, 1993
15 Parts:			
0-299	(869-019-00047-0)	14.00	Jan. 1, 1993
300-799	(869-019-00048-8)	25.00	Jan. 1, 1993
800-End	(869-019-00049-6)	19.00	Jan. 1, 1993
16 Parts:			
0-149	(869-019-00050-0)	7.00	Jan. 1, 1993
150-999	(869-019-00051-8)	17.00	Jan. 1, 1993
1000-End	(869-019-00052-6)	24.00	Jan. 1, 1993
17 Parts:			
1-199	(869-019-00054-2)	18.00	Apr. 1, 1993
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-019-00059-3)	15.00	Apr. 1, 1993
400-End	(869-019-00060-7)	10.00	Apr. 1, 1993
19 Parts:			
*1-199	(869-019-00061-5)	35.00	Apr. 1, 1993
200-End	(869-019-00062-3)	11.00	Apr. 1, 1993
20 Parts:			
1-399	(869-019-00063-1)	19.00	Apr. 1, 1993
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	21.00	Apr. 1, 1992
21 Parts:			
1-99	(869-019-00066-6)	15.00	Apr. 1, 1993
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
200-299	(869-019-00069-1)	6.00	Apr. 1, 1993
300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-019-00072-1)	8.00	Apr. 1, 1993
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-019-00074-7)	12.00	Apr. 1, 1993
22 Parts:			
1-299	(869-019-00075-5)	30.00	Apr. 1, 1993
300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	18.00	Apr. 1, 1992
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-9)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-019-00082-8)	15.00	Apr. 1, 1993
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-019-00084-4)	21.00	Apr. 1, 1993
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
§§ 1.170-1.300	(869-019-00086-1)	23.00	Apr. 1, 1993
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-019-00093-3)	26.00	Apr. 1, 1993
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
§§ 1.1401-End	(869-019-00095-0)	31.00	Apr. 1, 1993
2-29	(869-019-00096-8)	23.00	Apr. 1, 1993
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-019-00098-4)	13.00	Apr. 1, 1993
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00100-0)	23.00	Apr. 1, 1993
500-599	(869-019-00101-8)	6.00	[4] Apr. 1, 1990
600-End	(869-017-00101-5)	6.50	Apr. 1, 1992

Title	Stock Number	Price	Revision Date
27 Parts:			
1-199	(869-017-00102-3)	34.00	Apr. 1, 1992
200-End	(869-019-00104-2)	11.00	[5] Apr. 1, 1991
28	(869-017-00104-0)	37.00	July 1, 1992
29 Parts:			
0-99	(869-017-00105-8)	19.00	July 1, 1992
100-499	(869-013-00106-6)	9.00	July 1, 1992
500-899	(869-017-00107-4)	32.00	July 1, 1992
900-1899	(869-017-00108-2)	16.00	July 1, 1992
1900-1910 (§§ 1901.1 to 1910.999)	(869-017-00109-1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992
1911-1925	(869-017-00111-2)	9.00	[6] July 1, 1989
1926	(869-017-00112-1)	14.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992
30 Parts:			
1-199	(869-017-00114-7)	25.00	July 1, 1992
200-699	(869-017-00115-5)	19.00	July 1, 1992
700-End	(869-017-00116-3)	25.00	July 1, 1992
31 Parts:			
0-199	(869-017-00117-1)	17.00	July 1, 1992
200-End	(869-017-00118-0)	25.00	July 1, 1992
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-189	(869-017-00119-8)	30.00	July 1, 1992
190-399	(869-017-00120-1)	33.00	July 1, 1992
400-629	(869-017-00121-0)	29.00	July 1, 1992
630-699	(869-017-00122-8)	14.00	[7] July 1, 1991
700-799	(869-017-00123-6)	20.00	July 1, 1992
800-End	(869-017-00124-4)	20.00	July 1, 1992
33 Parts:			
1-124	(869-017-00125-2)	18.00	July 1, 1992
125-199	(869-017-00126-1)	21.00	July 1, 1992
200-End	(869-017-00127-9)	23.00	July 1, 1992
34 Parts:			
1-299	(869-017-00128-7)	27.00	July 1, 1992
300-399	(869-017-00129-5)	19.00	July 1, 1992
400-End	(869-017-00130-9)	32.00	July 1, 1992
35	(869-017-00131-7)	12.00	July 1, 1992
36 Parts:			
1-199	(869-017-00132-5)	15.00	July 1, 1992
200-End	(869-017-00133-3)	32.00	July 1, 1992
37	(869-017-00134-1)	17.00	July 1, 1992
38 Parts:			
0-17	(869-017-00135-0)	28.00	Sept 1, 1992
18-End	(869-017-00136-8)	28.00	Sept. 1, 1992
39	(869-017-00137-6)	16.00	July 1, 1992
40 Parts:			
1-51	(869-017-00138-4)	31.00	July 1, 1992
52	(869-017-00139-2)	33.00	July 1, 1992
53-60	(869-017-00140-6)	36.00	July 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992
81-85	(869-017-00142-2)	17.00	July 1, 1992
86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-017-00144-9)	34.00	July 1, 1992
150-189	(869-017-00145-7)	21.00	July 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992
260-299	(869-017-00147-3)	36.00	July 1, 1992
300-399	(869-017-00148-1)	15.00	July 1, 1992
400-424	(869-017-00149-0)	26.00	July 1, 1992
425-699	(869-017-00150-3)	26.00	July 1, 1992
700-789	(869-017-00151-1)	23.00	July 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
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19-100		13.00	[3] July 1, 1984
1-100	(869-017-00153-8)	9.50	July 1, 1992
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102-200	(869-017-00155-4)	11.00	[7] July 1, 1991
201-End	(869-017-00156-2)	11.00	July 1, 1992
42 Parts:			
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400-429	(869-017-00158-9)	23.00	Oct. 1, 1992
430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
43 Parts:			
1-999	(869-017-00160-1)	22.00	Oct. 1, 1992
1000-3999	(869-017-00161-9)	30.00	Oct. 1, 1992
4000-End	(869-017-00162-7)	13.00	Oct. 1, 1992
44	(869-017-00163-5)	26.00	Oct. 1, 1992
45 Parts:			
1-199	(869-017-00164-3)	20.00	Oct. 1, 1992
200-499	(869-017-00165-1)	14.00	Oct. 1, 1992
500-1199	(869-017-00166-0)	30.00	Oct. 1, 1992
1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
46 Parts:			
1-40	(869-017-00168-6)	17.00	Oct. 1, 1992
41-69	(869-017-00169-4)	16.00	Oct. 1, 1992
70-89	(869-017-00170-8)	8.00	Oct. 1, 1992
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156-165	(869-017-00173-2)	14.00	[8] Oct. 1, 1991
166-199	(869-017-00174-1)	17.00	Oct. 1, 1992
200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
500-End	(869-017-00176-7)	14.00	Oct. 1, 1992
47 Parts:			
0-19	(869-017-00177-5)	22.00	Oct. 1, 1992
20-39	(869-017-00178-3)	22.00	Oct. 1, 1992
40-69	(869-017-00179-1)	12.00	Oct. 1, 1992
70-79	(869-017-00180-5)	21.00	Oct. 1, 1992
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7-14	(869-017-00187-2)	30.00	Oct. 1, 1992
15-28	(869-017-00188-1)	26.00	Oct. 1, 1992
29-End	(869-017-00189-9)	16.00	Oct. 1, 1992
49 Parts:			
1-99	(869-017-00190-2)	22.00	Oct. 1, 1992
100-177	(869-017-00191-1)	27.00	Oct. 1, 1992
178-199	(869-017-00192-9)	19.00	Oct. 1, 1992
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400-999	(869-017-00194-5)	31.00	Oct. 1, 1992
1000-1199	(869-017-00195-3)	19.00	Oct. 1, 1992
1200-End	(869-017-00196-1)	21.00	Oct. 1, 1992
50 Parts:			
1-199	(869-017-00197-0)	23.00	Oct. 1, 1992
200-599	(869-017-00198-8)	20.00	Oct. 1, 1992
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.



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