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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[No. LS–93–004]

RIN 0581–AA90

Increase Testing Fees for Inspection and Certification of Quality of Agricultural and Vegetable Seeds Under the Agricultural Marketing Act of 1946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the applicable fees for testing seed under the voluntary seed inspection and certification program. The increased fees which are to be paid by the users of the service are necessary because of increased costs of operating the program. The fee increase is intended to generate sufficient revenue to offset the costs of the program.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: James P. Triplitt, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Division, AMS, USDA, Building 506, BARC–E, Beltsville, Maryland 20705, 301–504–9430.

SUPPLEMENTARY INFORMATION: This rule is authorized by the Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, which provides for voluntary seed inspection and certification services. The AMA authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. This revision is to increase the fees to be charged for the inspection and certification of agricultural and vegetable seeds to reflect the Department's cost of operating the program.

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

The rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. The rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to judicial challenge to the provision of this rule. This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Administrator of AMS has determined that this action will not have a substantial economic impact on a significant number of small entities. Although some seed growers and shippers using this service may be classified as small entities, the effect of the increased fees will be minimal. Under this rule the cost for a typical test will increase from about $44.00 to about $53.10. It is estimated that the total revenue generated by this increase will be approximately $18,000 annually.

The Agricultural Marketing Act (AMA) of 1946, as amended, provides for the inspection and certification of quality of agricultural and vegetable seeds in order to bring about efficient, orderly marketing, and to assist the development of new or expanding markets. The AMA provides for the collection of fees and charges equal to the cost of providing the service. The service is voluntary and available to anyone.

Under the voluntary program samples of agricultural and vegetable seeds submitted to AMS are tested for factors such as purity and germination at the request of the applicant for the service. In addition, grain samples, submitted at the applicant's request, by the Federal Grain Inspection Service are examined for the presence of certain weed and crop seed. A Federal Seed Analysis, Sample Inspection Certificate is issued giving the test results. Most of the 2,000 samples tested in 1992 represented seed or grain scheduled for export. Many importing countries require a Federal Seed Analysis Certificate on United States seed.

The present fee of $29.40 per hour has been in effect since 1991. Since that time, there have been increases in salaries and fringe benefits to personnel, as well as increases in rent and other costs of operating the program.

In addition, some aging testing equipment such as balances must be replaced in order to continue to provide accurate, timely test results. After reviewing the current costs the Department has determined that the present fee is insufficient to cover the Department's cost of operation. Based on the Agency's analysis of the increased costs, AMS is increasing the hourly rate for voluntary seed inspection and certification services from $29.40 to $35.40. In addition, the cost of issuing additional duplicate original certificates will be increased from $7.35 to $8.85. Approximately one-fourth hour is required to issue additional duplicate certificates.

A proposed rule was published in the **Federal Register** on June 11, 1993 (58 FR 32617). Comments on the proposed rule were invited from interested persons until July 12, 1993. No comments were received.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and record keeping requirements, Seeds, Vegetables.

For reasons set forth in the preamble, 7 CFR part 75 is amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for part 75 continues to read as follows:

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

§ 75.41 [Amended]

2. Section 75.41 is amended by removing "$29.40" and adding in its place "$35.40."

§ 75.47 [Amended]

3. Section 75.47 is amended by removing "$7.35" and adding in its place "$8.85."

Dated: November 29, 1993.

Kenneth C. Clayton,

Deputy Administrator for Marketing Programs.

[FR Doc. 93–29741 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–157–1]

Mexican Fruit Fly Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by adding California to the list of quarantined States and by designating a portion of Los Angeles County, CA, as a regulated area. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The effect of this action is to impose restrictions on the interstate movement of regulated articles from the regulated area in California.

DATES: Interim rule effective November 30, 1993. Consideration will be given only to comments received on or before February 4, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–157–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mike B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruits. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10 and referred to below as the regulations) were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Prior to the effective date of this rule, Texas was the only State quarantined for the Mexican fruit fly.

Section 301.64–3 provides that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Plant Protection and Quarantine (PPQ) shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs. Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of the regulated articles that are substantially the same as those with respect to the interstate movement of the articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of PPQ reveal that a portion of Los Angeles County, CA, is infested with the Mexican fruit fly. Specifically, inspectors collected 15 adult Mexican fruit flies in traps in Los Angeles County, CA, between October 26, 1993, and November 4, 1993. The Mexican fruit fly is not known to occur anywhere else in the continental United States, except parts of Texas.

Accordingly, to prevent the spread of the Mexican fruit fly to other States, we are amending the regulations in § 301.64(a) by designating California as a quarantined State and in § 301.64–3(c) by designating as a regulated area a portion of Los Angeles County, CA. The regulated area, about 63 square miles in the Boyle Heights area, is described as follows:

That portion of Los Angeles County bounded by a line drawn as follows: Beginning at the intersection of Vermont Avenue and Beverly Boulevard; then east along Beverly Boulevard to its intersection with Silver Lake Boulevard; then northeast along Silver Lake Boulevard to its intersection with Glendale Boulevard; then north along Glendale Boulevard to its intersection with Fletcher Drive; then northeast along Fletcher Drive to its intersection with Eagle Rock Boulevard; then northeast along Eagle Rock Boulevard to its intersection with York Boulevard; then southeast along York Boulevard to its intersection with Pasadena Avenue; then east along Pasadena Avenue to its intersection with Monterey Road; then east along Monterey Road to its intersection with Fremont Avenue; then south along Fremont Avenue to its intersection with Valley Boulevard; then east along Valley Boulevard to its intersection with Atlantic Boulevard; then southwest along Atlantic Boulevard to its intersection with Slauson Avenue; then west along Slauson Avenue to its intersection with Avalon Boulevard; then north along Avalon Boulevard to its intersection with Jefferson Boulevard; then northwest along Jefferson Boulevard to its intersection with Vermont Avenue; then north along Vermont Avenue to the point of beginning.

There does not appear to be any reason to designate any other portion of the quarantined State of California as a regulated area. Officials of State agencies of California have begun an intensive Mexican fruit fly eradication program in the regulated area in California. Also, California has adopted and is enforcing regulations imposing restrictions on the interstate movement of certain articles from the regulated area that are substantially the same as those imposed on the interstate movement of the regulated articles under this subpart.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive

and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule was reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This rule restricts the interstate movement of regulated articles from a portion of Los Angeles County, CA. Within the regulated area there are approximately 1,125 small entities that may be affected by this rule. These include 350 distributors/wholesalers, 750 fruit and produce stands, 12 nurseries, 5 growers on a total of 2 acres, 3 swap meets, 2 processors, 2 community gardens, and 1 packer. These 1,125 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate, movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

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

Executive Order 12372

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

Executive Order 12778

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Mexican fruit fly program. The assessment provides a basis for the conclusion that the methods employed to eradicate the Mexican fruit fly will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.64 [Amended]

2. In § 301.64, paragraph (a) is amended by removing the phrase "the State of Texas" and adding "the States of California and Texas" in its place.

3. In § 301.64–3, paragraph (c) is amended by adding an entry for "California" and the description of the regulated area for Los Angeles County, CA, to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) * * *

California

Los Angeles County. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Vermont Avenue and Beverly Boulevard; then east along Beverly Boulevard to its intersection with Silver Lake Boulevard; then northeast along Silver Lake Boulevard to its intersection with Glendale Boulevard; then north along Glendale Boulevard to its intersection with Fletcher Drive; then northeast along Fletcher Drive to its intersection with Eagle Rock Boulevard; then northeast along Eagle Rock Boulevard to its intersection with York Boulevard; then southeast along York Boulevard to its intersection with Pasadena Avenue; then east along Pasadena Avenue to its intersection with Monterey Road; then east along Monterey Road to its intersection with Fremont Avenue; then south along Fremont Avenue to its intersection with Valley Boulevard; then east along Valley Boulevard to its intersection with Atlantic Boulevard; then southwest along Atlantic Boulevard to its intersection with Slauson Avenue; then west along Slauson Avenue to its intersection with Avalon Boulevard; then north along Avalon Boulevard to its intersection with Jefferson Boulevard; then northwest along Jefferson Boulevard to its intersection with Vermont Avenue; then north along Vermont Avenue to the point of beginning.

* * * * *

Done in Washington, DC, this 30th day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29737 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Parts 955 and 987

[Docket Nos. FV93–955–1FIR, FV93–987–1FIR]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of two interim final rules that authorized expenditures and established assessment rates under Marketing Orders 955 and 987 for the 1993–94 fiscal period. Authorization of these budgets enables the Vidalia Onion

Committee and the California Date Administrative Committee (Committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: Section 955.206 is effective September 16, 1993, through September 15, 1994; and § 987.336 is effective October 1, 1993, through September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; John R. Toth (M.O. 955), Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, PO Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770; or Kellee J. Hopper (M.O. 987), California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia; and Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of dates produced or packed in Riverside County, California. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Vidalia onions and California dates are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable onions handled during the 1993–94 fiscal period, from September 16, 1993, through September 15, 1994, and all assessable dates during the 1993–94 crop year, from October 1, 1993, through September 30, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 250 producers of Georgia Vidalia onions under Marketing Order 955, and approximately 145 handlers. Also, there are approximately 135 producers of California dates under Marketing Order 987, and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers covered under these orders may be classified as small entities.

The budgets of expenses for the 1993–94 fiscal period were prepared by the Vidalia Onion Committee and the California Date Administrative Committee, the agencies responsible for local administration of their respective orders, and submitted to the Department for approval. The members of these Committees are producers and handlers of Vidalia onions and California dates. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input into these processes.

The recommended assessment rates were derived by dividing anticipated Committee expenses by expected respective shipments of Vidalia onions and California dates. Because these rates will be applied to actual shipments of onions and dates, the assessment rates must be established at levels that will provide sufficient income to pay the Committees' expenses.

The Vidalia Onion Committee met July 22, 1993, and unanimously recommended a 1993–94 budget of $262,950, which is $17,278 more than the previous year. Increases include $1,000 for auto expenses, $500 for dues and subscriptions, $300 for office supplies, $700 for printing, $500 for postage/courier, $10,000 for contract management, and $29,610 for marketing, plus the addition of $4,500 for equipment purchases, for which no funding was recommended last year. These increases will be partially offset by decreases of $500 for travel, $1,200 for liability insurance and bond, $150 for interest, $4,450 for furniture/equipment maintenance, $32 for office overhead, $1,000 for Committee member expense, and $22,500 for research. Major expense items include $59,600 for contract management, $78,500 for research, and $82,500 for marketing.

The Onion Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag, the same as last year. This rate, when applied to anticipated shipments of 2,667,500 50-pound bags, will yield $266,750 in assessment income. This will be adequate to cover anticipated expenses. Funds in the Committee's authorized reserve at the beginning of the 1993–94 fiscal period, estimated at $138,274, will be within the maximum permitted by the order of three fiscal periods' expenses.

The California Date Administrative Committee met on May 13, 1993, and unanimously recommended a 1993–94 budget of $672,440, which is $176,940 more than the previous year. Included in 1993–94 budgeted expenditures is an operating budget of $121,800, with a 20 percent surplus account allocation, for a net operating budget of $97,440, which is $77 more than last year. Increases include $7,000 for the Executive Director's salary, $1,500 for telephone, $1,500 for travel/mileage, $200 for publications, $500 for professional services—accounting, $182,530 for market promotion, the addition of $15,000 for an administrative assistant,

$4,000 for contingencies, $1,000 for an unemployment reserve, and $1,900 for USDA compliance audits. These would be partially offset by decreases of $6,000 for a clerk's salary, $1,000 in health and related benefits, $503 in payroll taxes, and the elimination of $25,000 for an assistant secretary for which no funding was recommended. Also, the Committee recommended no transfer to the market promotion reserve, for which $5,667 was allocated last year. Major expense items include $76,000 for salaries and $575,000 for market promotion.

The Date Committee also unanimously recommended an assessment rate of $1.25 per hundredweight, which is $0.15 less than last season. This rate, when applied to anticipated date shipments of 38,000,000 pounds, will yield $475,000 in assessable income. This, along with $5,000 in interest income and $192,440 from the Committee's reserve, will be adequate to cover budgeted expenses. The maximum amount permitted in the Committee's reserve cannot exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. Funds held by the Committee at the end of the crop year, including the reserve, which are in excess of the crop year's expenses may be used to defray expenses for four months and thereafter the Committee shall refund or credit the excess funds to the handlers. The funds in the Committee's reserve were in excess of the maximum permitted by the order. Accordingly, the Committee has credited or refunded each handler's share of the excess funds. Funds in the reserve are now within the maximum permitted by the order.

Interim final rules were published in the **Federal Register** on July 13, 1993, for 7 CFR part 987 (58 FR 37638); and on September 7, 1993, for 7 CFR part 955 (58 FR 47023). Those rules added § 987.336 and § 955.206 which authorized expenses, and established assessment rates for the Committees. Those rules provided that interested persons could file comments through October 12, 1993, for 7 CFR part 987 and through October 7, 1993, for 7 CFR part 955. No comments were received.

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

It is found that the specified expenses for the marketing orders covered in this rulemaking are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94 fiscal periods began on September 16, 1993, for Vidalia onions and on October 1, 1993, for California dates. The marketing orders require that the rates of assessment for the fiscal periods apply to all assessable onions and dates handled during the fiscal periods. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings and published in the **Federal Register** as interim final rules.

List of Subjects

7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 955 and 987 are amended as follows:

1. The authority citation for 7 CFR parts 955 and 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim rule adding § 955.206 which was published at 58 FR 47023 on September 7, 1993, is adopted as a final rule without change.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CA

Accordingly, the interim rule adding § 987.336 which was published at 58 FR 37638 on July 13, 1993, is adopted as a final rule without change.

Dated: November 29, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–29747 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 981

[Docket No. FV92–981–1FIR]

Almonds Grown in California; Finalize Revised Administrative Rules and Regulations Concerning Handler Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, without change, the provisions of an interim final rule which revised the administrative rules and regulations established under the Federal marketing order for California almonds. The interim final rule streamlined the reporting process for handlers in order to provide a more efficient process of collection and dissemination of information.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509 or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102–B, Fresno, California 93721; (209) 487–5901 or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

The Act provides that administrative proceedings must be exhausted before

parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0071.

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

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

There are approximately 7,000 producers of almonds in the regulated area and approximately 115 handlers who are subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the almond producers and handlers may be classified as small entities.

In August 1992, the Almond Board of California (Board) directed its staff to review reporting requirements under the marketing order. The staff was asked to determine if changes could be made to decrease the reporting burden on handlers by simplifying the process, eliminating unnecessary and duplicative reporting by handlers, and still provide the Board with the information it needs to properly administer the order. As a result of this review, the Board unanimously recommended at its December 14, 1992, meeting, revisions to several existing forms, the elimination of others, and the establishment of one new form. The Board also recommended reducing the frequency of submitting certain forms to the Board. Some of the recommended changes required corresponding changes to sections of the rules and regulations.

The interim final rule implementing these recommended changes was published in the **Federal Register** on June 29, 1993 (58 FR 34694). That rule revised §§ 981.472, 981.473 and 981.474 of Part 981—Administrative Rules and Regulations and was based on the Board's unanimous recommendation and other available information.

The recommended changes were fully discussed in the interim final rule and were implemented upon publication pursuant to 5 U.S.C. 553. In addition, § 981.74 provides authority for the Board, with approval of the Secretary, to request information from handlers that will enable the Board to perform its duties and exercise its powers.

The interim final rule concerning this action invited comments from interested persons until September 27, 1993. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the streamlining of handler reporting requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

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

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

PART 981—ALMONDS GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending 7 CFR Part 981 which was published at 58 FR 34696 on June 29, 1993, is adopted as a final rule without change.

Dated: November 29, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–29740 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[Docket No. FV93–989–3FIR]

Raisins Produced From Grapes Grown in California; Addition of Several Caribbean Area Countries as Countries Eligible for Exports of Reserve Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that added several Caribbean countries as countries eligible for exports of reserve California raisins. This action was unanimously recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the Federal marketing order regulating raisins produced in California. By providing handlers with additional markets for their reserve raisins, this action is expected to reduce the burden of oversupply currently confronting the industry.

EFFECTIVE DATE: January 5, 1994.

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

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

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to

have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 25 California raisin handlers subject to regulation under the marketing order covering raisins produced from grapes grown in California, and about 5,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

The interim final rule was issued on September 7, 1993, and published in the **Federal Register** (58 FR 48274, September 15, 1993), with an effective date of September 15, 1993. That rule amended § 989.221 of the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended October 15, 1993. No comments were received.

Prior to the implementation of the interim final rule, reserve raisins could be sold to handlers for export to the Dominican Republic, islands on the continental shelf of South America, and to all other markets in the world except the following: Canada, Mexico, all islands adjacent to Canada and Mexico, and Caribbean islands north of the 12th parallel (with the exception of the Dominican Republic). The Committee met on June 17, 1993, and unanimously recommended that the countries eligible for exports of reserve California raisins be expanded to include every market except Cuba, Puerto Rico, the U.S. Virgin Islands, Canada, Mexico, and all islands adjacent to Canada and Mexico. The Committee indicated that Puerto Rico and the U.S. Virgin Islands should continue to be ineligible because chain stores in the United States have stores in some of these markets and supply their stores in these territories with free percentage raisins purchased in the United States. The other countries would continue to be ineligible because of the potential for transhipment of free percentage tonnage to higher priced markets.

Implementation of the interim final rule increased the number of countries eligible for exports of reserve raisins and gave handlers more market outlets for their reserve raisins. Since this provision utilizes reserve raisins, continuation is expected to reduce the oversupply that is currently confronting the industry. Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (58 FR 48274, September 15, 1993) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

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

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

Subpart—Supplementary Regulations

2. Accordingly, the interim final rule revising § 989.221, which was published in the **Federal Register** (58 FR 48274, September 15, 1993), is adopted as a final rule without change.

Date: November 29, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–29745 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[Docket No. FV93–989–4IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 989 for the 1993–94 crop. Authorization of this budget enables the Raisin Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1993, through July 31, 1994. Comments received by January 5, 1994, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901, or

Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the crop year began on August 1, 1993, and the marketing order requires that the rate of assessment for the crop year apply to all assessable raisins handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule

provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 989

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

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

2. A new § 989.344 is added to read as follows:

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

§ 989.344 Expenses and assessment rate.

Expenses of $579,060 by the Raisin Administrative Committee are authorized, and an assessment rate of $1.80 per ton of California raisins is established for the crop year ending July 31, 1994. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: November 29, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–29746 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 997

[Docket No. FV93–997–1FR]

Changes in the Provisions Regulating the Quality of Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U. S. Department of Agriculture (Department) is adopting as a final rule, without change, an interim final rule that changed the outgoing quality regulation for 1993 and future crop peanuts, which regulates the quality of peanuts handled by persons who are not signatory to the Peanut Marketing Agreement. The outgoing regulation was changed to allow shipment, without positive lot identification, of lots which are reconstituted by a handler at the request of a buyer and to require that records be kept on such shipments. The interim final rule provided increased opportunity for handlers to meet the requests of their buyers and, thus, facilitated the movement of peanuts to market. This change is intended to bring the quality requirements into conformity with those specified in the agreement.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2020, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 25 handlers of peanuts who have not signed the agreement and thus, are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. It is estimated that most of the handlers are small entities. Most producers doing business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than $500,000.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Public Law 101–220, enacted December 12, 1989, amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the agreement. It is estimated that 5 to 10 percent of the domestic peanut crop is marketed by non-signer handlers and the remainder of the crop is handled by signatory handlers.

Under the non-signer provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the agreement. Regulations to implement Public Law 101–220 were issued and made effective on December 4, 1990 (55 FR 49980) and amended on October 31, 1991 (56 FR 55988). Violation of those regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445c-2) for the crop year during which the violation occurs.

The intent of P.L. 101–220 and the objective of the agreement is to insure that only wholesome peanuts of good quality enter edible market channels. Under the non-signer agreement regulatory provisions, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of shelled peanuts, destined for edible channels, must be officially sampled and chemically tested for aflatoxin by the Department or in other laboratories listed in the regulations. Inspection and chemical analysis programs are administered by the Department.

In 1992, the three major peanut production areas produced approximately 4.28 billion pounds of peanuts, a 13 percent decrease from 1991. The 1992 crop value is § 1.3 billion, down 8 percent from 1991.

The interim final rule amended paragraph (d) *Identification*, of the outgoing quality regulation to allow for shipment, without Positive Lot Identification (PLI), of inshell and shelled, edible quality peanuts which are reconstituted after processing and PLI by a handler, at the request of a buyer.

The outgoing quality regulation requires that peanut lots be PLI when shipped by the handler. Handlers have traditionally maintained PLI until the lot is received by a buyer or other independent entities in the handling process such as second handlers,

independent cold storage warehouse operators, blanchers or remillers. Under the previous provisions, the handler PLI requirement, at the time of shipment, puts handlers at a competitive disadvantage with such entities. Such entities may provide additional processing or change containers of the lot, at the request of the buyer. However, because such lots are no longer under the purview of the non-signer provisions, the entities do not have to maintain PLI, and thus do not charge buyers the extra costs for obtaining a Federal or Federal-State Inspection Service transfer certificate or a second positive lot inspection of such reconstituted lots.

This rulemaking extends an action approved beginning with the 1992 crop year when the Department determined (57 FR 39112, August 28, 1992) that non-signer handlers may commingle PLI lots, at the request of a buyer, and ship such lots without inspection recertification. This action permits non-signer handlers to provide additional processing services after the initial processing and PLI, without incurring recertification costs.

To safeguard normal inspection procedures, a lot which does not receive a new PLI or transfer certificate after reconstitution and/or commingling is not eligible for an appeal inspection. Loss of the handler's right to an appeal inspection on a reconstituted and/or commingled lot should not represent a significant concern as lots that pass quality inspection and aflatoxin testing normally do not require an appeal inspection.

Non-signer handlers are responsible for maintaining records of the quantities of peanuts so reconstituted and making such records available to the Department upon request.

The change was effected by revising § 997.30(d). A similar change has been made in the outgoing quality regulation of the agreement, effective for the 1993–94 crop year.

The interim final rule was issued on June 23, 1993, and published in the **Federal Register** (58 FR 34863, June 30, 1993), with an effective date of June 30, 1993. That rule amended section 997.30 of the rules and regulations in effect. That rule provided a 30-day comment period which ended July 30, 1993. No comments were received. This action will provide increased opportunity for handlers to meet the requests of their buyers and, thus facilitate the movement of peanuts to market. There will be no adverse impact from this change on the outgoing quality regulation of the non-signer provisions.

There are no changes applicable to the incoming quality requirements, therefore, the incoming quality regulation applicable to 1992–93 crop peanuts continues to be effective for 1993–94 crop peanuts.

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

The information collection requirements that are contained in the sections of these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

After consideration of all available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (58 FR 34863, June 30, 1993) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending 7 CFR part 997, which was published at 58 FR 34863 on June 30, 1993, is adopted as a final rule without change.

Dated: November 29, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–29743 Filed 12–03–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1075

[Docket No. AO–14–A64, etc.; DA–90–017]

RIN 0581–AA37

Milk in the New England and Other Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service is correcting the final rule that appeared in the **Federal Register** of May 11, 1993 (58 FR 27774), which amended 37 Federal milk marketing orders based on evidence received at a 43-day hearing held in the fall of 1990. The document was published with an inadvertent error regarding the amendatory instruction for amendment number 44 in part 1075. This docket corrects the error.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: In the final rule beginning on page 27774 of the **Federal Register** for Tuesday, May 11, 1993, the amendatory instruction for amendment number 44 in the second column on page 27864 for part 1075 is corrected to read as follows:

"44. Section 1075.76 is revised to read as follows:"

Dated: November 29, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93–29742 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, 30, 40, 70, and 73

RIN 3150–AE91

NRC Region III Telephone Number and Address Change

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to change the address and telephone numbers of the NRC Region III office. These amendments are necessary to inform the public of these administrative changes to the NRC's regulations.

EFFECTIVE DATE: December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Helen Pappas, USNRC Region III, Lisle, Illinois (708) 829–9550.

SUPPLEMENTARY INFORMATION: On December 13, 1993, the NRC will move its Region III office from 799 Roosevelt Road, Glen Ellyn, Illinois 60137 to 801 Warrenville Road, Lisle, Illinois 60532–4351. The telephone number will be changed from (708) 790–5500 to (708) 829–9500. The FTS telephone number will be changed to (FTS) 829–9500.

Because this amendment deals with agency procedures, the notice and

comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a change in address and telephone number. The amendment is effective December 13, 1993.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

The final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because it is an administrative action that changes the address and telephone number of an NRC region.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because this rule does not involve any provisions that would impose a backfit as defined in § 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Incorporation by reference, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 20, 30, 40, 70, and 73.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

§ 1.5 [Amended]

2. In § 1.5, paragraph (b), the NRC Region III address is revised to read "Region III, USNRC, 801 Warrenville Road, Lisle, IL 60532–4351."

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Appendix D to §§ 20.1001–20.2402 [Amended]

4. In Appendix D to §§ 20.1001–20.2402, the NRC Region III address is revised to read "USNRC, Region III, 801 Warrenville Road, Lisle, IL 60532–4351." The NRC Region III telephone number is revised to read "(708) 829–9500." The NRC Region III FTS telephone number is revised to read "(FTS) 829–9500."

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

5. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 30.6 [Amended]

6. In § 30.6, paragraph (b)(2)(iii), the NRC Region III address in the last sentence is revised to read "U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 801 Warrenville Road, Lisle, Illinois 60532–4351."

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

7. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 40.5 [Amended]

8. In § 40.5, paragraph (b)(2)(iii), the NRC Region III address in the last

sentence is revised to read "U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 801 Warrenville Road, Lisle, Illinois 60532–4351."

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.5(b)(2)(iii) [Amended]

§ 70.5 [Amended]

10. In § 70.5, paragraph (b)(2)(iii), the NRC Region III address in the last sentence is revised to read "U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 801 Warrenville Road, Lisle, Illinois 60532–4351."

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

11. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

Appendix A to Part 73 [Amended]

12. In Appendix A the address for the NRC Region III office is revised to read "USNRC, 801 Warrenville Road, Lisle, IL 60532–4351." The NRC Region III telephone number is revised to read (708) 829–9500." The NRC Region III FTS telephone number is revised to read "(FTS) 829–9500."

Dated at Rockville, Maryland, this 23rd day of November 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–29726 Filed 12–3–93; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0816]

Reserve Requirements of Depository Institutions Reserve Requirement Ratios; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: This notice corrects certain compliance dates and a dollar amount in the graph in § 204.9 in the final rule published November 23, 1993, 58 FR 61801. The final rule amended the Regulation D reserve tranches, designated the compliance dates, and reestablished the deposit cutoff level. The compliance dates for the low reserve tranche adjustment and the reservable liabilities exemption adjustment are corrected to be one week later than specified in the November 23, 1993, rule for institutions that report quarterly. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the computation period beginning Tuesday, December 21, 1993, and for the reserve maintenance period beginning Thursday, January 20, 1994. In § 204.9, the reserve requirement for net transaction accounts over $51.9 million, prior to adjustment for the $4.0 million exemption amount, is corrected to be $1,557,000 plus 10 percent of the amount over $51.9 million.

EFFECTIVE DATE: December 14, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Attorney (202/452-3818), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

1. In FR Doc. 93-28685 on page 61801, 2nd column, make the following corrections:

In the 2nd column in the Compliance Dates caption, the fifth line, "December 14" is corrected to read "December 21"; in the eighth line, "January 13" is corrected to read "January 20".

2. In FR Doc. 93-28685 on page 61802, 1st column, make the following corrections:

In the 1st column in the Supplementary Information caption in the first full paragraph in the 14th line, "December 14" is corrected to read "December 21", and in the 16th line, "January 13" is corrected to read "January 20".

§ 204.9 [Corrected]

3. In FR Doc. 93-28685, in § 204.9(a)(1), on page 61803, in the chart in the first column, under the heading "Reserve requirement," "$1,437,000" is corrected to read "$1,557,000".

By order of the Board of Governors of the Federal Reserve System, November 30, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-29708 Filed 12-3-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–44–AD; Amendment 39–8741; AD 93–23–07]

Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Industrie Model A300–600 series airplanes, that requires inspections to detect cracks in the center spar sealing angles adjacent to the pylon rear attachment and in the adjacent butt strap and skin panel, and corrections of discrepancies. This amendment is prompted by reports of cracks in the vertical web of the center spar sealing angles of the wing. The actions specified by this AD are intended to prevent crack formation in the sealing angles; such cracks could rupture and lead to subsequent crack formation in the bottom skin of the wing, resulting in reduced structural integrity of the center spar section of the wing.

DATES: Effective January 5, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of January 5, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Airbus Industrie Model A300–600 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on May 24, 1993 (58 FR 29802). That action proposed to require repetitive high frequency eddy current (HFEC) inspections to detect cracks in the center spar sealing angles adjacent to the pylon rear attachment, cold work, and replacement of any cracked parts. That action also proposed to require additional inspections to detect cracks of the adjacent butt strap and skin panel, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,800, or $660 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93–23–07 Airbus Industrie: Amendment 39–8741. Docket 92–NM–44–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the center spar section of the wing, accomplish the following:

(a) For those airplanes on which the modification described in Airbus Repair Drawing R571–40588 has not been accomplished: Perform high frequency eddy current (HFEC) inspections to detect cracks in the center spar sealing angles adjacent to Rib 8, in accordance with Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991, at the times specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable:

(1) For airplanes that have accumulated less than 12,000 total landings as of the effective date of this AD: Prior to the accumulation of 12,000 total landings or within 2,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 6,000 landings.

(2) For airplanes that have accumulated 12,000 total landings or more, but less than 14,000 total landings as of the effective date of this AD: Prior to the accumulation of 14,000 total landings or within 2,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 6,000 landings.

(3) For airplanes that have accumulated 14,000 total landings or more as of the effective date of this AD: Prior to the accumulation of 500 landings after the effective date of this AD; and thereafter at intervals not to exceed 6,000 landings.

(b) For those airplanes on which the average flight time differs from 2.1 hours by more than 10 percent: For purposes of complying with this AD, the initial inspection thresholds and the repetitive inspection intervals specified in paragraph (a) of this AD must be multiplied by an adjustment factor obtained from the formula listed in paragraph 1.C.(3) of Airbus Industrie Service Bulletin A300–57–6027, dated October 8, 1991.

(c) For those airplanes on which the modification described in Airbus Repair Drawing R571–40588 has been accomplished: Prior to the accumulation of 15,000 landings after accomplishing the modification, or within 500 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 6,000 landings, perform a HFEC inspection to detect cracks in the center spar sealing angles adjacent to Rib 8, in accordance with Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991.

(d) If any crack is found in the center spar sealing angles, including cracking entirely through the sealing angle, as a result of the inspections required by paragraph (a), (b), or (c) of this AD, prior to further flight, replace the pair of sealing angles on the affected wing and cold work the attachment holes, in accordance with Airbus Repair Drawing R571–40589; and perform the repetitive inspections required by paragraph (c) of this AD.

(e) If any sealing angle is found to be cracked through entirely as a result of the inspections required by paragraph (a) or (c) of this AD, prior to further flight, perform additional inspections to detect cracks in the adjacent butt strap and skin panel, in accordance with paragraph 2.B.(5) of Airbus Industrie Service Bulletin No. A300–57–6027, dated October 8, 1991. If any crack is found in the adjacent butt strap and skin panel, prior to further flight, repair it in accordance with Airbus Repair Drawing R571–40611.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(h) The inspections shall be done in accordance with Airbus Industrie Service Bulletin No. A300–57–6027, including Appendix 1, dated October 8, 1991. 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 may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on January 5, 1994.

Issued in Renton, Washington, on November 17, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28679 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–51–AD; Amendment 39–8747; AD 93–23–11]

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes, that requires an inspection of certain nose wheel assemblies to ensure that these assemblies are identified correctly, and replacement of any assembly that is identified incorrectly. This amendment is prompted by a recent report that several modified nose wheel assemblies that do not meet Federal Aviation Regulation (FAR) requirements have been found installed on the affected airplanes. The actions specified by this AD are intended to prevent reduced strength and structural integrity of the nose wheel assembly.

DATES: Effective January 5, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 5, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Aircraft Braking Systems Corporation, 1204 Massillon road, Akron, Ohio 44306–4186. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes was published in the **Federal Register** on June 2, 1993 (58 FR 31354). That action proposed to require a one-time visual inspection of certain nose wheel assemblies to ensure that these assemblies are identified correctly, and replacement of any assembly that is identified incorrectly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of its members, requests that the proposed rule be withdrawn. The commenter suggests that the FAA issue an information bulletin advising Principal Maintenance Inspectors of the addressed problem and requesting that operators check purchasing records to determine if nose wheel assemblies have been purchased from Aviation Wheel and Brake, Miami, Florida. The commenter indicates that the number of suspect nose wheel assemblies is very small and no failures have been reported to date.

The FAA does not concur with the commenter's request that this AD be withdrawn. As explained in the preamble of the proposal, the suspect nose wheel assemblies are not safe for use on heavier airplanes. If suspect nose wheel assemblies were installed on airplanes identified in this AD and not detected, the strength and structural integrity of those assemblies would be reduced. Therefore, to correct this unsafe condition, the FAA must require that operators determine if these suspect assemblies are installed. The appropriate vehicle to ascertain that this requirement is accomplished is the airworthiness directive.

The commenter also requests that operators be permitted to complete a records search for suspent assemblies, rather than a physical inspection of the airplane. The commenter indicates that nose wheel assemblies having unauthorized modifications would be difficult to find by a line mechanic in the field.

The FAA concurs with the commenter's request. Operators are permitted to accomplish either paragraph (a)(1) or (a)(2) of this AD.

While paragraph (a)(1) requires a physical inspection of the nose wheel assemblies, paragraph (a)(2) requires operators to determine if the nose wheel assemblies have ever been in the possession of Aviation Wheel and Brake, Miami, Florida. The FAA has revised paragraph (a)(2) of the final rule to indicate that this determination may be accomplished by performing a records search.

The commenter requests that the proposed compliance time be extended from 60 to 90 or 180 days. The commenter states that a lengthened compliance time would allow operators to perform a sight inspection of the nose wheel assemblies during normal shop visits for a tire change or overhaul.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the required actions. In light of these items, the FAA has determined that 60 days for compliance is appropriate. However, paragraph (c) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if sufficient data are presented to justify such an adjustment.

One commenter asks that paragraph (b) of the proposal be revised to

eliminate "two different compliance periods." The commenter indicates that paragraph (b) stipulates immediate compliance for wheel assemblies installed after the effective date of the AD.

The FAA does not concur with the commenter's request to revise paragraph (b) of the AD. The purpose of paragraph (b) is simply to ensure that no suspect nose wheel assembly is installed on an airplane after the effective date of the AD. The FAA finds this requirement practical and a reasonable course of action to ensure that the suspect assemblies are not installed on the affected airplanes. Removing an unsafe condition that already exists on an airplane necessarily involves performing maintenance on the airplane, and the FAA always provides some kind of "grace period" in order to minimize disruption of operations. On the other hand, prohibiting installation of spares that have been determined to create an unsafe condition does not require any additional maintenance activity; it simply requires use of one part rather than another. In general, once the FAA has determined that an unsafe condition exists, it is its policy not to allow that condition to be introduced into the fleet. In developing the technical information on which every AD is based, one of the important considerations is the availability of parts that the AD will require to be installed. When it is determined that those (safe) parts are immediately available to operators, it is the FAA's policy to prohibit installation of the unsafe parts after the effective date of the AD.

Further, the FAA considers that the period of time between publication of the final rule AD in the **Federal Register** and the effective date of the final rule (usually 30 days) is sufficient to provide operators with an opportunity to determine their immediate need for modified spares and to obtain those parts. Of course, in individual cases where this is not possible, every AD contains a provision that allows an operator to obtain an extension of compliance time based upon a specific showing of need. The FAA considers that this policy does increase safety and does not impose undue burdens on operators.

One commenter requests that the 60-day compliance time specified in the proposal be revised to require that nose wheel assemblies installed on aircraft with a ramp weight of less than 148,000 lbs. be inspected at the next removal/shop visit, even if those nose wheel assemblies are identified incorrectly. The commenter states that, in the case of its fleet, installation of a wheel assembly identified with the incorrect dash number would not be a safety concern since all wheel assemblies with the basic part number 9550267 are approved for use on its fleet.

The FAA does not concur with the commenter's request to revise the compliance time for certain airplanes. In addition to the change of dash number of the suspect wheel assemblies, a suspect boss was welded onto the wheel. Consequently, the strength of the wheels is also in question. In light of these safety implications, the FAA has determined that a 60-day compliance time is appropriate.

One commenter requests that the FAA clarify whether an incorrectly identified wheel may be overhauled, inspected, properly reidentified, and reused on its fleet. The FAA responds by noting that it is aware that suspect wheel assemblies have a boss welded onto the wheel. However, the FAA currently is unaware of the availability of any acceptable maintenance procedure that would correct this modification.

One commenter requests that an inspection item be added to the Component Overhaul Manual for these airplanes directing operators to confirm the wheel assembly dash number at each shop visit. The commenter expresses concern that a one-time inspection will not prevent the same problem from reoccurring in the future.

The FAA does not concur with the commenter's request to revise the Component Overhaul Manual. This AD addresses a problem created by the unauthorized actions of one particular repair station. Since the FAA cannot predict which actions specified in the Component Overhaul Manual would be appropriate in preventing a problem created by incorrect modifications accomplished in the future, the FAA finds that a change to that manual is not appropriate at this time.

The economic analysis paragraph, below, has been revised to reflect the current numbers of airplanes of the affected design in the worldwide and U.S. fleets and to revise the total cost impact of the AD accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,950 Model DC–9 and DC–9–80 series airplanes and Model MD–88 and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,150 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $31,625, or $27.50 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93-23-11 McDonnell Douglas: Amendment 39-8747. Docket 93-NM-51-AD.

Applicability: All Model DC-9-10, -20, -30, -40, and -50 series airplanes; Model DC-9-81, -82, -83, and -87 series airplanes; Model MD-88 airplanes; and C-9 (military) airplanes; equipped with nose wheel assembly part number 9550267-6 or 9550267-7; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the nose wheel assembly, resulting from installation of a suspected unapproved part, accomplish the following:

(a) Within 60 days after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Perform a one-time visual inspection of nose wheel assemblies, part numbers 9550267-6 and 9550267-7, to ensure that these assemblies are identified correctly in accordance with Section II, Accomplishment Instructions, of Aircraft Braking Systems Corporation Service Letter MD81-SL-3, MD82-SL-3, MD83-SL-4, MD87-SL-3, MD88-SL-4, MD90-SL-1, DC9-10-SL-12, DC9-30-SL-16, DC9-40-SL-16, DC9-50-SL-8 (included in one document), dated February 10, 1993.

(i) If any nose wheel assembly is not identified correctly, prior to further flight, replace that assembly with an FAA-approved assembly in accordance with the applicable Aircraft Maintenance Manual.

(ii) If each nose wheel assembly is identified correctly, no further action is required by this paragraph.

(2) Determine if the nose wheel assemblies, part numbers 9550267-6 and 9550267-7, have ever been in the possession of Aviation Wheel and Brake, Miami, Florida. This determination may be accomplished by performing a search of maintenance or other records.

(i) If it is not possible to make such a determination, or if the results of that determination indicate that any nose wheel assembly has been in the possession of Aviation Wheel and Brake, accomplish the inspection required by paragraph (a)(1) of this AD.

(ii) If it is determined that a nose wheel assembly has never been in the possession of Aviation Wheel and Brake, no further action is required by this paragraph with respect to that nose wheel assembly.

(b) As of the effective date of this AD, no person shall install a nose wheel assembly, part number 9550267-6 or 9550267-7, on any airplane unless, prior to installation, that nose wheel assembly has been inspected in accordance with the requirements of paragraph (a)(1) of this AD and has been found to be identified correctly; or unless, prior to installation, it has been determined that the nose wheel assembly has never been in the possession of Aviation Wheel and Brake in accordance with the requirements of paragraph (a)(2) of this AD.

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

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

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

(e) The inspection shall be done in accordance with Aircraft Braking Systems Corporation Service Letter MD81-SL-3, MD82-SL-3, MD83-SL-4, MD87-SL-3, MD88-SL-4, MD90-SL-1, DC9-10-SL-12, DC9-30-SL-16, DC9-40-SL-16, DC9-50-SL-8 (included in one document), dated February 10, 1993. 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 may be obtained from Aircraft Braking Systems Corporation, 1204 Massillon Road, Akron, Ohio 44306-4186. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 3, 1994.

Issued in Renton, Washington, on November 19, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-28952 Filed 12-3-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 93-ASW-25]

Revocation of Class D Airspace: Beeville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace at Beeville, TX. The Department of the Navy has decommissioned the Tactical Air Navigation (TACAN) and Nondirectional Radio Beacon (NDB) serving the Naval Air Station (NAS), Chase Field, TX, and canceled all standard instrument approach procedures (SIAP) based on these navaids. Additionally, flight operations have ceased and the airfield has been closed. Controlled airspace will no longer be needed to contain instrument flight rule (IFR) operations at this location.

EFFECTIVE DATE: 0901 UTC, March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone 817-624-5531.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Control Zone at the Naval Air Station (NAS), Chase Field, Beeville, TX, was published in the **Federal Register** (58 FR 26267). The Department of the Navy has decommissioned all navaids serving NAS Chase Field and all SIAP's based on these navaids have been canceled. Additionally, NAS Chase Field has been closed. Therefore, controlled airspace will no longer be needed to contain instrument flight rules (IFR) operations at this location. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone," replacing it with the designation "Class D airspace."

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Other than the change in terminology, this amendment is the same as that proposed in the notice.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class D airspace designation listed in this document will be removed from the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Class D airspace at NAS Chase Field, Beeville, TX, which previously provided controlled airspace for aircraft executing all SIAP's at NAS Chase Field, Beeville, TX.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant

regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

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

Paragraph 5000: General

* * * * *

ASW TX D Beeville, TX [Removed]

* * * * *

Issued in Fort Worth, TX, on November 19, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29590 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–26]

Revision of Class E Airspace: Beeville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Beeville, TX. Previously, the controlled airspace for the Naval Air Station (NAS), Chase Field also contained the controlled airspace for Beeville Municipal Airport. The Department of the Navy has now decommissioned the Tactical Air Navigation (TACAN) and Nondirectional Radio Beacon (NDB) serving NAS Chase Field, TX, and the controlled airspace encompassing NAS Chase Field and Beeville Municipal has been revoked. The intent of this action is to reestablish controlled airspace extending upward from 700 feet above the ground (AGL) since it is needed to contain aircraft executing standard instrument approach procedures (SIAP's) at Beeville Municipal Airport.

EFFECTIVE DATE: 0901 u.t.c., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–624–5531.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to continue to provide a transition area for Beeville Municipal Airport, Beeville, TX, was published in the Federal Register (58 FR 26269). This action proposed to revise the Beeville transition area to provide adequate Class E airspace, extending upward from 700 feet AGL to contain instrument flight rules (IFR) operations during portions of the terminal operation and while transitioning between the enroute and terminal environments at Beeville Municipal Airport, Beeville, TX. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet above ground level is now Class E airspace. Simultaneously, the Class D airspace for the Naval Air Station, Chase Field, will be revoked (Docket No. 93 ASW 25) and this Class E airspace for Beeville Municipal Airport will be established.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Other than the change in terminology, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Beeville, TX, to provide controlled airspace from 700 feet AGL for aircraft executing SIAP's into the Beeville, TX, Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

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

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Beeville, TX [Revised]

Beeville Municipal Airport

(lat. 28°21'52"N., long. 97°47'31"W.)
Beeville NDB
(lat. 28°22'04"N., long. 97°47'40"W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Beeville Municipal Airport and 1.3 miles each side of the 138° bearing from the Beeville NDB extending from the 6.6-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Forth Worth, TX, on November 19, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93-29591 Filed 12-3-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 158

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of enforcement policy change.

SUMMARY: This Notice describes the Federal Aviation Administration's (FAA) policy regarding implementation of a recent law affecting the Passenger Facility Charge (PFC) program. The law prohibits the FAA from awarding Airport Improvement Program (AIP) grant monies to a public agency imposing PFCs on tickets acquired with frequent flyer and similar airline bonus awards. While current FAA regulations can be construed as requiring collection of PFCs from passengers using frequent flyer award tickets, until further notice the FAA will consider collection of such PFCs to be at the discretion of the public agency and not a regulatory requirement.

Accordingly, in order to protect its AIP eligibility, a public agency may inform the air carriers subject to collection of PFCs that it will no longer impose PFCs on tickets acquired with frequent flyer and similar bonus awards and that the carriers should terminate PFC collections on such tickets.

PFC collection approvals will continue to exclude approval for collection from frequent flyer award travelers unless a public agency explicitly requests otherwise.

DATES: *Effective Date:* This notice of enforcement policy is effective November 19, 1993. *Notification Date:* Notices provided by public agencies to collecting carriers which are postmarked no later than January 5, 1994 will be considered timely, and will assure public agency eligibility for AIP assistance is not jeopardized.

FOR FURTHER INFORMATION CONTACT: Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION:

Background

The Aviation Safety and Capacity Expansion Act of 1990 (ASCEA) authorizes the Secretary of Transportation to approve local imposition of PFCs of $1, $2, or $3 per enplaned passenger and to use PFC revenue for approved projects. After notice, comment, and a public hearing, the FAA promulgated a final rule, part 158 of the Federal Aviation Regulations (FARs), to implement the PFC authority conferred by the Federal Aviation Act of 1958, as amended (FAAct), effective as of June 28, 1991 (56 FR 24254). The rule sets forth procedures for public agency applications for authority to impose PFCs, for FAA processing of such applications, for collection, handling, and remittance of PFCs by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing Federal grant funds apportioned to large and medium hub airports imposing a PFC.

The Supplementary Information to the Final Rule noted that many comments were received requesting that particular classes of persons or carriers not be subject to PFCs, including persons travelling on frequent flyer discount fares. However, the final rule did not provide an exception for persons travelling on tickets obtained in frequent flyer or similar bonus programs. It also did not expressly define "paying passengers." Rather, the FAA exercised the authority legislatively conveyed by section 1113(e)(14) of the FAAct, 49 U.S.C. App. section 1513(e), to implement the "paying passenger" provision by authorizing collection of PFCs from revenue passengers as defined in 14 CFR part 241. Frequent flyer passengers are considered revenue passengers under part 241 "since the revenue considerations for passenger travel were included in their previously purchased ticket." 14 CFR part 241, § 19.7, appendix A, part X. As a result, part 158 requires air carriers to collect from those passengers travelling on tickets acquired through frequent flyer and other bonus programs.

However, section 328 of the Department of Transportation and Related Agencies Fiscal Year 1993 Appropriations Act, Public Law 102-388 (2d Session, October 6, 1992), prohibited the FAA's use of appropriated funds during fiscal year 1993 for planning or executing rules or regulations to add PFCs to the cost of travel benefits commonly known as "frequent flyer award certificates" or any other bonus program offered by any airline. While section 328 did not amend or repeal section 1113(e) of the FAAct, and did not require repealing or amending part 158 of the FARs, the FAA was prohibited from approving any application for PFCs under part 158 unless the proposed PFC excluded charges on passengers enplaned on air travel tickets provided by way of frequent flyer award certificates or any other bonus program. The FAA was also barred from enforcing any failure to collect or to remit covered charges during fiscal year 1993. However, section 328 did not affect approvals granted before October 6, 1992.

The Department of Transportation Appropriations Act for Fiscal Year 1994 was enacted on October 27, 1993. Section 333 of that Act states that none of the funds provided by this Act shall be made available for any airport development project, or projects, proposed in any grant application submitted in accordance with title V of Public Law 97-248 (96 Stat. 671; 49 U.S.C. App. 2201, *et seq.*) to any public agency, public authority, or public airport that imposes a fee for any passenger enplaning at the airport in any instance where the passenger did not pay for the air transportation which resulted in such enplanement, including any case in which the passenger obtained the ticket for the air transportation with a frequent flyer award coupon.

Department of Transportation and Related Agencies Appropriations Act for the Fiscal Year Ending September 30, 1994, Public Law 103-122, section 333 (Oct. 27, 1993).

In the Report accompanying H.R. 2750, the Committee on Appropriations stated:

> The bill includes a new general provision * * * that prohibits the awarding of any airport improvement program (AIP) funds to any airport which allows the collection of passenger facility charges (PFCs) on tickets acquired with frequent flyer and similar airline bonus awards. Last year this Committee reported, and the Congress adopted, language intended to prohibit the FAA from approving the collection of passenger facility charges (PFCs) from airline passengers travelling on frequent flyer bonus awards. In the report accompanying that action the Committee indicated that it believed the legislative history on this matter was clear, and that the intent of Congress was

clear, that passenger facility charges were not to be collected from frequent flyers.

Notwithstanding that action, the FAA issued regulations that only partially suspended such collections. Therefore the Committee reiterates its view that frequent flyers should not be subject to PFC collections and in support of that position instructs the FAA to withhold awarding any funds appropriated for the Airport Improvement Program to any airport, or airport authority which imposes a passenger facility charge on any passenger travelling on a frequent flyer bonus award.

H.R. Rep. No. 103–190, 103d Cong., 1st Sess. 47 (July 27, 1993).

The Senate Committee included the House Bill language in the Senate Report dated September 29, 1993. S. Rep. No. 103–150, 103d Cong., 1st Sess. 65 (1993). Since there were no objections to that language, it was neither amended nor addressed in the House Conference Report dated October 18, 1993.

The FAA construes the legislative intent in enacting section 333 to terminate, as of October 27, 1993, imposition of PFCs on passengers enplaned on air travel tickets provided by way of frequent flyer award certificates and similar bonus awards. Therefore, the FAA will not approve a public agency's collection of PFCs on tickets issued through frequent flyer and other bonus award programs unless the public agency affirmatively requests such authority and certifies that it will forgo AIP grant monies. The FAA defines a "frequent flyer award" to mean a zero-fare award of air transportation that an air carrier or foreign air carrier provides to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program. The FAA defines "any other bonus award program" to mean any other accumulated travel mileage or accumulated trip credit program offered by any airline, for which zero-fare awards of transportation are made, whether or not the term "frequent flyer" is used in the definition of that program. The definitions of "frequent flyer award" and "any other bonus award program" do not extend to redemption of accumulated credits for awards of additional or upgraded service on trips for which the passenger has paid a published fare.

The FAA does not construe section 333 as applying to "two-for-the-price-of-one" and similar marketing programs. The FAA views each of the two passengers travelling together under such a marketing program as contributing equally towards the air transportation. Each passenger is deemed to contribute fifty percent of the amount paid for the air transportation. As a result, they are not covered by section 333's language which applies only in instances where the passenger "* * * did not pay for the air transportation which resulted in such enplanement." In addition, consistent with the treatment of frequent flyer award travellers as revenue passengers, the FAA considers the traveller using the "free ticket" to be a revenue passenger "since the revenue considerations for passenger travel were included in [the simultaneously] purchased ticket." 14 CFR part 241, § 19.7 appendix A, part X. Thus, a PFC will be collected on the "free ticket" resulting from the "two-for" marketing scheme since such passengers are not included within the scope of Congressional concern.

FAA Policy on Implementation of Public Law No. 103–122

With respect to those PFC applications approved prior to the date of enactment of section 328 of the Department of Transportation and Related Agencies Fiscal Year 1993 Appropriations Act, October 6, 1992, the new law will have no retroactive effect. Those PFC approvals still have full force and effect and any PFC collections from frequent flyers remain valid under part 158 of the FARs. Public agencies may or may not choose to continue to collect PFCs from frequent flyers bonus tickets or other bonus tickets based upon their desire to be eligible to receive AIP grant monies. While current FAA regulations can be construed as requiring collection of PFCs from passengers using frequent flyer award tickets, until further notice, the FAA will consider collection of such PFCs to be at the discretion of the public agency and not a regulatory requirement.

In order to protect its AIP eligibility, a public agency may inform the air carriers subject to collection of PFCs that it will no longer impose PFCs on tickets acquired with frequent flyer and similar bonus awards, as discussed in this Notice, and that air carriers should cease collection of such PFCs immediately. In order to avoid uncertainty about continuing eligibility for AIP funds under section 333, public agencies should notify carriers as soon as possible to terminate collection of PFCs on tickets acquired with frequent flyer and similar bonus awards but not later than 30 days after the publication of this notice in the **Federal Register**. Public agencies that do not provide such notices within 30 days of publication will be presumed by the FAA to be allowing the collection of PFCs on such tickets.

The following is suggested language to implement this practice:

This is to serve as official notice by (*name of public agency*) the starting on (*date*), air carriers serving (*name of airport*) shall terminate immediately collection of passenger facility charges (PFCs) from those travelers flying on frequent flyer mileage or other similar bonus awards as defined by the Federal Aviation Administration (FAA). This notice is being issued pursuant to the Department of Transportation and Related Agencies Appropriations Act for the Fiscal Year Ending September 30, 1994, Public Law 103–122, section 333 (October 27, 1993,), as interpreted by the FAA in its notice published in the **Federal Register** on December 6, 1993. Please refer to the FAA notice for further information.

Additional statutory provisions affecting PFC collections from frequent flyers are included in pending AIP reauthorization legislation. The FAA will consider appropriate amendments to part 158 of the FARs following enactment of that legislation.

Issued in Washington, DC, on November. 19, 1993.

Quentin S. Taylor,

Deputy Assistant Administrator for Airports.

[FR Doc. 93–29585 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISION

16 CFR Part 1000

Commission Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising the addresses listed in in its statement of organization and functions to reflect the imminent relocation of its headquarters and the relocation of its Western Regional Center.

EFFECTIVE DATE: December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207-0001, telephone 301-504-0980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately on the specified effective date. Further, this action is not a rule as defined in the Regulatory

Flexibility Act, 5 U.S.C. 601-612 and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (government agencies).

Accordingly, 16 CFR part 1000 is amended as follows:

PART 1000—[AMENDED]

1. The authority citation for part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

2. Section 1000.4 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 1000.4 Commission address.

(a) The principal Offices of the Commission are at 4330 East West Highway, Bethesda, Maryland. All U.S. Postal Service mail communications with the Commission should be addressed to the Consumer Product Safety Commission, Washington, DC 20207-0001, unless otherwise specifically directed. Materials sent by private express services or by messenger should be addressed to the Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408.

(b) * * *

(3) Western Regional Center, 600 Harrison St., room 245, San Francisco, California 94107-1370; Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Louisiana, Montana, Nevada, New Mexicao, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93-29736 Filed 12-3-93; 8:45 am]

BILLING CODE 6355-01-F

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-33256]

Records Services, Fee Schedule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its schedule of fees for records services to increase the copying fee from $0.22 to $0.24 per page. After reviewing cost and revenue information for the past year, the Commission has determined that this increase is justified.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jessica L. Kole, (202) 272-2706, Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Copying services are provided for records publicly available through the public reference rooms in the Commission's home office at 450 Fifth Street, NW., Washington, DC 20549, its Northeast Regional Office at suite 1300, 7 World Trade Center, New York, New York 10048, and its Midwest Regional Office at suite 1400, Northwestern Atrium Center, Chicago, Illinois 60661. Copying services are also provided for Commission records requested and released under the Freedom of Information Act. Since the copying fee was last increased on November 1, 1992, the Commission has reviewed cost and revenue information and has determined that a $0.02 increase per page is justified. The Commission also finds that this fee increase relates to "rules of agency organization, procedure, or practice" within the meaning of the Administrative Procedure Act [5 U.S.C. 553(b)(3)(A)]. Therefore, it is not subject to notice and comment under that Act.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information.

Text of the Amendment

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

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78*ll*(d), 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. Section 200.80e is amended by revising the paragraph entitled "Freedom of Information Act services" to read as follows:

§ 200.80e Appendix E—Schedule of fees for records services.

* * * * *

Regular service. Paper copies of original paper copies, or from microfiche accessible to the contractor, will be shipped within seven calendar days after the contractor receives the order and material at $0.24 per page, exclusive of any applicable shipment cost and sales taxes.

* * * * *

By the Commission.

Dated: November 30, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29666 Filed 12-3-93; 8:45 am]

BILLING CODE 8010-01-P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Rules of General Application

AGENCY: International Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its Rules of Practice and Procedure to change the minimum notice period afforded for Commission meetings held pursuant to the Government in the Sunshine Act from ten to seven days. This amendment is consistent with the requirements of the Sunshine Act, will bring the Commission's notice period into conformity with that of most other agencies under the Act, and will not affect the Commission's methods of issuing such notices.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3090. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedure and rules and regulations as it deems necessary to carry out its functions and duties. Section 3 of the Government in the Sunshine Act (5 U.S.C. 552b(g)) authorizes the Commission to promulgate regulations to implement the requirements of that Act.

Commission rules ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA), which entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the

final rules thirty days prior to their effective date. See 5 U.S.C. 553. Notice of proposed rulemaking was published in the **Federal Register** of September 23, 1993 (58 FR 49452) and interested persons were given until October 25, 1993, to submit comments. No comments were received. The final rule adopted is therefore the same as the rule proposed and published in the **Federal Register** of September 23, 1993.

The Commission has determined that this final rule does not meet the criteria described in section 1(b) of Executive Order 12291 (46 FR 13193, Feb. 17, 1981) and does not constitute a major rule for the purposes of the EO. The amendment is not subject to the filing requirement of section 3(c)(3) of the EO. Moreover, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 note), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule set forth in this notice is not likely to have a significant economic impact on a substantial number of small business entities. This is because the final rule merely conforms the Commission's practice under the Government in the Sunshine Act to that of the majority of other agencies and is not expected to have any significant economic impact.

Explanation of the Amendment to 19 CFR Part 201

Sections 201.35(a), 201.35(c)(1), 201.35(c)(2), and 201.35(c)(3) are amended to provide that public notice of Commission meetings held pursuant to the Government in the Sunshine Act shall be issued at least seven days prior to the date of the meeting. The present rule provides for ten days' notice.

This amendment is fully in accordance with section 552b(e)(1) of the Government in the Sunshine Act (5 U.S.C. 552b(e)(1)), which requires agencies to make public announcement of a meeting at least one week before the meeting. Since only a very few agencies afford more than seven days' notice of meetings under the Act, the amendment is also in accordance with the practice of most other agencies under the Act.

The Commission intends to continue its present practice of issuing meeting notices by posting each notice on the bulletin board outside the Secretary's office, making additional copies of the notice available to the public through the Secretary's office and the mailing list, and submitting a copy of each notice to the **Federal Register** for publication.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Sunshine Act.

19 CFR part 201 is amended as follows:

PART 201—RULES OF GENERAL APPLICATION

Subpart E—Opening Commission Meetings to Public Observation Pursuant to 5 U.S.C. 552b

1. The authority citation for subpart E of part 201 continues to read as follows:

Authority: 5 U.S.C. 552b; 19 U.S.C. 1335.

2. Paragraphs (a) and (c) § 201.35 are revised to read as follows:

§ 201.35 Notices to the public.

(a) At least seven (7) days before each Commission meeting the Commission shall issue a public notice which:

(1) States the time and place of the meeting;

(2) Lists the subjects or agenda items to be discussed at the meeting;

(3) States whether the meeting or portion thereof is to be open or closed to public observation; and

(4) Gives the name and business phone number of the Secretary to the Commission.

* * * * *

(c)(1) The 7-day period for public notice provided for in paragraph (a) of this section shall not apply when a majority of the entire membership of the Commission determines by recorded vote that Commission business requires that a particular meeting be called with less than 7 days' notice and that no earlier announcement of such meeting was possible.

(2) When the Commission has voted in conformity with paragraph (c)(1) of this section to shorten the 7-day period for public notice provided for by paragraph (a) of this section with respect to a particular meeting, the Commission shall issue the public notice required by paragraph (a) of this section at the earliest practicable time.

(3) When the Commission not only has voted in conformity with paragraph (c)(1) of this section to shorten the 7-day period for public notice provided for in paragraph (a) of this section with respect to a particular meeting, but also has voted to close a portion or portions of such meeting in accordance with § 201.36 of this subpart, the public notice required by paragraph (c)(2) of this section shall also include, or be amended to include, if already issued, those items specified in paragraph (b) of this section.

* * * * *

By order of the Commission:

Issued: November 29, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29671 Filed 12–03–93; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960—None Assigned

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Dates for Various Body System Listings

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration issues listings of impairments to evaluate disability and blindness under the Social Security and supplemental security income programs. This rule extends the expiration dates for several body system listings. We have made no revisions to the medical criteria in the listings; they remain the same as they now appear in the Code of Federal Regulations. These extensions will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability at step three of our sequential evaluation process based on impairments in these body systems.

EFFECTIVE DATE: This regulation is effective December 6, 1993.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document—Richard M. Bresnick, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: On December 6, 1985, we published revised listings in parts A and B of appendix 1 to subpart P of part 404 (50 FR 50068). We use the listings to evaluate disability and blindness at the third step of the sequential evaluation process for adults and children under the Social Security and supplemental security income (SSI) programs. The listings describe disorders considered severe enough to prevent a person from doing any gainful activity, or, for a child under age 18 applying for SSI benefits based on

disability, from functioning independently, appropriately, and effectively in an age-appropriate manner. We use the criteria in part A mainly to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of children under age 18. If these criteria do not apply, we may use the criteria in part A.

When we published the revised listings in December 1985, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established dates ranging from 4 to 8 years on which the various body system listings would no longer be effective. We also provided that each body system listing in parts A and B would no longer be effective on the specific date we set, unless we extended the listing or revised and promulgated it again. We promulgated an 8-year expiration date for 9 of the 13 listings in part A and all 13 listings in part B so that these listings would no longer be effective on December 6, 1993. We promulgated earlier expiration dates for the remaining listings in part A; i.e., the Musculoskeletal System (1.00), Respiratory System (3.00), Cardiovascular System (4.00), and Mental Disorders (12.00). Subsequently, we issued final rules to extend the expiration dates of these four listings. We also used the notice of proposed rulemaking (NPRM) procedures to revise the Respiratory System listings (3.00 and 103.00) in parts A and B and the Mental Disorders listing (112.00) in part B and to propose revisions to several other listings in parts A and B. We will continue to use the NPRM procedures if we believe that revisions should be proposed for other listings.

In this final regulation, we are extending for periods ranging from 2 to 5 years the expiration dates of the listings that would otherwise no longer be effective on December 6, 1993. These listings are: Growth Impairment (100.00); Musculoskeletal System (1.00 and 101.00); Special Senses and Speech (2.00 and 102.00); Digestive System (5.00 and 105.00); Genito-Urinary System (6.00 and 106.00); Hemic and Lymphatic System (7.00 and 107.00); Skin (8.00); Endocrine System and Obesity (9.00); Endocrine System (109.00); Neurological (11.00 and 111.00); and Neoplastic Diseases, Malignant (13.00 and 113.00).

We are also republishing the expiration dates that we previously established through the rulemaking process for the other listings; i.e., the Respiratory System (3.00 and 103.00), Cardiovascular System (4.00 and 104.00), Multiple Body Systems (110.00), Mental Disorders (12.00 and 112.00), and Immune System (14.00 and 114.00). We are not extending the expiration dates for these listings in this regulation.

Some of the listings will remain in effect for up to another 5 years. We reviewed the listings we are extending and believe they are still valid, and will remain valid, for purposes of evaluating claims for Social Security and SSI benefits based on disability. As noted above, we use the listings at the third step of the sequential evaluation process. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is equivalent in severity to an impairment in the listings, we will find that the individual is disabled without completing the sequential evaluation process. We never use the listings to find that an individual is not disabled. Individuals whose impairments do not meet or equal the criteria of the listings receive individualized assessments at the subsequent steps of the sequential evaluation process.

In this final rule, we are making the following changes, so that the various body system listings we are extending will no longer be effective on the following dates.

Growth Impairment (100.00): December 6, 1996.

Musculoskeletal System (1.00 and 101.00): June 6, 1996.

Special Senses and Speech (2.00 and 102.00): December 4, 1998.

Digestive System (5.00 and 105.00): December 5, 1997.

Genito-Urinary System (6.00 and 106.00): December 5, 1997.

Hemic and Lymphatic System (7.00 and 107.00): December 6, 1995.

Skin (8.00): June 6, 1997.

Endocrine System and Obesity (9.00) and Endocrine System (109.00): June 6, 1997.

Neurological (11.00 and 111.00): June 5, 1998.

Neoplastic Diseases, Malignant (13.00 and 113.00): December 6, 1995.

We are also revising the introductory paragraphs in appendix 1 to set out more clearly when a listing will no longer be effective unless it is extended by the Secretary or revised and promulgated again. We are replacing the paragraphs in the introduction with a single introductory statement followed by a list of the body system listings (with their listing numbers) and the dates on which the listings will no longer be effective.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy generally follows the Administrative Procedure Act (APA) NPRM and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the NPRM and public comment procedures in this case. Good cause exists because this regulation only extends the dates on which various body system listings will no longer be effective and makes no substantive changes to those listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing these changes to our regulations as a final rule.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects individuals who claim benefits under titles II and XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance; 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: November 2, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: November 18, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 442(c), 423, 425, and 1302.

2. Appendix 1 to subpart P is amended by revising the introductory text before part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

The body system listings in parts A and B of the Listing of Impairments will no longer be effective on the following dates unless extended by the Secretary or revised and promulgated again.

1. Growth Impairment (100.00): December 6, 1996.
2. Musculoskeletal System (1.00 and 101.00): June 6, 1996.
3. Special Senses and Speech (2.00 and 102.00): December 4, 1998.
4. Respiratory System (3.00 and 103.00): October 7, 2000.
5. Cardiovascular System (4.00 and 104.00): January 6, 1994.
6. Digestive System (5.00 and 105.00): December 5, 1997.
7. Genito-Urinary System (6.00 and 106.00): December 5, 1997.
8. Hemic and Lymphatic System (7.00 and 107.00): December 6, 1995.
9. Skin (8.00): June 6, 1997.
10. Endocrine System and Obesity (9.00) and Endocrine System (109.00): June 6, 1997.
11. Multiple Body Systems (110.00): July 2, 1998.
12. Neurological (11.00 and 111.00): June 5, 1998.
13. Mental Disorders (12.00): August 28, 1994.
14. Mental Disorders (112.00): December 12, 1995.
15. Neoplastic Diseases, Malignant (13.00 and 113.00): December 6, 1995.
16. Immune System (14.00 and 114.00): July 2, 1998.

* * * * *

[FR Doc. 93–29651 Filed 12–3–93; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Part 100

[Docket Nos. 92N–0363 and 93N–0172]

Misleading Containers; Nonfunctional Slack-Fill

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adopting a regulation that implements section 403(d) of the Federal Food, Drug, and Cosmetic Act (the act) by defining the circumstances in which a food is misbranded under that section of the act. In particular, this regulation sets out the circumstances in which the slack-fill within a package is nonfunctional and, therefore, misleading. FDA is taking this action, in accordance with the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), to remedy the inadequate implementation of section 403(d) of the act. Elsewhere in this issue of the **Federal Register**, FDA is proposing to revoke a regulation implementing section 403(d) of the act that became final by operation of law.

DATES: Effective January 5, 1994, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5106.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2957), FDA proposed to amend its regulations to define the circumstances in which a food is misbranded under section 403(d) of the act (21 U.S.C. 343(d)). The proposed rule, entitled "Misleading Containers; Nonfunctional Slack-Fill" (hereinafter referred to as the misleading container proposal), responded to the provisions of section 6 of the 1990 amendments (Pub. L. 101–535), entitled "National Uniform Nutrition Labeling," which added new section 403A to the act (21 U.S.C. 343–1). Section 403A(a)(3) of the act prohibits States from directly or indirectly establishing any requirement for the labeling or packaging of any food in interstate commerce of the type required by section 403(b) (offered for sale under the name of another food), 403(d) (misleading container), 403(f) (appropriate prominence of information), 403(h) (standards of quality and fill), 403(i)(1) (common or usual name), or 403(k) (declaration of artificial flavoring, coloring, or preservatives) of the act that is not identical to the requirements of such sections. However, sections 6(b)(3) and 10(b)(1)(C) of the 1990 amendments provide that the six provisions listed in section 403A(a)(3) of the act do not become preemptive until FDA determines that each is being adequately implemented by Federal regulations.

In response to section 6(b)(3)(B) of the 1990 amendments, FDA published in the **Federal Register** of January 6, 1993 (58 FR 2470), final lists that identified which of the above six sections of the act that define circumstances in which a food is misbranded are (and are not) being adequately implemented by FDA's regulations. The agency concluded that sections 403(b), 403(f), 403(h), 403(i)(1), and 403(k) of the act are being adequately implemented, and that section 403(d) of the act is not being adequately implemented. The agency's determination that section 403(d) of the act is not being adequately implemented is discussed further in the final list (58 FR 2470 at 2472).

The 1990 amendments require that FDA propose revisions to its regulations for any section that the agency determines is not being adequately implemented (section 6(b)(3)(C) of the 1990 amendments). Thus, FDA published the misleading container proposal to amend its regulations to remedy the inadequate implementation of section 403(d) of the act. In the misleading container proposal, the agency proposed to create new § 100.100 *Misleading containers* (21 CFR 100.100) that would: (1) Repeat the misleading container provisions of section 403(d) of the act, and (2) define the circumstances in which the slack-fill within a package is nonfunctional and, therefore, misleading. FDA proposed to define "slack-fill" as the difference between the actual capacity of a container and the volume of product contained therein (proposed § 100.100(a)).

Interested persons were given until March 8, 1993, to comment. FDA received 20 letters, each containing one or more comments, from food manufacturers, trade organizations, State and local officials, a consumer, and a consumer interest group. Most comments generally supported the

proposed amendments. Many comments suggested modification of various provisions of the proposed rule or requested clarification of certain issues. A summary of the comments and the agency's responses are presented in section III. of this document.

II. Promulgation of Final Rule

Section 6(b)(3)(D)(ii) of the 1990 amendments provides that, if FDA does not issue final revisions to its regulations in accordance with section 6(b)(3)(C) within 30 months of the enactment of the 1990 amendments, the proposed revisions shall be considered the final revisions, and States and political subdivisions shall be preempted with respect to such revisions.

The 30-month period established by the 1990 amendments expired on May 8, 1993. Accordingly, FDA published a notice in the **Federal Register** of May 12, 1993 (58 FR 27932), announcing that the regulation that it proposed in the misleading container proposal is considered to be the final regulation by operation of law, effective May 10, 1993. The agency noted that the May 12, 1993, notice was part of a separate rulemaking contemplated by Congress if the agency did not issue final revisions by May 8, 1993, and that it bore a separate docket number (docket number 93N–0172) to distinguish it from the January 6, 1993, rulemaking, which was ongoing. FDA also stated in the May 12 notice that it intended to issue in the near future a final rule in the misleading container rulemaking that would supersede the regulation that is considered final by operation of law.

FDA is now issuing that final rule. The agency advises that the revisions to its regulations contained in this document take into consideration the comments that it received in response to the January 6, 1993, misleading container proposal. Therefore, FDA finds that this final rule is better able to ensure adequate implementation of section 403(d) of the act than the regulation that was considered final by operation of law but that did not have the benefit of a comment period. For this reason, elsewhere in this issue of the **Federal Register**, FDA is proposing to withdraw the regulation that is considered final by operation of law. Because FDA considers it unlikely that there will be any comment on that proposed action, the agency is providing that the version of § 100.100 that it is publishing in this final rule will become effective January 5, 1994, and supersede the regulation that became final by operation of law. If for any reason this will not be the case, FDA will publish an appropriate notice in the **Federal Register**.

III. Comments to Proposal

A. Adequate Implementation

In the preamble to the proposed rule on misleading containers (58 FR 2957 at 2958) FDA advised that, should it receive evidence establishing that section 403(d) of the act is being adequately implemented, the agency would be willing to reconsider its contrary determination.

1. One comment maintained that section 403(d) of the act is being adequately implemented and urged that the agency reconsider the need for a regulation. In support of its position, the comment argued that the Fair Packaging and Labeling Act (the FPLA) gives no indication that Congress viewed FDA's implementation of section 403(d) of the act to be inadequate. The comment also maintained that the agency's earlier decision not to implement regulations under the FPLA was an appropriate response to the issue of slack-fill. The comment stated that fill of containers has rarely materially misled consumers. Finally, the comment argued that the potential benefits of expanded implementation of section 403(d) of the act, as proposed, will become even less needed in light of the agency's renewed emphasis on informative and conspicuous labeling.

As an alternative, the comment suggested that FDA establish a compliance policy guide (CPG) that affirms section 403(d) of the act by stating that misleading fill constitutes misbranding, and by listing the packaging considerations that FDA will use when assessing compliance with section 403(d). The comment stated that such a CPG should be sufficient to provide guidance to States that want to enforce or adopt Federal law.

Conversely, several comments stated that section 403(d) of the act has not been adequately implemented, and that further regulation of slack-fill is necessary: (1) To ensure adequate implementation of section 403(d) of the act, (2) to provide guidance to industry, and (3) to protect consumers. Comments provided examples of products that are on the market and, the comments asserted, are misleadingly filled.

FDA disagrees with the first comment. The comment misinterprets the agency's previous determination not to issue regulations defining "misleading fill" under the FPLA. The FPLA was promulgated, in part, to elaborate on and to reinforce the misbranding provisions in section 403 of the act. Section 2 (15 U.S.C. 1451) of the FPLA declares that "Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons." Section 5(c)(4) of the FPLA (15 U.S.C. 1454(c)(4)) provides for the promulgation of regulations, whenever the promulgating authority determines that such regulations are necessary, to prevent the deception of consumers or to facilitate value comparisons of consumer commodities, including regulations to prevent nonfunctional slack-fill.

The agency's earlier decision not to promulgate, under the provisions of the FPLA, regulations implementing section 403(d) of the act was in relation to the efficient use of agency resources, not the adequate implementation of the intent of section 403(d). Based on a series of surveys in the 1970's on the incidence and function of slack-fill in consumer commodities (see 58 FR 2957 at 2959), FDA concluded that establishing specific limits on the level of slack-fill of consumer commodities, while authorized by the FPLA, would not be an appropriate way to expend its resources.

However, the 1990 amendments asked a different question. They directed FDA to examine the six sections of the act referred to in section 403A of the act, and the regulations issued by the Secretary to enforce those sections, to determine whether such sections and regulations adequately implement the purposes of such sections. In discussing the preemption provisions of the 1990 amendments, Congressman Waxman stated that a strong Federal regulatory system must be in place before State laws are preempted (136 Congressional Record H5842 (July 30, 1990)). Based on the agency's determination that section 403(d) of the act is not being adequately implemented (58 FR 2470 at 2472), FDA is compelled by the act to issue regulations on misleading containers, including misleading fill.

FDA also disagrees with the comment's argument that the potential benefits of expanded implementation of section 403(d) of the act will become even less necessary with FDA enforcement of the new nutrition labeling requirements. Although the agency expects to work closely with consumers and industry, especially during the transition to use of the new nutrition label, such interactions do not ensure adequate implementation of section 403(d) of the act. Section 403(d) of the act addresses a completely different aspect of how food is

presented than the nutrition label does. Further, as discussed in the final list document (58 FR 2470 at 2471), there is nothing in the act or in the legislative history of the 1990 amendments that indicates that level of enforcement should be a factor in determining adequacy of implementation. FDA concluded (58 FR 2470 at 2471) that it is appropriate to examine the regulations in place to implement each of the sections in question to determine whether each is being adequately implemented.

The first comment provided no evidence that section 403(d) of the act is being adequately implemented. Therefore, FDA concludes that there is no basis for the agency to reconsider its determination that section 403(d) of the act is not being adequately implemented.

FDA also finds no merit in the comment's suggestion that the agency establish a CPG on section 403(d) of the act. As noted above, section 6 of the 1990 amendments requires that FDA revise its regulations to ensure that there is adequate implementation of any of the six sections of the act that it determines is not being adequately implemented. FDA regulations adopted under section 701(a) of the act (21 U.S.C. 371(a)), after notice and comment rulemaking, have the force and effect of law. A CPG, on the other hand, is only a guideline. While guidelines establish principles or practices of general applicability that are acceptable to FDA for a matter that falls within the laws administered by the agency, they are not legal requirements. Because a CPG is not, by itself, legally binding, the agency finds that issuing one on misleading fill, as suggested by the comment, would not be an adequate response under section 6 of the 1990 amendments for ensuring adequate implementation of section 403(d) of the act. Therefore, FDA must reject this aspect of the comment.

Thus, FDA agrees with the comments that stated that section 403(d) of the act is not being adequately implemented, and that the adoption of a regulation is necessary.

B. Preemption Provisions of the 1990 Amendments

2. One comment stated that it supported "any amendment that would protect the consumer by further specifying the circumstances by which a package would be considered to be misbranded." However, the comment expressed concern that Federal preemption of State laws would reduce consumer protection from misleading containers and urged FDA to "allow both State and local officials the opportunity to protect the consumer by not preempting State law."

FDA appreciates the concern expressed by the comment. However, in providing for national uniform nutrition labeling, section 6 of the 1990 amendments preempts any State or local requirement for the labeling or packaging of the type required by section 403(b), 403(d), 403(f), 403(h), 403(i)(1), or 403(k) of the act that is not identical to the requirement of such section. The 1990 amendments provide that each of the six provisions listed in section 403A(a)(3) of the act become preemptive once FDA determines that the particular provision is being adequately implemented by Federal regulations or issues additional regulations necessary to ensure adequate implementation. Thus, FDA does not have the option to forgo preemption.

At the same time, the agency recognizes the traditional role of the States in protecting consumers against misleading packaging and filling practices. The agency expects that the States will continue their active role in this area under their own laws, where appropriate, and in cooperation with FDA under section 307 of the act (21 U.S.C. 337).

3. One comment stated that there should be no preemption unless FDA issues implementing regulations in the specific area covered by State or local law. Conversely, the comment maintained that States and localities are free to impose additional requirements within section 403(d) of the act if the Federal government has not spoken on certain specific issues.

FDA disagrees with this comment. Section 403A(a)(3) of the act states that no State or political subdivision of a State may directly or indirectly establish or continue in effect as to any food in interstate commerce "* * * any requirement of the type required by section 403(b), 403(d), 403(f), 403(h), 403(i)(1), or 403(k) of the act that is not identical to the requirement of such section." Thus, under this provision, as explained more fully in the final rule entitled "State Petitions Requesting Exemption from Federal Preemption" (58 FR 2462, January 6, 1993), a State provision prohibiting misleading containers that is not identical to the requirements of section 403(d) of the act and to the provisions that FDA has adopted to implement that section would be preempted. As discussed in response to the previous comment, preemption is established as a matter of law by the 1990 amendments and to that extent is outside the control of FDA.

C. "Made" or "Formed" Provisions of Section 403(d) of the Act

Section 403(d) of the act states that a food is misbranded "if its container is so made, formed, or filled as to be misleading." Most of the discussion in a report submitted by the National Academy of Sciences, Institute of Medicine, Food and Nutrition Board (the IOM), and much of the information that the IOM received, regarding the adequacy of section 403(d) of the act centered around whether consumers are being adequately protected against slack-filled containers. Furthermore, of the States cited by the IOM that have established more specific requirements than section 403(d) of the act related to misleading containers, most have chosen to focus on misleading fill.

In concluding that section 403(d) of the act was not being adequately implemented, the IOM suggested that FDA consider promulgating regulations to prohibit misleading fill based on the definition of nonfunctional slack-fill provided for in the FPLA. The IOM did not recommend that the agency promulgate regulations with regard to the "made" or "formed" as to be misleading provisions of section 403(d) of the act.

Based on the IOM report and its review of the administrative record, FDA tentatively decided not to elaborate on ways in which a container may be made or formed as to be misleading. FDA tentatively concluded that these terms are straightforward and need little elaboration (58 FR 2957 at 2960). The agency invited comment on its tentative conclusion.

4. Most comments that addressed this issue supported FDA's tentative determination that the terms "made" and "formed" do not require further elaboration. Comments stated that current implementation of section 403(d) of the act is adequate to prevent containers that are made or formed as to be misleading, and that no significant unaddressed problems exist in the marketplace with respect to these provisions.

On the other hand, two comments stated that FDA had not gone far enough in its proposed regulation. These comments maintained that the agency should address the "made" or "formed" as to be misleading provisions of section 403(d) of the act. In support of their position, the comments cited examples of misleading packaging practices, e.g., packages made with false bottoms, similar to the examples that FDA provided in the misleading container proposal (58 FR 2957) to explain the meaning of the "made" and "formed"

provisions in section 403(d) of the act. These comments stated that such practices would mislead consumers and, therefore, should be addressed by regulations implementing section 403(d) of the act. These comments did not provide information that such products are currently being marketed.

After careful consideration of the comments, FDA finds that the comments have not provided any basis on which to conclude that there are significant unaddressed problems with respect to containers that are made or formed so as to be misleading. Of the States that have adopted regulations prohibiting misleading containers, most have adopted the "made" and "formed" language of section 403(d) of the act without elaboration. Based on these factors, FDA finds that it is not necessary to elaborate by regulation on when a container is so made or formed as to be misleading to fully implement section 403(d) of the act. As discussed in the misleading container proposal (58 FR 2957 at 2960), the agency believes that the misleading packaging practices cited by the comments, such as the use of side walls and false bottoms whose only purpose is to create empty space (i.e., space devoid of product), are clearly misleading, and that therefore, no elaboration of section 403(d) of the act is necessary to establish that such practices constitute misbranding under the act.

Thus, FDA concludes that the statement in § 100.100 that a food is misbranded if "its container is so made, formed, or filled as to be misleading" adequately addresses misbranding that results from the way in which a container is made or formed, and that this approach is consistent with that of the States that have chosen to adopt regulations of this type.

Accordingly, FDA is incorporating the language of section 403(d) of the act in the first paragraph of new § 100.100, as proposed but concludes that no elaboration is necessary.

5. One comment stated that, because FDA has not elaborated on the "made" or "formed" provisions of section 403(d) of the act, the heading for proposed § 100.100 should read "*Misleading fill*" rather than "*Misleading containers.*"

FDA disagrees. Section 403(d) of the act deals with misleading containers. As discussed in the proposal (58 FR 2957), the misleading container provisions of section 403(d) of the act may be triggered by misleading packaging practices (i.e., containers that are made or formed as to be misleading) or by misleading fill. Although FDA has chosen not to elaborate on the "made" or "formed" aspects of section 403(d) of the act, it is incorporating these provisions of section 403(d) in new § 100.100 in their entirety. Therefore, FDA finds that the heading "Misleading containers" is appropriate and is so designating new § 100.100.

D. Misleading Slack-fill

6. Two comments stated that a food is misbranded if its container includes misleading slack-fill, regardless of whether the slack-fill is functional or nonfunctional. One comment provided examples of slack-fill that, in its view, would be misleading even though the comment believed that the exceptions set out in proposed § 100.100 would exclude such examples from the proposed definition of nonfunctional or misleading fill. For example, the comment described two opaque coffee cups containing candy, wrapped in cellophane, and sold as gift items. One cup was filled to capacity while the other contained filler in the nonvisible portion of the cup and a smaller amount of candy at the top. The comment stated that the two cups appeared to contain the same amount of candy, notwithstanding accurate net weight statements. The comment assumed that both products would be lawful under proposed § 100.100(a)(5) which the comment interpreted as exempting all gift products from the definition of nonfunctional slack-fill as misleading fill. The comment suggested that FDA eliminate any possible ambiguity by modifying proposed § 100.100(a) to read: "(a) A container shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill or if it contains slack-fill which facilitates the perpetration of deception or fraud."

A second comment suggested that FDA add a new paragraph (b) to proposed § 100.100 stating that even when a package meets the criteria for the exceptions in proposed § 100.100(a)(1) through (a)(5), the package may still be misleading. This comment stated that such a new paragraph should read as follows: "(b) Notwithstanding compliance with subsection (a)(1) through (a)(5), a food shall be misbranded within the meaning of section 403(d) of the Federal Food, Drug, and Cosmetic Act if it is packaged in such a way as to be deceptive or misleading."

FDA believes that the comments misinterpreted the intent of the exceptions to the definition of nonfunctional slack-fill set out in § 100.100(a). In the misleading container proposal (58 FR 2957 at 2961), FDA defined "nonfunctional slack-fill" as the empty space in a package that is filled to substantially less than its capacity for reasons other than to accomplish a specific functional effect. FDA set out in proposed § 100.100(a)(1) through (a)(5) types of products or practices that typically result in slack-fill within a container but as a part of which, the agency tentatively concluded, the slack-fill performs a specific functional effect.

FDA advises that the exceptions to the definition of "nonfunctional slack-fill" in § 100.100(a) apply to that portion of the slack-fill within a container that is necessary for, or results from, a specific function or practice, e.g., the need to protect a product. Slack-fill in excess of that necessary to accomplish a particular function is nonfunctional slack-fill. Thus, the exceptions in § 100.100(a) provide only for that amount of slack-fill that is necessary to accomplish a specific function. FDA advises that these exceptions do not exempt broad categories of food, such as gift products and convenience foods, from the requirements of section 403(d) of the act. For example, § 100.100(a)(2) recognizes that some slack-fill may be necessary to accommodate requirements of the machines used to enclose a product in its container and is therefore functional slack-fill. However, § 100.100(a)(2) does not exempt all levels of slack-fill in all mechanically packaged products from the definition of nonfunctional slack-fill.

Consequently, in the case of gift products such as those described by the first comment (i.e., coffee cups filled with candy), reasonable amounts of slack-fill that result from differences in the volume of the container (whose size is also related to its use after the food is consumed) and the amount of food contained therein is a function of the nature of the gift product and the continued utility of the container. Slack-fill in excess of that which is dictated by reasonable differences in the volume of a gift container and the amount of food contained therein is nonfunctional slack-fill.

Space within a container that is devoid of product is slack-fill, regardless of whether it contains air or "filler." FDA finds that slack-fill whose only function is to mislead consumers is nonfunctional slack-fill. FDA also finds that deceptive methods of packaging whereby that portion of the contents displayed gives the consumer an erroneous impression as to the quantity of product in a container, whether such deception is accomplished through misleading fill, misleading packaging, or both, is misbranding.

FDA finds that the above suggestions are redundant with respect to the provisions of § 100.100 that already

state that a food is misbranded if its container is so made, formed, or filled as to be misleading. Thus, the six categories of functional slack-fill listed in § 100.100(a) do not provide a "safe haven" from deceptive packaging practices: packages whose slack-fill is functional but that are otherwise made, formed, or filled in a manner that is misleading still violate section 403(d) of the act.

The agency notes that in cases such as *United States* v. *174 Cases * * * Delson Thin Mints*, 195 F. Supp. 326 (D.N.J. 1961), *aff'd* 302 F.2d 724 (3d. Cir. 1962), courts have ruled that the phrase "misleading fill" is too vague to permit direct enforcement. FDA advises that the intent of § 100.100(a) is to ensure the adequate implementation of section 403(d) of the act by providing a more concrete, enforceable definition for the phrase "misleading fill." Thus, FDA finds that establishing a two-pronged test where one of the tests is whether a container is filled so as to be misleading, as suggested by the comment, does nothing to elaborate on the meaning of "misleading fill" or "misleading container" and is therefore contrary to the intent of this rulemaking.

FDA also disagrees with the suggestion that functional slack-fill might be misleading slack-fill. In *United States* v. *174 Cases * * * Delson Thin Mints*, the court ruled that "the efficacy of the packaging, both from the standpoint of protecting the product and from the standpoint of economy of manufacture outweighs its deceptive quality," provided that no less deceptive alternative is available. FDA advises that the exceptions to the definition of "nonfunctional slack-fill" in new § 100.100(a) are meant to elaborate on the circumstances in which slack-fill within a package is functional slack-fill as opposed to misleading fill. To the extent that such slack-fill, or the practice that results in such slack-fill, performs a necessary function, it would not constitute nonfunctional slack-fill and thus would not be misleading within the meaning of the term in section 403(d) of the act.

FDA finds that adding a new paragraph (b), as suggested, would fail to recognize that slack-fill is justified when it performs a necessary function in a packaged food product. FDA also finds that to be consistent with the findings in cases such as *United States* v. *174 Cases * * * Delson Thin Mints*, functional slack-fill as provided for in § 100.100(a)(1) through (a)(6) is not misleading fill. Therefore, FDA must deny the request.

7. One comment suggested that, if FDA does not include a provision prohibiting misleading fill as requested by the preceding comments (i.e., as a two-pronged test), the agency should amend the language in § 100.100(a) to clarify that these exceptions apply only to necessary or unavoidable slack-fill. For example, the comment suggested that proposed § 100.100(a)(3), which provides for normal product settling during shipping and handling, be changed to read "unavoidable product settling * * *."

FDA agrees. FDA notes that the "necessary or unavoidable" aspect of functional slack-fill is expressed in several exceptions in § 100.100 by phrases such as "the *requirements* of the machines * * *" (§ 100.100(a)(2)) and "the *need* for the package to perform a specific function * * *" (§ 100.100(a)(4)). As stated above, FDA finds that the exceptions to the definition of nonfunctional slack-fill in § 100.100(a) apply to that portion of the slack-fill within a container that is necessary for, or results from, a specific function or practice, e.g., the need to protect a product. The agency also finds that slack-fill in excess of that necessary to accomplish a particular function is nonfunctional slack-fill.

FDA notes that many factors influence the amount of settling in a product. The physical characteristics of the product, e.g., particle size and shape, product density, and product fragility, will dictate how densely a product can be packed without an increased incidence of product breakage. Further, some packaging equipment shakes the container to encourage product settling during the filling operation, thereby achieving a greater level of fill within the container and reducing subsequent product settling. FDA finds that, to the extent that the physical characteristics of the product and the limitations of the filling machine contribute to product settling during shipping and handling, such slack-fill is functional slack-fill. On the other hand, FDA finds that adjusting line speed and filling equipment such that product is more loosely packed than necessary, i.e., to temporarily achieve what appears to be a full container, would not constitute functional slack-fill under § 100.100(a)(3).

Accordingly, FDA is amending § 100.100(a)(3) to specify that slack-fill resulting from product settling during shipping is functional slack-fill when such slack-fill is unavoidable.

E. Nonmisleading Nonfunctional Slack-fill

In the preamble to the misleading container proposal, FDA tentatively concluded (58 FR 2957 at 2961) that slack-fill in excess of that required to perform a function in a food is nonfunctional and, therefore, misleading. FDA also invited comment on whether it makes a difference if a product is packaged in a container that allows consumers to fully view the contents of the container (58 FR 2957 at 2962).

8. Ten comments objected to the provisions of proposed § 100.100 that equate nonfunctional slack-fill with misleading fill. Several comments stated that neither the FPLA nor section 403(d) of the act says "nonfunctional slack-fill is misleading," yet proposed § 100.100 concludes that nonfunctional slack-fill constitutes misbranding.

Several comments stated that FDA failed to specify that product that fails to meet the criteria in proposed § 100.100 is not misbranded unless such failure results in deception. One comment stated that, absent a finding of consumer deception by FDA, nonfunctional slack-fill should not render a product misbranded. These comments maintained that products packaged in containers that allow consumers to fully view the contents of the package should be exempt from the definition of nonfunctional slack-fill as misleading fill. One comment stated that fill of container could not be misleading when product is packaged in "clear or fairly clear" packages.

One comment stated that § 100.100 should provide for adequate disclosure of slack-fill in packages. The comment acknowledged, however, that label disclosure of slack-fill will not dispel such visual misrepresentations as caused by egregiously oversized packages. Another comment stated that if consumers can be informed of any level of slack-fill within the package, through label statements, pictorials, or other devices, they cannot be deceived as to the fill of the container. Several comments cited the protection against deception provided for by net weight statements.

Finally, one comment stated that level of fill is irrelevant in a single-serve package so long as the package contains sufficient product to accomplish its intended effect, e.g., enough sweetener to sweeten a cup of coffee. Thus, the comment maintained, it would not be misleading for slack-fill to exist in any single-serve package that clearly indicates the content's volume.

FDA disagrees with the comments that stated the agency has no basis for equating nonfunctional slack-fill with misleading fill. From the beginning of deliberations to revise the Food and Drugs Act in 1933, a major goal was to protect consumers from packages that

are made or filled so as to be misleading. Senator Copeland (78 Congressional Record (May 16, 1934) as quoted in Dunn, *Federal Food, Drug, and Cosmetic Act* 161) stated "Another dishonest practice that escapes the present law, but can be stopped under S. 2800 [section 403(d)] is that of slack filling containers of food * * *." Congress determined (S. Rept. 361, 74th Cong., 1st sess. 9 (1935)) that packages that are only partly filled (containing slack-fill) create a false impression as to the quantity of food they contain. Thus, throughout the legislative history of the enactment of the misbranding provisions in section 403(d) of the act, slack-fill has been equated with misleading fill.

Recognizing that factors such as product shrinkage after shipping may result in slack-fill within a package, Congress stated that the provision in section 403(d) of the act "is not intended to authorize action against packages that are filled as full as practicable in good manufacturing practice." (S. Rept. 361, supra at 9.) This statement, although allowing for the presence of some amount of unavoidable slack-fill, reinforces the concept that, from the standpoint of fill, nonmisleading containers are those that are filled as full as practicable.

In section 2 of the FPLA, Congress states that "Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of contents and should facilitate value comparison." Section 5(c) of the FPLA provides for the promulgation of regulations, including regulations prohibiting nonfunctional slack-fill, to facilitate value comparisons and to prevent consumer deception. Thus, the FPLA equates nonfunctional slack-fill with misleading fill. Further, California adopted the language of the FPLA for nonfunctional slack-fill as a basis for prohibiting misleading fill. Finally, the IOM suggested that FDA also consider using the FPLA definition of nonfunctional slack-fill as a basis for regulations to ensure adequate implementation of section 403(d) of the act. FDA concludes that there is adequate basis for using a definition of nonfunctional slack-fill as a means to implement the intent of section 403(d) of the act.

FDA finds that language similar to that used in the FPLA will ensure adequate implementation of the misleading container provisions of section 403(d) of the act and is consistent with the intent of both the FPLA and section 403(d). Therefore, FDA is establishing new § 100.100 which, among other things, defines the circumstances in which the slack-fill within a package is nonfunctional and, therefore, misleading.

FDA also advises that the standard in section 403(d) of the act is whether a container is misleading as opposed to deceptive or fraudulent. According to Webster's II New Riverside University Dictionary, "fraud" is "A deliberate deception practiced so as to secure unfair or unlawful gain." Webster's defines "deceptive" as "intended or tending to deceive," whereas "misleading" is defined as "tending to mislead." FDA advises that the term "misleading" does not require any clear implication regarding intent. Thus, it is not incumbent upon the agency to prove deception in order to deem a food to be misbranded under section 403(d) of the act. Rather, FDA is defining misleading fill as nonfunctional slack-fill. Thus, the appropriate test is whether or not the empty space within a package performs a specific function in relation to the product or its packaging. FDA finds that it is incumbent on manufacturers, knowing the physical characteristics of their products and the capabilities of their packaging equipment, to ensure that any slack-fill in their packages is there to perform one or more valid functions. Slack-fill whose only function is to make the product container larger, and thus to deceive the consumer as to the quantity of food in the container, is nonfunctional slack-fill and, therefore, misleading.

With respect to transparent containers, FDA notes that section 403(d) of the act is intended to prohibit partially filled packages that give a false impression as to the quantity of food they contain. FDA is not aware of there ever having been any action against a product that was allegedly filled so as to be misleading that was packaged in a container that allowed consumers to fully view its contents. Nor can FDA conceive of any situation related to fill of container where consumers would be misled as to the quantity of contents in such a container. Therefore, FDA is modifying § 100.100(a) to specify that a container that does not allow consumers to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. This action acknowledges that misleading fill has not been an issue when consumers can clearly see the level of fill in a container.

FDA advises that the exception for containers that allow consumers to fully view the contents of the container applies to packages that are constructed in such a way and made from such materials that consumers can fully see the amount of product they are purchasing and, consequently, could not be misled as to the level of fill in the container. This exception would apply to containers made of transparent material such as a glass jar or a clear poly bag. It does not refer to containers made of translucent material that must be held up to the light, nor does it apply to transparent containers bearing labeling or graphics such that the consumer's clear view of the contents is obscured.

FDA also advises that the above exception applies only to considerations of fill. FDA believes that, in a transparent container, level of fill would not, by itself, mislead consumers as to the quantity of product. However, it is conceivable that transparent containers could be made, shaped, or formed in such a way as to mislead consumers as to the quantity or quality of contents. Consequently, FDA finds that the prohibition against containers that are made or formed as to be misleading applies to both transparent and nontransparent containers.

FDA advises that the entire container does not need to be transparent to allow consumers to fully view its contents, i.e., a transparent lid may be sufficient depending on the conformation of the package. On the other hand, FDA finds that devices, such as a window at the bottom of a package, that require consumers to manipulate the package, e.g., turning it upside down and shaking it to redistribute the contents, do not allow consumers to fully view the contents of a container. FDA finds that such devices do not adequately ensure that consumers will not be misled as to the amount of product in a package. Therefore, such foods remain subject to the requirements in § 100.100(a) that slack-fill in the container be functional slack-fill. Further, FDA advises that displaying a portion of the contents in such a way as to give consumers an erroneous impression of the quantity of contents in a package, whether through misleading packaging or through misleading filling practices, constitutes misbranding.

FDA disagrees with the comments that stated that net weight statements protect against misleading fill. FDA finds that the presence of an accurate net weight statement does not eliminate the misbranding that occurs when a container is made, formed, or filled so as to be misleading.

Section 403(e) of the act requires packaged food to bear a label containing an accurate statement of the quantity of contents. This requirement is separate

and in addition to section 403(d) of the act. To rule that an accurate net weight statement protects against misleading fill would render the prohibition against misleading fill in section 403(d) of the act redundant. In fact, Congress stated (S. Rept. No. 493, 73d Cong., 2d sess. 9 (1934)) in arriving at section 403(d) of the act that that section is "intended to reach deceptive methods of filling * * * where the package is only partly filled and, despite the declaration of quantity of contents on the label, creates the impression that it contains more food than it does." Thus, Congress clearly intended that failure to comply with either section would render a food to be misbranded.

In the misleading container proposal (58 FR 2957 at 2959), FDA noted that some manufacturers employ label statements such as "Contents may settle during shipping" or "Contents sold by weight, not volume" to inform consumers that a package will probably appear to be less than full. Statements such as "A certain amount of air is packaged in each bag to act as a cushion against breakage" alert consumers as to the presence of slack-fill and provide information on the function of the slack-fill. FDA believes that such label statements may reduce consumer dissatisfaction with functional slack-fill and, therefore, encourages their use. However, FDA finds that label statements cannot correct nonfunctional or misleading fill.

FDA also disagrees with the comment that stated that slack-fill would not be misleading in any single-serve package that indicates the volume of the contents. FDA finds there is no reason to treat single-serve packages differently from packages that contain multiple servings with respect to prohibiting nonfunctional slack-fill. To the extent that slack-fill exists in some single-serve packages (e.g., packages of table salt or coffee creamer) because the manufacturer is unable to further reduce the size of the package, such slack-fill is a function of a minimum package size requirement, as set out in § 100.100(a)(6). In addition, manufacturers may package products, such as high intensity sweeteners, in premeasured packets for the convenience of consumers. Thus, a portion of the slack-fill in such packages may result from the need for the package to perform a specific function, e.g., to provide convenience, and would therefore be functional slack-fill within the provisions of § 100.100(a)(4). However, to the extent that slack-fill in a single-serve package serves no purpose other than to mask the amount of product present, it is misleading. Therefore, FDA must deny the request.

F. Related Products—Single Packaging Machine

9. Several comments stated that it is common practice to use one package size and a single line or filling machine to package related products. These comments maintained that any law regulating fill-of-container must take into account the benefits of common packaging, at least for related products. One comment described a single line operation used to package a variety of frozen vegetables in the same-size poly bag. The comment stated that, although it believes the use of the same-size bags is appropriate, differences in the size and shape of various vegetables, such as peas and broccoli florets, will result in different levels of slack-fill within each package. The comment suggested that FDA specify that related products may be packaged on a single line. Another comment maintained that FDA should recognize as functional slack-fill that slack-fill that results from the practice of packaging oddly shaped products, especially seasonal items such as a chocolate Santa or an Easter bunny, in a common package.

As stated in the misleading container proposal (58 FR 2957 at 2961), this regulation is not intended to require manufacturers who are operating under current good manufacturing practice to change the physical characteristics of a food, nor is it intended to require manufacturers to purchase additional or more sophisticated packaging equipment. FDA finds that the exception from the definition of "nonfunctional slack-fill" for slack-fill resulting from the requirements of the filling machine adequately covers the use of a single filling machine to package related products when such use is appropriate, without further exemptions. For example, even though the above mentioned chocolate Easter bunny and chocolate Santa may be of approximately similar height and width, their shapes are very different. Therefore, packaging both products in the same container would result in different levels of slack-fill for each product. However, the slack-fill in each box may still be functional slack-fill if it is justifiable based on the conformation of the specific products. On the other hand, using the same-size package for an Easter bunny that is 12 inches (in) tall by 6 in wide and for a chocolate ornament that has a 6-in diameter would not be appropriate.

FDA advises that the amount of slack-fill in a package is the result of both the size of the container and the level of fill therein. FDA notes that manufacturers wishing to market related products in a single, uniform container may vary the amount of product in each container to compensate for difference in the physical characteristics of a particular product. For example, a spice manufacturer may fill one jar with 10 grams (g) of a leafy herb, such as parsley or basil. However, in the case of a denser spice, such as ground cumin, it would require approximately 50 g of product to fill the same size jar as full as practicable. The price of each item would then be adjusted to reflect both the relative value and the amount of the product in each container.

Equipment manufacturers often design filling equipment to accommodate different packaging needs, e.g., cups of different heights with the same diameter (lid size) or the ability to heat seal packages of varying length from a continuous sleeve of packaging material. Further, some equipment is designed so that a simple adjustment can be made, such as changing the size of the spacers between the knives used to cut candy bars to a given length, that changes the size of the product or the fill of container. Therefore, depending on the versatility of the machines used to manufacture a product and to fill a container, owning a single filling machine does not necessarily limit a manufacturer to a single package size or a single level of fill.

G. Small Package Exception

FDA invited comment on the appropriateness of establishing an exemption from the definition of nonfunctional slack-fill for packages containing slack-fill that results from an inability to further reduce the size of the package. The agency noted that some food products (e.g., saffron and saccharin) are frequently sold in very small quantities for various reasons, including limited shelf-life, high cost per unit volume, or the need to use only a small amount of the product at any one time.

10. Several comments stated that small packages often contain slack-fill that results from an inability to further reduce the size of the package. Comments maintained that such slack-fill is a function of a minimum package size requirement. Comments suggested that proposed § 100.100(a) be modified to specify that slack-fill resulting from an inability to further reduce the size of the package is not nonfunctional slack-fill.

One comment argued that, in addition to FDA's basic food labeling requirements, packages must bear a UPC code (Universal Product Code) and, in

many cases, directions for preparation or use of the product. The comment urged FDA to find that products packaged in the minimum-size package necessary to accommodate all required labeling information in a readable format are not misleadingly filled.

Another comment stated that a minimum package size may be necessary to accommodate package inserts such as dosing devices (e.g., measuring scoops), coupons, and other premiums. Several comments stated that a minimum package size is necessary to facilitate handling and to discourage pilfering. Comments maintained that reducing package size beyond a certain point would be impracticable and could result in retailers delisting products that are packaged in very small containers.

FDA agrees that reducing package size beyond a certain point may cause problems. However, because slack-fill is the difference between the volume of a container and the amount of food contained therein, manufacturers can control the amount of slack-fill through choice of container size or through the level of fill within the container. At the same time, FDA realizes that some products, such as products that are used in small amounts and products with limited shelf-life or high unit cost, must be sold in small quantities. For example, products such as saffron are sold in such small quantities (e.g., 2 g or less) that a package with no slack-fill could be easily lost or stolen. Further, increasing levels of fill may not be an option because of the high unit cost.

FDA also notes that additional factors, including marketing data and handling and distribution requirements have an effect on what would constitute the minimum package size for a particular product. Some products such as breath mints and bakers yeast may be packaged in containers with very small volumes (i.e., less than 2 cubic in). Such products are often sold from a bin attached to a shelf or rack in a specific location within the store. Thus, even though these products are sold in small quantities, manufacturers and retailers have devised systems to facilitate handling of the products, thereby allowing the product to be packaged in a container whose size accurately reflects the amount of product therein. Further, some small packages are attached to a larger card such that consumers can clearly see the size of the container, while the card provides additional surface area to bear labeling, to facilitate handling, or to discourage pilfering.

Usage patterns may also influence the level of fill in a package that is already relatively small. For example, market data may show that the appropriate level of fill for products that are expected to be prepared and consumed at a single sitting would be that amount necessary to serve a typical family of four. In the case of a gelatin mix sweetened with a high intensity sweetener, this amount would be no more than 0.5 ounce (oz) of product.

FDA finds that, to the extent that such foods must be sold in small quantities, and be packaged in a container of some minimum size to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices, the resulting slack-fill is functional slack-fill. Therefore, FDA is adding new paragraph (a)(6) to § 100.100, which states that the empty space in a package that results from an inability to further reduce the size of the package is not nonfunctional slack-fill. FDA advises, however, that manufacturers relying on this exception should be prepared to demonstrate that the level of fill is appropriate for the particular product, and that package size cannot be further reduced.

H. Slack-fill Resulting From Product Reformulation

In the misleading container proposal (58 FR 2957 at 2962), FDA noted that product reformulation may change the density, weight, or volume of a product, sometimes drastically. For example, the agency described a package containing approximately 3 oz (85 g) of gelatin mix sweetened with sugar. The same product sweetened with a high intensity sweetener may weigh only 0.5 oz (14 g). If the manufacturer uses the same package for both products, the package containing gelatin sweetened with the high intensity sweetener will contain a significantly greater amount of slack-fill. The agency noted that the increased slack-fill in the package containing 0.5 oz of product exceeds the amount of slack-fill that is required to perform such necessary functions as protecting the product and ensuring proper package closure in the package that contains 3 oz of product. The agency tentatively concluded (58 FR 2957 at 2962) that, absent a functional effect, the portion of slack-fill within a container resulting from product reformulation (e.g., removal of a macronutrient such as sucrose) that reduces the volume of product in that container constitutes nonfunctional (misleading) slack-fill. The agency invited comment on this tentative conclusion and on the criteria that could be used to distinguish between functional (justifiable) and nonfunctional (misleading) slack-fill in a case such as this.

11. Five comments strongly disagreed with the agency's tentative conclusion that an artificially sweetened version of a food (0.5-oz net weight) would be misleading if it were packaged in the same-size container as the conventionally sweetened product (3.0-oz net weight). One comment maintained that, in the 9 years this type of product has been on the market, consumers have learned that removing a bulky constituent, such as sucrose, may reduce the total volume of a food. Comments further maintained that consumers associate package size with the amount of finished product, not the amount of mix in a package. Several comments argued that if the package containing a food formulated with a high intensity sweetener were made smaller, consumers would assume that the amount of finished product from the smaller package would be less. Thus, comments argued, this is a case where conforming package size to the physical amount of product would be misleading. One comment maintained that the high volume of repeat sales for such products, e.g., dessert mixes sweetened with a high intensity sweetener, is further evidence of the lack of consumer deception.

Similarly, a comment from a food manufacturer stated that it produces different versions of a hot cocoa mix in single-service envelopes packaged in point-of-sale cartons. The products vary in formulation, sweeteners, product density, and net weight. Each version of the food is packaged in the same-size envelope and similar box and produces the same amount of finished product. The comment maintained that of the 70,000 letters and inquiries it received from consumers in the last year, only 2 questioned why the sugar-free diet hot cocoa mix was packaged in the same-size container as the regular hot cocoa mix.

On the other hand, one comment gave the example of a sugar-free diet product where a portion of the increase in slack-fill resulting from product reformulation would, in its view, constitute misleading fill. The comment included copies of two containers, one for a sugar-free product and the other for a diet version of the sugar-free food. The comment maintained that consumers expect the weight and volume of a sugar-free food to be less than the conventional food because of the removal of the bulky sweetener. However, according to the comment, the diet sugar-free version of the food achieves its lower caloric value largely by reducing the level of a major

nutritive ingredient. According to the comment, the volume of the resulting diet product is one-third less than that of the regular sugar-free food. The comment suggested that FDA specify that slack-fill resulting from the removal of an essential nutritive ingredient constitutes misleading fill.

FDA notes that reformulated products and substitute foods cover a very broad range of products. Product reformulations are not limited to the removal of bulky constituents such as sucrose but include product reformulations that result in less dramatic changes in product volume. For example, a manufacturer of a dried pasta salad mix who uses a tube-shaped macaroni product may also market a second type of pasta salad mix using a spiral shaped pasta product. Because the pasta component of each mix has a different shape, each mix would occupy a different volume within the container while still providing the same amount of finished product (e.g., six 140-g servings). The degree to which product reformulation changes the amount of slack-fill in a container depends on the degree to which the shape or density of the new ingredient differs from that of the original ingredient and on the effect of the reformulation on the volume of the food.

Consumers develop expectations as to the amount of product they are purchasing based, at least in part, on the size of the container. The congressional report that accompanied the FPLA stated: "Packages have replaced the salesman. Therefore, it is urgently required that the information set forth on these packages be sufficiently adequate to apprise the consumer of their contents and to enable the purchaser to make value comparisons among comparable products" (H.R. 2076, 89th Cong., 2d sess., p. 7 (September 23, 1966)). Thus, packaging becomes the "final salesman" between the manufacturer and the consumer, communicating information about the quantity and quality of product in a container. Further, Congress stated (S. Rept. 361, supra at 9) that "Packages only partly filled create a false impression as to the quantity of food which they contain despite the declaration of quantity of contents on the label."

In cases such as *United States v. 174 Cases * * * Delson Thin Mints* and *United States v. 116 Boxes * * * Arden Assorted Candy Drops*, 80 F. Supp. 911, 913, (D. Mass., 1948), the courts have ruled that the standard against which misleading fill should be tested is whether the container would be likely to mislead the ordinary purchaser as to the quantity of its contents. In other words, would the average consumer expect to find more product in a package than that which is contained therein? FDA agrees that many consumers who have become familiar with substitute foods, such as a dry dessert mix sweetened with a high intensity sweetener, understand that removing the bulky sweetener may result in a smaller volume of mix, while the amount of finished product remains the same. However, consumers who are not familiar with a particular substitute food may be misled as to the amount of product that they are purchasing if the amount of product changes, and the size of the container remains the same. Such confusion is evidenced by the comment that acknowledged receiving two letters questioning why a small amount of a substitute food was packaged in the same-size container as that used to hold a larger quantity of the regular product. FDA also notes that, although consumers may become used to the presence of nonfunctional slack-fill in a particular product or product line, the recurrence of slack-fill over an extended period of time does not legitimize such slack-fill if it is nonfunctional.

Further, FDA disagrees with the comments that stated that packaging a substitute or reformulated food in a smaller container than the regular product would be potentially misleading about the amount of finished product that the substitute or reformulated food would produce, i.e., that consumers would assume that the smaller container provides a smaller amount of finished product. FDA notes that, because of consumer interest in environmental issues such as minimal packaging and recycling and because of economic incentives to reduce packaging, shipping, and storage costs, many products are being marketed in forms such as concentrates and refills. The fact that the smaller package provides as much product as a larger package can be readily communicated to the consumer. Just as label statements such as "packed by weight not volume" may be used to explain functional slack-fill, label statements such as "Special blend, this 39 ounce can provides at least 36 more cups of coffee compared to a 3 pound (48 ounce) can of regular coffee" may be used to explain that a small package provides as much or more product than a larger package. FDA advises, however, that label statements do not dispel the misleading aspect of nonfunctional slack-fill.

FDA finds that product reformulation does not, by itself, justify slack-fill in excess of that which is functional in the regular or original product. On the other hand, slack-fill in different versions of related products may be functional slack-fill under § 100.100(a)(2) (requirements of filling machines), *provided* that the manufacturer is making appropriate use of available packaging materials and filling equipment. Furthermore, FDA recognizes that reducing package size below a certain minimum may not be possible and has provided for slack-fill resulting from an inability to further reduce the size of a package in § 100.100(a)(6). Thus, in the case of products such as gelatin sweetened with a high intensity sweetener, where a product is sold in small amounts, slack-fill may be a function of a minimum package size requirement.

FDA agrees with the comment that stated that removal of an essential nutritive ingredient from a food is potentially misleading. As stated above, product reformulation does not, by itself, justify slack-fill in excess of that which is functional in the regular or original product. Thus, it is incumbent on the manufacturer of a substitute food to demonstrate that the slack-fill in their packages does not exceed that which is necessary to perform a function for the food.

FDA also advises that foods that purport to be useful in maintaining or reducing caloric intake or body weight must conform to the requirements of § 105.66 (21 CFR 105.66), including the requirement that they not be nutritionally inferior to the food for which they substitute. A substitute food that is nutritionally inferior to the food for which it substitutes must be labeled "imitation". Absent this labeling, the food is misbranded under section 403(c) of the act. However, section 403(c) is separate and apart from the misleading container provisions in section 403(d) of the act.

I. Immediate Container

12. One comment stated that slack-fill applies only to the immediate container in which a food is packaged, and that it never refers to the amount of unfilled space between the immediate container and external packaging. The comment defined "immediate container" as that portion of the packaging that is in immediate contact with the product. The comment suggested, for example, that in the case of a dry dessert mix formulated with a high intensity sweetener and a conventionally sweetened dessert mix, both products could be packaged in the same-size box because the only place where slack-fill needs to be considered is within the package liner that immediately contains the dry mix. Therefore, according to the

comment, manufacturers could avoid excess slack-fill by reducing the air space in the package liner containing the dry mix made with a high intensity sweetener. The comment also stated that, to the extent that there is any issue with respect to the use of the same-size outer box for both regular and sugar-free products, the issue is one of potentially deceptive packaging and not slack-fill.

FDA disagrees with the comment's interpretation of "immediate container." Section 201(l) of the act (21 U.S.C. 321(l)) specifically states that the phrase "immediate container" does not include package liners. Furthermore, section 10(b) of the FPLA (15 U.S.C. 1459(b)) defines "package" as "* * * any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers * * *." Thus, the box that the consumer sees when purchasing the dessert mix, not the bag within the box, is the immediate container. The amount of slack-fill in the dessert mix package would be based on the volume of the box. The term "package", as defined in the FPLA, does not include shipping containers or wrapping used solely for transport or such containers or wrappings that bear no printed matter pertaining to any particular commodity.

FDA also advises that deceptive packaging refers to containers that are made or formed so as to be misleading, such as containers made with false bottoms. Therefore, the issue involved in the example provided by the comment, i.e., two products that differ in volume but produce similar amounts of finished product, is one of fill, not packaging.

J. Additional Exceptions to the Definition of "Nonfunctional Slack-fill"

Many comments, although generally in favor of proposed § 100.100, requested clarification of various provisions of the proposal or suggested additional exceptions to the proposed definition of nonfunctional slack-fill. Specific comments were as follows.

Machine Requirements

13. Several comments stated that FDA has not formally recognized all the requirements of the machines used for enclosing the contents of a package. One comment stated that other machines, such as equipment used to fill to headspace above a product with nitrogen to protect the product from oxidation, have fill requirements. Comments urged FDA to recognize that slack-fill that results from the requirements of machines used to enclose the contents in a package is not limited to filling machines but may include other machines used to process or package the product.

FDA agrees that packaging a product may involve a series of unit operations, such as: (1) Filling product in a container, (2) flushing headspace with nitrogen, and (3) sealing the container. Each unit operation may require use of a single, specialized piece of equipment. FDA advises that the statement in § 100.100(a)(2) that recognizes that slack-fill that results from the requirements of "the machines used for enclosing the contents in such package" is not nonfunctional covers not only the requirements of the filling machine itself but of all equipment involved when product and package come together. FDA finds that, to the extent that slack-fill is necessary for the efficient functioning of the machines used to enclose the contents in a package, such slack-fill is functional slack-fill.

14. Two comments stated that, in some instances, vending machines only accommodate a standard size package. Thus, products sold in vending machines may have some empty space related to the constraints of the vending machine and the value of the product relative to the expected price range for products sold in a vending machine. The comments requested that slack-fill in a vending machine package be recognized as a function of "the requirements of the machines used for enclosing the contents in such package" as set out in § 100.100(a)(2).

FDA disagrees. The provisions in § 100.100(a)(2) provide for slack-fill resulting from the requirements of the machines used to enclose a product within a container. FDA notes that this exception is specific to those machines involved in bringing together a product and its package. The exception does not extend to all machines used in the manufacture, distribution, and sale of a food.

FDA advises that many vending machines are able to accommodate a wide variety of package sizes and shapes. Further, many vending machines are able to dispense different products at different prices, such as a package of gum, a candy bar, or a bag of potato chips, from a single machine. The comments did not provide any evidence that the requirements of vending machines would result in the presence of functional slack-fill in a significant number of products. Furthermore, when consumers contemplate purchasing a product from a vending machine, value comparisons based on visual assessment of the product, including the size of the package, become even more important compared to other purchasing situations. Thus, after careful consideration of the comments, FDA finds that there is no basis to exempt the slack-fill in containers that are sold through vending machines from the definition of "nonfunctional slack-fill" in § 100.100(a).

Gift Products

15. Several comments stated that the exception to the definition of nonfunctional slack-fill in proposed § 100.100(a)(3) should not be limited to gift products. Comments provided examples of packaging that is intended for reuse by consumers but that is not necessarily sold as part of a gift item. Examples included canisters designed as coin banks or for other storage uses; holiday, commemorative, or collectors items; and jars that can be used as glasses. Comments maintained that these items are often meant as promotional packs rather than gift items. One comment suggested that FDA exempt gift items or "products packaged in other reusable containers." In order to qualify for such an exemption, the comment suggested the following criteria: (1) That the quality of the package greatly exceed that which is necessary to merely contain the product, and (2) that the package play a primary role in the presentation of the food. The comment maintained that cheap packages such as those made of "flimsy cardboard without additional covering" should not be included in this exemption. The comment also stated that the size and conformation of most reusable containers, other than household items, can be easily controlled.

On the other hand, one comment maintained that manufacturers of gift-type products in nonreusable containers, where the container plays a role in the presentation of the food, need the same amount of flexibility as manufacturers of gift products in reusable containers. In support of its argument, the comment described two types of containers, e.g., a rectangular cookie tin and a paperboard box, both having the same volume, design, and label vignettes. The comment maintained that the paperboard box would be as attractive as the tin but would be available to consumers at a lower cost.

This comment suggested the following criteria to distinguish gift products from conventional food items: (1) Seasonal items and items sold for special occasions (e.g., holidays and birthdays) where packages are designed to convey appropriate sentiments, and

(2) the quality of the food component exceeds that of the conventional food, and this superior quality is conveyed by the package (e.g., gourmet items sold in specialty food shops).

The comment also maintained that, because FDA has defined a "gift item" merely as a product that "is in a form intended to be used as a gift" in the new nutrition labeling regulations (58 FR 2159 and 2184, January 6, 1993), the distinction between gift items packaged in reusable versus nonreusable containers in this rulemaking is unnecessary. The comment suggested that FDA amend § 100.100(a)(5) to read "where a product is packaged in a form intended to be used as a gift," thereby eliminating the distinction between reusable and nonreusable containers and focusing on the gift nature of the food.

A few comments stated that slack-fill resulting from packaging practices whose value lies in the aesthetics of presenting the product or in conveying a sentiment should be allowed when "the most significant purpose of the package configuration is something other than to misrepresent the quantity of its contents."

FDA agrees with the comment that stated that the proposed exemption for functional slack-fill in gift products (§ 100.100(a)(5)) should be expanded to include products consisting of a food packaged in a reusable container where the container has value that is both significant in proportion to the value of the product and independent of its function to hold the food. FDA advises that part of the purchase of a food packaged in a reusable container is the continued utility of the container. FDA finds that the interest in the reusable container would exist whether consumers purchase the product as a gift or for their own use. Therefore, slack-fill resulting from reasonable differences in the volume of a reusable container and the amount of food contained therein would be functional slack-fill.

FDA notes that, depending on the nature of the food and the type of container used, manufacturers will have varying degrees of control over the amount of slack-fill in the container. FDA disagrees with the comment that stated that manufacturers using nonreusable containers need the same amount of flexibility as manufacturers of gift-type products packaged in reusable containers. FDA finds that manufacturers packaging product in nonreusable containers have more control over the size and conformation of such containers compared to manufacturers packaging product in certain household items, such as a coffee mug or a tea pot, whose size and shape is also dependent on its intended use after the food is consumed.

FDA finds that the term "reusable container" describes household items (e.g., baskets and coffee cups) and durable commemorative or promotional packaging (e.g., holiday tins and canisters with nostalgic graphics). FDA agrees with the comment that stated that containers made of flimsy materials should not be included in this exemption. FDA advises that the purpose of § 100.100(a)(5) is to provide a certain degree of flexibility to manufacturers of products packaged in containers, such as reusable household items, that have a function above and beyond that of containing the food. Consequently, FDA is retaining the proposed criterion that such containers be reusable after the food is consumed.

FDA advises that the definition of "gift item" in the January 6, 1993, final rule on nutrition labeling (58 FR 2079 at 2159 and 2184) was concerned with providing consumers with accurate and accessible nutrition information that could be used to plan a healthy diet. Thus, the nature of the container was not germane to that final rule. However, this final rule is concerned with the ability of consumers to make appropriate value comparisons based on their perception of the quality and quantity of food in a container. FDA advises that, in this context, any factors that influence the way in which a container is made, formed, or filled are important considerations. FDA finds that some reusable containers are available in a limited range of sizes, and that using such containers to package product may result in slack-fill that is, in part, a function of the size of the container relative to its continued utility after the food is consumed. Therefore, FDA concludes that the nature of the container, i.e., its continued utility, may have a significant influence on container fill.

Most manufacturers try to market their products as attractively as possible. FDA finds that providing for slack-fill solely as a function of aesthetics is neither necessary nor appropriate. FDA believes that such an exception would cover a very broad and poorly defined range of packaging practices. Therefore, FDA denies the request.

Accordingly, FDA is modifying proposed § 100.100(a)(5) to specify that reasonable amounts of slack-fill resulting from the packaging of a food component in a reusable container, where the container is part of the presentation of the food and has significant value independent of its function to hold the food, is not nonfunctional slack-fill. FDA finds that exempting reasonable amounts of slack-fill in products consisting of a food component and a reusable container will provide manufacturers with flexibility in packaging such products, when such flexibility is needed, and will provide consumers with product choices.

Slack-fill That Plays a Role in the Preparation or Consumption of a Food

16. One comment objected to that portion of proposed § 100.100(a)(4) that excepted slack-fill that performs a function in the preparation or consumption of a food from the definition of nonfunctional slack-fill "where such function is inherent to the nature of the food *and is clearly labeled.*" The comment suggested that FDA modify proposed § 100.100(a)(4) to provide that such function must be either obvious or clearly labeled. In support of its position, the comment stated that it markets cereal in bowl-shaped containers. The comment stated that it is obvious to consumers that the bowl-shaped package not only contains their product but may also hold added milk and be used to eat the food. The comment maintained that when the function of the package is obvious, it is not necessary to explain it on the label.

FDA agrees that when the function of the slack-fill is obvious (e.g., a bowl-shaped food package that can be used to consume the food), it is not necessary to provide a label statement declaring the obvious. FDA notes that some products may be packaged so that consumers can clearly see the amount of product relative to other components of the packaging, such as a baking tray. For example, six, one-half cup, single-serving containers of pudding may be surrounded by an open-ended cardboard sleeve that allows consumers to view the size of the cups and to see that they can be used to consume the food. A box containing several packages of a dry seasoning mix for salad dressings and a glass bottle in which the dressings can be mixed and served may be designed to display the bottle and the smaller packages of seasoning mix.

On the other hand, many of the food products addressed by § 100.100(a)(4) are new and novel and may be unfamiliar to consumers. The number and range of these products are likely to increase with future advances in innovative packaging technologies and product development. For example, a package of microwavable brownies may contain a tray in which the brownies can be mixed and cooked. Thus the size

of the package is a function of the requirements of the baking tray, not the amount of product. Further, the convenience aspect of this product may include not only faster preparation but a smaller volume of product compared to a typical package of brownie mix intended to be cooked in a conventional oven.

FDA finds that slack-fill resulting from the need for a package to perform a specific function (e.g., to play a role in the preparation or consumption of a food), where such function is inherent to the nature of the food, is functional slack-fill. FDA also finds that the function of such packaging is a material fact in the purchase of the food product and must be communicated to the consumer. Therefore, FDA has modified proposed § 100.100(a)(4) to require that the function of such slack-fill be clearly communicated to the consumer.

17. Another comment requested that FDA amend proposed § 100.100(a)(4) to include minimum type size and placement requirements for statements explaining the function of the slack-fill. The comment suggested that FDA incorporate requirements similar to those established for net quantity declarations in 21 CFR 101.105(i).

FDA notes that under section 403(f) of the act, required information shall be prominently placed on the label or labeling "with such conspicuousness * * * and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use." Failure to comply with section 403(f) of the act renders a food misbranded. FDA also notes that 21 CFR 101.15 (§ 101.15) sets forth conditions under which required statements may be deemed to lack the appropriate prominence or conspicuousness. FDA has previously found (58 FR 2470 at 2473) that section 403(f) of the act is adequately implemented by FDA regulations.

The comment did not provide any basis on which to conclude that section 403(f) of the act and the implementing regulations in § 101.15(a) will not be adequate to ensure that information concerning the function of slack-fill in containers is clearly communicated to consumers, and that more specific type size and placement requirements are necessary. Therefore, FDA is not establishing specific requirements for type size or placement of statements related to the function of slack-fill within a container. However, should FDA determine, in its experience with new § 100.100(a)(4), that such requirements would improve implementation of § 100.100, it would consider amending the regulation accordingly.

Dietary Supplements

18. One comment requested that slack-fill in dietary supplements be exempt from the definition of nonfunctional slack-fill because, according to the comment, consumers do not make the same types of value comparisons with respect to dietary supplements that they make for conventional food products. Therefore, according to the comment, consumers cannot be misled as to the amount of product they are purchasing.

FDA disagrees. The agency is not convinced by the comment that there is any reason to treat dietary supplements differently from other conventional food items. Some exceptions may be appropriate to this commodity class (e.g., the small package exemption); however, dietary supplements are food and, as such, must comply with section 403(d) of the act.

Test Products

19. Several comments suggested that FDA provide an exemption in § 100.100 for products that are being test marketed.

FDA is aware that a significant proportion of new products are introduced into the market place but are discontinued after a brief trial. FDA understands that there may be a reluctance on the part of some manufacturers to purchase new packaging equipment for a product whose future is uncertain. At the same time, FDA believes that if consumers are paying fair market price for test products, they deserve fair market value. Therefore, FDA finds that test product containers, like those of any other food product, must facilitate value comparisons and not be misleading.

Further, depending on the nature of the product and the size of the company, a test market may be quite extensive, e.g., involving a significant market share, distribution in all States, and an unlimited period of time. FDA expects manufacturers to examine their choice of packaging when preparing to introduce a new product into the market place. In some instances, such as the extension of an existing product line, current packaging practices may be appropriate for the new product (e.g., packaging related products on a single line as provided for within § 100.100(a)(2)). Therefore, FDA finds that it is not necessary or appropriate to exclude new products from the misleading container provisions in § 100.100.

Display Requirements

20. Several comments stated that FDA should modify proposed § 100.100(a) to recognize that some slack-fill may be a function of a package's display requirements. Examples of functions related to display requirements included package strength and stackability.

FDA advises that slack-fill resulting from the need for package strength is adequately provided for within § 100.100(a)(1) (protection of contents) as functional slack-fill. Therefore, FDA finds that no additional change is necessary with respect to package strength requirements.

FDA also advises that stackability is related more to the way in which a container is made or formed than it is to level of fill within the container. For example, containers may be formed so as to facilitate the bottom of one can resting on the lid of the can below. A bag may be designed with a pocket in its base to fit over the top of another bag. Both of the above examples refer to the way a container is made or formed, rather than filled. FDA also notes that there is a significant difference between, for example, a small recess at one end of a container that allows containers to be stacked and a large recess whose only function is to mislead consumers as to the quantity of contents in such container.

Further, to the extent that the conformation (i.e., shape and style) of the package influences the level of fill within the container, such slack-fill may be related to the requirements of the filling machine (§ 100.100(a)(2)) or to a minimum package size requirement (§ 100.100(a)(6)).

On the other hand, although increasing the size of a package may improve the stackability and display characteristics of the container, if such package contains nonfunctional slack-fill, the food is misbranded. Likewise, FDA finds that false bottoms or other devices that may incidentally improve display features would nonetheless render a food misbranded if such devices misled consumers as to the quantity of product in the container.

Thus, the comments did not provide a sufficient basis for FDA to conclude that it is either necessary or appropriate to provide for slack-fill that results solely from the display requirements of a container as functional slack-fill. Therefore, FDA denies the request.

K. Other Matters

Filled to Substantially Less Than Capacity

21. One comment stated that all slack-fill that is not provided for by the exceptions in § 100.100(a) is significant and potentially deceptive. The comment maintained that defining the term "significant" so that it is meaningful in all contexts is problematic and leaves a loophole in the definition of nonfunctional slack-fill that may be exploited. The comment also maintained that the phrase "substantially less" places an additional and unnecessary burden on regulatory officials to prove "significant or substantial" slack-fill. Therefore, the comment suggested that FDA delete the word "substantially" from the final regulation.

One comment suggested that FDA define "filled to substantially less than capacity" as those packages where one-third of their volume is empty space. Another comment maintained that the terms "substantially" and "significant" in the context of the proposed regulation are qualified, not only by volume but by value, visibility, method of sale, usable space, and labeling. The comment argued that both common sense and expertise must govern the interpretation of these terms on a case-by-case basis. The comment stated that FDA has taken action against fills as low as 44 percent and as high as 67 percent of capacity. The comment concluded that it knows of no rational basis for establishing a specific threshold for the amount of airspace that constitutes significant underfilling.

FDA recognizes that there is significant variability in the amount of slack-fill in packages, both between and within commodity classes and even within a single-product line. Factors that influence slack-fill include the physical characteristics of the product, the capabilities of the filling machine, and the way in which the product is handled. When FDA proposed to define "nonfunctional slack-fill" as the empty space in a package that is filled to substantially less than its capacity for reasons other than to accomplish a specific functional effect, the agency intended to exclude normal variations in level of fill from the definition of nonfunctional slack-fill.

FDA agrees with the comment that stated that no specific numerical value could adequately describe the amount of nonfunctional slack-fill that would be significant. For example, it is possible to package some products with essentially no slack-fill, while other products may have a significant amount of slack-fill to allow package closure or to protect the product. FDA finds that the primary issue is whether slack-fill is functional versus nonfunctional. The amount of slack-fill becomes important when determining whether that amount of slack-fill in a container exceeds that which is necessary to accomplish a particular function. FDA did not intend to impose an additional regulatory burden with the use of this term, nor did it intend to provide a loophole for products containing nonfunctional slack-fill. Further, the record is clear that section 403(d) of the act is not meant to prohibit normal variations in fill based on the characteristics of a particular product or the capabilities of machines used to fill packages. Therefore, FDA is deleting the word "substantial" from § 100.100(a).

Downsizing

22. One comment disagreed with FDA's determination that it does not have jurisdiction over downsizing. The comment stated that, in its view, the misleading container provisions of section 403(d) of the act apply to downsizing. The comment defined "downsizing" or "package shorting" as the practice of filling a container such that the amount of product is reduced but the size of the container is unchanged. The comment stated that this practice is an increasingly common form of economic deception and is an increasing area of public concern. The comment further stated that section 403(a) of the act (false or misleading labeling) provides FDA with the authority to require that a food label disclose that a package has been downsized. The comment urged FDA to propose, in a separate **Federal Register** notice, regulations requiring such disclosure.

FDA believes that there is some confusion as to what constitutes downsizing, and what constitutes package shorting. Although these terms have been used interchangeably by some, they represent two different practices. Downsizing refers to the practice of reducing both the amount of product and the size of the container holding the product such that consumers may not be aware of these changes. For example, a manufacturer may decide, with an appropriate change in the net weight statement, to sell 4 oz of baby food in a new container that, although slightly smaller, is similar in appearance (e.g., same shape and graphics) to one that has traditionally held 5 oz. The price of the new product often remains the same as that of the larger container. Further, the new container may be designed in such a way that the amount of slack-fill in relation to the amount of product in the container remains the same, i.e., without creating nonfunctional slack-fill. The potential problem with downsizing lies in the fact that consumers, familiar with a particular product and its packaging, may not be aware that the size of the container and the amount of product therein have been reduced and therefore, do not realize that they are purchasing a smaller amount of product.

Package shorting refers to reducing the amount of product in a container without reducing the volume of the container. For example, a manufacturer may decide to sell 6.8 oz of rice in the same container that previously held 8 oz, with an appropriate change in the net quantity of contents declaration. Again, consumers who are in the habit of purchasing a particular product and package size may assume they are getting the same amount of product that they are accustomed to purchasing.

FDA notes that reducing the amount of product in a container without reducing the volume of the container (i.e., package shorting) will increase the amount of slack-fill in that container. To the extent that some portion of this slack-fill would be nonfunctional, the practice would constitute misleading fill under § 100.100(a).

However, proliferation of sizes, of which downsizing may be a part, comes under the jurisdiction of the Department of Commerce as provided for in section 5(d) of the FPLA. Section 5(d) sets out procedures for developing voluntary product standards "[w]henever the Secretary of Commerce determines that there is an undue proliferation of weights, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable ability of consumers to make value comparisons * * *."

Therefore, package shorting that results in misleading fill is prohibited by section 403(d) of the act and its implementing regulations. However, any action under section 403(a) of the act to require label statements informing consumers that a container has been downsized is outside the scope of this rulemaking and would need to be addressed in a future rulemaking.

IV. Conclusion

Therefore, FDA is promulgating new § 100.100 (21 CFR part 100.100), in new subpart F of Part 100 (Subpart F—Misbranding for Reasons Other Than Labeling). The regulation states that

food is misbranded if its container is so made, formed, or filled as to be misleading. It defines nonfunctional slack-fill in containers that do not allow consumers to fully view their contents by setting forth criteria for determining whether slack-fill is functional or nonfunctional.

As stated in section II. of this preamble, the agency anticipates that this final rule will supersede the regulation that was considered final by operation of law on May 10, 1993. Elsewhere in this issue of the Federal Register, FDA is proposing to revoke the May 10, 1993, regulation.

The agency finds that the new regulation adequately implements section 403(d) of the act and thus provides additional consumer protection against misleading fill and facilitates value comparisons on the part of consumers.

This regulation will also provide State regulatory agencies, as well as FDA, with a uniform means of taking action against misleading containers. Section 4 of the 1990 amendments provides for State enforcement of section 403(d) of the act in Federal court. Consequently, manufacturers can expect that packaging will be treated uniformly throughout the States with regard to misleading containers.

V. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (58 FR 2957 at 2963). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Economic Impact

FDA has examined the economic implications of the final rule on misleading containers and nonfunctional slack-fill as required by Executive Orders 12866 and 12612 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 compels agencies to use cost-benefit analysis when making decisions, and Executive Order 12612 requires Federal agencies to ensure that Federal solutions, rather than State or local solutions, are necessary. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. The agency finds that this final rule is not a major rule as defined by Executive Order 12866. In accordance with the Regulatory Flexibility Act, FDA has also determined that this final rule will not have a significant adverse impact on a substantial number of small businesses. Finally, any federalism issues that would require an analysis under Executive Order 12612 are resolved as a matter of law by section 6 of the 1990 amendments.

A. Costs

This final rule prohibits only nonfunctional slack-fill. Industry comments presented situations in which slack-fill might be considered functional. As indicated in the preamble, many of these situations fall under, and are addressed by, exemptions to the definition of "nonfunctional slack-fill" that were included in the proposal. In addition to the examples given in the preamble, slack-fill that is necessary for the following reasons is also exempted: presence of measuring devices or prizes in a container, liquid products that have cooled after being packaged hot, ability to reclose the package, and the need to accommodate devices that reduce the risk of microbiological and filth contamination.

However, other situations in which industry comments suggested slack-fill might be functional or nonmisleading have not been exempted. For example, the agency has not provided an exemption for products sold through vending machines or for gift packages where the container is not reusable or durable.

In addition, FDA has not provided exemptions based solely on lowering the economic impact of the final rule, including packaging for test products or for exotically shaped products which require nonstandard packaging. Finally, FDA has no basis to address the issue of whether it would be necessary or appropriate to grant any exemptions for small businesses as discussed in the economic impact section of the misleading container proposal (58 FR 2957 at 2963).

FDA has insufficient information to quantify the reduction in compliance costs that would occur if these additional exemptions were granted; however, FDA believes the reduction in costs would be small.

B. Benefits

FDA received no information allowing it to estimate the benefit of reducing the incidence of differing interpretations of the language of section 403(d) of the act that might occur if FDA had merely promulgated a regulation that repeats the language of section 403(d). In addition, FDA has received no information that enabled it to estimate the benefit to consumers of the possible reduction in the incidence of consumer dissatisfaction with the fill of food containers or that enabled it to estimate the effect of granting additional exemptions on the possible reduction in consumer dissatisfaction.

C. Conclusion

Although unable to quantify the costs and benefits of this final rule, FDA believes they are probably small. As stated in section II. of this document, FDA finds that no hardship will result from replacing the May 10, 1993, regulation with this final rule.

List of Subjects in 21 CFR Part 100

Administrative practice and procedure, Food labeling, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 100 is amended as follows:

PART 100—GENERAL

1. The authority citation for 21 CFR part 100 continues to read as follows:

Authority: Secs. 201, 301, 307, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 337, 342, 343, 348, 371).

2. New subpart F, consisting of § 100.100, is added to read as follows:

Subpart F—Misbranding for Reasons Other Than Labeling

§ 100.100 Misleading containers.

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

(1) Protection of the contents of the package;

(2) The requirements of the machines used for enclosing the contents in such package;

(3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable

container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

(b) [Reserved]

Dated: November 30, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93-29690 Filed 12-3-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 1220

[Docket No. 93N-0393]

Regulations Under the Tea Importation Act; Tea Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of tea standards for the year beginning May 1, 1993, and ending April 30, 1994. The tea standards are provided for under the Tea Importation Act (the Act). The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

DATES: Effective May 1, 1993; written comments by January 5, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5099.

SUPPLEMENTARY INFORMATION: Because of the unique nature of the decisionmaking process for establishing annual standards for tea, the procedural protections that are part of this process, and the short period within which standards must be set, FDA has never, since the enactment in 1897 of the Act (21 U.S.C. 41), used notice and comment rulemaking for tea standards.

Each final rule setting the standards is based on the recommendations of the Board of Tea Experts (the board), which is comprised of tea experts who are representative of the tea trade. The board selects standards each year according to the provisions of the Act. The board bases its selection on tea samples submitted by members of the tea trade to the board. Relying primarily on organoleptic examination, the board selects one tea to represent the standard for each major type of tea imported into the United States. In choosing a standard, the board tries to select one at least equal in quality to that of the previous year. The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

The annual meeting of the board is open to the public and is announced in advance in the **Federal Register**. At the annual meeting any interested person may present data, information, or views orally or in writing regarding new standards.

The annual tea standards are prepared and submitted to the Secretary of Health and Human Services by the board (21 CFR 1220.41).

Should a tea importer be dissatisfied with an FDA tea examiner's rejection of a shipment of tea, the importer can refer its complaint to the U.S. Board of Tea Appeals and then to the U.S. Court of Appeals. FDA is unaware of any complaints or arguments having ever occurred concerning a designated standard, despite the many years since the enactment of the Act.

FDA concludes that notice and comment rulemaking to set tea standards is impracticable, contrary to the public interest, and unnecessary by virtue of the factors discussed above, i.e., the unique, longstanding procedures that apply to establishing a standard, the fact that standards are based principally on organoleptic examinations by tea experts, the public participation opportunities already provided, and the timeframes required for issuing annual standards. Hence, the agency is not following notice and comment rulemaking procedures in establishing the final tea standards for 1993.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The impact of this rule on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96-354) (5 U.S.C. 601). FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

Interested persons may on or before January 5, 1994, submit to the Dockets Management Branch (address above) written comments regarding this regulation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

List of Subjects in 21 CFR Part 1220

Administrative practice and procedure, Customs duties and inspection, Imports, Public health, Tea.

Therefore, under the authority delegated to the Secretary of Health and Human Services by the Tea Importation Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1220 is amended as follows:

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

1. The authority citation for 21 CFR part 1220 continues to read as follows:

Authority: 21 U.S.C. 41-50; 19 U.S.C. 1311.

2. Section 1220.40 is amended by revising paragraph (a) to read as follows:

§ 1220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on February 25, 1993, are hereby fixed

and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1993, and ending April 30, 1994:

(1) Black Tea (for all teas except those from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, Turkey, and Argentina).

(2) Black Tea (for Argentina teas).

(3) Black Tea (for teas from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, and Turkey).

(4) Green Tea (of all origins).

(5) Formosa Oolong.

(6) Canton Oolong (for all Canton types from the People's Republic of China (China) and Taiwan (Formosa)).

(7) Scented Black Tea.

(8) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1993.

* * * * *

Dated: November 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-29648 Filed 12-3-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 219

[Docket No. R-93-1666; FR-3441-F-02]

RIN 2502-AG03

Flexible Subsidy Program—Amendments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the changes made to the Flexible Subsidy Program by the Housing and Community Development Act of 1992, to include the establishment of additional criteria by which a project will be considered eligible for assistance, and the establishment of new selection criteria by which HUD shall award assistance to eligible projects under the Flexible Subsidy Program. It also includes the requirement that eligible projects that have federally insured mortgages in force be selected for assistance under section 201 before any other eligible project.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, 451 Seventh Street SW, Washington DC 20410, telephone (202) 708-3944 (voice) or (202) 708-4594 (TDD for hearing-impaired). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Statement

The Office of Management and Budget has approved the use of the Flexible Subsidy forms under OMB control number 2502-0395, through March 31, 1996.

I. Background

A. June 25, 1993 Proposed Rule

On June 25, 1993 (58 FR 34506), HUD published a proposed rule that would amend the Flexible Subsidy Program regulations, codified at 24 CFR part 219, to implement the changes made to the Flexible Subsidy Program by sections 405 and 406 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (the 1992 Act). The changes made to the Flexible Subsidy Program included the establishment of additional criteria by which a project will be considered eligible for assistance under the Flexible Subsidy Program, and the establishment of new selection criteria by which HUD shall award assistance to eligible projects under the Flexible Subsidy Program, and the requirement that eligible projects that have federally insured mortgages in force be selected for assistance under section 201 before any other eligible project.

The preamble to the proposed rule listed the specific changes made to the Flexible Subsidy Program by sections 405 and 406 of the 1992 Act, and the regulatory amendments proposed to be made as a result of the statutory changes. (See 58 FR 34506-34509.) The Department solicited public comments on the proposed amendments to part 219. By the expiration of the public comment period on August 24, 1993, three comments had been received.

The following section of the preamble presents a summary of the comments raised by the commenters, and the Department's response to these comments.

B. Comments on the June 25, 1993 Proposed Rule

Comment. One commenter stated that it objected to HUD's proposed amendment to 24 CFR 219.230(b) which proposed to establish an order of priority for non-HUD-insured projects eligible to receive funding under the Flexible Subsidy Program. The commenter stated that the only funding priority which HUD is authorized to establish by legislation is a priority for HUD-insured projects (which is established in § 219.230(a)), and all other projects, including HUD-held projects, should be equally eligible for funding and not categorized as second, or third priorities. In support of this position, the commenter noted that 12 U.S.C. 1715z-1a (the Flexible Subsidy legislation) provides that Flexible Subsidy assistance "shall be made on an annual basis * * * without regard to whether such projects are insured under the National Housing Act." The commenters noted that the amendment made by section 405(b)(2) of the 1992 Act provides that "eligible projects that have federally-insured mortgages in force are to be selected for award of assistance under this section before any other eligible project." The commenter stated that the 1992 Act amendatory language when read together with section 1715z-1a must be interpreted to require the inclusion of non-insured projects among those eligible for consideration for Flexible Subsidy funding, and that the change merely establishes a priority for HUD-insured projects. The commenter recommended that the final rule reflect the correct statutory intent.

Another commenter also commented on the proposed amendment to § 219.230, and stated: "While we have no comment on the language of HUD's draft rule implementing this provision, we think that it is important to articulate [our] serious concern about the effect of section 201(n)(2) [the new section created by the 1992 Act] on our troubled project portfolio and that of other state agencies with portfolios of troubled and potentially troubled non-insured section 236 assisted projects."

HUD Response. The Department is sympathetic to the concerns of the commenters about troubled non-insured projects. However, the Department maintains that establishing a priority for HUD-held projects over non-insured projects is consistent with the amendments made to the Flexible Subsidy Program by the 1992 Act. In establishing an explicit priority for HUD-insured projects, the Congress expressed its intent in protecting HUD's FHA insurance fund, and protecting HUD-held properties from foreclosure protects the FHA insurance fund.

Where HUD is the holder of the mortgage, HUD already has paid a claim from the insurance fund. However, assistance provided to the troubled project through the Flexible Subsidy

Program may give the project owner a greater chance of having the mortgage brought current, thereby obviating HUD's need to foreclose on the property, and preventing further loss to the FHA insurance fund. If HUD forecloses on a HUD-held project, HUD becomes the owner, and as the owner, the property would be part of HUD's inventory, and subject to the stringent property disposition requirements of section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1710z–1711). Projects in HUD's inventory have resulted in substantial losses to the FHA insurance fund.

In an effort to aggressively promote the Secretary's call to action to reduce losses to the HUD Multifamily portfolio, HUD has decided to give priority to the HUD-held portfolio in allocating Flexible Subsidy funds after the insured projects are funded. This will provide more accessible resources with which to mitigate losses to the FHA Insurance Fund.[1]

C. Adoption of Proposed Rule

The Department adopts as its final rule the proposed rule published on June 25, 1993, without change.

II. Other Matters

Environmental Impact

At the time of development of the proposed rule and the FY 1993 Flexible Subsidy NOFA (both published in June 1993), a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding remains applicable to this final rule, and is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12866

This final rule was reviewed by the Office of Management and Budget as a significant regulatory action under Executive Order 12866.

[1] The comment of the third commenter was directed to the FY 1993 Flexible Subsidy NOFA that was published approximately two weeks before the Flexible Subsidy proposed rule was published (58 FR 32022). The commenter expressed dissatisfaction with the elimination of section 202 projects from the list of projects eligible for funding through the Flexible Subsidy Program. Section 202 projects were not eliminated from the list of projects eligible for funding. Section 202 projects were listed as part of the Category 3 funding priorities of the NOFA (see 58 FR 32026).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication, and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule will codify the changes made to the Flexible Subsidy Program by the Housing and Community Development Act of 1992. These statutory changes do not provide the Department with the discretion to differentiate between large and small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this final 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. Specifically, this rule will codify the changes made to the Flexible Subsidy Program by the Housing and Community Development Act of 1992. These changes will not interfere with State or local government functions.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *The Family*, has determined that this final rule does not have potential for significant impact on family formation, maintenance, or 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.

Regulatory Agenda

This rule was listed as sequence number 1537 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56430) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.164.

List of Subjects in 24 CFR Part 219

Loan programs—housing and community development, Low- and moderate-income housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 219 is amended as follows:

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

1. The authority citation for part 219 continues to read as follows:

Authority: 12 U.S.C. 1715z–1a; 42 U.S.C. 3535(d).

2. Section 219.110 is amended by revising paragraph (b) and by adding new paragraphs (h) through (l) to read as follows:

§ 219.110 General eligibility.

* * * * *

(b) The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage. This constitutes the minimum period for low-income affordability restriction. HUD, at its discretion, may extend this period of restriction to the remaining useful life of the project.

* * * * *

(h) All reasonable attempts have been made to take all appropriate actions and provide suitable housing for project residents.

(i) There is a feasible plan to involve the residents in project decisions as demonstrated through documentation submitted to HUD.

(j) The Affirmative Fair Housing Marketing plan meets applicable requirements.

(k) The owner certifies that he/she will comply with all applicable equal opportunity statutes.

(l) The project is not receiving financial assistance under the Emergency Low-Income Housing Preservation Act of 1987 (12 U.S.C. 17151 note) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) (12 U.S.C. 4101 *et seq.*).

3. A new § 219.127 is added to read as follows:

§ 219.127 Coordination of assistance.

The Secretary shall coordinate the allocation of assistance under this part with assistance made available under 24 CFR part 886, subpart A (the Loan Management Set-Aside Program), and 24 CFR part 290, subpart B (Management of HUD-Owned Multifamily Projects) to enhance the effectiveness of the Federal Response to troubled multifamily housing.

4. In § 219.205, paragraph (b)(1) introductory text is revised to read as follows:

§ 219.205 Amount of operating assistance.

* * * * *

(b) * * *

(1) Generally, the contribution must be made in cash. The contribution must not be taken from project income. Cash contributions made by the owner within the 36 months before application for operating assistance under this subpart from sources other than project income may be considered for purposes of meeting this contribution requirement.

* * * * *

5. Section 219.210 is revised to read as follows:

§ 219.210 Application.

(a) The project owner must submit an application on a form approved by the Secretary. The application will include a management improvement and operating plan (MIO Plan) that consists of two parts—Parts I and II.

(b) The MIO Plan Part I must include the following:

(1) A detailed maintenance schedule;

(2) A schedule for correcting past deficiencies in maintenance, repairs and replacements;

(3) A plan to upgrade the project to meet cost-effective energy efficiency standards approved by HUD;

(4) A plan to improve financial and management control systems;

(5) An updated annual operating budget, if the last budget was submitted more than 90 days before the application is submitted;

(6) A plan setting forth the specific controls and procedures that will result in a reduction in operating costs, if possible, together with an estimate of the cost saving; and

(7) Documentation of eligibility, as described in § 219.110.

(c) The MIO Plan Part II must include the following:

(1) Action items and other requirements needed to monitor the funding process, including sources and uses of funds;

(2) Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601–4655), and its implementing regulations at 49 CFR part 24, and § 219.135;

(3) Certification that the applicant will comply with the provisions of the Fair Housing Act (42 U.S.C. 3601–3619), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Executive Orders 11063 (3 CFR, 1958–1963 Comp., p. 652, and 3 CFR, 1980 Comp., p. 307) and 11246 (3 CFR, 1964–1965 Comp., p. 339), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and all regulations issued in accordance with these authorities;

(4) Affirmative Fair Housing Marketing Plan;

(5) Disclosures of other government assistance and expected sources and uses of that assistance, and the identity of interested parties, as required by 24 CFR 12.32; and

(6) Such other certifications and disclosures that may be specified in a **Federal Register** notice of funding availability.

(d) Within 30 days of receipt by HUD from the owner of the MIO Plan Part I in response to a notice of funding availability (NOFA), HUD will advise the owner, in writing, whether or not the MIO Plan Part I meets the submission requirements as stated in the NOFA. If HUD fails to inform the owner of its disapproval within the 30-day time-frame, the MIO Plan Part I shall be considered to be approved. If HUD disapproves the MIO Plan Part I, no further consideration will be given to the applicant for award of funds under the NOFA.

(Approved by the Office of Management and Budget under control number 2502–0395)

6. Section 219.230 is revised to read as follows:

§ 219.230 Priorities for funding.

(a) HUD will give funding priority first to insured projects based on the extent to which:

(1) The project presents an imminent threat to the life, health, and safety of project residents;

(2) The project is financially troubled;

(3) There is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in management of the project (except that paragraph (a)(3) of this section shall have no application to projects that are owned by cooperatives);

(4) The project owner has provided competent management and complied with all regulatory and administrative instructions (including such instructions with respect to the comprehensive servicing of the multifamily projects as the Secretary may issue); and

(5) The project meets such other criteria that the Secretary may specify in a **Federal Register** notice of funding availability.

(b) To the extent that funds are available for projects other than those described in paragraph (a) of this section, priority will be given to the following projects, in the order shown, based on the extent to which these projects meet the same criteria set forth in paragraph (a) of this section:

(1) HUD-held projects and projects assisted under section 202 of the Housing and Community Development Act of 1978 (12 U.S.C. 1715z-1b);

(2) State Agency non-insured projects; and

(3) State Agency owned projects.

7. In § 219.305, paragraphs (c)(1) and (c)(4) are revised to read as follows:

§ 219.305 Eligibility.

* * * * *

(c) * * *

(1) Generally, the contribution must be made in cash. The contribution must not be taken from project income. Cash contributions made by the owner within 36 months before the application for a capital improvement loan under this subpart, from sources other than project income, may be considered for purposes of meeting this contribution requirement.

* * * * *

(4) When an owner has spent its own money (as from surplus cash) to attempt to repair items within 36 months before HUD's receipt of the capital improvement loan application, and the repair was unsuccessful and has resulted in a need for a replacement (to be funded by a capital improvement loan), the expenditure will be considered credit for purposes of meeting the contribution requirement.

8. Section 219.310 is revised to read as follows:

§ 219.310 Application.

(a) The project owner must submit an application on a form approved by the Secretary. The application will include a MIO Plan that consists of two parts—Parts I and II.

(b) The MIO Plan Part I must include a work write-up to describe the capital improvements to be covered by the requested loan (see § 219.315), and other documentation of eligibility, as described in §§ 219.110 and 219.305. A MIO Plan Part I is required for an application for a capital improvement loan only when one or more of the following conditions exist:

(1) The project is in default or was in default at any time during the one-year period preceding the application date.

(2) The project received a Below Average or Unsatisfactory rating for Overall Physical Condition or for Maintenance Policies and Practices on the most recent HUD–9822, Physical Inspection Report (unless the owner has since corrected the problems in a manner satisfactory to HUD).

(3) The project received a Below Average or Unsatisfactory rating in the

Financial Management Section or Overall Management Section on the HUD–9834, Management Review, in the past 24 months (unless the owner has corrected the problems through a substitution of management agent, management personnel, or otherwise, in a manner satisfactory to HUD).

(4) A situation that HUD Headquarters has determined requires submission of a MIO Plan Part I.

(c) The MIO Plan Part II must include the following:

(1) Action items and other requirements needed to monitor the funding process, including sources and uses of funds;

(2) Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601–4655), and its implementing regulations at 49 CFR part 24, and § 219.135;

(3) Certification that the applicant will comply with the provisions of the Fair Housing Act 42 U.S.C. 3601–3619), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Executive Orders 11063 (3 CFR, 1958–1963 Comp., p. 652, and 3 CFR, 1980 Comp., p. 307) and 11246 (3 CFR, 1964–1965 Comp., p. 339), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and all regulations issued in accordance with these authorities;

(4) Affirmative Fair Housing Marketing Plan;

(5) Disclosures of other government assistance and expected sources and uses of that assistance, and the identity of interested parties, as required by 24 CFR 12.32; and

(6) Such other certifications and disclosures that may be specified in a **Federal Register** notice of funding availability.

(d) Within 30 days of receipt by HUD from the owner of the MIO Plan Part I in response to a notice of funding availability (NOFA), HUD will advise the owner, in writing, whether or not the MIO Plan Part I meets the submission requirements as stated in the NOFA. If HUD fails to inform the owner of its disapproval within the 30-day time-frame, the MIO Plan Part I shall be considered to be approved. If HUD disapproves the MIO Plan Part I, no further consideration will be given to the applicant for award of funds under the NOFA.

(Approved by the Office of Management and Budget under control number 2502–0395)

9. In § 219.330, paragraph (b) is revised, and paragraph (c) is added to read as follows:

§ 219.330 Priorities for funding.

* * * * *

(b) To the extent that funds are available for projects other than those described in paragraph (a) of this section, priority will be given to insured projects based on the extent to which:

(1) The project presents an imminent threat to the life, health, and safety of project residents;

(2) The project is financially troubled;

(3) There is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in management of the project (except that paragraph (a)(3) of this section shall have no application to projects that are owned by cooperatives);

(4) The project owner has provided competent management and complied with all regulatory and administrative instructions (including such instructions with respect to the comprehensive servicing of the multifamily projects as the Secretary may issue); and

(5) The project meets such other criteria that the Secretary may specify in a **Federal Register** notice of funding availability.

(c) To the extent that funds are available for projects other than those described in paragraph (b) of this section, priority will be given to the following projects, in the order shown, based on the extent to which these projects meet the same criteria set forth in paragraph (b) of this section:

(1) HUD-held projects and projects assisted under section 202 of the Housing and Community Development Act of 1978 (12 U.S.C. 1715z-1b);

(2) State Agency non-insured projects; and

(3) State Agency owned projects.

Dated: November 29, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. 93–29688 Filed 12–3–93; 8:45 am]

BILLING CODE 4210–27–P

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 970

[Docket No. R–93–1689; FR–3528–N–02]

RIN 2577–AB54

Public and Indian Housing Program—Demolition or Disposition of Public and Indian Housing Projects—Required and Permitted PHA/IHA Actions Prior to Approval; Delay of Effective Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Delay of effective date of final rule.

SUMMARY: Existing regulations require that a PHA or IHA not take any action intended to further the demolition or disposition of a public or Indian housing project or a portion of a public or Indian housing project without obtaining HUD approval under the provisions of 24 CFR parts 970 or 905, respectively. The final rule published on November 4, 1993, clarifies that until such time as HUD approval may be obtained, the PHA or IHA must prevent further deterioration of the physical condition of the project, other than deterioration incident to normal use, and is responsible under the ACC to continue providing emergency repair services and routine maintenance for occupied projects. This document delays the effective date of the final rule.

EFFECTIVE DATE: Effective December 6, 1993, the effective date of the final rule published at 58 FR 58784 is delayed until February 4, 1994.

FOR FURTHER INFORMATION CONTACT: William R. Minning, Director, Policy Division, Office of Management and Policy, (202) 708–0713. The telecommunications device for deaf persons (TDD) is available at (202) 708–0850. (The telephone numbers provided are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: On November 4, 1993, at 58 FR 58784, the Department issued a final rule regarding required and permitted actions that a PHA or IHA may take prior to approval of an application for demolition or disposition of a public or Indian housing project or a portion of a public or Indian housing project. The final rule has an effective date of December 6, 1993. This notice delays that effective date for 60 days.

Serious concerns have been expressed about the impact of some of the provisions of the final rule on residents

and resident organizations. Therefore, in the spirit of cooperation, the Department wishes to delay the effective date of the final rule so that further review of this rule may be conducted.

Accordingly, in FR Doc. 93–27012, published in the **Federal Register** on November 4, 1993, at 58 FR 58784, the effective date for the final rule regarding the Public and Indian Housing Program, is delayed until February 4, 1994.

Dated: November 30, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–29687 Filed 12–3–93; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval, with exceptions and required amendments, of a program amendment submitted by Missouri as a modification to the State's permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to signs and markers, surface and underground hydrology, coal waste disposal, fish and wildlife, backfilling and grading, revegetation, land use, roads, coal exploration, mining near public roads, permit confidentiality, threatened and endangered species, buffer zones, sediment ponds, acid- and toxic-forming materials, operations and reclamation plans, public notice, permit application requirements, performance bonding, release of reclamation liability, bond forfeiture, assessments to the land reclamation fund, definitions, notices of violation, and penalty assessment.

The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: December 6, 1993.

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

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of Amendment

By letter dated October 19, 1992 (Administrative Record No. MO–555), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment with the intent of satisfying, in part, required program amendments at 30 CFR 925.16(f) and (p) placed on the Missouri program on September 29, 1992, (57 FR 44660) and at 925.16(g) placed on the Missouri program on May 8, 1991 (56 FR 21281). Missouri identified additional regulations that required amending in order to clarify their purposes and to be consistent with their Federal counterparts. The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors and to accomplish necessary recodification required by the addition or deletion of provisions.

The regulations that Missouri proposes to amend are: 10 CSR 40–3.010, Signs and Markers; 10 CSR 40–3.040, Requirements for Protection of the Hydrologic Balance; 10 CSR 40–3.080, Requirements for the Disposal of Coal Processing Waste; 10 CSR 3.100, Requirements for the Protection of Fish, Wildlife, and Related Environmental Values and Protection Against Slides and Other Damage; 10 CSR 3.110, Backfilling and Grading Requirements; 10 CSR 40–3.120, Revegetation Requirements; 10 CSR 40–3.130, Postmining Land Use Requirements; 10 CSR 40–3.140, Road and Other Transportation Requirements; 10 CSR 40–3.200, Requirements for Protection of the Hydrologic Balance for Underground Operations; 10 CSR 40–3.230, Requirements for the Disposal of Coal Processing Waste for Underground Operations; 10 CSR 40–3.250, Requirements for the Protection of Fish, Wildlife, and Related Environmental Values and Protection Against Slides and Other Damage; 10 CSR 40–3.260, Requirements for Backfilling and Grading for Underground Operations; 10 CSR 40–3.270, Revegetation Requirements for Underground Operations; 10 CSR 40–4.010, Coal Exploration Requirements; 10 CSR 40–5.010; Prohibitions and Limitations on Mining in Certain Areas; 10 CSR 40–6.030, Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information; 10 CSR 40–6.040, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 10 CSR 40–6.050; Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 10 CSR 40–6.070, Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions; 10 CSR 40–6.100, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information; 10 CSR 40–6.110, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 10 CSR 6.120, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; 10 CSR 40–7.011, Bond Requirements; 10 CSR 40–7.021, Duration and Release of Reclamation Liability; 10 CSR 40–7.031, Permit Revocation, Bond Forfeiture and Authorization to Expend Reclamation Fund Monies; 10 CSR 40–7.041, Form and Administration of the Coal Mine Land Reclamation Fund; 10 CSR 40–8.010, Definitions; 10 CSR 40–8.030, Permanent Program Inspection and Enforcement; and 10 CSR 40–8.040, Penalty Assessment.

OSM published a notice in the December 30, 1992, **Federal Register** (57 FR 62278) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended January 29, 1993. The public hearing scheduled for January 25, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns related to 10 CSR 40–3.110(3)(A)1., Covering Coal and Acid- and Toxic-forming Materials; 10 CSR 40–3.120(6)(H), Residential Land Use; 10 CSR 40–3.140(1)(A), Roads—Class I—General; 10 CSR 40–4.030(4)(B), Prime Farmland Applicability; 10 CSR 40–7.021(D)(2), Duration and Release of Reclamation Liability; 10 CSR 40–8.030(7)(A), Permanent Program Inspection and Enforcement; 10 CSR 40–8.040(9), Habitual Violator; 10 CSR 40–6.050(5)(B)5. and 8., Operations Plan—

Maps and Plans; and 10 CSR 40–7.031(3)(B), Permit Revocation, Bond Forfeiture and Authorization to Expend Reclamation Fund Monies. OSM notified Missouri of the concerns by letter dated March 18, 1993 (Administrative Record No. MO–567). Missouri responded in a letter dated April 26, 1993, (Administrative Record No. MO–569) by explaining that it wished to delay responding to the concerns. OSM, therefore, proceeded with this final rule making.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions and additional requirements, that the proposed amendment as submitted by Missouri on October 19, 1992, meets the requirements of SMCRA and 30 CFR chapter VII.

1. Provisions Not Discussed

Missouri proposes revisions to its rules that involve minor typographical corrections and recodification. The Director finds that these proposed revisions, unless specifically discussed below, are no less effective than the Federal regulations and is approving them.

2. Provisions Not Discussed That Are Substantively the Same as the Counterpart Federal Regulations

Missouri proposes revisions to rules that contain language that is the same or similar to the counterpart Federal regulations, replace Federal references and terms with appropriate State references and terms, or add specificity without adversely affecting other aspects of the program regulation. The Director, therefore, finds that these proposed revisions to Missouri's regulations are no less effective than and consistent with the Federal regulations. These revisions are as follows (Federal regulation counterparts are indicated in brackets): 10 CSR 40–3.130, Post-mining Land Use Requirements [30 CFR 816.133]; 10 CSR 40.3–140(1)(D), Road and Other Transportation Requirements [30 CFR 816.151(a)]; 10 CSR 40–3.140(8)(D)1., Roads—Class II—General [30 CFR 816.151(a)]; 10 CSR 40–5.010(3)(D), Prohibitions and Limitations on Mining in Certain Areas [30 CFR 761.11(d)]; 10 CSR 6.070(1)(G), Identification of Interests [30 CFR 778.13(h)]; 10 CSR 40–6.070(5)(A)3., Informal Conferences [30 CFR 773.13(c)(iii)]; 10 CSR 40–6.070(8), Criteria for Permit Approval or Denial [30 CFR 773.15(c)]; 10 CSR 40–6.100(1)(G), Identification of Interests [30 CFR 778.13(h)]; and 10 CSR 40–6.110(11)(E)1., Fish and Wildlife Resources Information [30 CFR 784.21(a)(2)(i)].

3. Required Program Amendments

Missouri submitted proposed revisions in response to required program amendments that the Director placed on the Missouri program and as codified in the Federal regulations at 30 CFR 925.16 (g) and (p). The Director finds that the following proposed State regulations satisfy the required program amendments, are no less effective than the Federal regulations indicated in each required program amendment, and is approving them (the codified required amendments at 30 CFR 925.16 are indicated in brackets): 10 CSR 40–3.040(6) (H) and (U), by requiring that sedimentation ponds be designed, constructed and maintained to provide periodic sediment removal sufficient to maintain adequate volume for the design event and that siltation structures be maintained until removal is authorized and in no case shall be removed sooner than 2 years after the last augmented seeding [30 CFR 925.16 (p)(1) and (p)(2)]; 10 CSR 40–3.040(10)(I), by providing items to be discussed in certification reports for dams and embankments [30 CFR 925.16(p)(3)]; 10 CSR 40–6.070(11)(A)1., by requiring a review if there is reason to believe a permit was improvidently issued [30 CFR 925.16(p)(13)]; 10 CSR 40–7.011(1)(C), by requiring that both the permittee and corporate guarantor execute the indemnity agreement for a self bond [30 CFR 925.16(g)(9)]; 10 CSR 40–7.011(2)(A), by requiring that performance bonds be conditioned upon the faithful performance of the Act, regulatory program, permit and reclamation plan [30 CFR 925.16(g)(10)]; 10 CSR 40–7.011(3)(D), by requiring an operator to identify initial and successive areas of increments for bonding and to specify the bond amounts for each and by prohibiting disturbance on succeeding increments prior to acceptance of bond [30 CFR 925.16(g)(11)]; 10 CSR 40–7.011(4) (F) and (G), by requiring the State director to adjust bond amounts in the event that an approved permit is revised and to allow for an informal conference on the adjustment [30 CFR 925.16(g)(12)]; 10 CSR 40–7.011(5) (A)2., by restricting a surety cancellation to only those lands not disturbed and only with prior consent of the regulatory authority [30 CFR 925.16(g)(13)]; 10 CSR 40–7.011(5) (A)(8) and (B)(7), by requiring an operator to begin reclamation immediately upon issuance of a cessation order if a surety company is insolvent and the permittee has not replaced bond coverage within 60 days [30 CFR 925.16(g)(14)]; 10 CSR 40–7.011(5)(B)2., by requiring that a certificate of deposit for a self bond be made payable to the regulatory authority only [30 CFR 925.16(g)(15)]; 10 CSR 40–7.011(5)(D)2.C., by expressing the financial ratio values as actual ratios rather than decimal fractions [30 CFR 925.16(g)(16]; 10 CSR 40–7.011(5)(D)2.D., by requiring that the accountant's audit or review opinion be prepared using generally accepted accounting principles [30 CFR 925.16(g)(17)]; 10 CSR 40–7.011(5)(D)5.A., by requiring that the third party non-corporate guarantor also execute the indemnity agreement; that the applicant and guarantor must both sign the indemnity agreement; that an affidavit be submitted with the indemnity agreement attesting to its validity under applicable Federal and State laws; that the applicant, parent or non-parent corporate guarantor be required to complete the approved reclamation plan or pay the regulatory authority to complete the reclamation plan; and that the indemnity agreement shall operate as a judgment when under forfeiture [30 CFR 925.16(g)(18)]; 10 CSR 40–7.021(2)(B), by requiring that vegetation be established in accordance with the approved reclamation plan at the Phase II level and that prime farmland soil productivity yield levels be met at the Phase II level of bond release [30 CFR 925.16(g)(19)]; 10 CSR 40–7.031(3)(B), by requiring that no surety liability be released until successful completion of all reclamation under the permit term [30 CFR 925.16(p)(17)]; and 10 CSR 40–8.040(8)(K), by requiring that payment of a settlement agreement be received within 30 days from the date the agreement is signed and that the Missouri Department of Natural Resources, Land Reclamation Commission (the Commission), must take action to raise, lower, or vacate the penalty within 30 days from the date of recision [30 CFR 925.16(p)(19)].

Accordingly, the Director is removing the required program amendments as identified above from the Missouri program and as codified at 30 CFR 925.16.

4. 10 CSR 40–3.010(5), Signs and Markers

Missouri proposes to amend its program at 10 CSR 40–3.010(5) regarding bonded area markers by adding a requirement that, where the permit area is released in segments, the segments released shall be marked at the time of the release inspection unless

already delineated by natural or man-made boundaries.

The Federal regulations dealing with bond release inspection are found at 30 CFR 800.40.(b), however the Federal rule does not require that the bonded area to be released be marked at the time of the release inspection. While there is no direct Federal counterpart regulation, this State proposal is not inconsistent with the Federal program and will aid in the administration of its program. Therefore, the Director approves the proposed rule at 10 CSR 40–3.010(5).

5. 10 CSR 40–3.040(2)(A), Water Quality Standards and Effluent Limitations

Missouri proposes at 10 CSR 40–3.040(2)(a) to remove language from its rule that would allow surface drainage leaving the permit area from areas that are in the process of topsoiling and revegetation to not meet total suspended solids effluent limitations.

The Federal regulation at 30 CFR 816.42 requires that discharges of water from areas disturbed by surface mining activities shall comply with the effluent limitations for coal mining set forth at 30 CFR part 434, the implementing regulations for the Clean Water Act. Additionally, 30 CFR 816.46(b) requires that additional contributions of suspended solids to stream flow or runoff outside the permit area shall be prevented.

Missouri's proposal will provide a standard for surface drainage leaving the permit area that is no less effective than the Federal program standard.

The Director finds that Missouri's proposed rule at 30 CFR 40–3.040(2)(A) is no less effective than the Federal regulation requirements and is approving it.

6. 10 CSR 40–3.040(9) (A), (B) and (C), Acid- and Toxic-forming Materials

Missouri proposes at 30 CSR 40–3.040(9) (A), (B) and (C) to replace the word "spoil," in the context of acid- and toxic-forming "spoil," with the word "materials" and to include in its rules the requirements that drainage from acid- and toxic-forming materials, which may adversely affect water quality or be detrimental to public health and safety, be avoided by burying and/or treating the materials.

The counterpart Federal rules at 30 CFR 816.41(f) also refer to acid- and toxic-forming "materials" and include the material burying and/or treating requirements. Therefore, the Director finds Missouri's proposed rules at 10 CSR 40–3.040(9) (A), (B), and (C) to be no less effective than the Federal regulations and is approving them.

7. 10 CSR 40–3.110(3)(A)1. and .3 Covering Coal and Acid- and Toxic-forming Materials

Missouri's existing provision at 10 CSR 40–3.110(3)(A)(1) provides that:

[e]xposed coal seams, acid- and toxic-forming materials and combustible materials exposed, used or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with 10 CSR 40–3.040, to prevent sustained combustion and to minimize adverse effects on plant growth and the approved postmining land use.

Missouri proposes to delete the words "coal seams" and "and combustible materials exposed" from the existing provision. Missouri further proposes to add a new sentence to end of the provision. As proposed, 10 CSR 40–3.110(3)(A)(1) would read as follows:

Exposed acid- and toxic-forming materials used or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with 10 CSR 40–3.040, to prevent sustained combustion and to minimize adverse effects on plant growth and the approved postmining land use. Concerning exposed coal seams and combustible materials, including coal processing waste, adequately covered shall be defined as being covered with a minimum of four feet (4') of nontoxic, nonacid-producing materials unless otherwise demonstrated.

The counterpart Federal regulations at 30 CFR 816.102(f) requires that exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with 30 CFR 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

OSM has two concerns regarding this proposed revision. First, Missouri has removed the requirement that "exposed coal seams" and "combustible materials" be adequately covered or treated as required at 30 CFR 816.102(f). Although Missouri defines adequate cover for exposed coal seams and combustible materials, the State has eliminated the requirement for the covering or treatment of these materials by removing these terms from the rule. Additionally, by revising the rule as proposed, it appears that exposed coal seams and combustible materials are not required to meet the requirements of 10 CSR 40–3.040, protection of the hydrologic balance. This problem could be remedied by simply retaining the phrases that are proposed to be deleted.

Second, Missouri proposes to require only exposed acid- and toxic-forming materials to be adequately covered whereas exposed coal seams and combustible material, including coal processing wastes, are proposed to be covered with four feet of nontoxic-, nonacid-producing materials "unless otherwise demonstrated." Missouri must explain why these two groups of materials are treated differently and clarify what is required to be demonstrated if four feet of cover is not proposed.

The Director, based on the discussion above, finds that Missouri's proposed rule modifications at 10 CSR 40–3.110(3)(A)1 would render its program to be less effective than the Federal regulations at 30 CFR 816.102(f). Therefore, the Director is not approving the proposed modifications and is requiring Missouri to amend its program by (1) requiring that exposed coal seams and combustible materials be adequately covered or treated as required at 30 CFR 816.102(f) and (2) explaining why these two groups of materials, i.e., acid- and toxic-forming materials and exposed coal seams and combustible materials are treated differently and clarify what is required to be demonstrated if four feet of cover is not proposed.

8. 10 CSR 40–3.110(3)(A)3, Covering Coal and Acid- and Toxic-forming Materials

Missouri proposes at 10 CSR 40–3.110(3)(A)3. to add combustible materials and coal processing waste to the requirement that acid- and toxic-forming material shall not be buried or stored in proximity to a drainage course so as not to cause or pose a threat of water pollution. While there is no exact counterpart Federal regulation, the Federal regulations at 30 CFR 816.81(a), coal mine waste, and 816.102(f), backfilling and grading, are the regulations that require exposed coal seams, acid- and toxic-forming materials and combustible materials to be buried and/or treated or stored in a manner that will protect surface and ground water quality.

The Director finds that Missouri's proposed rule at 10 CSR 40–3.110(3)(A)3 is no less effective than the Federal regulations at 30 CFR 816.81(a) and 816.102(f) and is approving it.

9. 10 CSR 40–3.110(6)(B), Regarding or Stabilizing Rills and Gullies

Missouri proposes to add paragraph 10 CSR 40–3.110(6)(B) which allows that, on areas that have been previously

mined where topsoil is not available, the requirements for regarding or stabilizing rills and gullies pursuant to paragraph 10 CSR 40–3.110(6)(A) apply after final grading, except that the areas need not be topsoiled. Paragraph 10 CSR 40–3.110(6)(A) provides the requirements for stabilizing rills and gullies. Paragraph (A) also requires all rills and gullies deeper than nine inches to be retopsoiled upon regrading.

The Federal counterpart regulations concerning previously mined areas are located at 30 CFR 816.106. These regulations require that areas previously mined meet the requirements of 30 CFR 816.102 through 816.106. The Federal regulation at 30 CFR 816.102(d)(2) requires topsoil to be redistributed in accordance with 30 CFR 816.22; regulations governing topsoil and subsoil handling. The Federal regulation at 30 CFR 816.22(a)(ii) allows that where topsoil is of insufficient quantity or poor quality for maintaining vegetation, selected overburden materials may be substituted for topsoil if the operator demonstrates to the regulatory authority that the resulting soil medium is equal to, or more suitable for, sustaining vegetation than the existing topsoil and the resulting soil medium is the best available in the permit area to support vegetation. This material shall be removed as a separate layer from the area to be disturbed and segregated. The Federal regulations concerning previously mined areas, therefore, do not allow for an area that has been regraded and stabilized to forgo topsoiling. Missouri must require an operator to identify the best suited material available for topsoil replacement and to segregate that material for later use as a topsoil substitute.

The Director finds 10 CSR 40–3.110(6)(B) to be less effective than the Federal regulations at 30 CFR 816.106 and 816.22 to the extent that it does not require an operator to identify the best suited material available for topsoil replacement and to segregate that material for later use as a topsoil substitute and is not approving it to that extent. The Director is requiring Missouri to amend its program by requiring, for previously mined areas, an operator to identify the best suited material available for topsoil replacement and to segregate that material for later use as a topsoil substitute.

10 CSR 40–3.120(6)(B), Residential Land Use and 10 CSR 40–3.270(6)(B), Revegetation Requirements for Underground Operations

Missouri proposes to correct a typographical error in its reference to the residential land use guideline document adopted by the Land Reclamation Commission in August 1990. While the corrected terminology is acceptable, it is used in the reference to Missouri's unapproved Permanent Program Phase III Liability Release Guidelines that OSM has previously directed Missouri to remove as per the required program amendment at 30 CFR 925.16(p)(6). OSM cannot approve a correction to a portion of the Missouri program that was previously not approved by OSM. Therefore, the Director finds Missouri's proposed rules at 10 CSR 40–3.120(6)(B) and 10 CSR 40–3.270(6)(B) to be less effective than the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) to the extent that the State references the unapproved Permanent Program Phase III Liability Release Guidelines that OSM had previously directed Missouri to remove as per the required program amendment at 30 CFR 925.16(p)(6). The Director is not approving this proposed rule and the required program amendment remains in effect.

11. 10 CSR 40–3.120(7)(C), Tree and Shrub Stocking for Woodland, Wildlife Habitat and Recreation Land Uses and 10 CSR 40–3.270(7)(C), Tree and Shrub Stocking for Woodland, Wildlife Habitat and Recreation Land Uses (for underground operations)

Missouri proposes, at 10 CSR 40–3.120(7)(C) and 10 CSR 40–3.270(7)(C) to replace the phrase "on the reference area" with the phrase "approved in the permit" in the context of stocking rates for trees, shrubs, half-shrubs, and ground covers. Therefore, at 10 CSR 40–3.120(7)(C)2, the State would provide that "[t]he stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover approved in the permit," and that "[t]he stocking of live woody plants shall be equal to or greater than ninety percent (90%) of the stocking or woody plants of the same life form approved in the permit." At 10 CSR 40–3.120(7)(C)3.A, Missouri would require that "[t]he woody plants established on the revegetated site are equal to or greater than ninety percent (90%) of the stocking rate approved in the permit." The effect of this proposed language would be to remove the existing requirement that stocking rates be determined by observing the density and distribution of vegetation on a local, unmined "reference area." The proposed change would allow the regulatory authority to set the stocking rates in the permit, after consultation with and approval from the Missouri Department of Conservation, and would not require the establishment of a reference area.

The Federal counterpart regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) require that, for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, the regulatory authority must establish minimum stocking and planting arrangements on the basis of local and regional conditions and after consultation with and approval by appropriate State agencies. The Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) do not require the establishment of a reference area for determining stocking rates. Since Missouri requires the minimum stocking and planting arrangements to be approved by the Missouri Department of Conservation and since the proposed language provides Missouri with additional flexibility, the Director finds 10 CSR 40–3.120(7)(C) and 10 CSR 40–3.270(7)(C) to be no less effective than the corresponding Federal regulations and is approving the State's proposed revisions.

12. 10 CSR 40–3.140(1)(A), Roads—Class I—General

Missouri proposes to revise 10 CSR 40–3.140(1)(A) by removing the phrase "class I road" from the requirement to control or prevent erosion, siltation, the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed "class I road" surfaces. Missouri also proposes to delete the phrase "class I" from the requirement that the control and prevention of air pollution be accomplished through stabilizing all exposed "class I" road surfaces in accordance with current, prudent engineering practices. This proposed amendment is in response to a required program amendment placed on the Missouri program at 30 CFR 925.16(p)(9) that directed Missouri to amend its program to require operators to control and prevent air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces.

The Federal regulations at 30 CFR 816.150(b)(1) require that the control and prevention of air pollution be accomplished through stabilizing all "exposed surfaces" in accordance with current, prudent engineering practices.

Missouri's proposed amendment partially satisfies the required program amendment in that the proposed amendment removes the first occurrence of "class I road." As proposed, 10 CSR 40–3.140(1)(A) now requires control and prevention of dust occurring on "other exposed surfaces." However, Missouri did not fully remove the reference of "class I road" from the second usage. As proposed, 10 CSR 40–3.140(1)(A) requires an operator, in order to control dust, to stabilize other exposed *road* surfaces only. It does not require the operator, as does the Federal regulation, to stabilize all exposed surfaces, whether or not those exposed surfaces are "road" surfaces. Therefore, the Director finds the proposed rule at 10 CSR 40–3.140(1)(A) less effective than the counterpart Federal regulation because it limits the control and prevention of air pollution to the stabilization of "all exposed road surfaces" whereas the Federal regulation requires "stabilizing all exposed surfaces." The Director is not approving this proposed change to the extent that it does not require all exposed surfaces to be stabilized. The required program amendment at 30 CFR 925.16(p)(9) is modified to direct Missouri to require that all exposed surfaces be stabilized in accordance with current prudent engineering practices.

13. 10 CSR 40–6.040(11)(E)1 and 6.110(11)(E)1, Fish and Wildlife Resources Information, and 6.050(7)(C)1 and 6.120(12)(A)1, Fish and Wildlife Plan

Missouri proposes to modify 10 CSR 40–6.040(11)(E)1, 6.110(11)(E)1, 6.050(7)(C)1, and 6.120(12)(A)1 by providing correct citation for the Endangered Species Act. This proposed change adequately addresses the required program amendment placed on Missouri's program at 30 CFR 925.16(d). However, in its review of this proposed amendment, OSM discovered that the term "secretary," as used in 10 CSR 40–6.040(11)(E)1, is not defined anywhere in the Missouri program. Since Missouri has asserted that 10 CSR 40–6.040(11)(E)1 is equivalent to 30 CFR 716.16(a)(2)(i), however, OSM interprets the term "secretary" to mean the Secretary of the Interior, consistent with the Federal use of the term. Therefore, the Director finds that Missouri's failure to define the term "secretary," as used at 10 CSR 40–6.040(11)(E)1, does not render Missouri's proposed rule less effective than the Federal requirements and is approving the proposed amendments at 10 CSR 40–6.040(11)(E)1, 6.110(11)(E)1, 6.050(7)(C)1, and 6.120(12)(A)1 and is removing the required program amendment at 30 CFR 925.16(d). However, with this notice, OSM is notifying Missouri of this incomplete reference to the Secretary of the Interior and suggests that Missouri correct this reference to the "secretary" to the "Secretary of the Interior."

14. 10 CSR 40–6.040(14)(L), Maps—General Requirements

Missouri proposes to add a rule that requires all buffer zones, as defined at proposed 10 CSR 40–8.010(1)(A)(13), to be included on all maps required as part of the permit application. Missouri proposes to define "buffer zone" to mean a boundary which establishes a limit of mining-related disturbance beyond which a variance to the regulations must be obtained before disturbing.

The Federal map requirements are found at 30 CFR 779.24. These regulations do not require that buffer zones be identified on any map. Furthermore, the Federal regulations do not define the term "buffer zone." The Federal regulations at 30 CFR 780.16(b)(3)(i) and 784.21(b)(2)(i) do, however, allow a regulatory authority to require an applicant's fish and wildlife protection and enhancement plan to include the establishment of buffer zones as a protective measure. The Federal regulations at 30 CFR 816.57 and 817.57 further require an operator to provide buffer zones for streams so that no land within 100 feet of a perennial or intermittent stream will be disturbed by surface mining activities. The Federal regulation at 30 CFR 816.11(e) requires that stream buffer zones shall be marked along their boundaries in the field.

The Director finds that proposed 10 CSR 40–6.040(14)(L) is no less effective than the Federal regulations as it requires the applicant to include additional information on permit maps, beyond that which is required under the Federal regulations and will assist Missouri with the administration of its program. The Director is approving the proposed change.

15. 10 CSR 40–6.050(5)(B) 5. and 8., Operations Plan—Maps and Plans

a. Map and Narrative Requirements

Missouri proposes a clarification at 10 CSR 40–6.050(5)(B)5. The proposed revision to item (5)(B)5 requires that the operations plan map will show each topsoil, spoil, coal waste, and noncoal waste storage area and, except for topsoil and spoil, the narrative should be in accordance the appropriate section(s) of 10 CSR 40–3.080.

The Federal counterpart regulation at 30 CFR 780.14(b)(5) requires that each topsoil, spoil, coal waste and noncoal waste storage area each source of waste and each waste disposal facility relating to coal processing or pollution control be identified on a map as part of a permit application.

Missouri's proposal, while technically no less effective than the Federal counterpart regulation, tends to not clarify but confuse the intent of this regulation. This regulation specifies those items to be shown on the operations plan map and does not concern the narrative for coal or noncoal waste disposal. In addition, Missouri already has a narrative requirement for these items located at 10 CSR 40–6.050(2)(B). As stated earlier, this proposal does not render Missouri's program less effective than the Federal program, however, OSM suggests that the proposed language be removed.

b. *Waste and Waste Disposal Facility Location*

Missouri proposes a clarification at 10 CSR 40–6.050(5)(B)8. The proposed revision to item (5)(B)8 requires that the operations plan map will show each source of waste and each waste disposal facility relating to coal processing or pollution control "in accordance with 10 CSR 40–3.080(1)–(6)," the general requirements for disposal of coal processing waste.

The Federal counterpart regulation at 30 CFR 780.14(b)(8) requires each source of waste and each waste disposal facility relating to coal processing or pollution control be identified on a map as part of a permit application.

Missouri's current rule is already no less effective than the Federal regulation. The proposed amendment would provide the citation for the Missouri rules governing each source of waste and each waste disposal facility relating to coal processing or pollution control.

The Director finds the proposed amendments at 10 CSR 40–6.050(5)(B)5. and 8. to be no less effective than the Federal counterpart regulations and is approving them.

16. 10 CSR 40–7.021(2)(D)(2), Duration and Release of Reclamation Liability

Missouri proposes, at 10 CSR 40–7.021(2)(D)2, to remove the requirement that eighty-five percent (85%) of the bond be released when Phase II liability is released. This current release percentage is proposed to be replaced with the requirement that, after completion of Phase II, the Missouri

State director shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing vegetation if established by a third party and the amount of bond necessary to abate any water pollution caused by the contributing of suspended solids to stream flow or runoff outside the permit area in excess of the requirements set by chapter 3 of the Missouri rules. In addition, Missouri's liability release regulations at 10 CSR 40–7.021(2)(B)3 state that an area shall qualify for release of Phase II liability when the lands are not contributing suspended solids to stream flow or runoff outside the permit area.

Missouri's proposed rule at 10 CSR 40–7.021(2)(D)2 is in response to the required program amendment at 30 CFR 925.16(g)(21) which required Missouri to remove mandatory fixed percentage bond release amounts and provide the flexibility required in the Federal regulations.

The Federal regulation at 30 CFR 800.40(c)(2) requires, at the completion of Phase II reclamation, that the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party. Both section 519(c)(2) of SMCRA and 30 CFR 800.40(c)(2) of the Federal regulations state that no part of the bond shall be released so long as the lands to which the release would be applicable are contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements set by section 515(b)(10) of the Act.

The Federal regulation at 30 CFR 800.40(c)(2) does not explicitly require that a certain amount of the bond be retained to abate any water pollution in the event that, after the release of the Phase II bond, either the operator-initiated revegetation or the third-party initiated revegetation begins to contribute suspended solids to streamflow or runoff off the permit area. However, such bond money retention is implicit in the Federal regulation and is consistent with the broad remedial intent of SMCRA. The effect of Missouri's proposed rule is to explicitly require that which is implicitly required by the Federal regulation: that sufficient bond money be retained by the regulatory authority to abate water pollution resulting from any failed revegetation during the liability period. Such retained bond money would be in addition to the amount required to simply reestablish the vegetation itself.

Therefore, the Director finds Missouri's proposed rule change at 10 CSR 40–7.021(2)(D)(2) to be no less stringent than SMCRA and no less effective than the Federal regulations and is approving it. The Director is removing the required program amendment at 30 CFR 925.16(g)(21).

17. 10 CSR 40–8.010(1)(A) (13 and (71), Definitions

a. "Buffer zone"

Missouri proposes to add a definition for "buffer zone" at 10 CSR 40–8.010(1)(A)(13). Buffer zone is defined to mean a boundary which establishes a limit of mining related disturbance beyond which a variance to the regulations must be obtained before disturbance.

While there is no direct Federal counterpart definition, the Federal program makes reference to the establishment of buffer zones when addressing the protection of endangered species (30 CFR 780.16(b)(2)(i) and 784.21(b)(2)(i)) and perennial and intermittent streams (30 CFR 816.11, 816.43(b)(1), 816.57, and 817.57).

Because the application of the term "buffer zone" is not limited to the protection of endangered species and perennial and intermittent streams the potential effect of this definition would be to allow Missouri to define areas requiring buffer zones beyond what is already required by the Federal regulations.

The Director finds Missouri's proposal for buffer zones at 10 CSR 40–8.010(1)(A)(13) to be not inconsistent with and no less effective than the Federal program and is approving it.

b. "Previously mined area"

Missouri proposes to amend its definition of "previously mined area" at 10 CSR 40–8.010(1)(A)(71) so that fully reclaimed sites and highwalls created after August 3, 1977 would be specifically excluded from the definition. Therefore, Missouri's proposed definition of "previously mined area" now includes lands previously mined or disturbed to facilitate mining on which there were no surface coal mining operations subject to the standards of the Act, except highwalls created after August 3, 1977, and all fully reclaimed sites.

This proposed amendment is in response to the September 29, 1992, **Federal Register** (57 FR 44660, 44675) notice that did not approve a formerly submitted Missouri definition of "previously mined area." The basis for this non-approval is outlined in *National Wildlife Federation* v. *Lujan* (733 F. Supp. 419 (D.D.C. 1990)), in which the court remanded the Federal definition of "previously mined area" to the Secretary as being inconsistent with SMCRA to the extent that it would (1) not preclude the possibility that the date used to determine "previously" could be other than August 3, 1977; and (2) not preclude the possibility that sites, once mined and fully reclaimed under State laws preceding SMCRA, could be subsequently remined and reclaimed to a lower standard than that required by SMCRA.

On January 8, 1993 (58 FR 3466), OSM promulgated a new rule defining "previously mined area" as land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII.

Missouri's proposed amendment to the definition of "previously mined area" has not adequately addressed the deficiencies listed in the September 29, 1992, **Federal Register** notice. First, Missouri's proposed definition, because it does not specifically employ the date of SMCRA's enactment, August 3, 1997, still allows for lands mined subsequent to SMCRA's enactment to be included under the definition. Missouri must specifically identify SMCRA's enactment date of August 3, 1977. Second, the Federal definition emphasizes land that has not been "reclaimed to" the standards of 30 CFR chapter VII, whereas the Missouri definition emphasizes land on which there were no surface coal mining operations "subject to" the standards of the Act. Missouri's use of the term "subject to," rather than the term "reclaimed to," results in Missouri's definition of "previously mined area" including mined areas that were completely reclaimed prior to August 3, 1977, to standards equal to those set by SMCRA. Under Missouri's remining rules, such as fully reclaimed area could be remined and then reclaimed to standards lower than those required by SMCRA. This outcome conflicts with the intent of SMCRA and the holding of the court in *National Wildlife Federation* v. *Lujan*, above. Finally, it is unclear as to what Missouri intends by excluding highwalls created after August 3, 1977. It appears to be a redundant statement since the courts specifically excluded any land affected by surface coal mining operations after August 3, 1977 as being classified as a previously mined area. This would include all highwalls created after this date.

Therefore, for the reasons stated above, the Director finds the proposed amendment to the definition of "previously mined area" at 10 CSR 40–8.010(1)(A)(71) to be less effective than the Federal definition and is not

approving it. The Director is requiring Missouri to amend its program by furnishing a definition for "previously mined area" that is no less effective than the Federal definition.

18. 10 CSR 40–8.030(7)(A), Permanent Program Inspection and Enforcement

Missouri proposes to amend 10 CSR 40–8.030(7)(A) by removing the phrase "for good cause" and by adding a reference to 10 CSR 40–8.040, which deals with penalty assessment. Therefore, the proposed rule at 10 CSR 40–8.030(7)(A) would allow the Commission or Missouri State director to modify, terminate or vacate a notice of violation and extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued in accordance with 10 CSR 40–8.040.

This proposed rule change is in response to Finding No. 58 in the September 29, 1992, final **Federal Register** notice (57 FR 44660, 44675) that, while approving Missouri's current rule, also pointed out that the phrase "for good cause" was approvable only because limitations to the State regulatory authority's discretion to modify, terminate, or vacate NOV's were similar to and no less effective than those of the Federal regulations. Missouri's proposal to remove the phrase "for good cause" therefore, does not render its rule less effective than the Federal regulations. In addition, Finding No. 58 noted that Missouri's current rule allowed the commission or the State director to extend the time for abatement of an NOV if the failure to abate within the time previously set was not caused by a lack of diligence on the part of the person to whom it was issued. The Federal regulations at 30 CFR 843.12(c) allow for the extension of time for abatement of a NOV under similar circumstances as those outlined in the State rule. However, the Federal regulations set specific limits on the availability and length of such extensions. The Director, in Finding No. 58, approved this aspect of Missouri's rule because the Missouri program provided for the same requirements and limitations as those required by the Federal regulations at 10 CSR 40–8.030(7)(C). Missouri's current proposal to add the reference to 10 CSR 40–8.040 appears to be an attempt to recognize those State rules that set the requirements and limitations to allowing for the extension of time for abatement of a NOV. However, 10 CSR 40–8.040 deals with penalty assessment which is not relevant to extensions for abatement of NOV's.

The Director finds 10 CSR 40–8.030(7)(A) to be no less effective than the Federal counterpart regulation and is approving the proposal. However, the added phrase "in accordance with 10 CSR 40–8.040" provides a meaningless reference to penalty assessments. Missouri is required to amend its program to remove this incorporated phrase or to provide the proper citation to the State rule that addresses extension of time for abatement of NOV's.

19. 10 CSR 40–8.040(5)(B)3, Assessment of Separate Violations for Each Day

Missouri's rule at 10 CSR 40–8.040(5)(B)3 requires that if the permittee has not abated a violation within the required 30 day period, the commission or the State director shall take appropriate action pursuant to RSMo 444.870.5 and .6 and 444.885.1 (4) and (5), RSMo (Supp. 1986) within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate. Missouri proposes to change the current citations in its rule from "444.855.1 (4) and (5)" to "444.885.3 and .5." Missouri proposes this change in response to the September 29, 1992, final **Federal Register** notice (57 FR 44660, 44676) that noted in its Finding No. 59 that, while the State's proposed revision is the same as the Federal counterpart regulation at 30 CFR 845.15(b)(2), the State had not correctly cited its statutes in relation to the corresponding provisions of SMCRA at section 521(a)(4) dealing with patterns of violation and unwarranted failure to comply and Section 521(c) requesting the Attorney General to institute a civil action of relief. Finding No. 59 noted that the comparable State citations should be 444.885.3 and 444.885.5, respectively.

The Director found that the incorrect cross-references did not render the proposed State rule less effective than SMCRA and the Federal regulations and therefore, he approved it. Missouri's current proposed rule change corrects the cross-references. Therefore, the Director finds proposed 10 CSR 40–9.040(5)(B)3 to be no less effective than the Federal regulations at 30 CFR 845.15(b)(2) and is approving it.

20. 10 CSR 40–8.040(9), Habitual Violator

Missouri proposes to add to its penalty assessment criteria at 10 CSR 40–8.040, paragraph (9) dealing with habitual violators. Specifically, Missouri proposes to define a habitual violator as a person, permittee or operator that has established a pattern of violations of any requirements of the Surface Coal Mining Law, its promulgated regulations or the permit. The pattern of violations is described in 10 CSR 40–7.031(1)(F). The proposed rule requires that if a person, permittee or operator is found to be a habitual violator of the Surface Coal Mining Law, land reclamation laws of other States or other Missouri or Federal laws pertaining to land reclamation, a civil penalty for the same violation by the attorney general and a judicial assessment of a civil penalty may be made for the same violation in addition to the assessment of an administrative penalty. The proposed rule continues by requiring that, if a person, permittee or operator is not a habitual violator, the administrative penalty shall preclude the civil penalty by the attorney general and the judicial assessment of a civil penalty.

While there is no Federal counterpart regulation, the Federal regulations governing civil penalties are located at 30 CFR part 845.

Missouri proposed statutory revisions regarding this same topic and OSM did not approve the statutory revisions for reasons established in Findings No. 5 a and b of the September 24, 1992, final **Federal Register** notice (57 FR 44114, 44116). Given that OSM has not approved a statutory provision for habitual violators, it cannot approve the rules created to complement the statute for the same reasons.

In additional to the reasons established in the September 24, 1992, final **Federal Register** notice, OSM has several concerns regarding the rules proposed in this amendment. These concerns were passed on to Missouri in OSM's March 18, 1993, letter (Administrative Record No. MO–567).

The Director finds that 10 CSR 40–8.040(9) is less effective than the Federal program and is not approving it. The Director is requiring Missouri to amend its program by removing 10 CSR 40–8.040(9) regarding habitual violators.

IV. Public and Agency Comments

Public Comments

For a complete history of the opportunity provided for public comment on the proposed amendment, please refer to "Submission of Amendment." No public comments were received.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from the Administrator of the Environmental Protection Agency (EPA), and various other Federal agencies with an actual or potential interest in the Missouri

program. Comments were also solicited from various State agencies.

By letter dated December 9, 1992 (Administrative Record No. MO–563), the U.S. Fish and Wildlife Service (FWS) responded by providing three comments. The first comment suggested that language should be added to 10 CSR 40–6.040(11) to require applicants to consult with the FWS concerning the presence of Federally-listed species or designated critical habitat prior to submission of a permit application.

The second comment suggested that language should be added to 10 CSR 40–6.050(7) to require applicants to consult with the FWS concerning the adequacy of any protection plan developed for Federally-listed species or designated critical habitat prior to submittal of the plan.

Finally, the third comment suggested that the language at 10 CSR 40–6.040(11)(E)1, 10 CSR 40–6.050(7)(C)1, 10 CSR 40–6.110(11)(E)1, and 10 CSR 40–6.120(12)(A)1 be amended by changing the phrase "critical habitats" to "designated critical habitats" and changing the reference to the "secretary" to the "Secretary of the Interior."

The Federal regulations require only State regulatory authorities, not permit applicants, to consult with the FWS. While nothing would preclude an applicant from working directly with the FWS or a State from requiring such direct consultation, OSM cannot require a State to require a consultation process that is different from the Federal program requirements. Additionally, requiring consultation at the State regulatory authority level assures the consistency of the State program and assures that the State regulatory authority is well informed of the FWS needs.

Regarding the last comment, the Federal rule at 30 CFR 784.21(a)(2)(i) refers to "critical habitats" therefore, Missouri's rule is as effective as the Federal counterpart provision. However, OSM concurs that the use of the term "secretary" alone is meaningless. OSM notified Missouri of the need to provide a full title for the Secretary of the Interior in Finding No. 13.

Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), concurrence was solicited from the EPA for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated November 25, 1992 (Administrative Record No. MO–559), the EPA regional office in Kansas City, Kansas responded that, at 10 CSR 40–8.030(7), the word "may" should be "shall" in the phrase "[t]he commission or director may modify, terminate or vacate a notice of violation * * *" in order to be as effective as the Federal counterpart regulation at 30 CFR 843.12(e). The Federal regulation at 30 CFR 843.12(e) requires an authorized representative of the Secretary to terminate a notice of violation by written notice to the permittee when it is determined that all violations listed in the notice have been abated. Missouri's program contains a rule at 10 CSR 40–8.030(7)(E) that is substantively the same as 30 CFR 843.12(e).

OSM determined in a final **Federal Register** notice (Finding No. 58) published on September 29, 1992, (57 FR 44660, 44675) that Missouri's rule at 10 CSR 40–8.030(7)(A) was no less effective than the Federal counterpart rule in that the State regulatory authority's discretion to modify, vacate, or terminate NOV's is subject to limitations similar to and no less effective than the Federal regulations.

The EPA also commented that the word "back" should be "lack" in the phrase "lack of diligence." This is true. By this rulemaking action OSM is notifying Missouri of the editorial correction needed.

By letter dated October 19, 1993 (Administrative Record No. MO–579), the EPA Headquarters office responded by finding that the revisions to Missouri's program are adequate to administer the National Pollutant Discharge Elimination System (NPDES) regulations promulgated under the authority of the Clean Water Act, as amended. The EPA noted that many of the activities addressed by the revisions may involve discharges of pollutants into surface waters and may require NPDES permits.

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

The Federal regulation at 30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. Comments were solicited from these offices.

By letter dated November 30, 1992, (Administrative Record No. MO–562) the SHPO responded that it had no objection to the proposed amendment.

No comments were received from ACHP.

V. Director's Decision

Based on the above findings, and with the exception of those provisions found to be inconsistent with SMCRA or less effective than the Federal regulations, the Director is approving the proposed amendment submitted by Missouri on October 19, 1992.

The Director is not approving the proposed rules as discussed in findings No. 7, 10 CSR 40–3.110(3)(A)1, Covering Coal and Acid- and Toxic-forming Materials; No. 9, 10 CSR 40–3.110(6)(B), Regrading or Stabilizing Rills and Gullies; No. 10, 10 CSR 40–3.120(6)(B), Residential land use and 10 CSR 40–3.270(6)(B), Revegetation Requirements for Underground Operations; No. 12, 10 CSR 40–3.140(1)(A), Roads—class I—general; No. 17b, 10 CSR 40–8.010(1)(A)(71), Definition for Previously Mined Area; and No. 20, 10 CSR 40–8.040(9), Habitual violator.

Except as noted above, the Director is approving the Missouri regulations with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 925 codifying decisions concerning the Missouri program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Missouri program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Missouri of only such provisions.

VI. Procedural Determinations

Compliance With Executive Order No. 12866

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

Compliance With 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 regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

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

Compliance With the Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 26, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (q) as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(q) With the exceptions of 10 CSR 40–3.110(3)(a)1, Covering Coal and Acid- and Toxic-forming Materials, 10 CSR 40–3.110(6)(B), Regrading or Stabilizing Rills and Gullies, 10 CSR 40–3.120(6)(B), Residential land use and 10 CSR 40–3.270(6)(B), Revegetation Requirements for Underground Operations, 10 CSR 40–3.140(1)(A), Roads—class I—general, 10 CSR 40–8.010(1)(A)(71), Definition for Previously Mined Area, and 10 CSR 40–8.040(9), Habitual violator, the following revisions to the Missouri Code of State Regulations (CSR) submitted to OSM on October 19, 1992, are approved effective December 6, 1993:

10 CSR 40–3.010, Signs and Markers; 10 CSR 40–3.040, Requirements for Protection of the Hydrologic Balance; 10 CSR 40–3.080, Requirements for the Disposal of Coal Processing Waste; 10 CSR 3.100, Requirements for the Protection of Fish, Wildlife, and Related Environmental Values and Protection Against Slides and Other Damage; 10 CSR 3.110, Backfilling and Grading Requirements; 10 CSR 40–3.120, Revegetation Requirements; 10 CSR 40–3.130, Post-mining Land Use Requirements; 10 CSR 40–3.140, Road and Other Transportation Requirements; 10 CSR 40–3.200, Requirements for Protection of the Hydrologic Balance for Underground Operations; 10 CSR 40–3.230, Requirements for the Disposal of Coal Processing Waste for Underground Operations; 10 CSR 40–3.250, Requirements for the Protection of Fish, Wildlife, and Related Environmental Values and Protection Against Slides and Other Damage; 10 CSR 40–3.260, Requirements for Backfilling and Grading for Underground Operations; 10 CSR 40–3.270, Revegetation Requirements for Underground Operations; 10 CSR 40–4.010, Coal Exploration Requirements; 10 CSR 40–5.010, Prohibitions and Limitations on Mining in Certain Areas; 10 CSR 40–6.030, Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information; 10 CSR 40–6.040, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 10 CSR 40–6.050, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 10 CSR 40–6.070, Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions; 10 CSR 40–6.100, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information; 10 CSR 40–6.100, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 10 CSR 6.120, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; 10 CSR 40–7.011, Bond Requirements; 10 CSR 40–7.021, Duration and Release of Reclamation Liability; 10 CSR 40–7.031, Permit Revocation, Bond Forfeiture and Authorization to Expend Reclamation Fund Monies; 10 CSR 40–7.041, Form and Administration of the Coal Mine Land Reclamation Fund; 10 CSR 40–8.010, Definitions; 10 CSR 40–8.030, Permanent Program Inspection and Enforcement; and 10 CSR 40–8.040, Penalty Assessment.

3. Section 925.16 is amended by revising paragraph (p)(9), by removing and reserving paragraphs (d), (g)(9)–(19), (g)(21), (p)(1)–(3), (p)(13), (p)(17), and (p)(19), and by adding paragraph (q).

§ 925.16 Required program amendments.

* * * * *

(p) * * *

(9) By February 4, 1994, Missouri shall amend its program at 10 CSR 40–3.140(1)(A) by requiring that all exposed surfaces be stabilized in accordance with current prudent engineering practices.

* * * * *

(q) By February 4, 1994, Missouri shall amend its program as follows:

(1) At 10 CSR 40–3.110(3)(A)1, by (1) requiring that exposed coal seams and combustible materials be adequately covered or treated as required at 30 CFR 816.102(f) and (2) explaining why these two groups of materials, i.e. acid- and toxic-forming materials and exposed coal seams and combustible materials

are treated differently and clarify what is required to be demonstrated if four feet of cover is not proposed.

(2) At 10 CSR 40–3.110(6)(B), by requiring, for previously mined areas, an operator it identify the best suited material available for topsoil replacement and to segregate that material for later use as a topsoil substitute.

(3) At 10 CSR 40–8.010(1)(A)(71), by furnishing a definition for "previously mined area" that is no less effective than the Federal definition.

(4) At 10 CSR 40–8.030(7)(A), by removing the phrase "in accordance with 10 CSR 40–8.040" or by providing the proper citation to the State rule that addresses extension of time for abatement of NOV's.

(5) At 10 CSR 40–8.040(9), by removing 10 CSR 40–8.040(9) regarding habitual violators.

[FR Doc. 93–29752 Filed 12–3–93; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 938

Pennsylvania Regulatory Program; Bonding

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

ACTION: Final rule; partial approval and deferral of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides the permittee with additional financial instrument options for posting the performance bond that is required to be submitted and approved by the regulatory authority before the permit is issued or mining initiated.

EFFECTIVE DATE: December 6, 1993.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101 Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050).

Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated March 9, 1993 (Administrative Record Number PA 822.00), Pennsylvania submitted a State program amendment to allow for the use of additional bonding instruments.

OSM announced receipt of the proposed amendment in the June 7, 1993, **Federal Register** (58 FR 31925), 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 comment period closed on July 7, 1993. The public hearing scheduled for July 2, 1993, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal Regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal rules.

Section 4(d) of Pennsylvania's Surface Mining Conservation and Reclamation Act requires that the permit applicant file a performance bond with the Pennsylvania Department of Environmental Resources (PADER) before a permit can be issued or mining initiated. The financial instruments that may be used for the performance bond are: Surety bonds; cash; automatically renewable irrevocable bank letters of credit; or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth. On December 18, 1992, Pennsylvania's Governor Robert P. Casey signed House Bill 78 (Act 173) amending the Pennsylvania Surface Mining Conservation and Reclamation Act, including section 4(d). Section 4(d) was amended to provide the permit applicant with additional financial instrument options for posting the performance bond. These proposed bonding instruments include a life insurance policy; an annuity or trust fund; or other financial instruments authorized by the Environmental Quality Board by regulation.

The Federal regulations at 30 CFR 800.5(b) define collateral bond to include such things as cash, certificates of deposit, bonds, letters of credit, first-lien security interests in real property, and other investment-grade securities. The Federal regulations at 30 CFR 800.21 do not expressly include a life insurance policy or an annuity or trust fund as an acceptable form of collateral. While the use of such instruments as a form of collateral bond may be approvable, the State has not submitted supporting procedures and safeguards for the Secretary to make determination that the use of such alternative bonding mechanisms is not inconsistent with SMCRA and no less effective than the Federal Regulations found at 30 CFR part 800. The Director is, therefore, only approving the language in section 4(d) that was previously approved and incorporated in that section and which is no less effective than the Federal requirements at 30 CFR 800.21. The Director is deferring action on that part of the amendment proposing the use of a life insurance policy or an annuity or trust fund as collateral for performance bond.

Pennsylvania is also proposing the use of other financial instruments or combinations of bonding instruments which may be authorized by the Environmental Quality Board by regulation. This amendment is approved so long as PADER submits any such proposed rules to the OSM for approval as a program amendment in accordance with 30 CFR 732.17(g). Changes to the State regulations are not allowed to become effective until they are approved by the OSM.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the June 7, 1993, **Federal Register** ended on July 7, 1993. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(ii)(i), comments were solicited from various Federal and State agencies with an actual or potential interest in the Pennsylvania program. The Department of Labor, Mine Safety and Health Administration, Districts 1 and 2; the Department of Interior, Bureau of Mines; the Department of Agriculture, Soil Conservation Service; and the U.S. Army Corps of Engineers responded that they had no comments on the proposed amendment.

V. Director's Decision

Based on the findings discussed above, the Director is approving Pennsylvania's pre-existing language on financial instruments that may be used for performance bond and the use of other financial instruments or combinations of bonding instruments which may be authorized by the Environmental Quality Board by regulation. The Director is deferring his decision on that part of the amendment concerning Pennsylvania's proposal to use a life insurance policy or an annuity or trust fund as bonding instruments, as submitted by Pennsylvania on March 9, 1993, until such time as Pennsylvania submits proper procedures and safeguards.

The Federal regulations at 30 CFR part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) of the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

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

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 24, 1993.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In Section 938.15, a new paragraph (aa) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(aa) The following amendment to the Pennsylvania regulatory program, as submitted to OSM on March 9, 1993, is approved, except as noted herein, effective December 6, 1993: Revisions to the Pennsylvania Surface Mining Conservation and Reclamation Act at section 4(d) concerning financial instruments that may be used for the performance bond and the use of other financial instruments or combinations of bonding instruments which may be authorized by the Environmental Quality Board by regulation. Action is being deferred on the proposed additional bonding instruments which include a life insurance policy or an

annuity or trust fund pending receipt from Pennsylvania of supporting procedures and safeguards.

[FR Doc. 93-29754 Filed 12-3-93; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 66

[CGD 93-047]

RIN 2115-AE64

Private Aids to Navigation; Conformance Deadline

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending 33 CFR part 66 to allow owners of marine private aids to navigation one additional year to bring previously authorized, but nonconforming, private aids to navigation into conformance with the U.S. Aids to Navigation System. This rule extends the private aid conformance deadline from December 31, 1993 to December 31, 1994.

DATES: This rule is effective on January 5, 1994.

FOR FURTHER INFORMATION CONTACT: LTJG Michael Peterson, Project Manager, Coast Guard Headquarters, Short Range Aids to Navigation Division, (202) 267-0411.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LTJG Michael C. Peterson, Project Manager, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

On November 6, 1987, a final rule was published modifying 33 CFR part 60, 62, 66, and 100 (52 FR 42640). These modifications made the U.S. Aids to Navigation System more consistent with the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. While all Coast Guard maintained aids have been modified to conform with these changes, all private aids to navigation in the Western Rivers Marking System have not yet been brought into conformance.

In the final rule, 33 CFR 66.01-10 was amended by requiring owners of previously authorized, but nonconforming, private aids to navigation to bring such aids to navigation into conformance with the U.S. Aids to Navigation System no later than December 31, 1993.

Due to natural disasters in the Western Rivers region, the Coast Guard believes that some owners of private aids to navigation will be unable to bring such aids to navigation into conformance with the U.S. Aids to Navigation System by the current deadline. As a result, the Coast Guard is extending the private aid conformance deadline one additional year. Additionally, the Coast Guard has determined that good cause exists for promulgating this final rule without prior notice.

Discussion of Amendments

The Coast Guard is amending 33 CFR part 66 to allow owners of marine private aids to navigation one additional year to bring previously authorized, but nonconforming, private aids to navigation into conformance with the U.S. Aids to Navigation System. The private aid conformance deadline imposed by 33 CFR 66.01-10 is being extended one year to December 31, 1994.

Regulatory Evaluation

This proposal is not significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). Because this rule only extends the private aid conformance deadline one year, the Coast Guard expects the economic impact of this proposal to be so minimal that further regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because the Coast Guard expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has determined that this proposal does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. These aids to navigation requirements are a matter for which regulations should be developed on the national level, to avoid unreasonably burdensome variances and confusion. These regulations which provide uniform aids to navigation requirements are intended to preempt States from adopting similar requirements.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded, under sections 2.B.2.c and 2.B.2.l of Commandant Instruction M16475.1B, that this proposal is categorically excluded from further environmental documentation. This proposal is made to enhance the safety of personnel at sea and is expected to have no environmental impact. A Categorical Exclusion Determination is available in the docket for examination and copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 66

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends title 33, part 66 of the Code of Federal Regulations as follows:

1. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

PART 66—PRIVATE AIDS TO NAVIGATION

2. In § 66.01-10, paragraph (b) is amended to read as follows:

§ 66.01-10 Characteristics.

(a) * * *

(b) Owners of previously authorized, but nonconforming, private aids to navigation must bring such aids to navigation into conformance with the U.S. Aids to Navigation System not later than December 31, 1994.

Dated: November 8, 1993.

W.J. Ecker,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–29731 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2 and 10

[Docket No. 920671–3225]

RIN 0651–AA55

Changes in Signature and Filing Requirements for Correspondence Filed in the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The Patent and Trademark Office (Office) is correcting errors in the final rule which appeared in the **Federal Register** on Friday, October 22, 1993 (58 FR 54494). The regulations related to changes in signature and filing requirements for correspondence filed in the Patent and Trademark Office contained in parts 1, 2, and 10.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Abraham Hershkovitz by telephone at (703) 305–9282, or by facsimile transmission at (703) 305–8825, or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, make changes to the rules of practice relating to signatures and filing requirements for correspondence filed in the Patent and Trademark Office.

Need for Correction

As published, the final regulations contain errors, which may be misleading and are in need of clarification. Several sections relating to receipt of facsimile transmissions in certain trademark documents were omitted.

Correction of Publication

Accordingly, the publication on October 22, 1993, of the final regulations (Docket No. 920671–3225), which were the subject of FR Doc. 93–25864, is corrected as follows:

1. On page 54494, in the second column, at the end of the first partial paragraph, the following sentence should be added: "This final rulemaking also expands the acceptability of facsimile transmissions to certain trademark documents which were not part of the proposed rulemaking."

2. On page 54495, in the second column, after the first full paragraph, the following paragraphs should be added:

"This final rulemaking also expands the acceptability of facsimile transmissions to certain trademark documents, not included in the proposed rulemaking. These additional documents are:

(1) An affidavit showing that a mark is still in use or containing an excuse for nonuse under section 8 (a) or (b) or section 12(c) of the Trademark Act, 15 U.S.C. 1058(a), 1058(b), 1062(c);

(2) An application for renewal of a registration under section 9 of the Trademark Act, 15 U.S.C. 1059;

(3) In an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), the filing of an amendment to allege use in commerce under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c); or the filing of a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1).

The Certificate of Mailing or Transmission provisions of § 1.8 do not apply to correspondence listed in (1) through (3) above, nor to the filing of correspondence in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Preliminary Examining Authority or to the filing, in an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), of a request under section 1(d)(2) of the Trademark Act, 15 U.S.C. 1051(d)(2), for an extension of time to file a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1). See § 1.8(a) (v), (viii), (ix), (xi) and (xii). If the transmission of any of these documents is completed after midnight (Eastern time) of the due date, the papers are untimely."

3. On page 54495, second column, in the first sentence of the second full paragraph, "2.51, 2.52 or 2.72" should be revised to read "or 2.21".

4. On page 54495, second column, at the end of the third full paragraph, the following sentence should be added: "This final rulemaking also expands the acceptability of specimens filed in conjunction with amendments to allege use under section 1(c); statements of use under section 1(d); affidavits of use or excusable nonuse under section 8 (a) or (b) or 12(c); and applications for renewal under section 9 of the Trademark Act, 15 U.S.C. 1051 (c) and (d); 1058 (a) and (b); 1062(c) and 1059."

5. On page 54495, third column, in item numbered (2) at the bottom of the column, "§§ 2.51, 2.52, or 2.72" should be revised to read "§ 2.21".

6. On page 54495, third column, the item numbered "(3)" at the bottom of the column, should be removed.

7. On page 54495, third column, the item numbered "(4)" at the bottom of the column, should be removed.

8. On page 54495, third column, the item numbered "(5)" should be redesignated as "(3)".

9. On page 54495, the item numbered "(6)" should be removed.

10. On page 54496, top of the first column, the item numbered "(7)" should be redesignated as "(4)".

11. On page 54496, top of the first column, the item numbered "(8)" should be redesignated as "(5)".

12. On page 54498, in lines 16 and 17 from the top of the third column, to read "2.51, 2.52, or 2.72" should be revised to read "or 2.21".

13. On page 54498, in the third column, at the end of the first partial paragraph, the following sentence should be added: "However, the suggestion has been adopted to the extent that the Office will accept, via facsimile transmission, an affidavit showing that a mark is still in use or containing an excuse for nonuse under section 8 (a) or (b) or section 12(c) of the Trademark Act, 15 U.S.C. 1058(a), 1058(b), 1062(c); and application for renewal of a registration under section 9 of the Trademark Act, 15 U.S.C. 1059; and in application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), the filing of an amendment to allege use in commerce under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c); or the filing of a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1)."

14. On page 54502, in § 1.6(d)(3), lines 4 and 5, "§ 1.8(a)(2) (i) through (iv), (vi) through (xi) and (xiii)" should be revised to read "§ 1.8(a)(2)(i) (A) through (D) and (F); 1.8(a)(2)(ii) (A) and (D); and 1.8(a)(2)(iii)(A)".

15. On page 54502, in 31.8(a)(2) introductory text, the comma in the last line between "on" and "the" should be removed.

Dated: November 27, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 93–29598 Filed 12–3–93; 8:45 am]

BILLING CODE 3510–16–M

37 CFR Parts 1, 5 and 10

[Docket No. 920779–3226]

RIN 0651–AA34

Miscellaneous Changes in Patent Practice; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The Patent and Trademark Office (Office) is correcting errors in the final rule which appeared in the **Federal Register** on Friday, October 22, 1993 (58 FR 54504). The regulations related to miscellaneous changes in patent practice contained in parts 1, 5 and 10.

EFFECTIVE DATE: January 3, 1994.

FOR FURTHER INFORMATION CONTACT:

Abraham Hershkovitz by telephone at (703) 305–9282, or by facsimile transmission at (703) 305–8825, or by mail marked to his attention and addressed to: Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, make miscellaneous changes to the rules of practice in patent cases.

Need for Correction

As published, the final regulations contain errors, including the effective date, which may be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on October 22, 1993, of the final regulations (Docket No. 920779–3226), which were the subject of FR Doc. 93–25865, is corrected as follows:

1. On page 54504, in the second column, the Effective Date: should read "January 3, 1994."

2. On page 54505, first column, the second to last line of the first full paragraph, the "§ 029" should be removed.

Dated: November 29, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 93–29599 Filed 12–3–93; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI38–01–6031; FRL–4809–5]

Approval and Promulgation of Wisconsin Implementation Plan; Emission Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. EPA is approving a revision to Wisconsin's State Implementation Plan (SIP) submitted by the State of Wisconsin to implement an emission statement program for stationary sources throughout the State. The implementation plan was submitted by the State to satisfy the Federal requirements for an emission statement program in ozone nonattainment areas.

EFFECTIVE DATE: This action will be effective February 4, 1994, unless notice is received on or before January 5, 1994, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision and U.S. EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Megan Beardsley at (312) 886–0669 before visiting the Region 5 Office.)

A copy of this Wisconsin section 182 SIP revision is available for inspection from Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Megan Beardsley, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP requirements for ozone nonattainment areas are set out in subparts I and II of part D of title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 ("the Act").

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Paragraph 182(a) sets out requirements applicable in marginal nonattainment areas, which are also made applicable in paragraphs (b), (c), (d), and (e) to all other ozone nonattainment areas.

Paragraph 182(a)(3) requires that States implement rules that require stationary sources to submit to the State annual emission statements showing actual emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x). These rules were to be submitted as a revision to the SIP by November 15, 1992. When Wisconsin failed to submit complete rules by this deadline, U.S. EPA began a sanctions process against the State. On July 2, 1993, Wisconsin submitted the current emission statement SIP revision. On August 4, 1993, U.S. EPA sent Wisconsin a letter notifying the State that this submittal was complete and that the completeness finding ended the sanctions process for the emission statement SIP revision.

II. Evaluation of State Submission

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing its SIP, of which the emission statement program will become a part. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) similarly provides that each revision to an implementation plan submitted by a State under the Act must have been adopted by such State after reasonable notice and public hearing.

The State of Wisconsin held public hearings on December 8, 10 and 11, 1992, to solicit public comment on the emission statement rule, "Air Contaminant Emission Inventory Reporting Requirements," chapter NR 438 of the Wisconsin Administrative Code. Following the public hearing, the rule was adopted by the State and became effective June 1, 1993. The rule was submitted to U.S. EPA on July 2, 1993, as a proposed revision to the SIP.

The proposed SIP revision was reviewed by the U.S. EPA to determine completeness shortly after its submittal, in accordance with the completeness the criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter indicating the completeness of

[1] Also, section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

the submittal was sent to the governor's delegate on August 4, 1993.

B. Components of the Emission Statement Program

The U.S EPA has published a "General Preamble" describing the U.S. EPA's preliminary views on how the U.S. EPA intends to review SIP's and SIP revisions submitted under title I of the Act (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NO_x Supplement to the General Preamble")).

The U.S. EPA has also issued draft "Guidance on the Implementation of an Emission Statement Program" (July 1992). It should be noted that this guidance has not been finalized,[2] but does provide the best available guidance on the content and use of emission statements. Further revisions to this draft guidance were not available prior to final rulemaking on the Wisconsin SIP revision. Therefore, it is appropriate to use the July 1992 draft guidance in evaluating Wisconsin's emission statement submittal.

The draft guidance contains the following criteria for evaluating State emission statement programs.

1. Applicability

The State program must include provisions covering applicability of the regulations. The State may exempt individual sources emitting less than 25 tons per year of actual NO_x or VOC if the State provides an inventory of emissions from such class or category of sources, based on the use of emission factors established by the Administrator or other methods acceptable to the Administrator. However, if either NO_x or VOC is emitted at a rate equal to or greater than 25 tons per year, the source shall not be exempt.

Wisconsin's NR 438 is applicable to any person owning or operating a facility that emits an air contaminant is quantities above the minima listed in NR 438. In particular, sources must report annual, actual emissions of NO_x exceeding 5 tons per year (tpy) and annual, actual emissions of VOC exceeding 3 tpy.

2. Definitions

The State program must include definitions for key terms used in the regulations. Wisconsin's NR 438 includes specific definitions for "facility," and "source classification code." Other relevant definitions are established in NR 400, which is applicable to terms used in NR 400 to 499.

3. Compliance Schedule

The State program must include a compliance schedule for sources covered by the regulations. In particular, the State shall require sources emitting NO_x or VOC in ozone nonattainment areas to submit emission statement data before November 15, 1993, and annually thereafter. The U.S. EPA, however, strongly encourages a submittal date of April 15.

Wisconsin's regulation requires that sources report emissions by March 1 of each year. Beginning June 1993, sources must certify their emissions by June 30 of each year.

4. Source Information

When requesting an emission statement from sources of NO_x or VOC, the State shall require the following information from the source:

a. Source identification information;
b. Operating schedule;
c. Emissions information;
d. Control equipment information;
e. Process data; and
f. Certification of data accuracy.

Wisconsin fulfills the criteria for source information. In particular:

a. Source Identification. Wisconsin requires that sources reporting emissions provide their name, location, mailing address, and Standard Industrial Classification code, as well as additional information not addressed in the Federal guidance.

b. Operating Schedule. Wisconsin requires that sources provide their normal operating schedule in hours per day, days per week, days per year and percentage production per quarter.

c. Emissions Information. Wisconsin requires that facilities with emissions exceeding 5 tons per year of NO_x or 3 tons per year of VOC submit an emission inventory report of annual, actual emissions or supply sufficient information for Wisconsin Department of Natural Resources (WDNR) to calculate these emissions. Wisconsin also requires sources to report annual, actual emissions for several hundred other pollutants if emissions of these pollutants exceed the quantities listed in NR 438.

d. Control Equipment. Wisconsin requires that sources report control equipment and control equipment efficiency for the following types of emissions: Fugitive emissions, emissions from fuel combustion units, emissions from manufacturing processes, and emissions from incinerator equipment.

e. Process Data. Wisconsin requires process data for fuel combustion equipment, manufacturing processes and incineration equipment. The WDNR will compute the peak ozone season daily process rate based on the reported percentage production per quarter for the third quarter (July, August and September).

f. Certification. Wisconsin requires that, by June 30 of each year, the owner or operator of a facility that emits VOC or NO_x in a nonattainment area or is required to obtain an air pollutant control permit shall send written certification to WDNR that the WDNR's summary of the facility's emissions is correct.

Wisconsin has developed a series of forms for the emission reporting and certification described above.

5. State Reporting

In addition to the required SIP revision, the U.S. EPA guidance requests that the State enter the source data elements into the Aerometric Information Retrieval System (AIRS) and provide U.S. EPA with quarterly emission statement status reports beginning July 1, 1993.

Wisconsin has submitted its first quarterly report and has agreed to continue submitting these reports. Wisconsin also has agreed to continue working to load its emission inventory information into the AIRS database.

C. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and the U.S. EPA. Wisconsin's emission statement rule includes a schedule for source submittal of emission statements and details the data to be included in the statements. Under NR 494 of the Wisconsin Administrative Code, "Enforcement and Penalties for Violation of Air Control Provisions," any person who violates NR 438 is subject to the penalties provided under § 144.426 of the Wisconsin Statute.

D. Conclusion

U.S. EPA has reviewed Wisconsin's emission requirements set forward in the Clean Air Act and in the guidance discussed above. Hence, the U.S. EPA approves the emission statement SIP revision submitted to the U.S. EPA by Wisconsin on July 2, 1993.

Because the U.S. EPA considers this action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on February 4, 1994. However,

[2] The EPA is presently conducting a rulemaking process to modify title 40 of the CFR to reflect the requirements of the emission statement program.

if we receive notice by January 5, 1994, that someone wishes to submit adverse comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

IV. Administrative Requirements

A. Executive Order 12866

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 2 years. The U.S. EPA 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 the U.S. EPA's request. This request is still applicable under Executive Order 12866.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, U.S. 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, U.S. 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.

Approvals of SIP's under section 110 and subchapter I, part D, of the Act 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 Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976)).

C. Judicial Review

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 February 4, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Emission statements, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Oxides of nitrogen, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 17, 1993.

Dale S. Bryson,

Acting Regional Administrator.

For the reasons stated in the preamble, 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 YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(70) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(70) On July 2, 1993, the State of Wisconsin submitted a requested revision to the Wisconsin State Implementation Plan (SIP) intended to satisfy the requirements of section 182 (a)(3)(B) of the Clean Air Act as amended in 1990. Included were State rules establishing procedures for stationary sources throughout the state to report annual emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) as well as other pollutants.

(i) *Incorporation by reference.* Wisconsin Administrative Code, Chapter NR 438, Air Contaminant Emission Reporting Requirements, published in the Wisconsin Register, May 1993, effective June 1, 1993.

[FR Doc. 93–29721 Filed 12–3–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 15–1–6084; FRL–4801–4]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the Federal Register on January 17, 1991. The revision concerns Ventura County Air Pollution Control District (VCAPCD) Rule 71.2, Storage of Reactive Organic Compound Liquids. This approval action will incorporate the rule into the federally approved SIP. The intended effect of approving this rule 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 rule controls VOC emissions from the storage of reactive organic compound (ROC) liquids. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on January 5, 1994.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are 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 95814.

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Mae Wang, 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) 744–1200.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1991 in 56 FR 1754, EPA proposed to approve the following rule, among others, into the California SIP: VCAPCD Rule 71.2, Storage of Reactive Organic Compound Liquids. Rule 71.2 was adopted by VCAPCD on September 26, 1989, and submitted by the California Air Resources Board (CARB) to EPA on October 16, 1990. The rule was submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for the above rule and nonattainment area is provided in the NPR cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPR cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluation has been provided in 56 FR 1754 and in a technical support document (TSD) available at EPA's Region IX office (TSD dated October 24, 1990).

Response to Public Comments

A 30-day public comment period was provided in 56 FR 1754. EPA did not receive any comments on Rule 71.2.

EPA Action

EPA is finalizing action to approve VCAPCD Rule 71.2 for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget (OMB) has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under 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.

Approvals under sections 110 and 301 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, it does not have a significant impact on anysmall 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).

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 February 4, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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: October 25, 1993.

Felicia Marcus,

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 paragraph (c)(181) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(181) New and amended regulations for the following APCD were submitted on October 16, 1990, by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(*1*) Rule 71.2, adopted on September 26, 1989.

* * * * *

[FR Doc. 93–29719 Filed 12–3–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 52 and 60

[MT18–1–5871; FRL–4789–7]

Approval and Promulgation of Implementation Plans; Montana; Visibility Models, Standards of Performance for New Stationary Sources, and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is approving revisions to the Montana State Implementation Plan (SIP), which were submitted by the Governor of Montana on March 1, 1993. Revisions

were made to the State's regulations for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) to incorporate new and revised federal regulations promulgated between July 1, 1990 and July 1, 1992. In addition, the State amended its visibility modeling requirements to incorporate EPA's current guidance document for visibility modeling. These revisions are being approved because they provide for consistency with federal regulations.

EFFECTIVE DATE: This action will become effective on February 4, 1994, unless notice is received by January 5, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revisions are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2466;

Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620;

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, Air Programs Branch, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: On March 1, 1993, the Governor of Montana requested approval of revisions to the Montana SIP. The revisions consisted of amendments to the Administrative Rules of Montana (ARM), sections 16.8.1004 (Visibility Models), 16.8.1423 (NSPS), and 16.8.1424 (NESHAPs).

The revisions to ARM 16.8.1004 update the State's modeling requirements for visibility to incorporate EPA's current visibility modeling guideline entitled "Plume Visual Impact Screening and Analysis" (EPA–450/4–88–015, 1988).

The amendments to ARM 16.8.1423 and 16.8.1424 update the State's NSPS and NESHAPs regulations to incorporate new and revised federal regulations promulgated between July 1, 1990 and July 1, 1992. Three new federal NSPS were added between 1990 and 1992: Subpart Dc (Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units), Subpart Ea (Standards of Performance for Municipal Waste Combustors), and Subpart DDD (Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry). Other revisions were made to existing standards in 40 CFR parts 60 and 61, which the State has also incorporated. In addition, the State has added a definition for "administrator" in its NSPS and NESHAP regulations to clarify that the term "administrator" means the Montana Department of Health and Environmental Sciences except for those authorities which cannot be delegated to the State, in which case "administrator" means the Administrator of EPA.

On May 10, 1993, EPA notified the State that the SIP submittal was administratively and technically complete, and that the submittal would be approved. In this notice, EPA is approving the State's revisions to the SIP, providing the State with authority to implement and enforce the federal NSPS in 40 CFR part 60 and the federal NESHAPs in 40 CFR part 61, as in effect on July 1, 1992, with the exception of 40 CFR part 61, subparts B, H, I, K, T, and W, which pertain to radionuclides.

EPA is updating the table of NSPS authority in 40 CFR 60.04(c) to reflect the three new NSPS that the State now has authority for implementing and enforcing. EPA is not revising the table of NESHAPs authority in 40 CFR 61.04(c), since no new federal NESHAPs (excluding those pertaining to radionuclides) were promulgated between 1990 and 1992.

Final Action

EPA is approving the revisions to ARM 16.8.1004 (Visibility Models), ARM 16.8.1423 (NSPS), and ARM 16.8.1424 (NESHAPs), which were submitted by the Governor for SIP approval on March 1, 1993. This action provides the State with the authority for implementation and enforcement of all federal NSPS and NESHAPs (except 40 CFR part 61, subparts B, H, I, K, Q, R, T, and W, pertaining to radionuclides) promulgated as of July 1, 1992. However, the State's NSPS and NESHAP authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR parts 60 and 61. In addition, this action amends the State's modeling requirements for visibility impacts to require adherence to EPA's current visibility modeling guidelines.

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 a 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.*, 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 economic impact on a substantial number of small entities. Small entities include small business, 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 Act 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act 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).

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 Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 1994. Filing a petition for reconsideration by the Administrator 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

40 CFR Part 52

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

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

Dated: October 1, 1993.

Jack W. McGraw,

Acting Regional Administrator.

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 BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(28) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(28) On August 20, 1991, the Governor of Montana submitted revisions to the plan for visibility models, new source performance standards, and national emission standards for hazardous air pollutants.

(i) Incorporation by reference.

(A) Revisions to the Administrative Rules of Montana 16.8.1004, Visibility Models, 16.8.1423, Standards of Performance for New Stationary Sources, and 16.8.1424, Emission Standards for Hazardous Air Pollutants effective December 25, 1992.

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Public Law 101–549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

Subpart A—General Provisions

2. Section 60.4(c) is amended by revising the table to read as follows:

§ 60.4 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

Subpart	State					
	CO	MT[1]	ND[1]	SD[1]	UT[1]	WY
A General Provisions	(*)	(*)	(*)	(*)	(*)	(*)
D Fossil Fueled Fired Steam Generators	(*)	(*)	(*)	(*)	(*)	(*)
Da Electric Utility Steam Generators	(*)	(*)	(*)	(*)	(*)	(*)
Db Industrial-Commercial-Institutional Steam Generators	(*)	(*)	(*)	(*)	(*)	(*)
Dc Industrial-Commercial-Institutional Steam Generators	.....	(*)	(*)	.....	(*)	(*)
E Incinerators	(*)	(*)	(*)	(*)	(*)	(*)
Ea Municipal Waste Combustors	.....	(*)	(*)	(*)	(*)	(*)
F Portland Cement Plants	(*)	(*)	(*)	(*)	(*)	(*)
G Nitric Acid Plants	(*)	(*)	(*)	.....	(*)	(*)
H Sulfuric Acid Plants	(*)	(*)	(*)	.....	(*)	(*)
I Asphalt Concrete Plants	(*)	(*)	(*)	(*)	(*)	(*)
J Petroleum Refineries	(*)	(*)	(*)	.....	(*)	(*)
K Petroleum Storage Vessels (6/11/73–5/19/78)	(*)	(*)	(*)	(*)	(*)	(*)
Ka Petroleum Storage Vessels (5/18/78–7/23/84)	(*)	(*)	(*)	(*)	(*)	(*)
Kb Petroleum Storage Vessels (after 7/23/84)	.....	(*)	(*)	(*)	(*)	(*)
L Secondary Lead Smelters	(*)	(*)	(*)	.....	(*)	(*)
M Secondary Brass & Bronze Production Plants	(*)	(*)	(*)	.....	(*)	(*)
N Primary Emissions from Basic Oxygen Process Furnaces (after 6/11/73)	(*)	(*)	(*)	.....	(*)	(*)
Na Secondary Emissions from Basic Oxygen Process Furnaces (after 1/20/83)	(*)	(*)	(*)	.....	(*)	(*)
O Sewage Treatment Plants	(*)	(*)	(*)	(*)	(*)	(*)
P Primary Copper Smelters	(*)	(*)	(*)	.....	(*)	(*)
Q Primary Zinc Smelters	(*)	(*)	(*)	.....	(*)	(*)
R Primary Lead Smelter	(*)	(*)	(*)	.....	(*)	(*)
S Primary Aluminum Reduction Plants	(*)	(*)	(*)	.....	(*)	(*)
T Phosphate Fertilizer Industry: Wet Process Phosphoric Plants	(*)	(*)	(*)	.....	(*)	(*)
U Phosphate Fertilizer Industry: Superphosphoric Acid Plants	(*)	(*)	(*)	.....	(*)	(*)
V Phosphate Fertilizer Industry: Diammonium Phosphate Plants	(*)	(*)	(*)	.....	(*)	(*)
W Phosphate Fertilizer Industry: Triple Superphosphate Plants	(*)	(*)	(*)	.....	(*)	(*)
X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	(*)	(*)	(*)	.....	(*)	(*)
Y Coal Preparation Plants	(*)	(*)	(*)	(*)	(*)	(*)
Z Ferroalloy Production Facilities	(*)	(*)	(*)	.....	(*)	(*)
AA Steel Plants: Electric Arc Furnaces (10/21/74—8/17/83)	(*)	(*)	(*)	.....	(*)	(*)

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS—Continued
[(NSPS) for Region VIII]

Subpart	State					
	CO	MT [1]	ND [1]	SD [1]	UT [1]	WY
AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (after 8/7/83)	.....	(*)	(*)	.....	(*)	(*)
BB Kraft Pulp Mills	(*)	(*)	(*)	.....	(*)	(*)
CC Glass Manufacturing Plants	(*)	(*)	(*)	.....	(*)	(*)
DD Grain Elevators	(*)	(*)	(*)	(*)	(*)	(*)
EE Surface Coating of Metal Furniture	(*)	(*)	(*)	.....	(*)	(*)
GG Stationary Gas Turbines	(*)	(*)	(*)	(*)	(*)	(*)
HH Lime Manufacturing Plants	(*)	(*)	(*)	(*)	(*)	(*)
KK Lead Acid Battery Plants	(*)	(*)	(*)	.....	(*)	(*)
LL Metallic Mineral Processing Plants	(*)	(*)	(*)	(*)	(*)	(*)
MM Automobile & Light Duty Truck Surface Coating Operations	(*)	(*)	(*)	.....	(*)	(*)
NN Phosphate Rock Plants	(*)	(*)	(*)	.....	(*)	(*)
PP Ammonium Sulfate Manufacturing	(*)	(*)	(*)	.....	(*)	(*)
QQ Graphic Arts Industry: Publication Rotogravure Printing	(*)	(*)	(*)	.....	(*)	(*)
RR Pressure Sensitive Tape & Label Surface Coating	(*)	(*)	(*)	.....	(*)	(*)
SS Industrial Surface Coating: Large Appliances	(*)	(*)	(*)	.....	(*)	(*)
TT Metal Coil Surface Coating	(*)	(*)	(*)	.....	(*)	(*)
UU Asphalt Processing & Asphalt Roofing Manufacture	(*)	(*)	(*)	.....	(*)	(*)
VV Synthetic Organic Chemicals Manufacturing: Equipment Leaks of VOC	(*)	(*)	(*)	.....	(*)	(*)
WW Beverage Can Surface Coating Industry	(*)	(*)	(*)	.....	(*)	(*)
XX Bulk Gasoline Terminals	(*)	(*)	(*)	.....	(*)	(*)
AAA Residential Wood Heaters	.....	(*)	(*)	.....	(*)	(*)
BBB Rubber Tires	.....	(*)	(*)	.....	(*)	(*)
DDD VOC Emissions from Polymer Manufacturing Industry	.....	(*)	.....	.....	(*)	(*)
FFF Flexible Vinyl & Urethane Coating & Printing	(*)	(*)	(*)	.....	(*)	(*)
GGG Equipment Leaks of VOC in Petroleum Refineries	(*)	(*)	(*)	.....	(*)	(*)
HHH Synthetic Fiber Production	(*)	(*)	(*)	.....	(*)	(*)
III VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes	.....	(*)	(*)	.....	(*)	(*)
JJJ Petroleum Dry Cleaners	(*)	(*)	(*)	.....	(*)	(*)
KKK Equipment Leaks of VOC from Onshore Natural Gas Processing Plants	(*)	(*)	(*)	.....	(*)	(*)
LLL Onshore Natural Gas Processing: SO2 Emissions	(*)	(*)	(*)	.....	(*)	(*)
NNN VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations	.....	(*)	(*)	.....	(*)	(*)
OOO Nonmetallic Mineral Processing Plants	(*)	(*)	(*)	(*)	(*)	(*)
PPP Wool Fiberglass Insulation Manufacturing Plants	(*)	(*)	(*)	.....	(*)	(*)
QQQ VOC Emissions from Petroleum Refinery Wastewater Systems	.....	(*)	(*)	.....	(*)	(*)
SSS Magnetic Tape Industry	.....	(*)	(*)	.....	(*)	(*)
TTT Plastic Parts for Business Machine Coatings	.....	(*)	(*)	.....	(*)	(*)
VVV Polymeric Coating of Supporting Substrates	.....	(*)	(*)	.....	(*)	(*)

[1] Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).
(*) Indicates approval of state regulation.

[FR Doc. 93–29722 Filed 12–3–93; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[OR–30–1–5852; FRL–4794–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 28, 1989, the state of Oregon through the Oregon Department of Environmental Quality submitted a maintenance plan and a request to redesignate Eugene-Springfield to attainment for carbon monoxide (CO). The state has met the applicable requirements for redesignation contained in the Clean Air Act, as amended in 1990 (CAA). EPA approves the maintenance plan and the redesignation of Eugene-Springfield, Oregon, to attainment for CO.

EFFECTIVE DATE: This action will become effective on February 4, 1994, unless notice is received by January 5, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, Air Programs and Development Section, Air and Radiation Branch (AT–082), United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at: Air Programs Branch (OR–30–1–5852), Environmental Protection Agency, 1200 6th Avenue, AT–082, Seattle, Washington 98101, and Oregon Department of Environmental Quality, 811 SW. 6th Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air and Radiation Branch, Air Programs and Development Section (AT–082), U.S. Environmental Protection Agency, Region 10, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

I. Background

Under the pre-amended Clean Air Act the Eugene-Springfield Air Quality Maintenance Area (AQMA) was

designated nonattainment. 43 FR 9029 (March 3, 1978). Pursuant to the Act as amended in 1990, the Eugene-Springfield AQMA retained its designation of nonattainment for CO and was not classified. 56 FR 56694 (Nov. 6, 1991) codified at 40 CFR 81.338. On July 28, 1989, the state of Oregon submitted to the Environmental Protection Agency (EPA) a maintenance plan and a redesignation request for the Eugene-Springfield CO AQMA, prior to the enactment of the 1990 Clean Air Act Amendments (CAAA). The public hearing was held on September 13, 1988, and Oregon's Environmental Quality Commission adopted the plan on December 9, 1988.

The Agency has reviewed this request for redesignation to determine whether it meets the requirements of the amended CAA, particularly a new requirement that the state develop a maintenance plan to provide for maintenance of the National Ambient Air Quality Standard (NAAQS) for CO for at least 10 years after the redesignation. On July 14, 1993, the Lane Regional Air Pollution Authority (LRAPA) submitted a maintenance plan and additional information that addressed the above requirement and in a letter dated February 27, 1992, LRAPA committed to submit to EPA a contingency plan for attaining the standard if a violation of the CO NAAQS occurs. EPA has determined that the state's demonstration of attainment 10 years after redesignation and its commitment to correct any violation after redesignation are sufficient to satisfy the amended CAA requirement of a maintenance plan.

Since 1971, LRAPA has maintained a continuous monitoring site for CO at Lane Community College in the central business district in downtown Eugene. It was data from this site that led to a nonattainment designation for the entire Eugene-Springfield AQMA under part D of the 1977 CAA. A monitoring study performed by LRAPA in the winter of 1983–1984 demonstrated that the area exceeding the standard is confined to downtown Eugene. The same study concluded that the permanent monitoring site in downtown Eugene adequately represents the CO peak levels in the Eugene-Springfield AQMA and is a suitable indicator of CO attainment status.

Ambient air quality data for the period 1981 through 1992 show that the Eugene-Springfield CO nonattainment area has attained the NAAQS for CO. Therefore, in accordance with the amended Act, the state of Oregon has submitted a CO maintenance plan which projects continued attainment of the CO standard in the Eugene-Springfield Air Quality Maintenance Area (AQMA), and has requested redesignation of the area to attainment for the CO NAAQS. EPA is approving the Eugene-Springfield maintenance plan as a revision to the Air Pollution Control State Implementation Plan (SIP) for the state of Oregon. In conjunction with the maintenance plan, EPA is also approving Oregon's request to redesignate the Eugene-Springfield area to attainment with respect to the CO NAAQS.

II. Evaluation Criteria

Section 107(d)(3)(E) of the amended Act establishes five requirements that must be met in order to redesignate an area from nonattainment to attainment. The Eugene-Springfield redesignation request demonstrates that the area has fulfilled the applicable requirements of the amended Act under section 107(d)(3)(E). The requirements and an analysis of the state submittal under those requirements are set forth below.

A. The Administrator Has Determined That the Area Has Attained the National Ambient Air Quality Standard (Section 107(d)(3)(E)(i))

Ambient monitoring data for 1981 through 1992 show attainment of the CO NAAQS in the Eugene-Springfield area, i.e., less than or equal to one exceedance of the CO NAAQS (9.0 ppm) per year over a two year period. See 40 CFR 50.8. Subsequent to the last violation recorded in 1980, Eugene-Springfield has had 12 years of data with no recorded violation of the CO NAAQS. Therefore, EPA has determined that the NAAQS in Eugene-Springfield have been attained.

B. The Administrator Has Fully Approved the Applicable Implementation Plan for the Area as Meeting the Requirements of Section 110 and Part D (Section 107(d)(3)(E)(ii), Section 107(d)(3)(E)(v))

Oregon had a fully approved SIP for Eugene-Springfield which meets the requirements of sections 110(a)(2), 110(k) and part D of the 1977 Act. (45 FR 42265) The amended Act, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for nonattainment areas.

For purposes of redesignation, the SIP must contain all applicable requirements under the amended Act. EPA has reviewed the SIP to ensure that it contains all measures that were due under the amended Act prior to or at the time the state submitted its redesignation request.

1. Section 110 Requirements

Although section 110 was revised by the CAA amendments, the Eugene-Springfield SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

2. Part D Requirements

Before Eugene-Springfield may be redesignated to attainment, it also must fulfill the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirement applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 3 of part D establishes additional requirements for CO nonattainment areas classified under section 186(a).

Since the Eugene-Springfield area is designated as a not classified CO nonattainment area under the amended Act, the requirements of part D, subpart 3 are not applicable. However, in order to be redesignated to attainment, the state must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176.

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated as nonattainment. EPA has not determined that these requirements were applicable to CO nonattainment areas on or before the date that Oregon submitted a complete redesignation request for the Eugene-Springfield nonattainment area. Therefore, these requirements were not applicable for purposes of EPA's consideration of this redesignation request.

Section 176 of the Act requires states to develop transportation/air quality conformity procedures which are consistent with Federal conformity regulations and to submit these procedures as a SIP revision by November 15, 1992. EPA has not promulgated final conformity regulations; however, in a letter dated July 14, 1993, Oregon committed to develop conformity procedures consistent with the final federal

regulations and will submit, if necessary, an appropriate SIP revision according to the schedule set forth in the regulations.

C. 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 Regulation and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

Under the pre-amended Act, EPA approved the 1979 Oregon SIP control strategy for the Eugene-Springfield nonattainment area. Eugene-Springfield's SIP stated that the area would be in attainment by 1987, merely by relying on the Federal Motor Vehicle Emission Control Program. EPA is satisfied that the Federal Motor Vehicle Emission Control Program measures are enforceable and have resulted in the reductions that have allowed the area to attain the NAAQS. Moreover, the evidence indicates that this control strategy is sufficient to maintain the standard.

D. The Administrator Has Fully Approved a Maintenance Plan for the Area as Meeting the Requirements of Section 175A (Section 107(d)(3)(E)(iv))

Section 175A of the Act sets forth the maintenance plan requirement for areas requesting redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the next ten years following the initial ten-year period. To provide for the possibility for future NAAQS violations, the maintenance plan must contain contingency measures adequate to assure prompt correction of the air quality problem.

1. Emissions Inventory

A study performed by LRAPA during 1985 indicated there were two hot spot locations near downtown which were concluded to be isolated microscale problem areas. The two intersections (7th and Jefferson, and 13th and Hilyard) were identified in this report as hotspots and each was the result of occasional severe traffic congestion, in and around the intersections. Due to the nature of Eugene's CO violations, (i.e., hot spots only) LRAPA's emission inventory contains only on-road mobile and home wood heating emissions within the Central Area Transportation Study boundary. All point sources within the Eugene AQMA are located at a sufficient distance away as to not contribute significantly to the violations. The emission inventory requirement was fulfilled by using EPA's Mobile 3.1 model for emission factors and TRANSYT–7F model for vehicle miles traveled (VMT) and projected speeds. The base year 1985 was used for the attainment emission inventory. The emission estimates for home wood heating devices were derived from a 1987 LRAPA survey within the Eugene-Springfield Urban Growth Boundary.

2. Demonstration of Continued Attainment

A letter dated July 14, 1993, sent from the Director of LRAPA projected emissions from home wood heating devices and on-road vehicles to the year 2007. The projections show that the CO standard will be maintained.

The home wood heating CO emission estimates decreased from 1,348 tons/year in 1990 (as projected by the 1987 LRAPA survey) to 462 tons/year in the year 2007 (as projected by the 1992 LRAPA survey). The future year emissions are based upon projected population increases and continued replacement of conventional woodstoves with certified woodstoves through attrition.

The transportation CO emission estimates decreased from 6,021 tons/year in 1990 (as projected by using EPA's Mobile 3.1 model) to 2,164 tons/year in the year 2007 (as projected by using EPA's Mobile 4.1 model and estimated VMT from the City of Eugene Department of Public Works). Mobile 3.1 and Mobile 4.1 were the applicable models in use at the time the analyses were initiated.

3. Verification of Continued Attainment

Continued attainment of the CO NAAQS in Eugene-Springfield depends, in part, on the state's efforts toward tracking indicators of continued attainment during the maintenance period. The plan will be reviewed annually, making necessary changes to ensure that ambient air quality standards will not be violated. In addition, LRAPA will continue to monitor for CO at the designated monitoring site and will conduct periodic short-duration monitoring studies to ensure continued attainment.

4. Contingency Plan

Despite LRAPA's best efforts to demonstrate continued compliance with the NAAQS in Eugene-Springfield, the area may exceed or violate the NAAQS. Therefore, the LRAPA has submitted a contingency plan (February 27, 1992 letter) providing what actions the area will need to take if the CO standard is violated. The contingency plan provides that in the event of any measured violation of the CO standard, LRAPA and Lane City of Governments will submit within 60 days of notice of the violation a contingency plan for attaining the standard, which will be implemented as expeditiously as practicable.

Because EPA received the state's request to redesignate prior to enactment of the amended Act, the state's commitment to correct any violation after redesignation is sufficient to satisfy the new 1990 amended CAA requirement of the maintenance plan.

5. Commitment to Submit Subsequent Maintenance Plan Revisions

In accordance with section 175A of the Act, the state will submit a revised maintenance SIP eight years after the area is redesignated to attainment. The revised SIP will provide for maintenance for an additional ten years.

III. Conclusion

EPA, in this action, is redesignating Eugene-Springfield to attainment for carbon monoxide. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no adverse comments on this action. The public should be advised that this action will be effective February 4, 1994. However, if notice is received by January 5, 1994, that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action, another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

For further information, the reader may consult the Technical Support Document. This is available at the EPA address given previously.

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 Tables 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. The OMB has agreed to

continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12281 on September 30, 1993.

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 (5 U.S.C. 605(b)). 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 affected small entities. 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 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.

CO SIPs are designed to satisfy the requirements of part D of the Clean Air Act and to provide for attainment and maintenance of the CO NAAQS. This redesignation today should not be interpreted as authorizing the state to delete, alter, or rescind any of the CO control strategies contained in the approved CO SIP. Changes to the Eugene-Springfield SIP CO regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the Clean Air Act) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Clean Air Act.

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 November 8, 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 42 U.S.C. 7607(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: October 19, 1993.

Gerald A. Emison,

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 MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(101) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(101) On July 28, 1989, the state of Oregon, through the Oregon Department of Environmental Quality, submitted a maintenance plan and a request to redesignate Eugene-Springfield to attainment for carbon monoxide (CO).

(i) Incorporation by reference.

(A) July 28, 1989 letter from Oregon Department of Environmental Quality to EPA Region 10 submitting a maintenance plan and a redesignation request for the Eugene-Springfield CO Air Quality Maintenance Area (AQMA). This plan was submitted as an amendment to the State of Oregon Implementation Plan and adopted by the Oregon Department of Environmental Quality Commission on December 9, 1988.

(B) Attainment Demonstration and Maintenance Plan for the Eugene-Springfield AQMA for CO.

(C) Letter from Lane Regional Air Pollution Authority and Lane Council of Governments, dated February 27, 1992, to EPA Region 10, committing to submit a contingency plan if a violation of the CO NAAQS occurs.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.338 is amended in the table for "Oregon-Carbon Monoxide" by revising the entry for "Eugene-Springfield area, Lane Co (part)" to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Eugene-Springfield Area Lane County (part)	January 5, 1994.	Attain-ment.	January 5, 1994.	

OREGON—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
The Eugene-Springfield Area is described as: The area within the bounds beginning at the Northwest corner of T17S, R4W; extending South to the Southwest corner of Section 6, T17S, R4W; thence East to the Northwest corner of Section 8, T17S, R4W; thence South to the Southwest corner of Section 32, T17S, R4W; thence East to the Northeast corner of Section 4, T18S, R4W; thence South to the Southwest corner of Section 3, T18S, R4W; thence East to the Northwest corner Section 12, T18S, R4W; thence South to the Southwest corner of Section 13, T18S, R4W; thence East to the Northeast corner of Section 24, T18S, R4W; thence South to the Southeast corner of Section 24, T18S, R4W; thence East to the Northeast corner of Section 21, T18S, R3W; thence North to the Northeast corner of Section 21, T18S, R3W; thence East to the Northeast corner of Section 22, T18S, R3W; thence South to the Southwest corner of Section 23, T18S, R3W; thence East to the Southeast corner of Section 24, T18S, R3W; thence North to the Southeast corner of Section 1, T18S, R3W; thence East to the Southeast corner of Section 2, T18S, R2W; thence North to the Northeast corner of Section 26, T17S, R2W; thence West to the Southwest corner of Section 20, T17S, R2W; thence North to the Northwest corner of Section 20, T17S, R2W; thence West to the Southwest corner of Section 13, T17S, R3W; thence North to the Northwest corner of Section 13, T17S, R3W; thence West to the Southwest corner of Section 11, T17S, R3W; thence North to the Northwest corner of Section 11, T17S, R3W; thence West to the Southwest corner of Section 6, T17S, R3W; thence North to the Northwest corner of Section 31, T16S, R3W; thence West to the Northwest corner of Section 34, T16S, R4W; thence South to the Southwest corner of Section 34, T16S, R4W; thence West to the point of beginning.				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 93–29720 Filed 12–3–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7013

[OR–943–4210–06; GP3–416; OR–48184 (WASH)]

Withdrawal of Public Lands for the San Juan Archipelago; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 593.06 acres of public lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the natural and recreational values on seven tracts of land located in the San Juan Archipelago. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: December 6, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect seven natural and recreational sites in the San Juan Islands:

Willamette Meridian

Tract A, Patos and Little Patos Islands

T. 38 N., R. 2 W., unsurveyed,
Secs. 15, 16, and 17, Little Patos Island and Patos Island except the west 5 acres of Patos Island which contains the Patos Island Light Station.

Tract B, Turn Point on Stuart Island

T. 37 N., R. 4 W.,
Sec. 20, lots 5, 6, and 7 except the west 0.9 acre of lot 7 which contains the Turn Point Light Station.

Tract C, Kellet Bluff on Henry Island

T. 36 N., R. 4 W.,
Sec. 28, lots 3 and 4 except the 1.3 acres of lot 3 which contains the Kellet Bluff Light Station.

Tract D, Iceberg Point on Lopez Island

T. 34 N., R. 2 W.,
Sec. 23, lot 4;
Sec. 24, lots 6 and 7.

Tract E, Point Colville on Lopez Island

T. 34 N., R. 1 W.,
Sec. 21, lot 6.

Tract F, Iceberg South on Lopez Island

T. 34 N., R. 2 W.,
Sec. 25, lots 1 and 2.

Tract G, Chadwick Hill on Lopez Island

T. 34 N., R. 1 W.,
Sec. 16, NE¼SW¼ and S½SW¼.

The areas described aggregate approximately 593.06 acres in San Juan County, Washington.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–29654 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–33–M

43 CFR Public Land Order No. 7020

[AK-932-4210-06; AA-14908, AA-16672, AA-17981, AA-17988]

Partial Revocation of Executive Order No. 3406 Dated February 13, 1921, for Selection of Lands by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order insofar as it affects approximately 555.43 acres of National Forest System lands and 15.75 acres of public lands withdrawn for use by the Coast Guard, Department of Transportation, for the Cape Strait, Point Craig, Point Crowley, and Lemesurier Island Lighthouses. The lands are no longer needed for the purpose for which they were withdrawn. This action also opens the lands for selection by the State of Alaska, if such lands are otherwise available. If not selected by the State, this action will open the lands within the Forest to such forms of disposition as may by law be made of National Forest System lands and the remainder of the lands will be subject to Public Land Order No. 5180, as amended.

EFFECTIVE DATE: December 6, 1993.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 3406, dated February 13, 1921, which withdrew National Forest System lands and public lands for lighthouse purposes is hereby revoked insofar as it affects the following described lands:

Copper River Meridian

(a) Cape Strait (AA-14908)

Located within T. 56 S., R. 77 E. described as Tracts A & B of U.S. Survey No. 1611, excluding the following parcel:

Beginning at a point on low water line westerly from the lighthouse and distant 300 feet in a direct line from the center of the concrete pier upon which the light tower is erected;

Thence South 45° E. true 300 feet;

Thence East true 300 feet, more or less, to an intersection with the low water line;

Thence northwesterly and westerly, following the windings of the low water line to the point of beginning, this parcel contains approximately 1.5 acres.

The area described, less the exclusion, contains approximately 26.28 acres of National Forest System land and 4.33 acres of public land, for a total of 30.61 acres.

(b) Point Craig (AA-16672)

Located within T. 62 S., R. 81 E., described as U.S. Survey No. 1635, excluding the following parcel of land:

Beginning at the junction of latitude 56°27.4' N. and longitude 132°42.9' W., thence meandering westwardly along the shoreline of mean high water a distance of approximately 100 feet;

Thence due South a distance of 100 feet to a point;

Thence northeasterly on an approximate bearing of North 30° E., true to an intersection with the mean high water line;

Thence meandering northwestwardly along the mean high water line to the point of beginning, this parcel contains approximately 0.2 acre.

The area described, less the exclusion, contains approximately 88.57 acres of National Forest System land.

(c) Point Crowley (AA-17981)

Located within T. 66 S., R. 72 E., described as U.S. Survey No. 2171, excluding the following parcel of land:

All that part of the Kuiu Island in the vicinity of Point Crowley, lying West of a true North and South line across Point Crowley; said line lying 1200 feet true East from Point Crowley Light and being approximately 8000 feet in length, this parcel contains approximately 110 acres.

The area described, less the exclusion, contains approximately 365.56 acres of National Forest System land.

(d) Lemesurier Island (AA-17988)

Located within T. 41 S., R. 57 E., described as Tracts A & B of U.S. Survey 1623, excluding the following parcel:

All that part of the northeastern extremity of the island lying North of a true East and West line drawn across the point at a distance of 300 feet South true from the center of the concrete slab 4 feet square upon which the structure of the light is erected; including all adjacent rocks and islets not covered at low water, this parcel contains approximately 18.21 acres.

The area described, less the exclusion, contains approximately 75.02 acres of National Forest System land and 11.42 acres of public land for a total of 86.44 acres.

The total areas affected by this order aggregate approximately 555.43 acres of National Forest System land, and 15.75 acres of public land, for a total of 571.18 acres.

2. Subject to valid existing rights, the National Forest System lands described above are hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988). The public lands described above are hereby opened for selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988) or section 906(c) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described above until close of business on January 3, 1994, if such lands are otherwise available. Any of the lands described herein that are not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest reservation, Public Land Order No. 5190, as amended, or any other withdrawal of record.

4. At 10 a.m. on January 4, 1994, the National Forest System lands described above will be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the National Forest System lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized.

At 10 a.m. on January 4, 1994, the public lands described above will be opened to location under the mining laws, pursuant to the terms of 30 U.S.C. 49(a) (1988), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws. Appropriation of any of the public lands described in this order under the general mining laws for metalliferous minerals prior to the date and the time of restoration is unauthorized.

Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 29, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-29703 Filed 12-3-93; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 91-273; FCC 93-491]

Notification by Common Carriers of Service Disruptions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for reconsideration of the Commission's Report and Order, which exempted competitive access providers from the outage notification requirement established therein. In granting the petition for reconsideration, the Commission amends its regulations governing the reporting of telephone network outages to eliminate the exemption for competitive access providers. With the elimination of this exemption, competitive access providers will be required to report outages lasting 30 or more minutes and potentially affecting 50,000 or more of their customers. This action is necessary to ensure the Commission's ability to monitor outages and determine what steps may be necessary to ensure network reliability. The amendment will provide the Commission with the additional information it needs to perform this task.

EFFECTIVE DATE: March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Kimball, (202) 634-7150, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's MO&O in CC Docket No. 91-273, FCC 93-491, adopted November 5, 1993, and released December 1, 1993. The item is available for inspection and copying during normal hours in the Commission's Dockets Branch (room 230), 1919 M St., NW., Washington, DC, or a copy may be purchased from the duplicating contractor, International Transcription Service, Inc. (202) 857-3800, 2100 M St., NW., suite 140, Washington, DC 20037. The MO&O will be published in the FCC Record.

Paperwork Reduction

Public reporting burden for the collection of information is estimated to average 2.3 hours per response for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project (3060-0484), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060-0484), Washington, DC 20503.

Analysis of Proceeding

1. We amend § 63.100 to eliminate the exemption for competitive access providers from the reporting rule, thereby requiring that competitive access providers notify the Commission in writing within 90 minutes of the carriers' knowledge that it is experiencing an outage potentially affecting 50,000 or more of its customers for 30 minutes or more. Not later than thirty days after any reportable outage or incident under the rules, the competitive access provider will file a final service report containing any relevant information not contained in the initial report with the Chief of the Commission's Common Carrier Bureau.

2. Section 63.100 of the Commission's Rules, which this MO&O amends, was established in the Commission's Report and Order, 56 FR 7883, March 5, 1992, in response to outage incidents that occurred in 1990 and 1991, largely as a result of the introduction of new technology into the telecommunications infrastructure. In January of 1990, for example, AT&T experienced a large scale service failure when software used with its Signaling System 7 contained a coding error. Other major interexchange carriers also experienced significant outages. In June and July of 1991, local exchange carriers Pacific Bell and Bell Atlantic experienced major outages. At that time, the Commission had no systematic way by which to become informed quickly of significant service disruptions and was unable to determine whether certain kinds of technology or equipment threatened service reliability. A Notice of Proposed Rulemaking (NPRM) 56 FR 48504, September 25, 1991, was promulgated to propose § 63.100 and provide a vehicle by which the Commission became better and more quickly informed of significant outages. The NPRM sought comment on the proposed rule which required written notification by any facilities-based common carrier that provides access service or that provides interstate or international telephone service that experiences an outage of 30 or more minutes which affects 50,000 or more voice grade equivalent circuits. Twenty-six comments and twenty-one reply comments were received. The Commission carefully considered all comments and, in response to comments directed to the issue of which carriers should be required to report, provided for the exemption of competitive access providers from the proposed rule.

3. The Report and Order exempted competitive access providers from the reporting requirement because it was felt that there would be immediately available alternative service in cases of competitive access failure such that service disruptions of competitive access providers, even if they otherwise met the reporting thresholds, would not significantly affect the users of those services. A petition for reconsideration of the provision established in the Report and Order exempting competitive access providers from the reporting requirements was filed with the Commission which requested comment, 57 FR 14717, April 22, 1992. Three comments and three reply comments were received. All comments have been carefully considered. Some comments bring into doubt the conclusion that service disruptions of competitive access providers would not significantly affect the users of those services. Though the commission expects that service outages that meet the reporting thresholds will be rare among competitive access providers, the need to monitor significant service disruptions requires that competitive access providers report outages under the guidelines established in § 63.100.

4. The Commission has studied the reconsideration petition and comments and has concluded that elimination of the exemption for competitive access providers, while cost-effective and not unduly burdensome to the reporting parties, will further ensure the ability of the Commission to become aware of significant outages at the earliest possible time so that we may monitor developments, serve as a source of information to the public and encourage the industry to find ways to further ensure network reliability. As with other Commission regulations, compliance with the reporting requirements, if they are established, may be effectively enforced under 47 CFR 1.80. The information to be furnished by the carriers pursuant to § 63.100 as amended in this MO&O is normally collected by them; the collection burden has been minimized; and the Commission estimates that the total annual reporting and record keeping burden that will result from each collection of information is essentially the same as that reported to the OMB with the NPRM the

Commission issued pursuant to the establishment of § 63.100, herein amended.

Ordering Clauses

Accordingly, *It is Ordered*, That, pursuant to authority contained in sections 1, 4(i), 4(j), 5(c), 201–205, 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155(c), 201–205, 218 and 403, part 63 of the Commission's Rules and Regulations is amended as set forth below, effective 90 days after publication in the **Federal Register**.

List of Subjects for 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 63, is amended as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 201–205, 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, and 403, unless otherwise noted.

2. Section 63.100 is amended by removing the second sentence in paragraph (a) to read as follows:

§ 63.100 Notification of service outage.

(a) * * * Satellite carriers and cellular carriers are exempt from this reporting requirement. * * *

* * * * *

[FR Doc. 93–29711 Filed 12–3–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 93–233; DA 93–1429]

Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this action, amends the listing of major television markets, to change the designation of the Little Rock, Arkansas television market to include the community of Pine Bluff, Arkansas. This action, taken at the request of Agape Church, Inc., licensee of television station KVTN, Channel 25 (Independent), Pine Bluff, Arkansas, amends the rules to designate the subject market as the Little Rock-Pine Bluff, Arkansas television market. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT:

Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–233, adopted November 23, 1993, and released November 30, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

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

2. Section 76.51 is amended by revising paragraph (a)(50) to read as follows:

§ 76.51 Major television markets.

* * * * *

(a) * * *

(50) Little Rock-Pine Bluff, Arkansas.

* * * * *

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–29709 Filed 12–3–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–15; Notice 13]

RIN 2127–AE35

Federal Motor Vehicle Safety Standards, Lamps, Reflective Devices, and Associated Equipment; Replaceable Light Source Dimensional Information; Correction

AGENCY: National Highway Traffic Safety Administration, NHTSA (DOT).

ACTION: Final rule; correcting amendments.

SUMMARY: This document corrects an amendment to Federal Motor Vehicle Safety Standard No. 108 relating to replaceable light source dimensional information, published on January 12, 1993, which inadvertently deleted most of paragraphs S7.5(d), S7.5(e)(2), and S7.5(e)(3). These paragraphs are republished in their entirety.

EFFECTIVE DATE: The correcting amendments are effective on December 6, 1993.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, 202–366–5263.

SUPPLEMENTARY INFORMATION: On January 12, 1993, NHTSA published a final rule which, among other things, sought to amend paragraph S7.5(d) of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* (58 FR 3856). Section S7.5 establishes requirements for replaceable bulb headlamp systems.

The Office of the Federal Register informed NHTSA on November 4, 1993, that three of the amendments had the effect of inadvertently deleting virtually all of paragraphs S7.5(d), (e)(2) and (e)(3).

The version of Standard No. 108 appearing in the Code of Federal Regulations reflects revisions made as of October 1 of each year. Because corrections cannot be made to paragraphs S7.5(d), (e)(2), and (e)(3) as they will appear in the volume showing revisions as of October 1, 1993, NHTSA is republishing these paragraphs in their entirety so that the complete text will be available in the interim before the volume appears containing revisions as of October 1, 1994. Because this document effects no textual change in any of the amendments published on January 12, 1993, notice and public comment thereon are not required under the Administrative Procedure Act.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Accordingly, 49 CFR part 571 is corrected by making the following correcting amendments:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by revising paragraphs S7.5(d), S7.5(e)(2), and S7.5(e)(3) to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S7.5 * * *

(d) For a headlamp equipped with dual filament replaceable light sources, the following requirements apply:

(1) Headlamps designed to conform to the external aiming requirements of S7.8.5.1 shall have no mechanism that allows adjustment of an individual light source, or, if there are two light sources, independent adjustments of each reflector.

(2) The lower and upper beams of a headlamp system consisting of two lamps, each containing either one or two replaceable light sources, shall be provided as follows:

(i) The lower beam shall be provided in one of the following ways:

(A) By the outboard light source (or upper one if arranged vertically) designed to conform to:

(*1*) The lower beam requirements of Table 1 of SAE Standard J579 DEC84 if the light sources in the headlamp system are Type HB1, or Type HB5, or any combination of the two; or the lower beam requirements of Table 1 of SAE Standard J579 DEC84 or Figure 27 if the light sources in the headlamp system are any combination of dual filament replaceable light sources other than Type HB2.

(*2*) The lower beam requirements of Figure 17 or Figure 17A, if the light sources are Type HB2, or any dual filament replaceable light source other than Type HB1 and Type HB5; or

(B) By both light sources in the headlamp, designed to conform to the lower beam requirements specified above.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to:

(*1*) The upper beam requirements of Table 1 of SAE Standard J579 DEC84, if the light sources in the headlamp system are only Type HB1 or Type HB5, or a combination thereof; or

(*2*) The upper beam requirements of Figure 17 or Figure 17A, if the light sources are Type HB2, or any dual filament replaceable light source other than Type HB1 and Type HB5; or

(B) By both light sources in the headlamp, designed to conform to the upper beam requirements specified above.

(3) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single replaceable light source, shall be provided as follows:

(i) The lower beam shall be provided by the outboard lamp (or the upper one if arranged vertically), designed to conform to:

(A) The lower beam requirements of Table 1 of SAE Standard J579 DEC84 if the light sources in the headlamp system are Type HB1 or Type HB5 or any combination of the two; or the lower beam requirements of Table 1 of SAE Standard J579 DEC84 or Figure 27 if the light sources in the headlamp system are any combination of dual filament light sources other than Type HB2; or

(B) The lower beam requirements of Figure 15 or Figure 15A, if the light sources are Type HB2, or dual filament light sources other than Type HB1 and Type HB5. The lens of each such headlamp shall be marked with the letter "L".

(ii) The upper beam shall be provided by the inboard lamp (or the lower one if arranged vertically), designed to conform to:

(A) The upper beam requirements of Table 1 of SAE Standard J579 DEC84 if the light sources in the headlamp system are Type HB1 or Type HB5 or any combination of the two; or the upper beam requirements of Table 1 of SAE Standard J579 DEC84 or Figure 27 if the light sources are any combination of dual filament light sources other than Type HB2; or

(B) The upper beam requirements of Figure 15 or Figure 15A, if the light sources are Type HB2, or dual filament light sources other than Type HB1 and Type HB5. The lens of each such headlamp shall be marked with the letter "U".

(e) * * *

(2) The lower and upper beams of a headlamp system consisting of two lamps, each containing a combination of two replaceable light sources (other than those combinations specified in subparagraph (d) of this paragraph) shall be provided only as follows:

(i) The lower beam shall be provided in one of the following ways:

(A) By the outboard light source (or the uppermost if arranged vertically) designed to conform to the lower beam requirements of Figure 17 or Figure 17A; or

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17 or Figure 17A.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to the upper beam requirements of Figure 17 or Figure 17A; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17 or Figure 17A.

(3) The lower and upper beams of a headlamp system consisting of four lamps, using any combination of replaceable light sources except those specified in subparagraph (d) of this paragraph, each lamp containing only a single replaceable light source, shall be provided only as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 15 or Figure 15A. The lens of each such headlamp shall be permanently marked with the letter "L."

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 15 or Figure 15A. The lens of each such headlamp shall be marked with the letter "U."

* * * * *

Issued on: November 29, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–29619 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 921253–2353; ID. 112693A]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions; request for comments.

SUMMARY: NMFS announces reductions in vessel trip limits for widow rockfish and the Dover sole/thornyhead/trawl-caught sablefish complex in the groundfish fishery off Washington, Oregon, and California. This action is authorized under the Pacific Coast Groundfish Fishery Management Plan (FMP). The trip limits are designed to keep the catch as close as possible to the 1993 harvest guidelines for these species, without encouraging discards, while extending the fishery as long as possible during the year.

DATES: Effective from 0001 hours (local time) December 1, 1993, until modified, superseded, or rescinded.

Comments will be accepted through December 17, 1993.

ADDRESSES: Submit comments to J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN–C15700, Seattle, Washington 98115–0070; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd; suite 4200, Long Beach, California 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations (50 CFR part 663) provide for rapid changes to specific management measures that have been designated "routine." Trip landing and frequency limits for widow rockfish, Dover sole, thornyheads, and sablefish are among those management measures that have been designated as routine at 50 CFR 663.23(c)(1)(A). Implementation and further adjustment of those measures may occur after consideration at a single Pacific Fishery Management Council (Council) meeting. A trip limit is defined at 50 CFR 663.2 as the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, that may be taken and retained, possessed, or landed from a single fishing trip.

Widow Rockfish. On January 1, 1993, the cumulative trip limit for widow rockfish was set at 30,000 pounds (13,608 kg) per 4-week period. The catch rate for widow rockfish has accelerated since the spring, resulting in landings of 6,692 metric tons (mt) of widow rockfish through October 30, 1993. The 7,000-mt harvest guideline was attained on November 6, 1993, and an overage of 12 percent is projected if the rate is not slowed.

In the 1993 management measures (58 FR 2990, January 7, 1993), the Secretary of Commerce (Secretary) announced that a 3,000-pound (1,361 kg) trip limit may be imposed later in the year to extend the fishery as long as possible. At its September meeting, the Council decided not to recommend the reduction to 3,000 pounds. (1,361 kg) until additional data were available. However at its November meeting, the Council recommended that the trip limit for widow rockfish be reduced to 3,000 pounds (1,361 kg) per fishing trip (no longer on a cumulative basis), effective at the beginning of the next "4-week" period (December 1–31, 1993). This action is intended to minimize landings in excess of the harvest guideline while allowing incidental catches to be landed.

Dover Sole/Thornyheads/Trawl-Caught Sablefish Complex (DTS Complex, formerly the deepwater complex). On January 1, 1993, the trip limit for the DTS complex was set at 45,000 pounds (20,412 kg) cumulative per 2-week period, of which no more than 20,000 pounds (9,072 kg) could be thornyheads. The trip limit for trawl-caught sablefish, which was applied to each trip rather than cumulatively over the 2-week period, was 25 percent of the DTS complex or 1,000 pounds (454 kg), whichever was greater. In any landing, no more than 5,000 pounds (2,268 kg) could be trawl-caught sablefish smaller than 22-inches (56 cm) (total length).

On April 21, 1993, the cumulative trip limit for the DTS complex was reduced by 30 percent, from 45,000 pounds (20,412 kg) per 2-week period to 60,000 pounds (27,216 kg) per 4-week period, hoping for a similar reduction in the catch of trawl-caught sablefish. To avoid an increase in the rate of thornyhead landings, the thornyhead trip limit also was reduced from 20,000 pounds (9,072 kg) cumulative per 2-week period to 35,000 pounds (15,876 kg) cumulative per 4-week period (58 FR 21949, April 26, 1993).

Landings were not sufficiently slowed, and on September 8, 1993, the trawl-caught sablefish trip limit was modified to allow trawl-caught sablefish landings of either 1,000 pounds (454 kg), or 25 percent of the DTS complex not to exceed 3,000 pounds (1,361 kg), whichever was greater. Because each landing would contain less than the 5,000-pound (2,268 kg) limit for trawl-caught sablefish smaller than 22 inches (56 cm), that trip limit was removed and all trawl-caught sablefish could be smaller than 22 inches. This trip limit was intended to further reduce the catch as the species harvest guideline was approached. No change was made to the cumulative trip limits for the DTS complex or thornyheads (58 FR 47651, September 10, 1993).

The Council recommended further reductions at its November 1993 meeting when it learned that the landings of trawl-caught sablefish had not been slowed, landings of thornyheads had increased, and that the harvest guidelines for both trawl-caught sablefish and thornyheads had already been reached. The best available information through November 5, 1993, indicated that the 3,886-mt harvest guideline for trawl-caught sablefish was attained on October 12, 1993, with a projected overage of about 18 percent if landings are not slowed before the end of the year. The 7,000-mt harvest guideline for thornyheads was expected to have been reached on November 9, 1993, with a projected overage of about 17 percent by the year's end if landings are not slowed. The projected coastwide catch of Dover sole is 17 percent below its harvest guideline, but landings in the Columbia subarea are only 3 percent below that area's 5,000-mt harvest guideline. Consequently, the Council recommended an immediate reduction of the cumulative trip limit for the DTS complex from 60,000 pounds (27,216 kg) cumulative per 4-week period to 5,000 pounds (2,268 kg) per trip, of which no more than 1,000 pounds (454 kg) may be sablefish. Only one landing of fish in the DTS complex may be made per week. As in the past, the only sablefish included in the complex are those caught with trawl gear. This trip limit is intended to minimize landings in excess of the harvest guideline while allowing incidental catches to be landed.

In addition, to clarify that these limits apply to the harvest of these species even if caught in shallow water, the Council recommended changing the name "deepwater complex" to "Dover sole/thornyhead/trawl-caught sablefish (DTS) complex."

Secretarial Action

For the reasons stated above, the Secretary concurs with the Council's recommendations and announces the following changes to the management measures for widow rockfish announced at 58 FR 2990 (January 7, 1993) and for Dover sole/thornyheads/trawl-caught sablefish as announced at 58 FR 2990 (January 7, 1993), 58 FR 21949 (April 26, 1993), and 58 FR 47651 (September 10, 1993):

(1) No more than 3,000 pounds (1,361 kg) of widow rockfish may be taken and retained, possessed, or landed per vessel per fishing trip.

(2) Coastwide, no more than 5,000 pounds (2,268 kg) of Dover sole, thornyhead, and trawl-caught sablefish (the DTS Complex) may be taken and

retained, possessed, or landed per vessel per fishing trip, of which no more than 1,000 pounds (454 kg) may be sablefish. Only one landing of fish in the DTS Complex may be made in a one-week period.

(3) "One-week period" means 7 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. The last week in 1993 is longer, extending from December 22 through December 31.

(4) A vessel that has landed its weekly limit may continue to fish on the next week's limit so long as the fish are not landed (offloaded) until the next legal one-week period.

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until December 17, 1993.

This action is taken under the authority of 50 CFR 663.23(c)(1)(i)(A), and section III.C.1. of the Appendix to 50 CFR part 663.

Since these measures were publicized and discussed publicly, with opportunity for public comment, at the November Council meeting, and because any delay in the implementation of this action would result in an excessive harvest in the widow rockfish and DTS Complex fisheries, the Secretary finds that a delay in effectiveness in unnecessary and contrary to the public interest. The Secretary therefore finds good cause to waive the 30-day delayed effectiveness requirement of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

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

Dated: November 30, 1993.

David S. Crestin,

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

[FR Doc. 93–29645 Filed 11–30–93; 4:03 pm]

BILLING CODE 350–22–M

Proposed Rules

Federal Register
Vol. 58, No. 232
Monday, December 6, 1993

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 271

Food Stamp Program: Forfeiture and Denial of Property Rights

AGENCIES: Office of Inspector General and Food and Nutrition Service, United States Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 15(g) of the Food Stamp Act of 1977, as amended by Section 124 of the Food Stamp Act Amendments of 1980, Public Law No. 96–249, which authorizes the Secretary of Agriculture to subject to forfeiture and denial of property rights any nonfood items, moneys, negotiable instruments, securities, or other things of value that are furnished or intended to be furnished by any person in exchange for food coupons, authorization cards, or other program benefit instruments or access devices in any manner not authorized by the Food Stamp Act or regulations issued pursuant to the Food Stamp Act, 7 U.S.C. 2024(g). The proposed rule would establish procedures to be followed by the Inspector General and other Federal law enforcement officials who conduct investigations of alleged violations of the Food Stamp Act and who may, during the course of those investigations, acquire property subject to forfeiture and denial of property rights.

DATES: Comments on this proposed rule must be received by February 4, 1994 in order to be assured of consideration.

ADDRESSES: Comments should be submitted to Craig Beauchamp, Assistant Inspector General for Investigations, Office of Inspector General, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250–2317. All written comments will be open for public inspection during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday) in Room 412A, 14th Street and Independence Avenue SW., Washington, DC 20250–2317.

FOR FURTHER INFORMATION CONTACT: Brian L. Haaser, Director, Program Investigations Division, Office of Inspector General, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250–2318. Phone: (202) 720–6701.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The United States Department of Agriculture (USDA) has reviewed this rule under Executive Order 12291 and Departmental Regulation 1512–1. The rule will affect the economy by less than $100 million a year. The rule will not raise costs or prices for consumers, industries, government agencies or geographic regions. There will be no adverse effects upon competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, USDA has determined that this proposed rule is not a major rule under Executive Order 12291.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

This proposed rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Charles R. Gillum, Acting Inspector General, USDA, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of this rule, all applicable administrative procedures must be exhausted. The administrative review requirements relating to forfeiture of property pursuant to the Food Stamp Act of 1977, as amended, are set out in this rule.

Background

On August 14, 1985, USDA published a proposed rule at 50 FR 32712 which would have implemented section 15(g) of the Food Stamp Act of 1977 (the Act) (7 U.S.C. 2024(g)), as amended by Public Law 96–249, by authorizing the Secretary to subject to forfeiture and denial of property rights any nonfood items, moneys, negotiable instruments, securities, or other things of value that are furnished or intended to be furnished by any person in exchange for food coupons or authorization cards in any manner not authorized by the Act or the regulations issued pursuant to the Act.

This new proposed rule recognizes that the Office of Inspector General (OIG), USDA, conducts the majority of criminal investigations that result in Federal criminal prosecution under the Act; that such investigations involve the acquisition of valuable property by investigators in exchange for food coupons, authorization cards, or other program benefit instruments or access devices; and that Congress granted to USDA the power to subject such property to forfeiture. It should be noted that the Act defines "coupon" to include any "* * * type of certificate issued pursuant to the provisions of this Act" (7 U.S.C. 2012(d)). Thus, this rulemaking would subject to forfeiture property offered in exchange for any program benefit instrument or access

device. In addition to OIG, other Federal law enforcement agencies, including the United States Secret Service and the United States Postal Inspection Service, also conduct criminal investigations involving the acquisition of property in exchange for food coupons, authorization cards, or other program benefit instruments or access devices. Finally, in some instances food coupons and other benefit instruments are provided to other Federal law enforcement agencies for use in investigations involving program related activities under memoranda of understanding with OIG. This proposed rule would apply as well to seizure related to the Act which are made by those agencies.

Agents of the United States Secret Service, the United States Postal Inspection Service, and the Department's OIG investigate persons who are alleged to have violated or are suspected of violating the provisions of the Food Stamp Act, by acquiring, possessing, altering, using, or transferring food coupons, authorization cards, or other program benefit instruments or access devices in an unauthorized manner (7 U.S.C. 2024(b)). During these investigations, agents may acquire valuable property that has been exchanged for food coupons, authorization cards, or other program benefit instruments or access devices. The property is maintained in evidence until the conclusion of the investigation and any resulting criminal, civil, or administrative proceeding. At the conclusion of those proceedings, the custodians dispose of the valuable property in accordance with their respective internal agency regulations.

Although OIG, the United States Secret Service, and the United States Postal Inspection Service have developed work agreements in the form of memoranda of understanding that set out their respective authorities and responsibilities for enforcement of certain provisions of the Food Stamp Act, there is still a need for definitive procedures concerning the forfeiture of property. Therefore, the Department is proposing this revised rule. It would establish, in lieu of the August 14, 1985, proposed rulemaking, that any form of valuable property furnished or intended to be furnished to OIG agents or agents of the United States Secret Service, United States Postal Inspection Service, or other authorized Federal law enforcement agency, by any person, in any manner not authorized by the Act or the regulations issued pursuant to the Act, shall be forfeited to USDA. Given the expanded scope of the Department's policy objectives as reflected in this proposed rule, the proposed rule of August 14, 1985, is hereby formally withdrawn.

Exception

This proposed rule provides that the forfeiture provisions shall not apply to those items exchanged during the course of internal investigations by retail firms, investigations conducted by State and local law enforcement agencies, or FNS Compliance Branch investigations.

Related Rule

The proposed rule published by FNS on August 14, 1985, contained a provision which would permit firms subject to the bonding requirements of 7 CFR 278.1 to submit irrevocable letters of credit or collateral bonds to regain authorization. Only one comment was received on this provision and it expressed approval with the proposal as written. However, FNS is reconsidering the issue of bonding requirements, and will address this subject in a future proposed rule to be issued separately.

Substance of Proposed Rule

This proposed rule provides that property shall be forfeited at the time it is furnished or intended to be furnished in exchange for food coupons, authorization cards, or other program benefit instruments or access devices (7 CFR 271.5(e)(1)(i)). The rule provides that custodians of such valuable property shall safeguard the property until final disposition is made (7 CFR 271.5(e)(2)(i)). It provides that the custodian shall not dispose of the property prior to giving notice to the actual or apparent owner(s) or person(s) with possessory interests, unless there is reasonable cause to dispose of the property without notice (7 CFR 271.5(e)(2)(iv)). Reasonable cause to dispense with notice requirements might exist, for example, where explosive materials are being stored which may present a danger to persons or property.

The proposed rule would require that, except for reasonable cause, the investigating agency (OIG, the United States Secret Service, the United States Postal Inspection Service, or other authorized Federal law enforcement agency) shall make reasonable efforts to notify the actual or apparent property owner(s) or other person(s) with possessory interests of the forfeiture and of their opportunity to appeal the forfeiture (7 CFR 271.5(e)(3)(i)). Notice may be delayed if it is determined that such action is likely to endanger the safety of a law enforcement official or compromise another ongoing criminal investigation conducted by OIG, the United States Secret Service, the United States Postal Inspection Service, or other authorized Federal law enforcement agency (7 CFR 271.5(e)(3)(iv)).

The actual or apparent owner(s) of or person(s) with possessory interests in the property would have 30 days from the date of the delivery of the notice of forfeiture to make a written request for an administrative review of the forfeiture (7 CFR 271.5(e)(4)(i)–(iii)).

The presentation of oral evidence would also be allowed, upon request (7 CFR 271.5(e)(4)(iv)). In the event of a related administrative, civil, or criminal proceeding, the reviewing official could delay the issuance of a decision until the conclusion of that proceeding (7 CFR 271.5(e)(4)(vii)). The reviewing official's decision as to the disposition of the property would be the final agency determination, and would not be subject to further appeal (7 CFR 271.5(e)(4)(viii)).

Effective Date

It is proposed that this rule would become effective 30 days after publication of the final rule.

List of Subjects in 7 CFR Part 271

Administrative practice and procedure, Claims, Food stamps, Penalties.

Therefore, 7 CFR part 271 is proposed to be revised as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citation for part 271 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. Section 271.5 is proposed to be amended by adding a new paragraph (e), as follows:

§ 271.5 Coupons as obligations of the United States, crimes and offenses.

* * * * *

(e) *Forfeiture and denial of property rights.*—(1) *General.* (i) Any nonfood items, moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for food coupons, authorization cards, or other program benefit instruments or access devices in any manner not authorized by the Food Stamp Act or regulations issued pursuant to the Act, shall be subject to forfeiture and denial of property rights. Such property is deemed forfeited to the United States Department of Agriculture (USDA) at the time it is either exchanged or offered in exchange.

(ii) These forfeiture and denial of property rights provisions shall apply to property exchanged or offered in exchange during investigations conducted by the Inspector General, USDA, and by other authorized Federal law enforcement agencies.

(iii) These forfeiture and denial of property rights provisions shall not apply to property exchanged or intended to be exchanged during the course of internal investigations by retail firms, during investigations conducted solely by State and local law enforcement agencies and without the participation of an authorized Federal law enforcement agency, or during compliance investigations conducted by the Food and Nutrition Service.

(2) *Custodians and their responsibilities.* (i) The Inspector General, USDA, the Inspector General's designee, and other authorized Federal law enforcement officials shall be custodians of property acquired during investigations.

(ii) Upon receiving property subject to forfeiture the custodian shall:

(A) Place the property in an appropriate location for storage and safekeeping, or

(B) Request that the General Services Administration (GSA) take possession of the property and remove it to an appropriate location for storage and safekeeping.

(iii) The custodian shall store property received at a location in the judicial district where the property was acquired unless good cause exists to store the property elsewhere.

(iv) Custodians shall not dispose of property prior to the fulfillment of the notice requirements set out in paragraph 3, or prior to the conclusion of any related administrative, civil, or criminal proceeding, without reasonable cause. Reasonable cause to dispense with notice requirements might exist, for example, where explosive materials are being stored which may present a danger to persons or property.

(v) Custodians may dispose of any property in accordance with applicable statutes or regulations relative to disposition. The custodian may:

(A) Retain the property for official use;

(B) Donate the property to Federal, State, or local government facilities such as hospitals or to any nonprofit charitable organizations recognized as such under section 501(c)(3) of the Internal Revenue Code; or

(C) Request that GSA take custody of the property and remove it for disposition or sale.

(vi) Proceeds from the sale of forfeited property and any moneys forfeited shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, transportation costs, and any recording fees. Moneys remaining after payment of such expenses shall be deposited into the general fund of the United States Treasury.

(3) Notice requirements. (i) The custodian shall make reasonable efforts to notify the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture except for the good cause exception if the owner cannot be notified.

(ii) The notice shall: (A) Include a brief description of the property;

(B) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the opportunity to request an administrative review of the forfeiture;

(C) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the requirements for requesting administrative review of the forfeiture; and

(D) State the title and address of the official to whom a request for administrative review of the forfeiture may be addressed.

(iii) Except as provided in paragraphs (e)(3) (iv) and (v) of this section, notice shall be given within 45 days from the date the United States convicts, acquits, or declines to act against the person who exchanged the property.

(iv) Notice may be delayed if it is determined that such action is likely to endanger the safety of a law enforcement official or compromise another ongoing criminal investigation conducted by OIG, the United States Secret Service, the United States Postal Inspection Service, or other authorized Federal law enforcement agency.

(v) Notice need not be given to the general public.

(4) Administrative review. (i) The actual or apparent owner(s) of or person(s) with possessory interests in the property shall have 30 days from the date of the delivery of the notice of forfeiture to make a request for an administrative review of the forfeiture.

(ii) The request shall be made in writing to the Assistant Inspector General for Investigations, Office of Inspector General, USDA, or to his/her designee, hereinafter referred to as the reviewing official.

(iii) A request for an administrative review of the forfeiture of property shall include the following:

(A) A complete description of the property, including serial numbers, if any;

(B) Proof of the person's property interest in the property; and,

(C) The reason(s) the property should not be forfeited.

(iv) The requestor may, at the time of his/her written request for administrative review, also request an oral hearing of the reasons the property should not be forfeited.

(v) The burden of proof will rest upon the requestor, who shall be required to demonstrate, by a preponderance of the evidence, that the property should not be forfeited.

(vi) Should the administrative determination be in their favor, the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture may request that forfeited items be returned or that compensation be made if the custodian has already disposed of the property.

(vii) The reviewing official shall not remit or mitigate a forfeiture unless the requestor:

(A) Establishes a valid, good faith property interest in the property as owner or otherwise; and

(B) Establishes that the requestor at no time had any knowledge or reason to believe that the property was being or would be used in violation of the law; and

(C) Establishes that the requestor at no time had any knowledge or reason to believe that the owner had any record or reputation for violating laws of the United States or of any State for related crimes.

(viii) The reviewing official may postpone any decision until the conclusion of any related administrative, civil, or criminal proceeding.

(ix) The decision of the reviewing official as to the disposition of the property shall be the final agency determination for purposes of judicial review.

Done at Washington, DC, this 18th day of November, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–29560 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–23–M

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV93-981-4]

Almonds Grown in California; Proposed Rule To Revise the Quality Control Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revisions to the quality control provisions established under the Federal marketing order for California almonds. This proposal would better reflect current almond processing capabilities and marketing standards and practices. This action is based on a recommendation of the Almond Board of California (Board), which is responsible for local administration of the order.

DATES: Comments must be received on or before January 5, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456, FAX Number (202) 720-5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523-S., P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1509, or FAX (202) 720-5698, or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, California 93721; (209) 487-5901, or FAX (209) 487-5906.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

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

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

There are approximately 115 handlers of almonds that are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the almond producers and handlers may be classified as small entities.

This action would revise § 981.442—Subpart—Administrative Rules and Regulations and is based on a recommendation (by a 5-4 vote) of the Almond Board of California (Board) and other available information.

The processing of almonds involves various steps taken by growers and handlers prior to shipment to market. Initially, growers take their almonds to a huller/sheller operation where the hulls and shells are mechanically removed. The almonds are then delivered to a handler, who has the almonds inspected by the Federal-State Inspection Service. The inspector determines the percentage of inedible almond kernels, as defined in § 981.408, in a sample.

Under the quality control provisions of the marketing order, handlers incur a disposition obligation of inedible almonds, based on the results of this inspection. The weight of inedible kernels in excess of 0 percent of the kernel weight determined by USDA constitutes the inedible disposition obligation. In order to meet this disposition obligation, handlers normally will deliver packer pickouts, kernels rejected in blanching, pieces of kernel, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders or dealers in nut wastes on record with the Board as accepted users.

The Board maintains a list of approved accepted users, which includes feedlots and oil mills. Handlers must notify the Board at least 72 hours prior to delivery to an accepted user.

The quality control provisions also require that the almond meat content of the inedible shipment must be at least 10 percent of the shipment or it cannot be used as a credit against the handler's disposition obligation. This means that the almond meats must constitute a minimum of 10 percent of the contents of an inedible shipment to an accepted user.

Although there are no minimum grade requirements under the marketing order, USDA standards for almonds do exist and are widely used in the industry. The highest USDA standard allows for a tolerance of 1½ percent inedible almonds per container, based on an outgoing inspection.

The standards recognize that handlers may not be able to separate 100% of the inedible nuts from the end product. However, the current quality control provisions under the marketing order require that handlers dispose of a quantity of almonds equal to 100% of the inedible obligation as determined by incoming inspections. When this was first implemented, it was thought that handlers could meet the disposition obligation by supplementing pickouts with material generated in handler's

processing operations (slicing, dicing, etc.). However, many handlers do not have a processing operation wherein excess almond material is generated. In order to meet their disposition obligation, they often purchase a mixture of almonds and foreign material such as hulls, shells, etc., mixed with a low percentage of almond meats from a hulling and/or shelling operation and mix it with their inedibles. These low percentage lots are usually disposed of to feedlots, whereas the higher meat percentage lots are usually disposed of to oil mills.

The Board contends that the intent of the quality control provisions of the rules and regulations is not being met with these current requirements. For the above-mentioned reasons, the Board recommended, by a 5 to 4 vote, that the base tolerance level be revised from 0 percent to 1 percent and that the minimum meat content for inedible deliveries available for credit be revised from 10 percent to 50 percent. The Board feels that these proposed changes would better reflect current industry processing and marketing capabilities while maintaining the integrity of the quality control provisions of the marketing order.

These recommended changes are expected to enable handlers to pick out enough inedible material to satisfy their obligation with a 1 percent tolerance. Because the foreign material has already been removed in the hulling and shelling operation, the inedible portion of the shipments should most likely contain well over 50 percent meat content. Although it is likely these lots would be primarily sold to oil mills, those shipments with less than 50 percent meat content would continue to go to accepted users, either directly from hullers and shellers or from handlers. However, handlers would not receive credit against their disposition obligation on shipments with less than 50 percent meat content. Handlers would no longer have to supplement their shipments with huller and sheller purchases because sufficient inedibles would be picked out by the handlers. The marketing of inedible almonds should not be affected by this recommendation.

The members who voted against this recommendation were concerned that a negative perception might be projected by increasing the tolerance to 1 percent; i.e., that the industry is relaxing its quality requirements. The members believed that buyers may question the industry's commitment to quality control. They also felt that it may appear that the tolerance is being increased in order for the handlers to have more product to sell. The Board members in favor of this proposal believe that the proposal will improve the quality control program administered under the marketing order.

The Board recommended that this action become effective in the 1993–94 crop year which began on July 1, 1993. The Department believes that making it effective in the middle of a crop year would be difficult to administer and could be inequitable to handlers who ship almonds during different parts of the crop year. For this reason, this action is proposed to be effective for the 1994–95 crop year, beginning July 1, 1994.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

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

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

PART 981—ALMONDS GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

§ 981.442 [Amended]

2. Section 981.442(a)(4) is amended by changing the words "0 percent" to read "1 percent".

§ 981.442 [Amended]

3. Section 981.442(a)(5) is amended by changing the words "10 percent" to read "50 percent".

Dated: November 29, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–29748 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1040

[Docket No. AO–225–A45; DA–92–10]

Milk in the Southern Michigan Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the Southern Michigan Federal milk order based on industry proposals considered at a public hearing. The decision recommends adopting a plan for pricing milk on the basis of its protein, as well as butterfat, components. The proposed plan includes adjustments to the producer protein price based on the somatic cell count of producer milk. The decision also recommends an amendment to the pool supply plant definition. Additionally, the decision recommends increases in the rate of the maximum allowable marketing service assessment and the maximum allowable administrative assessment.

DATES: Comments are due on or before January 5, 1994.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

This action has been reviewed under Executive Order 12278, Civil Justice Reform. It is not intended to have retroactive effect. This action will not

preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

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

Prior documents in this proceeding:

Notice of Hearing: Issued December 3, 1992; published December 10, 1992 (57 FR 58418).

Supplemental Notice of Hearing: Issued January 19, 1993; published January 29, 1993 (58 FR 6447).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Southern Michigan marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held in Novi, Michigan, on February 17–18, 1993, pursuant to a notice of hearing issued December 3, 1992 (57 FR 58418) and a supplemental notice of hearing issued January 19, 1993 (58 FR 6447).

The material issues on the record of hearing relate to:

1. Pool supply plant definition.
2. Multiple component pricing.
3. Administrative assessment.
4. Marketing service assessment.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pool Supply Plant Definition

A witness for Michigan Milk Producers Association (MMPA) testified in support of the cooperative's proposal which would amend the pool supply plant definition to include as qualifying shipments transfers of milk to a partially regulated distributing plant. The witness testified that MMPA supplies bulk milk to a local partially regulated distributing plant that has substantial Class I and Class II utilization, but receives no credit for such sales toward fulfilling the pool supply plant shipping requirement. The witness explained that the shipment is a bulk transfer from the cooperative (MMPA) to the nonpool plant, with its classification determined during the pooling process. MMPA's post-hearing brief contended that adoption of the proposed amendment would eliminate the inequity caused by such transfers.

According to the cooperative's brief, the current month's marketwide Class I utilization percentage, which includes the portion of the transfer classified as Class I, determines the minimum qualifying shipping requirement for the same month of the following year but does not contribute to the cooperative's Class I use in determining whether pooling standards have been met.

The MMPA witness testified that the partially regulated plant historically had been a pool distributing plant but recently had become involved in the production of extended-life Class II products. As a result, he stated, the plant now has Class I utilization of approximately 40 percent. According to the witness, the partially regulated plant to which MMPA transfers milk is the only such plant to which the proposed amendment would apply. NFO's post-hearing brief supported adoption of the proposed amendment. There was no opposition to the proposal.

Testimony in the record illustrates that the partially regulated distributing plant is indeed satisfying Class I needs in the marketplace through the use of pooled milk, and thereby benefitting the pool. Therefore, the proposal to include shipments of producer milk to a partially regulated distributing plant when determining the qualifications of pool supply plants should be adopted.

2. Multiple Component Pricing

A proposal to incorporate multiple component pricing in the Southern Michigan Federal milk marketing order should be adopted with some modifications. The pricing plan generally would be patterned after recent amendments to the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana orders. Producers would be paid on the basis of the pounds of milkfat and protein contained in their milk and would share in the value of the pool's Class I and Class II uses on a per hundredweight basis. Regulated handlers would pay for the milk they receive on the basis of total milkfat, the protein used in Class II and III, the skim milk used in Class I and the hundredweight of total product used in Classes I and II. Protein prices paid to producers on all producer milk would be adjusted by the somatic cell count of the milk.

The director of milk sales for Michigan Milk Producers Association (MMPA) testified on behalf of MMPA, Independent Cooperative Milk Producers Association and National Farmers Organization (NFO) in support of MMPA's proposal to adopt a multiple component pricing system for Federal Order 40. According to the proponents' witness, MMPA is a cooperative representing 60 percent of the milk pooled under Federal Order 40, and Independent Cooperative Milk Producers and NFO represent approximately 20 percent of the milk pooled. The witness described the MMPA proposal as pricing milk based upon protein and butterfat content as well as volume, and providing an adjustment of the protein price for somatic cell count levels. In a post-hearing brief, MMPA stated that pricing milk on the basis of protein content is technically and economically feasible. The witness for the proponents stated that the proposal was modeled closely after the recommended decision issued by the USDA for Federal Orders 33, 36 and 49 because of the movement of products and producer milk supplies between those markets and Southern Michigan. The witness noted that all four markets include Michigan counties as part of their milkshed.

The proponents' witness testified that certain components of milk have a higher demand because of their functional, nutritional, and economic value in the marketplace. He claimed that the shift in consumer preference

over the past few years from whole milk to low fat and nonfat dairy products has caused a butterfat surplus. The witness stated that the Commodity Credit Corporation has been sending a signal to the industry that the butterfat component of milk is less valuable by devaluing it in its price support formula. The witness noted that since January 1, 1990, the support price for milk has remained at $10.10 per hundredweight, at average national test, but the butter purchase price has been reduced on three separate occasions from $1.0925 to its level of $.7625 per pound at the time of the hearing, and the equivalent value has been reallocated to the skim portion of milk.

The witness stressed that the skim portion of milk currently represents 77 percent of the Class III price. However, he argued, a valuation of the solids in the skim portion of milk is not required or reflected in the payment for this milk, and is not included as any part of the Order 40 pricing mechanism. The witness and MMPA's brief claimed that the present system is inequitable because it underpays producers with above average protein and overpays producers with below average protein.

The proponents' witness stated that milk protein has a functional value in the production of cheese and other dairy products such as yogurt, whipping cream, ice cream, condensed milk products and milk powders. The witness also stated that protein is an important component of fluid milk because it provides the wholesome flavor and nutritional value of the product to the consumer. He testified that the functional value of protein is affected by the somatic cell count (SCC) level of the raw milk supply. Therefore, the witness asserted, elevated somatic cell count levels and raw bacteria counts diminish the functional value of all milk. According to the witness, the damage is irreversible and cannot be restored by a mechanical process at a dairy plant.

The witness testified that high SCC levels are accompanied by an increase in the amount of undesirable enzymes in milk as well as an increased susceptibility of the fat component to attack by these enzymes. The witness explained that the undesirable enzymes attack the fat in milk and release free fatty acids. The witness stressed that even at very low concentrations, free fatty acids are responsible for producing off-flavors in any dairy product that contains milkfat. The witness noted that research has shown that the free fatty acid content of raw milk with high somatic cell counts is higher than raw milk with low somatic cell counts. The witness also pointed out that the enzymes are able to survive normal pasteurization and continue the process of deterioration of the flavor of finished fluid products, thus reducing shelf life. Therefore, he testified, protein payments to producers should reflect the influence of somatic cells on the quality of all milk.

The proponents' witness continued by stating that the voluntary pricing programs existing in the Southern Michigan market have developed into premium programs designed to procure or retain high protein or high solids supplies of milk with no provision to adjust payment to reflect low protein or low solids. According to the witness, the diverse component pricing programs have only promoted disorderly and inefficient marketing conditions. The witness indicated that, typically, out-of-state cheese plants have offered the most lucrative component premium programs, a situation which causes high protein producers to segregate from other adjacent farms and haul milk long distances, rather than to the closest plant, to receive those protein premiums. The witness asserted that in order for a multiple component pricing program to be efficient and effective, it must be uniform, mandatory, and address fairly both the producer and the handler.

The director of member services and quality control for Michigan Milk Producers Association testified that mastitis, an inflammation of the mammary gland, is a reaction to a cow's immune system fighting off invading bacteria. The witness explained that white blood cells and epithelial cells known as somatic cells are secreted during the process to destroy the invading bacteria. The witness stated that the level of somatic cells indicates, and is proportionate to, the infection level of a cow's udder.

The MMPA witness stated that somatic cell count standards were adopted as a measure of milk quality and are included in the Pasteurized Milk Ordinance (PMO) because of the recognition of their public health significance in the milk supply. The witness explained that the condition of mastitis and the subsequent increase of somatic cell levels decrease the quality of milk by reducing the levels of butterfat, lactose, total casein and total solids in milk and increasing whey protein, chloride, and sodium levels.

The MMPA quality expert noted that SCCs have been included as a criterion within quality premium programs throughout the United States and Michigan for several years. The witness testified that all milk marketing cooperatives in Michigan use the Optical Somatic Cell Count (OSCC), an electronic method, for measuring levels of somatic cells. According to the witness, the OSCC method is the most accurate method available for testing somatic cells and is a method approved by the Association of Official Analytical Chemists (AOAC).

The witness noted that the somatic cell count standards under the PMO would be lowered from 1,000,000 to 750,000 on July 1, 1993. The witness pointed out that under the PMO, all Grade A producers are required to be tested a minimum of four times in six months for somatic cells. He explained that most producers whose milk is pooled under Federal Order 40 have been tested five times a month for the past several months, with test results reported to the producers. The witness stated that MMPA's average SCC for 1992 was 308,000, according to record data. However, he stated, this average is based upon one SCC test per farm per month. The witness explained that in comparing data collected for the past six months, one test per month versus five tests per month, the cooperative's average SCC could increase by as much as 50,000. Another MMPA representative testified that the proposed neutral zone had been reduced from the initial proposal to between 300,000 and 450,000 to better reflect current data with regard to average SCCs in Order 40.

The MMPA quality expert testified that the Michigan Grade A milk law and the PMO require milk to contain a minimum amount of milk solids-not-fat. The witness stated that protein tests on producer milk in Order 40 are conducted on infra-red test instruments. He stated the particular instruments are Milko-Scan, Combi Foss, and Multispec or Dairy Lab. The witness noted that the Combi Foss instrument does not differentiate between casein values and whey protein values. The witness emphasized that all cooperatives in Order 40 have infra-red instruments and currently are testing producer milk for protein a minimum of five times a month. Therefore, he stated, the inclusion of protein testing would not result in increased cost. The proponent's witness recommended that if the proposal is adopted, the payment to producers should be based on an average of a minimum of five fresh tests per month for both protein and SCC.

An expert witness testified for MMPA on the functional and nutritional characteristics of protein. The witness stated that the functional characteristics of protein allow it to form the matrix in the production of cheese and yogurt. He

testified that protein is important in the air cell formations in the manufacture of whipped products such as ice cream. According to the witness, protein provides some required nutrients in the human diet. In general, he said, both casein and whey protein have high nutritional value as food sources. Additionally, the quality expert for MMPA stated that casein accounts for much of the value of the total milk protein, and whey protein accounts for a smaller value.

The expert witness testified that somatic cells seem to have an impact on milk quality through their ability to cause changes in the enzymatic characteristics of milk. The witness explained that the enzymes generated by somatic cells degrade the casein and change its functional attributes. He pointed out that some changes include higher losses in cheese yield, differences in flavor characteristics, and changes in other functional characteristics that may weaken the structure of curd in a curd formation when making a product. The witness stated that high somatic cell counts in milk cause an increased rate of rancid off-flavors, which produce a flavor that would be noticeable to a consumer. The witness explained that free fatty acids are one component that determines the shelf life of a fluid product and correlates to rancid off-flavors.

MMPA's expert witness went on to say that the enzyme which causes the damage is always present in an inactive form in milk. The active form of the enzyme, once it is produced in milk, is heat-stable and therefore unaffected by UHT processing. The witness explained that most of the damage to protein occurs while milk is in the udder of the cow. However, if milk is cooled quickly and held at refrigeration temperature, further damage is minimized. The witness explained that producers can reduce the average somatic cell count of their milk through better management and proper adjustment and maintenance of milking equipment.

According to the witness, an adequate number of times per month to test a herd for SCC would be the number of times currently used for butterfat, four or five times. The witness stated that the functional value of milk changes as soon as the SCC exceeds about 100,000. He stated that one of his research studies, which was conducted under ideal conditions, indicated that as SCCs change from zero to 1,300,000, cheese yields decline an additional two to three percent. The witness also stated that there is a maximum yield loss of about two percent when SCCs change from 100,000 to 750,000.

The expert witness continued by stating that instruments are available and currently are being used to test a large number of samples on a reliable basis for both protein and somatic cell count. He testified that in the case of protein, the infra-red milk analyzer calibrated with reference to the Kjeldahl test is the method most used by the industry. This method is approved by the Association of Official Analytical Chemists, and the repeatability and accuracy of this method is much better than those of the Babcock test for butterfat.

The expert witness testified that the Van Slyke cheese yield formula for cheddar cheese is a good indicator of the added value of lesser or additional protein in raw milk to the cheese handler. According to the witness, the formula is a reliable method of predicting the expected changes in yield as protein changes and fat remains constant.

A witness testified and filed a brief on behalf of Country Fresh, Incorporated (Country Fresh), a fluid milk and Class II processor in Order 40, in support of a somatic cell count adjustment but with modifications from MMPA's proposal. The witness stated that the primary concern of Country Fresh is the proposal's treatment of somatic cell pricing. The witness noted that the proposal would apply the somatic cell adjustment on all producer milk, which would affect the cost of all Class I, II, and III milk. In a post-hearing brief, Country Fresh stressed that there is substantial overlap in milk procurement areas of the Indiana Order and Southern Michigan Orders. Country Fresh's brief urged that the same pricing program recently adopted by USDA for the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana marketing orders be incorporated in the Southern Michigan order.

According to the witness, the potential difference in price resulting from adoption of MMPA's proposal for milk received from producers with SCCs below 100,000 and those over 900,000 could reach 75 cents per hundredweight. The witness claimed that, when purchasing top quality (low SCC) milk, Class I and III handlers would be unable to pay 75 cents or even 50 cents more than a competitor buying milk with a high somatic cell count. Furthermore, the witness argued, fluid milk handlers and others would be faced with a substantial economic incentive against receiving the highest quality milk.

The witness recommended that the size of the adjustment be reduced substantially. Under his recommended changes to the proposal, the witness stated that based on the peak cheese prices during 1992, the maximum plus and minus somatic cell adjustments would have been 15 cents a hundredweight. He argued that combined, this would create a range of about 30 cents, as the most the market can bear without creating a disincentive against receiving high quality milk.

The witness noted that effective July 1, 1993, the cap on the SCC for Grade A milk will be 750,000. The witness and Country Fresh's brief argued that the proposed neutral zone of 300,001 to 500,000 and MMPA's modified proposed neutral zone of 300,001 to 450,000 are too high. The witness testified that the average somatic cell count in the Southern Michigan marketing area is approximately 340,000, according to the market's largest cooperative. Therefore, the witness suggested that the appropriate neutral zone be 300,000 to 399,999 and the highest bracket 700,000 and up.

The witness continued by stating that if the somatic cell program is modified as suggested, Country Fresh could support its inclusion in the Southern Michigan order. Country Fresh's brief noted testimony of MMPA, Leprino and National Farmers Organization which asserted that there are other factors involved in high quality milk besides somatic cell count. He testified that Country Fresh urges that the somatic cell program be tried in a moderate rather than a radical manner. Otherwise, the witness claimed, chaotic marketing conditions could be created which would result in a new hearing being held in the not-too-distant future to amend the order.

A witness for Dean Foods also testified in support of MMPA's multiple component pricing proposal.

The regional dairy director for National Farmers Organization testified in support of the MMPA multiple component pricing proposal but opposed the inclusion of a somatic cell adjustment. The witness agreed with MMPA that the pricing of milk must be tailored to the marketplace and that pricing protein is a positive step toward that goal. The witness stated that uniformity in the pricing provisions of Orders 40, 33, 36 and 49 is of overriding importance and urged the Secretary to adopt the same programs for all orders. The witness argued that because of the degree of overlap in milksheds and sales between these orders, differences in order provisions will cause confusion and disorderly marketing conditions.

In a post-hearing brief, NFO expressed concern about the price formula for protein established in MMPA's

proposal. NFO stated that by utilizing the average protein content of milk in the Minnesota-Wisconsin (M–W) price survey, there is a possibility the producer milk in Michigan would have a base price less than the M–W price. NFO explained that this could occur if the average protein test in Michigan was less than the average of the milk going into the M–W sample. NFO's brief noted that the record for the M–W price hearing held in 1992 clearly documents that the Grade-B based M–W price continues to be depressed from true economic values because of competition for Grade-A milk at dual intake plants. NFO's opposition to a SCC adjustment will be discussed later.

A panel of three witnesses testified on behalf of Leprino, a manufacturer and distributor of mozzarella cheese, in support of a modification of the MMPA multiple component pricing proposal. The panel stated that Leprino's modification would use butterfat, protein, and a fluid carrier to value milk used in Class II and Class III. According to the panel, this approach is economically sound, equitable to producers and processors, and simple to administer. The panel testified that Leprino supports the inclusion of somatic cell count adjustments to value protein properly as long as other basic milk quality criteria are achieved, notably low psychrotrophic count and low raw bacteria count. Additionally, the panel also testified that Leprino opposes quality adjustments for Class I milk unless it can be clearly demonstrated that there is a discernible benefit to the Class I handler.

The panel recommended that yield factors used to value somatic cell counts should be conservative, given the conflicting scientific evidence, and should be uniform across Federal Orders. The panel also suggested that payment for protein be based on true protein rather than total Kjeldahl nitrogen, TKN, because only true protein has real value to processors.

The senior vice president for Leprino explained that under the MMPA proposal, the minimum value assigned for butterfat is removed from the basic formula price (the M–W price), and the remaining value of milk (formerly the skim value) is allocated entirely to the protein component. The witness argued that because the M–W is a competitive pay price, there are other factors besides protein included in this skim residual value. Therefore, the witness claimed, the residual value does not represent the true economic value of protein to manufacturers, and could send an economic signal to milk producers to produce more protein while encouraging milk processors to use lower-protein milk.

The project manager of Leprino's production division testified that Leprino proposes the use of a multiple component pricing plan similar in theory to a proposal advocated for several nearby Federal Orders for which a hearing has not been held, but with modifications to the type of components valued and the related calculation of their values. The witness stated that Leprino advocates the continued use of the M–W as the basic formula price and the use of the M–W survey protein as the protein used in the formula to calculate the residual fluid or fluid carrier value and volume to ensure consistency between orders. The witness indicated that the butterfat value would remain unchanged from the current federal order system and from the MMPA proposal. The witness also stated that the protein value would be based on its yield relationship to a pound of cheddar cheese and fluctuations within the cheese market.

In addition, the witness stressed that Leprino believes that no value should be included for the manufacture of whey or any whey product, consistent with the exclusion of whey in the USDA formula for the support price for cheese. The witness argued that an investment in a whey operation is a separate economic decision that, in many cases, is related to other waste disposal alternatives and unrelated to the cost of milk. Furthermore, the witness noted that Leprino is aware of no manufacturers of whey products in Michigan.

The witness went on to say that under Leprino's approach, the weighted average differential and butterfat values are calculated in the same manner as in the MMPA proposal. However, the Leprino modification would pool the value for Class I skim and Class II and III protein similar to the MMPA approach, but then include the residual fluid carrier values from Classes II and III. The total value would be allocated over all protein pounds in the pool to calculate a protein value per pound, as in the MMPA proposal.

The Leprino witness claimed that the Leprino fluid carrier and reduced handler protein price smooth the impact of the pricing plan between handlers receiving milk with high and low protein. Thus, the witness explained, the signal to the producer remains strong to increase protein, while giving the processor the ability to recover the additional cost of protein over the M–W price from the marketplace through increased yields.

The director of quality assurance for Leprino testified on issues relative to protein and milk quality testing. The witness stated that the three commonly used procedures for testing protein are Kjeldahl, dye binding and infra-red milk analyzers. The witness explained that Kjeldahl testing has been used widely since the 1800's and is based on the fact that nitrogen is a major constituent of protein, about one-sixth of the mass. The witness testified that classical Kjeldahl uses a factor of 6.38 to convert the total amount of nitrogen assayed from a sample to protein. She claimed that the 6.38 factor, which is an old determination of 15.67 percent nitrogen in milk protein, overstates protein values by about one percent. The witness stated that research reveals that the factor 6.32 is a more accurate average of the nitrogen levels of individual milk protein. The witness stated that analyst training requirements are extensive and initial equipment setup costs range from $20,000 to $35,000.

The Leprino quality assurance director stated that dye-binding test methods are more rapid than Kjeldahl, and provide good precision. The methods are based on the principle of binding protein to a dye material. The witness stated that analyst training requirements are not as extensive as for the Kjeldahl procedure and initial equipment setup is approximately $3,000.

The witness stated that infra-red milk analyzers (IRMA) have become the preferred method of component testing in milk due to their precision, repeatability and ease of operation, given the proper setup and calibration. She stated IRMA have to be calibrated according to Kjeldahl results. The witness explained that training is minimal, but setup and calibration procedures are exacting and require attention of a supervisor or a more proficient technician than dye-binding methods.

The Leprino witness recommended that protein determinations be made on the basis of true protein. She stated that quantifying true protein is of utmost importance to Leprino because cheese yields are directly related to the amount of true protein in milk. The witness indicated that the expert witness who had testified for MMPA researched and refined the procedure used for obtaining true protein. She explained that the procedure uses the Kjeldahl method to quantify only the nitrogen included in true protein, by treating a milk sample with trichloroacetic acid. According to the witness, the Kjeldahl method has good repeatability and reproducibility. The witness recommended that each producer's milk be tested for true

protein no less that five times per month with at least one test per week.

A Kraft General Foods (Kraft) representative and a post-hearing brief filed on behalf of Kraft supported MMPA's multiple component pricing (MCP) proposal with Leprino's modification. The Kraft representative testified that Kraft has supported MCP since 1984, when it was implemented in the Great Basin order, and employs MCP or premium programs at many of its plants. The witness explained that Kraft supports establishing a protein value based upon the composition of manufacturing milk in Minnesota and Wisconsin. However, she pointed out that the protein composition of the current month's basic formula price is not available until the following month. Therefore, she stated, Kraft would defer to USDA to decide whether to estimate the current month's protein composition based upon historical trends or simply to use the previous month's protein composition for the current month.

The Kraft witness supported Leprino's proposal which considers carefully the relationship between the protein price to be paid by a handler and the value received for protein in the marketplace by measuring cheese prices on a cheese exchange or some other source. The witness also recommended that the Secretary avoid regulating handler payments for protein at a level which exceeds the returns available to the handler in the marketplace. The witness agreed with Leprino that this approach would create an incentive to purchase low protein milk.

The Kraft witness stated that Kraft supports the inclusion of somatic cell adjustments in any component pricing plan. The witness noted that testimony and evidence in previous hearings, as well in this hearing, reveal that there is a reduction in cheese yield as somatic cell levels increase, thus lowering the value of protein in milk.

The Southern Michigan order should be amended to include multiple component pricing. On the basis of the record of this proceeding, multiple component pricing would entail pricing milk on the basis of butterfat and protein with a somatic cell adjustment to protein prices paid to producers. The record indicates that a large percentage of the producers pooled under the Southern Michigan order are already eligible for or receive some form of multiple component pricing and that nearly all of these component pricing plans use protein as a pricing component. The record also shows that the diverse component pricing programs that currently exist promote disorderly and inefficient marketing conditions in the procurement of milk supplies by competing handlers. The different programs cause non-uniform bases of payments to producers. The adoption of multiple component pricing will allow the Order to recognize the additional value in milk with a higher-than-average protein content.

There was insufficient opportunity for other hearing participants to consider and react to Leprino's proposed modification to MMPA's proposal. The hearing record contains insufficient evidence to adopt Leprino's fluid carrier approach. Hearing participants were not provided enough advance notice to explore the effects of such an approach. Although Leprino included a number of studies and research reports with their testimony, none of the researchers were made available for cross-examination to respond to questions about their work. Consequently, the record contains inadequate information to justify adoption of the Leprino proposal. Additionally, record evidence reveals that the Leprino proposal would result in minimal change to prices received by individual producers, and that handlers' total cost for milk used in manufacturing would not differ with the use of Leprino's fluid carrier approach versus MMPA's approach.

Testing for true protein may have considerable merit. However, the hearing record lacks sufficient discussion of the benefits of specifying testing for true protein versus total protein. Approved testing methods currently vary among states, and the orders at this time should not mandate specific protein tests. If more and more states begin to mandate protein testing on the basis of true protein, it may become necessary to specify such testing in the orders. The inclusion of quality factors other than SCC will be discussed later.

Record evidence clearly shows that protein has a higher demand than other components of milk because of its functional, nutritional and economic value in the marketplace. The functional characteristics of protein allow it to form the matrix in the production of cheese and yogurt. Protein is also important to the air formation in the manufacture of certain products and provides some required nutrients in the human diet. Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Additionally, handlers receiving milk that results in greater volumes of finished products such as cheese and cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished products deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield. Thus, sending an economic signal to dairy farmers will encourage them to maximize the production of those components which have the greatest demand in the marketplace.

Pricing milk on the basis of its protein content also meets the criteria of measurability, intrinsic value, and variability. The evidence in the record shows that protein can be easily measured and, in fact, that the variability in measurement may be less than the variability in butterfat testing because protein does not separate as butterfat does. The record evidence shows that protein has value to the manufacturing sector in the form of improved product yield and product structure. The value to the fluid sector was not quantified in the hearing record; however, testimony indicated some benefit to the fluid sector from higher-protein milk, resulting in a more wholesome and nutritional product. The criterion of variability is necessary to justify pricing a component separately from the product in which it is contained. In the case of protein in milk the record indicates that the level of protein varies from season to season, region to region, and farm to farm. In view of its functional, nutritional and economic value in dairy products, its widespread use as a pricing component in the Southern Michigan market and its qualification under the three criteria above, protein appears to be an appropriate component for pricing milk in Federal Order 40.

The price for protein should be based on the M–W price and the protein content of the milk included in the M–W price series. The handler protein price should be computed by subtracting from the M–W price for the month the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk included in the determination of the M–W price. Testimony strongly favored using the protein content of the M–W milk to determine the handler protein price. NFO's objections to using the M–W protein content to compute the Southern Michigan protein price disregards the fact that if milk pooled under the Southern Michigan order contains less protein than the milk included in the M–W price survey, it has less value to handlers. In addition, as multiple component pricing becomes a more common feature of Federal milk

orders, it may be desirable to use a standard price for protein.

Objections to the proposed pricing plan expressed by the division manager of milk procurement for Kroger, a company which operates a pool distributing plant regulated under Order 40, should not result in any modifications to the MMPA proposal. The witness contended that there is no economic justification for using a protein pricing formula for Class II and III products not accounted for as used-to-produce. He also argued that there is no economic justification to include a somatic cell adjustment on Class I sales or any Class II and III products such as raw fluid milk inventory, half and half, eggnog, Class III shrinkage and sales of surplus cream. According to the witness, the price or product yields of these items are not influenced by the amount of protein in the raw milk used in their manufacture. Additionally, the witness argued, adoption of the MMPA proposal would make it impossible for processors to recover the cost of these products and would create inequitable and uncompetitive Class II and Class III market conditions for Order 40 processors compared to their competitors regulated under other orders.

The Kroger representative continued by stating that Kroger is not opposed to a proposal which introduces multiple component pricing with protein pricing and a somatic cell adjustment for milk processed in Class II and III used-to-produce products. The witness stated that if the MMPA proposal is modified accordingly the MCP plan combined with a somatic cell count adjustment would have a potential benefit to producers and processors.

Protein pricing should be applied to all Class II and III milk. There is some question about whether only used-to-produce items are favorably affected by higher protein content. Testimony reveals that fluid cream products benefit from higher protein and therefore should be included in the protein pricing of Class II items. Additionally, the application of protein pricing to the non-"used-to-produce" products would affect only a small percentage of milk pooled and therefore have little impact on handler costs for protein or the producer protein price.

Witnesses for Kroger and Dean Foods Company opposed the inclusion of somatic cell counts as part of the pricing structure as it would relate to Class I fluid handlers. Additionally, a brief filed on behalf of Milk Industry Foundation (MIF), the national trade association for processors and distributors of fluid milk products, contained several concerns and objections to the inclusion of a SCC adjustment that would be applicable to milk used in Class I. MIF is comprised of 215 member companies located in all 50 states that process nearly 80 percent of all fluid milk and milk products nationwide.

The Kroger witness and MIF's brief argued that adoption of a SCC adjustment on milk used in Class I would result in disruptive and inequitable marketing conditions for Order 40 handlers versus their competitors in other markets where the provision does not exist. The witness and MIF complained that a somatic cell count adjustment would eliminate the advance knowledge fluid milk processors currently have of the Class I price and force handlers to estimate the value of somatic cells for the current month's price. The Kroger representative claimed that the proposal would influence the value of Class I milk based on the SCC level in raw milk. MIF expressed concern that milk processors would incur increased costs from milk with low SCCs that they would be unable to recover.

The witness for Dean Foods stated that there is no scientific evidence which shows that handlers or consumers benefit from lower somatic cell counts and that the inclusion of SCC adjustments in the pricing structure of producer milk within the Federal order system would ultimately be borne by the consumer. However, the witness stated, Dean Foods supports the inclusion of SCC premiums in Class II or Class III producer milk where there is evidence of improved yields due to reduced levels of somatic cells. According to the witness, Dean Foods has been marketing milk in the Southern Michigan market for over 30 years and operates a bottling plant, known as Liberty Dairy, located in Evert, Michigan.

According to the Leprino production manager, Leprino participates in milk quality programs based on several parameters, providing incentives for producers with high quality milk and disincentives for inferior quality milk. The witness noted that in the MCP hearing for Orders 33, 36, and 49, three studies were introduced into evidence and referenced in the recommended decision to justify adjusting the protein payment by SCCs. However, the witness argued that each study shows different yield impacts at different SCC levels in raw milk. The witness also noted a study which indicates that SCCs may affect yields, but day to day changes in milk composition obscure the effect. The witness pointed out that a study by the MMPA expert witness states that payment for milk quality should not rest solely on somatic cell counts.

The Leprino witness testified that scientific evidence indicates that the greatest yield benefits are at a level of 100,000 to 200,000 and greatest yield losses are above 500,000. The witness noted that the SCC limit under the PMO soon will be adjusted to 750,000. He stated that Leprino's proposal offers an adjustment of plus 20 cents to minus 20 cents for legal Grade A milk, and includes a prerequisite of other milk quality conditions that can affect cheese yield. The witness recommended that USDA use a conservative approach given the Department's limited experience with mandated milk quality criteria for payment purposes. The witness urged that the adjustments be uniform between all Federal orders to ensure orderly marketing.

The Leprino quality assurance director testified that the two methods for testing for the level of SCC are direct microscopic cell count (DMSCC) and optical somatic cell count (OSCC). She stated that the DMSCC is a tedious method which takes extensive training and precision to perform and is used to calibrate electronic methods. She estimated that equipment for performing SCC tests by the DMSCC method costs about $4,000. According to the witness, the OSCC methods are easily performed, generally more precise and are less labor intensive than the DMSCC. The witness stated that the unit cost for equipment is between $40,000 and $100,000, and when combined with infra-red component testing systems could range from $150,000 to $200,000.

The Leprino quality expert expressed opposition to the proposed order amendment which would allow no adjustment to a producer's protein price if an average SCC was not available for the month. The witness claimed that processors would not be able to reduce payments on high SCC milk if testing is not mandated. Therefore, the witness urged that testing be conducted no less than 5 times per month with at least one test per week. Furthermore, the witness recommended that if no tests are available, the handler should assume the milk falls in the highest adjustment category of 750,000 SCC per milliliter.

Leprino's production manager proposed that before any positive price adjustments are made, producer milk should meet (aside from antibiotics restrictions and added water limitations) minimum quality criteria such as psychrotrophic bacteria count of less than 25,000, and raw bacteria or standard plate count of less than 15,000.

The quality expert for Leprino testified that in addition to SCC, raw bacterial count (SPC) and psychrotrophic bacteria also have a direct influence on milk quality and hence its value to a processor. The witness stated that SPC gives an indication of sanitary practices around milking, transferring and the storage of milk. The witness claimed that SPC has been recognized and widely used as a basis for valuing milk. She added that psychrotrophic bacteria are those bacteria capable of appreciable growth under commercial refrigeration, regardless of the optimal growth temperature of the organisms. According to the witness, the bacteria degrades protein and fats, causing off-flavors, odors, slime formation and reduction in cheese yields.

The witness indicated that Leprino would accept once per month testing for both SPC and psychrotrophic bacteria, which is currently being done in most milk premium quality programs, as opposed to five tests per month because of the increased laboratory costs that would result. The witness stated that if one test has to be eliminated, Leprino would settle for psychrotrophic bacteria testing.

The NFO witness and MIF's brief observed that SCC is only one of several factors in NFO's and other quality programs. MIF's brief pointed out that current voluntary programs are based on bacteria level and standard plate count in addition to SCC. Additionally, the witness stated that the incorporation of a SCC adjustment would destroy the flexibility of voluntary quality programs.

The NFO witness stated that adoption of a SCC adjustment would overstate the importance of SCC among other factors used in determining milk quality. The witness claimed that the MMPA proposal elevates SCCs to a disproportionate role in determining the value of milk. He argued that this disproportionate emphasis on SCCs is exacerbated by the inherent vagaries of testing for SCCs.

The MIF brief and the NFO witness stated that somatic cell count is one of the more volatile variables in the measurement of milk quality and can vary significantly within the same herd. The NFO representative noted that the MMPA expert witness testified at the multiple component pricing hearing for Orders 33, 36 and 49 that tests for SCC are much less precise than tests for butterfat or protein. The witness explained that the variations in SCC tests within a herd during a month are much greater than for butterfat or protein.

According to MIF's brief, there is no quantifiable scientific evidence that the level of somatic cells results in any appreciable difference in the attributes of fluid milk, particularly attributes which would be discernible by consumers. MIF described the testimony of MMPA as failing to make an absolute statement regarding quantifiable economic benefits to fluid milk use resulting from lower somatic cell counts. MIF stressed that there is no need to pay a premium for reduced SCCs when the permissible count is being reduced by regulations. In briefs, MIF and NFO questioned whether it is appropriate for the Federal Order system to adopt a policy and administer practices which allocate economic advantages and disadvantages among certain segments of the dairy industry.

A somatic cell count adjustment should be adopted because it reflects the value of the level of somatic cells contained in milk. The adjustment will be on protein prices received by producers for all producer milk. There was significant testimony that elevated levels of somatic cells diminish the functional value of milk. A reduction in cheese yield, an increased rate of off-flavors and a reduction in the shelf-life of a fluid product all result from elevated levels of somatic cells.

The proponents' proposed neutral zone of 300,000 to 450,000 has been reduced to between 301,000 and 400,000 to better reflect the market's average somatic cell count and to correspond more closely with the multiple component pricing plan adopted for Orders 33, 36 and 49. Although increments of 100,000 were proposed, this decision breaks down somatic cell adjustments into increments of 50,000. Increments of 50,000 assure producers that if slight testing inaccuracies (which are greater in the case of somatic cells than for butterfat or protein) cause their protein price to be adjusted to the next level, that adjustment will not represent the entire value of a 100,000 increment of SCC.

In addition, because of the reduction in the maximum permissible somatic cell count, 750,000 and over will become the maximum increment for which protein prices will be adjusted for somatic cell content. It is possible that some Grade A producers may have an average somatic cell count of 750,000 or more for a month without losing Grade A status because of differences between the market administrators and health departments in the number of leucocyte (somatic cell) tests taken in a given period of time. In cases where a handler has not determined a monthly average somatic cell count for a producer, it will be determined by the market administrator.

Since the value of milk has been shown to be affected by the level of somatic cells, appropriate adjustments must be determined to apply to the various levels of somatic cells. These adjustments will be used to adjust the protein prices paid to individual producers. The somatic cell adjustment to producer protein prices will be computed by multiplying the appropriate constant for increment of somatic cell count by the monthly average 40-pound block cheese price at the National Cheese Exchange as published monthly by the Dairy Division. The resulting somatic cell adjustment will be added or subtracted from the protein price paid to producers.

The somatic cell adjustment to be used in determining protein prices paid to producers is derived from the reduction in cheese yield as the somatic cell level goes from zero to 1,000,000, converted to a value per pound of protein. The evidence contained in the hearing record shows that there is a one percent reduction in cheese yields as somatic cells increase to 100,000, and cheese yields decline an additional two to three percent as somatic cells increase from 100,000 to 1,000,000. There is also a maximum yield loss of about two percent as SCCs increase from 100,000 to 750,000. This decision reflects the proportional change in cheese yields as the SC level changes.

The constant to be used was computed by dividing the change in cheese yields attributable to changes in somatic cell counts by a representative protein test of producer milk (3.2%). As proposed, the adjustment to the producer protein price for somatic cell content would be computed by dividing the product of the cheese price and a factor that varies with the somatic cell level by the representative protein percent used in calculating the handler protein price.

MMPA's proposed factors varied from .20 for a somatic cell count below 100,001 to −.20 for a somatic cell count above 750,000. Leprino's proposed factors varied from .20 to −.25, and Country Fresh proposed factors varied from .128 to −.128. This decision includes factors that vary from .25 to −.25 and are based on the reduction in cheese yield associated with varying somatic cell counts. Although .20 was the maximum positive factor proposed, .25 should not overcompensate producers for producing the highest quality milk.

The factors adopted in this decision are similar to the ones proposed, with the largest difference occurring at SCC levels below 151,000 and above 500,000. Record testimony reveals that milk containing between 100,000 and 200,000 SCC yield the greatest benefits and milk containing more than 500,000 SCC yield the greatest losses in cheese production. Evidence also reveals that SCC per milliliter of milk typically ranges between 200,000 and 400,000. Therefore, it is logical to assume that the majority of Order 40 producers' SCCs will fall within the 200,000 to 400,000 range.

As shown in Table 1, the factors to be used in adjusting handler and producer protein prices for somatic cell content do not reflect a linear relationship between cheese yields and somatic cells because the relationship between these factors is not linear. Dividing these factors by a standard protein content of 3.2 yields the constants shown in Table 1 to be used for computing the somatic cell adjustment. Use of a constant substantially simplifies the computation of the somatic cell adjustment without changing the corresponding value. This result occurs because the protein percentage must change by a considerable amount before the adjustment will change. Therefore, the somatic cell adjustment will be calculated by multiplying the constant corresponding to each somatic cell count interval by the average price of 40-pound block cheese at the National Cheese Exchange as reported monthly by the Dairy Division.

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.250	.078125
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.0000000
351,000 to 400,000	.000	.0000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 to above	−.250	−.078125

Several hearing participants indicated that there is a great deal of overlap between Order 40 and Orders 33, 36 and 49, and stressed the importance of uniformity between the orders. This decision differs from the one recently issued for Orders 33, 36 and 49 because it recommends a somatic cell adjustment on all producer milk, as proposed. Proponents submitted their proposal after the recommended decision was issued for Orders 33, 36 and 49, but before the final decision in that proceeding was issued. There is no reason to believe that the resulting difference between the orders will have an adverse effect by allowing Order 40 handlers a competitive advantage over Orders 33, 36 and 49, or vice versa.

Although there is considerable overlap in the production areas of these four markets, significant differences currently exist in the prices paid to producers located in the same production areas but pooled under different orders. It is not likely that the considerably smaller differences in somatic cell adjustments to producer protein prices will cause any marketing disorders in milk procurement arrangements between the four marketing areas.

Regarding assertions that somatic cell adjustments would increase Class I handlers' cost of milk significantly, it is unlikely that any handler's total milk receipts would vary greatly from the market's average SCC. Even handlers with a somatic cell average in the 201,000–250,000 range will pay an SCC adjustment of no more than about 6 cents per hundredweight, which would still result in a lower Class I price than is effective in any of the other three marketing areas. It is also probable that application of somatic cell adjustments to milk used in Classes II and III, but not in Class I, would result in Class I handlers receiving lower-quality milk from suppliers without the payment of additional premium.

The effect of somatic cell adjustments on the advance nature of Class I prices should be expected to be minimal. The somatic cell adjustments are a very small portion of the cheese price and any changes from month to month would be correspondingly small in relation to changes in the cheese price. In addition, the biggest factor in Class I price movements is the amount of change in the M–W price, which can be expected on average to represent ten times the change in the cheese price.

Testimony in the record also reveals that Liberty Dairy, the Dean Foods plant located in Evert, Michigan, has a premium program currently in effect that includes a somatic cell count as one of the factors in pricing milk. Approximately 85 to 90 percent of the milk received at the plant is utilized in Class I.

The argument that somatic cell counts have wider fluctuations than butterfat or protein tests is apparently valid. However, the hearing record does not contain enough evidence that the variability in testing outweighs the benefits of including SCCs in the MCP plan. As specified in the Agricultural Marketing Agreement Act of 1937, one of the functions of the market administrator is "Providing * * * for the verification of weights, sampling and testing of milk purchased from producers." 7 U.S.C. 608c(5)(E) Since the market administrator will now be verifying the sampling and testing of milk for somatic cells, the variation in somatic cell levels due to testing should be minimized much as the differences in butterfat tests due to testing variations were minimized when the Federal milk order program was first instituted.

The Agricultural Marketing Agreement Act in 7 U.S.C. 608c(5) authorizes the Secretary to adjust minimum prices paid to producers based upon the quality of the milk purchased. Therefore, the argument that somatic cells cannot be used as a criterion for adjusting a producer's pay price is invalid. Furthermore, the hearing record shows that the level and presence of somatic cells directly affect the quality and grade of milk in that SCCs above a certain level result in the loss of a producer's Grade A permit.

Record evidence indicates that SCC is only one of the factors that affect milk quality. However, there is not enough substantial evidence to include other factors, such as psychrotrophic and raw bacteria count, as criteria used to

determine milk quality for payment purposes. Testimony indicates that there may be merit in including other quality factors besides SCC in Federal milk order pricing, but further study of the role of such other factors in affecting the value of milk is needed. In any case, the inclusion of other quality factors in this proceeding goes beyond the scope of the hearing notice.

With the inclusion of multiple component pricing in the Southern Michigan order as a result of this decision, certain conforming changes need to be made in the order to implement this decision. Since protein will now be priced under the order, each handler will need to include the amount of milk protein contained in total producer receipts, including protein contained in producer milk diverted to other plants, with its report of receipts and utilization. The assumption will be made that the protein is uniformly contained in the skim portion of the milk and may not be separated easily. Therefore, the protein will follow the skim milk through the allocation process and be allocated proportionately with the skim milk. For handlers filing payroll reports with the market administrator, the milk protein content and the average somatic cell count of each producer's milk protein content will be included on the payroll report in addition to the information currently reported to the market administrator on such reports.

To determine the proper price of milk components under the amended order, several price computations must be defined. These are the skim milk price, the butterfat price and the protein price. The skim milk price per hundredweight will be determined by subtracting the butterfat differential multiplied by 3.5 from the Class III price. The butterfat price per pound will be determined by adding the skim milk price divided by 100 to the butterfat differential. The handler protein price per pound will be determined by subtracting the butterfat price per pound, multiplied by 3.5, from the Class III price and dividing the result by the average protein content of milk used in obtaining the basic formula price (the Minnesota-Wisconsin price).

Two separate marketwide pools will be used to determine the amount that producers will be paid for the milk, and the protein contained in the milk, that they deliver. The first marketwide pool will determine the weighted average differential, while the second marketwide pool will determine the producer protein price. The weighted average differential is the additional value of the Class I and Class II milk in the pool and will be paid on all producer milk. The producer protein price is determined by the amount of protein used in Class II and Class III and the amount of skim milk used in Class I. In determining payments to producers, the producer protein price will be adjusted for each producer's somatic cell count, and be paid on a per pound of protein basis.

The weighted average differential is determined by computing for each handler the differential value of the product pounds used in Class I and Class II and then adding or subtracting, as is appropriate, the value of such items as inventory reclassification, shrinkage or overage, receipts of other source milk allocated to Class I, receipts from unregulated supply plants, and location adjustments. The above values are then combined for all handlers and the value of producer location adjustments and one-half the unobligated balance in the producer settlement fund are added. The resulting value is then divided by the total pounds of producer milk in the pool and an amount not less than six cents or more than seven cents will be subtracted to arrive at the weighted average differential for the zero zone.

The producer protein price is determined by combining, for all handlers, the value of the pounds of skim milk allocated to Class I at the skim milk price with the value of protein contained in the skim milk allocated to Class II and Class III at the handler protein price. The resulting total is divided by the total pounds of protein contained in pooled producer milk. Each producer's protein price will then be adjusted for the average somatic cell count of the individual's producer milk. The somatic cell adjustment will be determined by multiplying the cheese price by the appropriate constant for each producer's average somatic cell count.

Each producer will be paid based on total product pounds at the weighted average differential at the applicable zone, the pounds of protein contained in the producer milk at the protein price adjusted for the producer's average somatic cell count and the pounds of butterfat contained in the producer milk at the butterfat price.

The value of producer milk to each handler will consist of the sum of the value of pounds of producer milk in Class I times the difference between the Class I and Class III prices, the pounds of producer milk in Class II times the difference between the Class II price and the Class III price, the value of overage, inventory reclassification, other source milk, receipts from unregulated supply plants, handler location adjustments, the value obtained by multiplying the pounds of skim milk in Class I by the skim milk price and the value obtained by multiplying the pounds of protein contained in the skim milk in Class II and Class III by the protein price. The pounds of protein shall be computed by multiplying the pounds of skim milk in Class II and Class III by the percentage of protein contained in the skim milk of the handler's producer milk.

A handler's obligation to the producer settlement fund will be the difference between the value of producer milk to the handler and the sum of: (a) The value of the handler's receipts of producer milk at the weighted average differential price after adjusting for the producer's location, (b) the value of the protein contained in the handler's receipts of producer milk at the producer protein price, and (c) the value of other source milk at the weighted average differential adjusted for the location of the plant from which the milk was shipped.

Somatic cell adjustments to protein prices will be made when handlers pay producers for their milk. As in the case of payments to producers for butterfat, these adjustments do not have to be included in pool obligations or credits for payments to producers. The handlers receiving producer milk will pay for the protein in the milk based on its somatic cell count because they are the parties directly affected by the quality of milk they receive.

3. Administrative Assessment

The maximum allowable rate of assessment to be paid by handlers to cover the cost of administering the Southern Michigan order should be increased to 4 cents per hundredweight. The assessment would continue to be applied to the same milk to which the present assessment applies. The Act specifies that persons who are regulated shall pay the cost of operating the program through an assessment on the milk handled by regulated persons who are defined as handlers under the order. The present 2-cent per hundredweight maximum allowable rate of assessment has been provided for the administration of Order 40 since the order became effective on December 1, 1960.

The two-cent increase in the maximum allowable rate was proposed by MMPA. A witness for the cooperative association testified that the present ceiling on the deduction rate for administrative services does not adequately compensate the market administrator for all services rendered. In a post-hearing brief, MMPA stated that the market administrator should

have the authority to collect revenue necessary to perform the duties required by regulations. There was no other testimony on this proposal at the hearing. NFO's brief expressed support for MMPA's proposal.

The Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Michigan Upper Peninsula orders (Orders 33, 36, 40 and 44) are administered under the supervision of a single market administrator, headquartered in Cleveland, Ohio. Prior to 1992, Federal Orders 33 and 36 were administered by another market administrator.

The Balance Sheets and Income and Expense Statements for the Administrative Fund are compiled by the market administrator and reported annually to regulated handlers as well as to other interested parties. Record data for the years 1990 and 1991 show that the administrative expenses associated with the operation of Orders 40 and 44 exceeded the income the market administrator received from assessments by $80,000. However, when the four markets were consolidated in 1992, income exceeded expenses by $400,000. The change indicates that Orders 33 and 36 are bearing some of the financial responsibilities of Orders 40 and 44.

The witness for MMPA stated that the current rates of assessment for Federal Orders 33 and 36 are higher than for Orders 40 and 44. Furthermore, the witness noted, the recent recommended decision for Orders 33 and 36 sets the maximum allowable deduction rate for administrative services at 4 cents per hundredweight.

Handlers and producers serving the market have jointly asked that a new multiple component pricing program be provided to adjust the value of milk used by regulated handlers and payments to producers. The implementation and administration of that pricing plan for Order 40 may require the purchase of some new laboratory equipment and the performance of additional administrative duties. Many of the testing expenses associated with the multiple component pricing plan will be paid for with money from the marketing service fund. However, since the value of milk used by handlers in Classes I, II and III will be established on the basis of the milk's butterfat, protein and somatic cell content, some of the expenses related to establishing the level of these factors in producer milk likely will be paid for with money from the administrative fund. Thus, there is no reason to expect the expenses of administering the order to decline.

Providing a higher maximum rate of assessment in the order does not mean that the higher rate will apply automatically when the amended order becomes effective. The amendment gives the market administrator the discretionary authority to set the rate at any level up to the maximum specified in the order. When the amended order becomes effective, the market administrator may decide that no change in the effective assessment rate is necessary, or that some increase to a level less than the maximum allowed is warranted. Further, an increase in the maximum rate will assure that Order 40 will bear, with Orders 33 and 36, an equitable share of the cost of operating the market administrator's office.

4. Marketing Service Assessment

The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat, protein, somatic cell testing, and market information for nonmember producers should be increased to 7 cents per hundredweight under the Southern Michigan order. The increase is needed to assure sufficient revenue to cover the expenses incurred by the market administrator in providing such services to producers who are not members of a qualified cooperative association. Currently, the maximum allowable deduction for such services is 5 cents per hundredweight. Like the administrative assessment, this maximum rate has been effective since December 1, 1960.

Michigan Milk Producers Association proposed that the maximum allowable assessment rate for marketing services be increased to 7 cents per hundredweight. The MMPA representative testified that the market administrator provides services which involve verification of weights, samples and tests of milk received from producers, as well as providing market information to producers who are not members of a cooperative association. The witness and MMPA's post-hearing brief stated that in order for the market administrator to adequately perform the duties required by the order, he must be allowed to have the authority to collect the revenue necessary to provide those services. A post-hearing brief filed on behalf of NFO supported MMPA's proposal. There was no opposition to the proposal.

The Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Michigan Upper Peninsula orders (Orders 33, 36, 40 and 44) are administered under the supervision of a single market administrator, headquartered in Cleveland, Ohio. Prior to 1992, Federal Orders 33 and 36 were administered by another market administrator.

The Balance Sheets and Income and Expense Statements for the Marketing Service Fund are compiled by the market administrator and reported annually to nonmember producers as well as to other interested parties. Record data for the years 1990 and 1991 show that the expenses incurred by the market administrator in providing marketing services exceeded income by about $54,000. In 1992, when the statements for the four markets were combined, expenses exceeded income by approximately $116,000.

It is evident from the foregoing that the 5-cent deduction from producer payments for marketing services in the Southern Michigan order have been inadequate to cover the costs incurred in the performance of such duties by the market administrator. It also shows that the financial situation worsened when the statements were combined in 1992. The increase will align the maximum marketing service assessment rate of Order 40 with that recently adopted for Orders 33 and 36. In addition, the multiple component pricing plan adopted in this decision will require additional testing activities. Since not all handlers are equipped to make all of the determinations that will be required under the amended order, many of these duties will have to be performed by the market administrator responsible for administering the order.

The 7-cent maximum rate of deduction for marketing services proposed by MMPA should be provided in Order 40. The higher rate should give the market administrator the necessary flexibility to conduct effective marketing service programs, including any additional duties relating to the implementation and administration of the new pricing program that will be incorporated in the order.

Provision of a 7-cent maximum rate does not mean that the 7-cent rate will become effective automatically. Maximum rather than fixed rates of deduction are specified in the orders because the relationship between income and expenses for the fund is subject to many variables. Changes in the pounds of nonmember milk marketed and the rate assessed on these marketings increase or decrease the income of the marketing service fund, while changes in order requirements and the expenses of providing marketing services result in changes in total outlays.

An increase in the maximum allowable assessment will give the market administrator the discretionary authority to set the rates of deduction for marketing services at levels necessary to cover the expense of providing marketing services. The market administrator may use his discretionary authority to determine if rates below the upper limits adopted in the amended order will provide sufficient funding to conduct an adequate program for nonmember producers.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Michigan order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held; and

(d) It is hereby found that the necessary expense of the market administrator of the Southern Michigan order for the maintenance and functioning of that agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1040.85 of the aforesaid tentative marketing agreement and the order regulating the handling of milk in the Southern Michigan Federal milk order as proposed to be amended.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Southern Michigan marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1040

Milk marketing orders.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The authority citation for 7 CFR part 1040 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

1. Section 1040.7 is amended by adding paragraph (b)(5)(iii) to read as follows:

§ 1040.7 Pool plant.

* * * * *

(b) * * *

(5) * * *

(iii) A partially regulated distributing plant that is neither an other order plant, producer-handler plant, nor an exempt plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

* * * * *

2. Section 1040.30 is amended by revising paragraphs (a)(1), (a)(6) and (c)(1), to read as follows:

§ 1040.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants, showing the pounds of milk, and the butterfat and milk protein contained in the milk;

* * * * *

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph, including any information with respect to the receipts and utilization of skim milk, butterfat and milk protein as the market administrator may prescribe;

* * * * *

(c) * * *

(1) The quantities of skim milk, butterfat and milk protein contained in receipts of milk from producers; and

* * * * *

3. Section 1040.31 is amended by revising paragraphs (a)(2), (a)(3) and (a)(4), to read as follows:

§ 1040.31 Payroll reports.

(a) * * *

(2) The total pounds of milk, with the protein and butterfat content;

(3) The average somatic cell count of such milk; and

(4) The price per hundredweight, butterfat and milk protein prices and somatic cell adjustment to the protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

* * * * *

4. Section 1040.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1040.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

5. Section 1040.50 is amended by revising the section heading, revising the introductory text and paragraph (a), and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1040.50 Class and component prices.

Subject to the provisions of § 1040.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.75.

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1040.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1040.74 times 35, and rounding the result to the nearest whole cent.

6. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month;

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1040.50 (d), (e) and (f) for the preceding month; and

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1040.50(b).

7. The heading before § 1040.60 is revised to read "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS".

8. Section 1040.60 is revised to read as follows:

§ 1040.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler with respect to each of his pool plants, and for each handler described in § 1040.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1040.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1040.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1040.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1040.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1040.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(14) and the corresponding step of § 1040.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1040.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1040.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1040.44(a)(14) and the corresponding step of § 1040.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1040.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1040.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1040.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1040.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1040.44(a)(9) and the corresponding step of § 1040.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1040.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(9) and the corresponding step of § 1040.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1040.44(a)(9) and the corresponding step of § 1040.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(7)(i) through (iv), and the corresponding step of § 1040.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(7)(v) and (vi) and the corresponding step of § 1040.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(11) and the corresponding step of § 1040.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1040.44, multiplied by the skim milk price for the month computed pursuant to § 1040.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1040.50(e).

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1040.76(c).

9. Section 1040.61 is revised to read as follows:

§ 1040.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1040.60, paragraphs (a) through (g) and (j) and (k), for all handlers who made reports pursuant to § 1040.30 and who made payments pursuant to § 1040.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1040.75(a) and (b);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1040.75(a) and (b);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1040.60(g).

(f) Subtract not less than 6 cents not more than 7 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

10. Section 1040.62 is revised to read as follows:

§ 1040.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1040.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1040.30 and who made payments pursuant to § 1040.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer protein price."

11. New §§ 1040.63 through 1040.66 are added under the revised heading "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS" to read as follows:

§ 1040.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1040.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1040.65 and 1040.73.

§ 1040.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 11th day after the end of the month the weighted average differential price computed pursuant to § 1040.61, the producer protein price computed pursuant to § 1040.62 and the uniform price computed pursuant to § 1040.63(a).

§ 1040.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1040.61 and adjusted pursuant to § 1040.75; multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1040.62 and adjusted pursuant to § 1040.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1040.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1040.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment:

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.250	.078125
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

12. Section 1040.71 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1040.71 Payments to the producer-settlement fund.

(a) * * *

(1)(i) The total obligation of the handler for such month as determined pursuant to § 1040.60; or

(ii) In the case of a cooperative association which is a handler, the value of milk delivered to other handlers pursuant to § 1040.43(d).

(2) The sum of:

(i) The value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant to § 1040.73 excluding any applicable location adjustment pursuant to § 1040.75(a)(3); and

(ii) The value of the protein in such handler's receipts of producer milk at the producer protein price computed pursuant to § 1040.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1040.60(g).

* * * * *

13. Section 1040.73 is amended by revising the first sentence of paragraph (a), paragraph (b)(1)(ii), and paragraph (c), to read as follows:

§ 1040.73 Payments to producers and to cooperative associations.

(a) Except as provided by paragraph (b) of this section, on or before the 15th day of the each month, each handler (except a cooperative association) shall pay each producer for milk received from him during the preceding month, not less than the value determined pursuant to § 1040.65, less any payment made pursuant to paragraph (d) of this section. * * *

(b) * * *

(1) * * *

(ii) The total pounds of butterfat, and protein contained in such milk and the average somatic cell count;

* * * * *

(c) On or before the 13th day after the end of each month, each handler shall pry a cooperative association, which is a handler with respect to milk received by him from a pool plant operated by such cooperative association or by bulk tank delivery pursuant to § 1040.9(c), not less than an amount determined pursuant to § 1040.65, less any payments made pursuant to paragraph (d) of this section.

* * * * *

14. Section 1040.75 is amended by revising paragraph (a)(1) and paragraph (c) to read as follows:

§ 1040.75 Plant location adjustments for producers and on nonpool milk.

(a) * * *

(1) May deduct for milk to be paid for at the value determined pursuant to § 1040.65 the rate per hundredweight applicable pursuant to § 1040.52(a) (1) or (2) for the location of the plant at which the milk was first physically received.

* * * * *

(c) For purposes of computation pursuant to §§ 1040.71 and 1040.72 the weighted average differential price shall be adjusted at the rates set forth in § 1040.52 applicable at the location of the nonpool plant from which the other source milk was received except that the weighted average differential price shall not be less than the zero.

§ 1040.85 [Amended]

15. The introductory text of § 1040.85 is amended by changing the words "2 cents" to "4 cents".

§ 1040.86 [Amended]

16. Section 1040.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents."

Dated: November 29, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93–29749 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 113

[Notice 1993–32]

Expenditures; Personal Use of Campaign Funds

AGENCY: Federal Election Commission.

ACTION: Notice of hearing.

SUMMARY: On August 30, 1993, the Federal Election Commission published a Notice of Proposed Rulemaking regarding the personal use of campaign funds. 58 FR 45463. In a subsequent document the Commission invited persons who would be interested in testifying at a public hearing on the proposed rules to submit requests to testify. 58 FR 52040. The Commission received three requests to testify in response to this invitation. Consequently, the Commission has decided to hold a public hearing on the proposed rules.

DATES: The Commission will hold the hearing on its proposed rules on the personal use of campaign funds on January 12, 1994 at 10 a.m.

Any additional persons who wish to testify at the hearing should inform the Commission in writing before December 10, 1993.

ADDRESSES: Requests to testify must be in writing and addressed to Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. The hearing will be held at the Federal Election Commission, Ninth Floor Hearing Room, at that address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

Dated: November 30, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–29600 Filed 12–3–93; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0812]

Truth in Savings; Proposed Regulatory Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation DD (Truth in Savings) to provide a more precise calculation of annual percentage yields (APYs) for certain accounts under a uniform method that gives consumers an enhanced basis for comparing across a broad range of accounts. This action is taken in response to difficulties that some institutions have experienced with the current formula. Under the proposal, the APY would reflect not only the effect of compounding but also the time value of money for consumers who receive interest payments during the term of the account. The amendments would not affect accounts that make a single interest payment at maturity (whether or not compounding occurs), nor would they affect most accounts with daily compounding. The Board also solicits comment on whether taking a narrower approach—or leaving the regulation unchanged—is preferable, given the potential burden associated with implementing a different calculation method at this time.

DATES: Comments must be received on or before January 13, 1994.

ADDRESSES: Comments should refer to Docket No. R–0812, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street

NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Kyung Cho, Kurt Schumacher or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for questions associated with the regulatory flexibility analysis, Gregory Elliehausen, Economist, Office of the Secretary, at (202) 452–2504; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION: (1) *Background.* The Truth in Savings Act (act) (12 U.S.C. 4301 et seq.) requires depository institutions to provide disclosures to consumers about their deposit accounts, including an APY on interest-bearing accounts.[1] The law also contains rules about advertising deposit accounts, including accounts at depository institutions offered to consumers by deposit brokers. The Board is authorized in section 269(a)(3) of the act to make adjustments and exceptions that, in its judgment, are necessary or proper to carry out the purposes of the act or to facilitate compliance with the requirements of the act. The act is implemented by the Board's Regulation DD (12 CFR part 230), which became effective June 21, 1993. (See final rule published on September 21, 1992 (57 FR 43337), correction notice published on October 5, 1992 (57 FR 46480), and amendments published on March 19, 1993 (58 FR 15077).)

Time Value of Money in the Annual Percentage Yield

In implementing the Truth in Savings Act, the Board sought to fulfill the Congress' intent to provide consumers with a uniform tool that would enable them to make informed decisions regarding deposit accounts. In the rulemaking that resulted in the final rule of September 1992, the Board was guided by several general principles, such as establishing simple rules that minimize the possibility of errors and compliance costs and providing institutions with flexibility to promote a variety of product choices for consumers. This included designing a simple, easy-to-use formula for calculating the APY.

It has since come to the Board's attention that for some accounts the regulation's current formula for calculating the APY produces results that seem anomalous. The formula assumes that interest paid remains on deposit until maturity. Because the formula sometimes ignores the opportunity to reinvest interest received, it does not always reflect the time value of money. When consumers receive interest payments over several years prior to maturity, the formula produces results that seem especially anomalous, with an APY that is lower than the contract interest rate.[2]

Yet other accounts in which interest is paid before maturity, the current formula effectively reflects the time value of money in the resulting APY. This situation occurs when interest is compounded on an account that gives consumers the *option* to take interest payments at intervals when the interest would otherwise compound. In this circumstance, the APY disclosed is the same for consumers who receive interest payments as for those who choose to leave interest in the account for compounding.[3]

To reduce these apparent anomalies and account for the timing of interest payments, the Board is soliciting comment on proposed amendments to Regulation DD that provide a single alternative formula for calculating the APY. The Board believes the act's purposes—providing a uniform method of computing the APY for effective comparison shopping—are better fulfilled by a formula that captures both total interest paid and the timing of interest payments. Because the calculation would be more precise, the Board believes it may be preferable to the current computation method. The Board is concerned that amending the regulation at this time and in the manner proposed might have a significant impact on the compliance programs many institutions have already put in place to comply with Regulation DD. If the burden of compliance costs is shown to exceed the benefits consumers may derive from the proposed calculation, the Board will consider whether a narrower solution, or making no change to the regulation, may ultimately be more satisfactory.

(2) *Proposed regulatory revisions.*

Approach A: Proposal of Additional Formula

The Board is proposing for comment a new formula for the APY that reflects not only the effect of compounding, but also the value of receiving interest during the term of the account. Institutions offering accounts that pay interest only at maturity (regardless of whether or when compounding occurs) and accounts that compound daily (other than accounts involving stepped-rate calculations) would not be affected by this proposal.

The proposal bases the calculation of the APY on a commonly-used computation tool, a standard internal rate of return formula. This formula, labeled "Formula for all accounts," appears in Appendix A, section 1.A., below. Although the proposed formula may be used by institutions to calculate APYs for all accounts, at their option, use of the formula would be required for institutions offering accounts involving stepped-rate calculations that make interest payments prior to maturity. It also would be required for accounts that pay interest prior to maturity if interest is not compounded daily. If any change to the current rule is adopted, the Board contemplates providing institutions with a sufficient period—such as nine months from the date the amendments become final—to implement any necessary changes in operating systems before compliance with the amendments become mandatory.

The Board believes that the new formula would provide more helpful information to consumers for making investment decisions in the marketplace, given that depository institutions often offer consumers a choice regarding interest payments on deposit accounts. After considering many alternatives, the Board believes an internal rate of return formula is the best method for computing the APY in a way that fulfills the Congress's intent to provide consumers with a uniform tool to compare accounts.

The Board is aware that requiring the use of the new formula would affect existing format, account disclosure, and advertising requirements, among others. The Board is concerned that amending

[1] For convenience, the terms "APY" and APYE" (for annual percentage yield earned) are used throughout the supplementary information.

[2] For example, assume a consumer deposits $1,000 in a two-year noncompounding CD with a 6.00% interest rate. If the institution pays out interest annually, the consumer receives $60 each year. Because the formula reflects only the total amount of interest paid regardless of when it is paid out ($120 at the end of two years, in this example), the APY for the two-year CD is 5.83%—which is lower than the 6.00% interest rate.

[3] To illustrate, assume a consumer deposits $1,000 in a one-year CD with a 6.00% interest rate that compounds quarterly. The consumer receives $61.40 in interest at maturity, and the institution discloses a 6.14% APY. If the consumer receives interest checks each quarter, the current APY is still 6.14%, because the regulation requires the institution to assume that interest continues to compound in the account until maturity. In this case the consumer receives only $60 in four $15 quarterly payments.

the regulation not long after its effective date could impose additional burdens on depository institutions, and asks for general comment on the potential cost. To help weigh the burden against the potential advantage to consumers, the Board also solicits comment on whether commenters believe the new calculation would improve or reduce the value of the APY in consumer comparisons of investment choices in the marketplace.[4]

The Board is also aware of differences in disclosed returns among various investment products. For example, a two-year Treasury note sold at par value that bears a coupon rate of 6.00% and makes semi-annual interest payments states a 6.00% yield. In contrast, a two-year CD with a noncompounding 6.00% interest rate and semi-annual interest payments would disclose a 5.83% APY under the current formula and a 6.09% APY under the proposal. Would these kinds of differences cause significant confusion for consumers?

Approach B: Noncompounding Multi-Year CDs

In considering whether to propose a new APY formula, the Board discussed taking a narrower approach that would address only the calculation of APYs for noncompounding CDs that have maturities longer than one year and that provide interest payments at least annually. The current formula produces a APY that is lower than the contract interest rate even if institutions make interest payments at least annually. Under the alternative approach considered by the Board, the APY for a multi-year CD that does not compound but pays interest at least annually would always be the same as the contract interest rate.[5] This approach corresponds to the way in which the return is calculated on Treasury securities and similar investments when they are purchased at par value.[6]

The Board recognizes that this narrower approach would produce less precise calculations than would the use of an internal rate of return formula because the resulting APY would not reflect differences in periodic interest distributions. For example, it would not differentiate between annual or monthly interest payments. Compared to the current rule, how would a narrower approach improve or reduce the value of the APY in comparing different accounts? If commenters believe a narrower approach is preferable, how would the compliance costs to implement the narrower rule compare to the costs to implement the formula proposed in Approach A?

Approach C: Leaving the Regulation Unchanged

In light of concerns about requiring changes soon after the regulation's effective date and questions about whether the costs of the proposed changes could outweigh the benefits to consumers, the Board solicits comments on whether the regulation should be left unchanged.

(3) *Section-by-section analysis.*

A section-by-section description of proposed amendments follows.

Section 230.2—Definitions

Paragraph (c)—Annual Percentage Yield

The act and regulation define the APY as the total amount of interest that would be received based on the interest rate and the frequency of compounding for a 365-day year. The proposed amendment broadens the definition to treat the distribution of interest to the consumer as the equivalent of compounding. For example, if an institution pays a 6.00% interest rate on an account, the same APY would result whether an institution compounds monthly or sends out monthly interest payments.

Section 269 of the act authorizes the Board to make adjustments and exceptions that are necessary or proper to carry out the purposes of the act. The Board solicits comments on whether an exception should be made to the definition of APY, and whether the purpose of the regulation—enabling consumers to make informed decisions about deposit accounts—is better met if the APY captures the time value of interest received as an interest payment during the term of the account, as well as by compounding.

Paragraph (i)—Crediting

The act and regulation require institutions to disclose crediting policies for interest-bearing accounts. The Board proposes to define the term "crediting" to include the payment of interest to a consumer, either by payment to the account or by check or transfer to another account. The Board believes that using a single term to describe the various methods by which interest is paid to a consumer will simplify the regulation (particularly Appendix A, dealing with the APY formula). A uniform definition also would ease compliance when institutions disclose their interest crediting frequencies. (See paragraph 4(b)(2).) The Board believes that the term "compounding"—when interest begins to earn interest in an account—has a uniform meaning in the industry; thus, a regulatory definition is not proposed. The Board requests comment on the proposed definition of "crediting" and on whether the term "compounding" should be defined.

Section 230.4—Account Disclosures

Paragraph (b)(6)—Features of Time Accounts

Paragraph (b)(6)(iii)—Withdrawal of Interest Prior to Maturity

The regulation contains a disclosure for institutions offering time accounts that compound interest and permit a consumer to withdraw accrued interest during the account term. Institutions must currently disclose that the APY assumes interest remains on deposit until maturity of the account and that interest withdrawals will reduce the earnings on the account. The proposal would delete the disclosure as unnecessary since, under the proposed amendments, the APY would reflect the receipt of interest at specific time intervals.

Section 230.5—Subsequent Disclosures

Paragraph (a)—Change in Terms

Paragraph (a)(2)—No Notice Required

Paragraph (a)(2)(iv)—Changes to the Frequency of Interest Payments Initiated by the Consumer

The act and regulation require institutions to give 30-days' advance notice of any change in the account disclosures if the change might reduce the APY or adversely affect the consumer.

The proposal would create an exception for changes to the interest-payment intervals that are initiated by the consumer. For example, if a consumer receives monthly interest payments on an account and prior to maturity requests the institution to start making payments semi-annually, no advance notice would be required. However, if an institution that permits interest payments monthly eliminates that payment option during the term of an account, advance notice would be

[4] For example, under the current formula, a 5.83% APY is disclosed for a two-year CD with a noncompounding 6.00% interest rate and semi-annual interest checks. Under the proposal, a 6.09% APY would be disclosed (reflecting the value of the semi-annual interest checks).

[5] An example is a two-year CD that pays a 6.00% interest rate and does not compound interest but pays out interest checks at the end of each year. Under the current regulation, institutions would disclose a 5.83% APY, but under Approach B institutions would disclose a 6.00% APY whether checks are sent annually or more frequently.

[6] Treasury notes and bonds provide semi-annual interest payments, and the investment yield reflects the interest coupon rate and whether the securities are sold at a discount or a premium.

required for consumers who are receiving monthly payments.

Section 269 of the act authorizes the Board to make adjustments and exceptions that are necessary or proper to carry out the purposes of the act. The Board solicits comment on whether the proposed exception to the change-in-terms notice requirements should be made.

Appendix A to Part 230—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

A. General Rules

Appendix A establishes the rules that institutions use to calculate the APY. Currently, Part I contains the calculations for account disclosures and advertisements. Two APY formulas are provided: A "general" formula that can be used for all types of accounts and a "simple" formula that can be used for accounts that have a maturity of one year or that have an unstated maturity. Assumptions and other general rules regarding the formulas are addressed in section I.A.

As discussed above, the Board proposes to add a formula that takes into account the time value of money based on when the consumer receives interest. The general rules applicable to all APY calculations for account disclosures and advertisements would appear in Part I.A. A new section I.A.1 would explain the proposed new formula and accompanying rules for calculations, and section I.A.2. would explain when institutions may use the existing formula.

The proposal would change some assumptions. For example, the current formula generally requires institutions to assume that all interest and principal remain on deposit and that no transactions (deposits or withdrawals) occur during the term of the account. Because the proposed new formula factors in the timing of interest payments, institutions would continue to assume that no deposits occur during the term of the account, but would consider when interest withdrawals are made.

The Board proposes to delete footnote 3 as unnecessary, given that the proposed formula specifically factors in when interest payments are made on an account.

The Board proposes to incorporate two assumptions to provide greater flexibility and ease compliance with the new formula. First, institutions could calculate the APY by assuming an initial deposit amount of $1,000. Or, institutions could factor in the actual dollar amount of a deposit, although the Board notes that the effects of rounding interest paid on a very small deposit amount such as $25 can produce a skewed APY.

Second, if interest is paid out monthly, quarterly, or semi-annually, institutions could base the number of days either on the actual number of days for those intervals or on an assumed number of days (30 days for monthly distributions, 91 days for quarterly distributions, and 182 days for semiannual distributions). Appendix A currently permits institutions to use a similar assumption for determining the number of days in the term of a "three-month" or "six-month" time account, for example. (Of course, if the institution chooses to use 91 days as the number of days for each quarter, it must also use 91 days to compute interest for those quarters. And see § 230.7, which requires institutions to pay interest on the full principal balance in the account each day.) To illustrate, assume the institution sends interest payments at the end of each calendar month to consumers with six-month CDs. If the institution bases its APY calculation on an assumed term of 183 days, the institution could calculate the effect of monthly interest payments by using the actual days in each calendar month or assuming five 30-day intervals and one 33-day interval.) The Board solicits comment on the proposed assumptions.

1. Formula for All Accounts

The new formula, which is a standard internal rate of return formula, could be used for all accounts. It would have to be used for accounts that: (1) involve stepped-rate calculations (regardless of the compounding frequency) that pay interest prior to the maturity of the account, and (2) pay interest prior to the maturity of the account if interest is not compounded daily. For example, institutions would use the formula to calculate the APY for a one-year time account that compounds semi-annually and for which the consumer receives interest payments during the year. Institutions also would use the formula for stepped-rate accounts, with daily compounding, where the consumer receives interest payments during the term of the account.

The proposed formula and the existing formula produce the same result for two commonly offered accounts (and, thus, institutions could use either formula to calculate the APY): (1) accounts where interest is paid only in a single payment at maturity (whether or not interest is compounded), and (2) accounts not requiring stepped-rate calculations that compound interest daily. For transaction accounts such as NOW accounts and money market deposit accounts (MMDAs), institutions could continue to use the existing formula unless they do not compound daily or unless they require stepped-rate calculations, in which case they would disclose an APY based on the new formula.

The APY is determined directly from the proposed formula. For an internal rate of return program that is standard for most calculators and software, calculations would consider the amount and days at which payments are made in relation to the amount and day of the deposit. Using standard programs, the calculation will result in a daily yield, which is annualized to produce the APY.[7] To ease compliance and calculations with standard programs for internal rates of return, the proposed examples include figures such as the daily periodic rate and daily yield. The Board solicits comment on the proposed formula and proposed examples, and whether additional examples should be given.

2. Formula for Certain Accounts

Proposed section I.A.2. contains the formulas currently in Appendix A. Institutions could continue to use them for accounts with a single interest payment made at maturity (whether or not compounding occurs prior to maturity). These formulas may also be used for accounts that compound daily and pay interest prior to maturity—except for accounts involving stepped-rate calculations. When these formulas are used for accounts that compound daily, the time value of money is reflected by the assumption that interest remains in the account, even though consumers may choose to receive interest payments during the term of the account (as Example 2 illustrates).

Institutions offering stepped-rate accounts (or variable-rate accounts with an introductory premium or discount rate) that compound daily (or on another frequency) and pay interest prior to the maturity of the account would be required to use the proposed formula rather than the existing formula. Otherwise, the APY would reflect the assumption that interest earned at the initial rate remains in the account and earns interest at the rate paid in succeeding periods.

[7] Annual percentage yield=(daily yield/100+1)^{365} −1.

B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)

This paragraph provides two examples for calculating the APY for accounts that have two or more interest rates that take effect in succeeding periods and are known when the account is opened (stepped-rate accounts). Minor amendments to the text, without substantive change, are proposed. Also, an additional example is proposed to illustrate the use of the new formula.

C. Variable-Rate Accounts

Appendix A currently provides that the APY for a variable rate account with an introductory premium (or discount) must be calculated like a stepped-rate account, and provides an example using the current "simple" formula. The Board proposes to modify the example in Part I.C. to illustrate the use of the proposed new formula.

Part II. Annual Percentage Yield Earned for Periodic Statements

Institutions that send periodic statements for interest-bearing accounts must disclose information, including the annual percentage yield earned (APYE). The APYE is tied to the interest earned and the account balance for the period reflected on the statement. Appendix A, Part II, sets forth two formulas for calculating the APYE: a general formula and a formula for accounts that compound interest and send periodic statements more frequently than the compounding period.

Under the proposal, a savings account that compounds quarterly but permits monthly interest payments would disclose an APY reflecting the value of receiving interest monthly rather than quarterly. For example, an institution offering an MMDA with a 6.00% interest rate would disclose a 6.17% APY to consumers who chose to receive monthly interest payments. However, if periodic statements are sent quarterly, the APYE would be lower than the disclosed APY (in this example, 6.14%, assuming an initial deposit of $1,000 and no activity in the account during the 91-day quarter).

The Board recognizes that the APYE may vary from the APY disclosed in advertisements and in account-opening disclosures, depending on the activity in an account during a statement cycle. This is the case regardless of whether periodic statements are sent at the same or a different frequency as interest distributions or compounding periods. The Board believes the proposed changes to the calculation of the APY do not require a corresponding amendment to the rules regarding the calculation of the APYE. However, the Board solicits comment on the potential differences between the APY that may be disclosed under the proposal and the APYE, and whether consumers are likely to be confused by those differences.

Appendix B—Model Clauses and Sample Forms

1. *B–1 Model Clauses.* Clause (b)(i) provides model language that may be used to disclose the frequency of an institution's compounding and crediting practices. The proposal adds a new sentence providing model language to use when interest is credited by check payments or transfer to another account. In accord with the proposed deletion of paragraph 4(b)(6)(iii), the Board also proposes to delete clause (h)(iii), and to redesignate clause (h)(iv) as (h)(iii).

2. *B–7 Sample Form.* Given the proposed deletion of paragraph 4(b)(6)(iii) and model clause B–1(h)(iii), the proposal would delete the last two sentences in the first paragraph of the sample form.

3. *B–7a Sample Form.* The proposed new sample form illustrates a disclosure for a CD that offers consumers the options to compound interest or to receive interest on a more frequent basis. The form discloses which interest payment option was chosen, and an APY reflecting that choice.

(4) *Proposed additional guidance.* The proposed regulatory amendments associated with a new APY formula raise other interpretive issues. The Board solicits comments on the issues addressed below.

Section 230.3(a)—Form

The Board believes that institutions must indicate in some manner which options and yields apply to the terms chosen by the consumer. The regulation provides institutions with great flexibility in designing their disclosures, as long as the information is presented in a format that allows consumers to readily understand the terms of their own accounts (see § 230.3(a)), as illustrated in proposed B–7a Sample Form.

Section 230.3(e)—Oral Response to Inquiries

The regulation provides that institutions must state the APY when responding to oral inquiries about rates. For example, on a one-year CD that pays an interest rate of 6.00%, compounds semi-annually, and permits interest to be withdrawn quarterly or monthly, the consumer could receive an APY of 6.09% (semi-annual compounding), or 6.14% (quarterly interest payments) or 6.17% (monthly interest payments) under the proposed formula. In stating an APY that will vary depending on a consumer's choice of interest payments, any of several approaches could be taken. An institution could:

- State any currently available APY.
- State any currently available APY, along with any compounding or crediting period, such as, "An annual percentage yield of 6.17% assumes you receive monthly interest payments."
- State the lowest and highest APYs for a given maturity.
- State all APYs for the account.

The Board solicits comment on which approach best serves consumers who are comparison shopping.

Section 230.4(a)—Delivery of Account Disclosures

Paragraph 4(a)(2)(ii)—Requests

The Board solicits comment on the approaches suggested for giving oral responses to requests for information (discussed in regard to paragraph 3(e)), as they would apply to responding to a request for written account disclosures.

Section 230.4(b)(1)(i)—Annual Percentage Yield and Interest Rate

The Board believes the regulation would require institutions offering a variety of options for compounding or interest payments to disclose the APY reflecting the specific interest payment or compounding option chosen by the consumer, because disclosures must reflect the terms of the legal obligation (see § 230.3(b)). Indicating in some manner which of several yields preprinted on a rate sheet applies to the consumer's account would be an acceptable way of complying. (See § 230.3(a), which provides flexibility in designing disclosures.)

Section 230.4(b)(2)—Compounding and Crediting

Paragraph (b)(2)(i)—Frequency

The regulation requires institutions to disclose the frequency with which interest is compounded and credited. This standard would require institutions also to specify the crediting frequency for interest payments sent directly to the consumer or to another account, whether by check or other means, as well as when interest is credited to the account.

The Board believes that just as the disclosure of the compounding frequency permits consumers to correlate a higher APY with more frequent compounding periods, the disclosure of an interest payment frequency schedule for an account could

assist consumers in understanding why APYs may vary. So, if a multi-year time account does not compound interest but pays interest annually, the proposal would require the institution to state that interest is credited annually. The Board solicits comment on the proposed disclosure and on whether stating the frequency of crediting by interest payments or transfers to other accounts is likely to help consumers compare and understand differences in the disclosed APYs.

Section 230.5(b)—Notice Before Maturity for Time Accounts Longer Than One Month That Renew Automatically

Annual Percentage Yield

The regulation requires institutions to provide disclosures, including the APY, prior to maturity of automatically renewing time accounts. If the new interest rate and APY are known at the time the notice is sent, the Board believes institutions must state the interest rate and APY that correspond to the specific compounding and interest payment options applicable to the account at the time the notice is sent.

If the APY and interest rate are not known, institutions must disclose when that information will be available and provide a telephone number for consumers. The Board believes that oral responses giving specific APYs would be important to consumers in comparing accounts. However, the Board recognizes the potential cost of compliance for institutions that may not have online access to computerized account information about what options apply to a particular account. The Board solicits comment on the approaches for disclosure under paragraphs 3(e) and 4(a)(2)(ii) as they would apply to a renewing rollover CD.

Compounding and Crediting Frequency

The regulation requires institutions to disclose the specific compounding and crediting frequency applicable to renewing CDs. (See § 230.3(b), which requires that disclosures reflect the legal obligation of the account agreement.) The Board solicits comment on the approaches for disclosure under paragraphs 3(e) and 4(a)(2)(ii) as they would apply to the compounding and crediting frequencies of a renewing rollover CD. The Board solicits comment on the potential compliance costs for tracking and disclosing the consumer's current choice for compounding and crediting frequencies, particularly for accounts that require account disclosures to be given, such as CDs with maturities longer than one year.

Section 230.8(b)—Permissible Rates

The Board solicits comment on whether an advertisement for an account offering consumers a variety of interest payment options may state any available APY. For example, assume an institution advertises a one-year CD that pays a 6.00% interest rate, compounds semi-annually, and permits interest to be withdrawn quarterly or monthly. May the institution advertise only one APY such as 6.17% (monthly interest payments), or must the advertisement disclose all three rates: 6.09% (semi-annual compounding), 6.14% (quarterly interest payments), and 6.17% (monthly interest payments)?

The Board solicits comment on this issue, and alternatives such as the desirability of requiring the lowest APY also to be stated if a higher APY is quoted. How would institutions' advertising be affected by these alternative requirements for advertising? Would institutions reduce the frequency of advertising yields, for example? How would these alternatives affect the value of the information that consumers receive from advertising? The Board also solicits comment on whether an advertisement should be considered misleading if it does not also state the interest payment frequency used in obtaining the advertised yield.

(5) *Form of comment letters.* Comment letters should refer to Docket No. R–0812, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, if accompanied by an original document in paper form.

(6) *Regulatory flexibility analysis and Paperwork Reduction Act.* The Board's Office of the Secretary has prepared an economic impact statement on the proposed revisions to Regulation DD. The analysis expresses reservations about whether the proposed amendment would significantly improve the value of the APY disclosure to consumers and concern about the desirability of amending the regulation regarding the calculation of the APY at this time. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–3245.

The Board solicits information regarding the likely costs for complying with the proposed changes to the APY formula, or a narrower approach that involves changes to the disclosure of the APY for noncompounding multi-year CDs. In particular, the Board solicits comments on the following:

- What proportion of existing accounts would require the new formula for computing APYs? Would institutions adopt the new formula only when required, or would they use the new formula for all accounts whether required or not?
- What changes would institutions have to make to implement the new formula and what would it cost institutions to make these changes?
- What changes in the number of different account terms and types of accounts offered would result if the new formula were adopted? For example, would institutions offer consumers fewer choices? Would institutions change from compounding to distributing the interest paid on accounts without compounding?

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed revisions will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Truth in savings.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 230 as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 would continue to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Part 230.2 would be amended by revising paragraph (c), by redesignating paragraphs (i) through (v) as paragraphs (j) through (w) and by adding a new paragraph (i) to read as follows:

§ 230.2 Definitions.

* * * * *

(c) *Annual percentage yield* means a percentage rate reflecting the total amount of interest paid on an account,

based on the interest rate and the frequency of ♦interest payments and♦ compounding, for a 365-day period and calculated according to the rules in Appendix A of this part.

* * * * *

♦(i) *Crediting* means the payment of interest to the account or to the consumer from the account by check or transfer to another account.♦

* * * * *

3. Section 230.4 would be amended by removing paragraph (b)(6)(iii) and redesignating paragraph (b)(6)(iv) as paragraph (b)(6)(iii).

4. Section 230.5 would be amended by adding a new paragraph (a)(2)(iv) to read as follows:

§ 230.5 Subsequent disclosures.

(a) * * *

(2) * * *

♦(iv) *Changes to the frequency of interest payments initiated by the consumer.* Changes initiated by the consumer to the frequency of interest payments.♦

* * * * *

5. In Part 230, Appendix A would be amended by revising the introductory paragraph to Appendix A; by removing the introductory paragraph to Part I; and by revising paragraph A, the examples in paragraph B, and the final paragraph in paragraph C in Part I of Appendix A, to read as follows:

Appendix A to Part 230—Annual Percentage Yield Calculation

The annual percentage yield measures the total amount of interest paid on an account based on the interest rate, and the frequency of compounding[,] ♦and interest payments♦.[1] The annual percentage yield is expressed as an annualized rate, based on a 365-day year.[2] Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentage yield earned calculations for periodic statements.

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

♦A. General Rules♦

In general, the annual percentage yield for account disclosures under §§ 230.4 and 230.5 of this part and for advertising under § 230.8 of this part is an annualized rate that reflects the relationship between the amount of interest that would be earned by the consumer for the term of the account ♦(and the frequency of interest payments)♦ and the amount of principal used to calculate that interest. [Special rules apply to accounts with tiered and stepped interest rates. A. *General Rules*] The annual percentage yield shall be calculated by the formula♦s♦ shown below. Institutions shall calculate the annual percentage yield based on the actual number of days in the term of the account. For accounts without a stated maturity date (such as a typical savings or transaction account), the calculation shall be based on an assumed term of 365 days. [In determining the total interest figure to be used in the formula,] Institutions shall assume that [all principal and interest remain on deposit for the entire term and that no other transactions (deposits *or* withdrawals)] ♦no deposits♦ occur during the term.[3] For time accounts that are offered in multiples of months, institutions may base the number of days either on the actual number of days during the applicable period, or the number of days that would occur for any actual sequence of that many calendar months. If institutions choose to use the latter rule, they must use the same number of days to calculate the dollar amount of interest earned on the account that is used in the annual percentage yield formula♦s♦ [(where "Interest" is divided by "Principal")]. ♦If interest is credited monthly, quarterly or semi-annually, institutions may base the number of days on either the actual number of days for those intervals, or the following assumed intervals: monthly, 30 days; quarterly, 91 days; and semi-annually, 182 days. If institutions choose to use the latter rule, they must use the same number of days to calculate the dollar amount of interest earned on the account that is used for the crediting interval. Institutions may base the dollar amount of a deposit on either the actual amount of the deposit or an assumed deposit of $1000.

1. Formula for All Accounts

The following formula may be used for all accounts. It shall be used for stepped-rate accounts (and variable-rate accounts with an introductory premium or discount) where interest is paid prior to the maturity of the account. The formula also shall be used for accounts where interest is paid prior to the maturity of the account if interest is not compounded daily. This formula reflects the specific frequency of interest payments to the consumer.

Deposit = First payment/(1 + APY/100) Day of deposit to day of first payment/365
+ Succeeding payment/(1 + APY/100) Day of deposit to succeeding payment/365
+ ...
+ Final Payment/(1 + APY/100) Day of deposit to day of final payment/365

"APY" is the annual percentage yield paid on the deposit.

"Deposit" is the initial deposit.

"First payment" is the amount of the first interest payment made during the term of the account.

"Succeeding payment" is the amount of each succeeding interest payment, excluding the first and final payments, made during the term of the account.

"Final payment" is the amount of the final payment including principal made at the end of the account.

"Day of deposit to day of first payment" is the number of days between the day of the initial deposit and the first payment.

"Day of deposit to succeeding payment" is the number of days between the day of the initial deposit and each succeeding payment.

"Day of deposit to day of final payment" is the actual number of days in the term of the account.

Examples

(1) For a $1,000 two-year CD (with a 6.00% interest rate and a .01644% daily periodic rate, and no compounding but semi-annual interest payments), an institution makes two midyear interest payments of $29.92 on day 182 of each year (days 182 and 547) and two interest payments of $30.08 at each year's end (days 365 and 730). Using the formula above, the annual percentage yield is 6.09%:

$1{,}000 = 29.92/(1 + APY/100)^{182/365} + 30.08/(1 + APY/100)^{365/365} + 29.92/(1 + APY/100)^{547/365} + 1030.08/(1 + APY/100)^{730/365}$

Daily yield = .01619%

APY = 6.09%

(2) For a $1,000 one-year CD (with a 6.00% interest rate and a .01644% daily periodic rate, compounded semi-annually), an institution which allows the consumer to elect quarterly interest payments assumes three quarterly interest payments of $14.96 at 91-day intervals (days 91, 182 and 273), and a final payment of $1015.12 on day 365. Using the formula above, the annual percentage yield for the quarterly payment option is 6.14%:

$1{,}000 = 14.96/(1 + APY/100)^{91/365} + 14.96/(1 + APY/100)^{182/365} + 14.96/(1 + APY/100)^{273/365} + 1015.12/(1 + APY/100)^{365/365}$

Daily yield = .01632%

APY = 6.14%

2. Formula for Certain Accounts

The formula under this section I.A.2. may be used for accounts that make a single interest payment at maturity. The formula may also be used for accounts that compound daily regardless of when interest is credited, with one exception. This formula may not be used for stepped-rate accounts and variable-rate accounts with an introductory premium or discount that compound daily and pay interest prior to maturity. When using the formula, institutions shall determine the total interest figure to be used in the formula by assuming that all principal and interest remain on deposit for the entire term and that no other transactions (deposits *or* withdrawals) occur during the term.♦ The annual percentage yield is calculated by use

[1] The annual percentage yield reflects only interest and does not include the value of any bonus (or other consideration worth $10 or less) that may be provided to the consumer to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future.

[2] Institutions may calculate the annual percentage yield based on a 365-day or a 366-day year in a leap year.

[3] [This assumption shall not be used if an institution requires, as a condition of the account, that consumers withdraw interest during the term. In such a case, the interest (and annual percentage yield calculation) shall reflect that requirement.]

of the following [general] formula ("APY" is used for convenience in the formulas):

$$APY = 100 [(1 + (Interest/Principal))^{(365/Days\ in\ term)} - 1]$$

"Principal" is the amount of funds assumed to have been deposited at the beginning of the account.

"Interest" is the total dollar amount of interest earned on the Principal for the term of the account.

"Days in term" is the actual number of days in the term of the account.

When the "days in term" is 365 (that is, where the stated maturity is 365 days or where the account does not have a stated maturity), the annual percentage yield can be calculated by use of the following simple formula: APY = 100 (Interest/Principal)

Examples

(1) If an institution pays [$61.68]♦$61.83♦ in interest for a 365-day year on $1,000 deposited into a NOW account ♦(with a 6.00% interest rate and daily compounding)♦, using the [general] formula above, the annual percentage yield is [6.17]♦6.18♦%: APY = 100 [(1 + ([61.68]♦61.83♦/1,000))$^{(365/365)}$ − 1] APY = [6.17]♦6.18♦%.

Or, using the simple formula above (since, as an account without a stated term, the term is deemed to be 365 days):

APY = 100 (61.1[7]♦8♦/1,000)
APY = 6.1[7]♦8♦%

(2) If an institution [pays $30.37 in interest on] ♦offers♦ a $1,000 six-month certificate of deposit (where the six-month period used by the institution contains 182 days♦, quarterly interest payments are sent, and there is daily compounding at a 6.00% interest rate♦), using the [general] formula above, the annual percentage yield is 6.18%:

$$APY=100 [(1 + (30.37/1,000))^{(365/182)} - 1]$$
APY=6.18%

B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods.)

* * * * *

Examples

(1) If an institution offers a $1,000 6-month certificate of deposit on which it pays a 5.00% interest rate, compounded daily, for the first three months (which contain 91 days), and a 5.50% interest rate, compounded daily, for the next three months (which contain 92 days), the total interest ♦paid in a single payment at maturity♦ for six months is $26.68 and using the [general] formula ♦in section I.A.2.♦ above, the annual percentage yield is 5.39%:

$$APY=100 [(1 + (26.68/1,000))^{(365/183)} - 1]$$
APY=5.39%

(2) If an institution offers a $1,000 two-year certificate of deposit on which it pays a 6.00% interest rate, compounded daily, for the first year, and a 6.50% interest rate, compounded daily, for the next year, the total interest ♦paid in a single payment at maturity♦ is $133.13 and using the [general] formula ♦in section I.A.2.♦ above, the annual percentage yield is 6.45%:

$$APY=100 [(1 + 133.13/1,000)^{(365/730)} - 1]$$
APY=6.45%

♦(3) For a $1,000 two-year certificate of deposit (with an interest rate of 6.00% and a daily periodic rate of .01644% the first year, and an interest rate of 6.50% and a daily periodic rate of .01781% the second year, no compounding but semi-annual interest payments), an institution makes two payments during the first year, a midyear interest payment of $29.92 on day 182 and a yearend interest payment of $30.08 on day 365, and two payments during the second year, a midyear interest payment of $32.41 on day 547 and a final payment of $1032.59 on day 730. Using the formula in section I.A.1. above, the annual percentage yield is 6.34%:

$$1,000=29.92/(1 + APY/100)^{182/365} + 30.08/(1 + APY/100)^{365/365} + 32.41/(1 + APY/100)^{547/365} + 1032.59/(1 + APY/100)^{730/365}$$
Daily yield=.01684%
APY=6.34%♦

C. Variable-Rate Accounts

* * * * *

For example, [if] ♦assume♦ an institution offers an account on which it pays ♦quarterly interest payments at♦ a 7.00% interest rate ♦and a .01934% daily periodic rate♦, compounded daily, for the first three months (which, for example, contain 91 days), while the variable interest rate that would have been in effect when the account was opened was 5.00% [, the total interest for] ♦with a daily periodic rate of .01378%. For♦ a 365-day year [for]♦on♦ a $1,000 deposit [is $56.52] ♦an institution would make one quarterly interest payment on day 91 of $17.60♦ [(based on 91 days at 7.00%)]♦, two interest payments of $12.54 on days 182 and 273,♦ [followed by 274 days at 5%)]♦ and a final payment of $1012.68 on day 365♦. Using the [simple] formula ♦in section I.A.1.♦ the annual percentage yield is [5.65]♦5.66♦%:

[APY=100 (56.52/1,000)
APY=5.65%]
♦$1,000=17.60/(1 + APY/100)^{91/365} + 12.54/(1 + APY/100)^{182/365} + 12.54/(1 + APY/100)^{273/365} + 1012.68/(1 + APY/100)^{365/365}$
Daily yield=.01508%
APY=5.66%♦

* * * * *

6. In Part 230, Appendix B, section B–1 is amended by removing Model Clause B–1(h)(iii) and redesignating Model Clause B–1(h)(iv) as Model Clause B–1(h)(iii), and by adding a sentence to the end of Model Clause B–1(b)(i) to read as follows:

Appendix B to Part 230—Model Clauses and Sample Forms

* * * * *

B–1—Model Clauses for Account Disclosures

(a) * * *
(b) Compounding and crediting
(i) Frequency
* * *

♦or

Interest for your account will be paid [by check/to another account] [(time period)].♦

* * * * *

7. In Part 230, Appendix B is amended by removing the last two sentences from the first paragraph of Sample Form B–7 and by adding a new Sample Form B–7a to read as follows:

Appendix B to Part 230—Model Clauses and Sample Forms

* * * * *

B–7—Sample Form (Certificate of Deposit)

XYZ Savings Bank

1 Year Certificate of Deposit

Rate Information

The interest rate for your account is *5.20%* with an annual percentage yield of *5.34%*. You will be paid this rate until the maturity date of the certificate. Your certificate will mature on *September 30, 1993*. [The annual percentage yield assumes interest remains on deposit until maturity. A withdrawal will reduce earnings.]

♦B–7a—Sample Form (Certificate of Deposit)

XYZ Savings Bank

1 Year Certificate of Deposit

Rate Information

The interest rate for your account is *5.00%* with an annual percentage yield of *5.12%*. You will be paid this rate until the maturity date of the certificate. Your certificate will mature on *September 30, 1994*.

Interest for your account will be:

Compounded and credited to your account
_____ two times a year.
_____ four times a year.

Paid to you
_____ monthly
_____ four times a year
_____ by check
_____ to another account

Interest begins to accrue on the business day you deposit any noncash item (for example, checks).

Minimum Balance Requirements

You must deposit $1,000 to open this account.

You must maintain a minimum balance of $1,000 in your account every day to obtain the annual percentage yield listed above.

Balance Computation Method

We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Transaction Limitations

After the account is opened, you may not make deposits into or withdrawals from the account until the maturity date.

Early Withdrawal Penalty

If you withdraw any principal before the maturity date, a penalty equal to three months interest will be charged to your account.

pay-per-call Renewal Policy

This account will be automatically renewed at maturity. You have a grace period of ten (10) calendar days after the maturity date to withdraw the funds without being charged a penalty.♦

* * * * *

Board of Governors of the Federal Reserve System, November 22, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–29706 Filed 12–3–93; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–173–AD]

Airworthiness Directives; Boeing Model 737–300 Series Airplanes Equipped With a Pemco Aeroplex Main Cargo Door That Has Been Modified in Accordance With Supplemental Type Certificate (STC) SA2969S0

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300 series airplanes. This proposal would require replacement of the forward and aft hinge shims and the lower hinge fairings of the main cargo door with new shims and fairings. This proposal is prompted by reports of a slight separation between the end hinge shims and the cargo door; this separation can cause bending loads on the fasteners. The actions specified by the proposed AD are intended to prevent fatigue failure of the hinge fasteners, loss of structural integrity of the cargo door hinge, possible loss of the cargo door, and subsequent rapid decompression of the airplane.

DATES: Comments must be received by February 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pemco Aeroplex Inc., P.O. Box 2287, Birmingham, Alabama 34201. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe Branch, ACE–120A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–2910; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–173–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during routine inspections of certain Boeing Model 737–300 series airplanes, a slight separation was found between the end hinge shims and the cargo door. The cargo door attachment assembly on these airplanes had been manufactured by Pemco Aeroplex, and the doors had been modified in accordance with Supplemental Type Certificate (STC) SA2969S0. The airplanes inspected had varying periods of time-in-service. Investigation has revealed that this STC door design allows such a separation during pressurization cycles; such separation can cause increased bending loads on the door hinge fasteners. This condition, if not corrected, could lead to fatigue failure of the hinge fasteners, loss of structural integrity of the cargo door hinge, possible loss of the cargo door, and subsequent rapid decompression of the airplane.

The FAA has reviewed and approved Pemco Aeroplex Inc. Service Bulletin 737–52–0012, dated February 9, 1993, that describes procedures for replacement of the forward and aft hinge shims and lower hinge fairings of the main cargo door with new shims and fairings. These new shims have additional attachment space to provide a more positive bond between the end shims and the cargo door.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of the forward and aft hinge shims and lower hinge fairings of the main cargo door, with new shims and fairings. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 11 Model 737–300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 280 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by Pemco Aeroplex at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $30,800, or $15,400 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 93–NM–173–AD.

Applicability: Boeing Model 737–300 series airplanes, as listed in Pemco Aeroplex Inc. Service Bulletin 737–52–0012, dated February 9, 1993; equipped with a Pemco Aeroplex main cargo door that has been modified in accordance with Supplemental Type Certificate (STC) SA2969SO; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the hinge fasteners, loss of structural integrity of the cargo door hinge, possible loss of the cargo door, and subsequent rapid decompression of the airplane, accomplish the following:

(a) Within 12,000 landings from the date of STC SA2969SO installation or within 6 months after the effective date of this AD, whichever occurs later, replace the forward and aft hinge shims and the lower hinge fairings of the main cargo door, with new shims and fairings, in accordance with Pemco Aeroplex Inc. Service Bulletin 737–52–0012, dated February 9, 1993.

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

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

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

Issued in Renton, Washington, on November 30, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–29694 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–169–AD]

Airworthiness Directives; Jetstream Aircraft Limited Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This proposal would require modification of the wiring for the electric-powered disconnect unit for the elevator control system and a subsequent functional test of the elevator control system. This proposal is prompted by an in-service report of damaged wire insulation in the electrical power circuit for the elevator disconnect unit, that resulted in grounding of the circuit and consequent uncommanded operation of the disconnect unit. The actions specified by the proposed AD are intended to prevent uncommanded operation of the elevator disconnect unit, which would result in single elevator operation and consequently reduced controllability of the airplane.

DATES: Comments must be received by February 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–169–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for

the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises that a case has been reported of damaged insulation on a certain wire in the electrical power circuit for the elevator disconnect unit on an in-service Model ATP airplane. This situation resulted in grounding of the circuit and consequent uncommanded operation of the disconnect unit. Consequently, the left-to-right-hand elevator electric-powered disconnect unit opened. As a result, the pilot's control moved only one elevator, rather than the normal two elevators. Reduced control authority occurred, including increased control column movement for equivalent airplane response. The electric-powered disconnect unit can only be safely re-set on the ground. The cause of the damaged insulation is not known. This condition, if not corrected, could result in uncommanded operation of the electric-powered disconnect unit for the elevator control system, which would result in single elevator operation and consequent reduced controllability of the airplane.

British Aerospace (the original manufacturer of the Model ATP) has issued BAe ATP Service Bulletin ATP–27–49–10234A, Revision 1, dated August 14, 1993, that describes procedures for accomplishment of Modification 10234A, which entails modifying the wiring for the electric-powered disconnect unit for the elevator control system. This modification will ensure that only a double failure will initiate a disconnect sequence and that system failure will be correctly indicated to the flight crew. This service bulletin also describes procedures for performance of a subsequent functional test of elevator control system. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the wiring for the electric-powered disconnect unit for the elevator control system; and a subsequent functional test of elevator control system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $25 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,650, or $465 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Jetstream Aircraft Limited (Formerly British Aerospace): Docket 93–NM–169–AD.

Applicability: Model ATP airplanes, serial numbers 2002 through 2047 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded operation of the elevator disconnect unit, which would result in single elevator operation and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the wiring for the electric-powered disconnect unit for the elevator control system (Modification 10234A); and, prior to further flight after modification, perform a functional test of the elevator control system; in accordance with BAe ATP Service Bulletin ATP–27–49–10234A, Revision 1, dated August 14, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 30, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–29695 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–56–AD]

Airworthiness Directives; Airbus Industrie Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes. This proposal would require repetitive internal eddy current inspections to detect cracks in the lower spar axis of the pylon between ribs 9 and 10, and repair, if necessary. This proposal is prompted by a report that fatigue cracks have been found on the lower spar of the pylon. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the lower spar of the pylon.

DATES: Comments must be received by February 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–56–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A300, A300–600, and A310 series airplanes. The DGAC advises that fatigue cracks have been found on the lower spar of the pylon between ribs 9 and 10, initiating at the center stiffener beyond the flat area, on airplanes equipped with General Electric and Pratt and Whitney pylons. Fatigue cracks in this area, if not detected and corrected in a timely manner, could result in reduced structural integrity of the lower spar of the pylon.

Airbus Industrie has issued Service Bulletin No.'s A300–54–071, dated November 12, 1991 (for Model A300 series airplanes); A300–54–6011, dated November 12, 1991, as amended by Service Bulletin Change Notice O.A., dated July 10, 1992 (for Model A300–600 series airplanes); and A310–54–2016, dated November 12, 1991 (for Model A310 series airplanes). These service bulletins describe procedures for repetitive internal eddy current inspections to detect cracks in the lower spar axis of the pylon between ribs 9 and 10, and repair, if necessary. The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive 92–049–130(B)R1, dated November 25, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive internal eddy current inspections to detect cracks in the lower spar axis of the pylon between ribs 9 and 10, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $12,540, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 93–NM–56–AD.

Applicability: Model A300, A300–600, and A310 series airplanes, as listed in Airbus Industrie Service Bulletin No. A300–54–071, dated November 12, 1991; A300–54–6011, dated November 12, 1992, as amended by Service Bulletin Change Notice O.A., dated July 10, 1992; and A310–54–2016, dated November 12, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the lower spar of the pylon, accomplish the following:

(a) For Model A300 B4–2C, B2K–3C, B4–103, and B4–203 series airplanes: Prior to the accumulation of 9,000 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylon between ribs 9 and 10 in accordance with Airbus Industrie Service Bulletin No. A300–54–071, dated November 12, 1991.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 2,500 landings.

(2) If any crack is found that is less than or equal to 30 mm: Perform subsequent inspections and repair in accordance with the methods and times specified in the service bulletin.

(3) If any crack is found that is greater than 30 mm, but less than 100 mm: Prior to the accumulation of 250 landings after crack discovery, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(4) If any crack is found that is greater than or equal to 100 mm: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) For Model A300–600 B4–620, C4–620, –622R, and –622 series airplanes: Prior to the accumulation of 4,000 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylon between ribs 9 and 10 in accordance with Airbus Industrie Service Bulletin No. A300–54–6011, dated November 12, 1992, as amended by Service Bulletin Change Notice O.A., dated July 10, 1992.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 2,500 landings.

(2) If any crack is found that is less than or equal to 30 mm: Perform subsequent inspections and repair in accordance with the methods and times specified in the service bulletin.

(3) If any crack is found that is greater than 30 mm, but less than 100 mm: Prior to the accumulation of 250 landings after crack discovery, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(4) If any crack is found that is greater than or equal to 100 mm: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) For Model A310–221, –222, –322, –324, and –325 series airplanes: Prior to the accumulation of 25,000 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylon between ribs 9 and 10 in accordance with Airbus Industrie Service Bulletin No. A310–54–2016, dated November 12, 1991.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 2,500 landings.

(2) If any crack is found that is less than or equal to 30 mm: Perform subsequent inspections and repair in accordance with the methods and times specified in the service bulletin.

(3) If any crack is found that is greater than 30 mm, but less than 100 mm: Prior to the accumulation of 250 landings after crack discovery, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(4) If any crack is found that is greater than or equal to 100 mm: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 30, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–29696 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 946

[Docket No. 931221–3321]

RIN 0648–AF72

Weather Service Modernization Criteria

AGENCY: National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The National Weather Service (NWS) is publishing in the **Federal Register** its proposed criteria for taking certain modernization actions such as commissioning new weather observation systems, decommissioning outdated NWS radars and evaluating staffing needs for field offices in an affected area; and its criteria for certifying that closing, consolidating, automating, or relocating a field office will not degrade service to the affected area. This notice of proposed rulemaking sets forth the proposed criteria for these actions except for automating and closing field offices. The criteria for those two actions require further development and, after notice and public comment, will be published in final form before either of these actions take place. All final criteria will be set forth in appendix A to the basic modernization regulations at 15 CFR part 946 which were published in final form on Dec. 3, 1993.

DATES: Comments are requested by January 5, 1994.

ADDRESSES: Requests for copies of documents stated in the preamble as being available upon request and comments should be sent to Julie Scanlon, NOAA/GCW, SSMC2, room 18111, 1325 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon, 301–713–0053.

SUPPLEMENTARY INFORMATION: Section 704(a) of the Act required the NWS to contract with the National Research Council (NRC) for a review of the scientific and technical modernization criteria by which the NWS proposes to certify, under section 706, actions to close, consolidate, automate, or relocate a field office and the preparation and submission of a report assessing these criteria. The NRC prepared this report and submitted it to the Secretary of Commerce on July 28, 1993. The NRC essentially endorsed the criteria proposed with certain reservations about some of the criteria that relate to the commissioning of Automated Surface Observation System (ASOS) and automation certification. The criteria, in the format reviewed by the NRC, are set forth in Appendix B to the NRC Report. These criteria have been reformatted somewhat for purposes of publishing them as a proposed rulemaking. There has been no substantive change, but readers may wish to compare the two formats and review some explanatory material found in the NRC format by obtaining a copy of the Report (see ADDRESS section above).

Section 704(b) of the Act requires the NWS to publish the criteria in the **Federal Register**, based on the NRC Report, after providing an opportunity for public comment and after consulting with the NRC and the Modernization Transition Committee (the Committee) established by section 707 of the Act. Section 704(b) requires criteria for certain actions that do not, by themselves, involve certification, i.e., commissioning new weather observing systems, decommissioning an outdated NWS radar and evaluating staffing needs for field offices in affected areas; and criteria for action requiring certification, i.e., closing, consolidating, automating, or relocating a field office.

A. Criteria for Actions Not Involving Certification

1. Commissioning New Weather Observation Systems

Currently, two new weather observation systems are being deployed, the next generation Doppler radar system (known as the NEXRAD or WSR–88D) and the ASOS. The criteria for commissioning these systems are drawn from two basic NWS documents referenced in the criteria: The National Weather Service-Sponsored WSR–88D Site Component Commissioning Plan and The National Weather Service-Sponsored Automated Surface Observing System (ASOS) Site Component Commissioning Plan and, more specifically, from the Evaluation Packages that are included as Appendices to these Plans. These documents are available upon request (see address section).

The criteria will ensure that: Adequate operations and maintenance staffs are available and have been trained; the new system provides proper support for NWS forecasting and warning services (in the case of NEXRAD, by at least 96% availability of the radar coded message for a period of 30 consecutive days prior to commissioning); and a full complement of spare parts and test equipment is available on site.

The commissioning plans for both the ASOSs and WSR–88Ds provide for the commissioning of a system with one or more "work-arounds." A work-around provides for an alternative method of meeting a commissioning criteria through the application of a pre-approved operational procedure implemented on a temporary basis. An example of a work-around for ASOS is human augmentation of the observation for the occurrence of freezing rain, until such time as a freezing rain sensor has been accepted for operational use with ASOS. The commissioning plans require that work-arounds invoked be tracked as open items until they can be eliminated by implementation of the originally intended capability.

With one exception, the concerns raised by NRC with respect to the ASOS criteria do not relate to commissioning an ASOS unit but to operating it without NWS sponsored backup and/or augmentation. These concerns will be addressed further in connection with the criteria for certifying an automation, as discussed later. The NRC's one concern related to commissioning involved the length of time needed before commissioning to ensure that ASOS observations are representative (criterion I.A.1.n.). At the time of the NRC review NWS had not yet determined the appropriate period but now proposes a period of approximately 60 days.

Since the time of the NRC review, an additional criterion for ASOS commissioning relating to installation of field modification kits and firmware has been developed (criterion I.A.1.e.).

2. Decommissioning Outdated NWS Radars

The criteria for decommissioning outdated NWS radars are drawn from the National Weather Service—Sponsored Network and Local Warning Radars Site Component Decommissioning Plan and the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the National Weather Service, both of which are available upon request (see address section above). These criteria include ensuring that an existing radar is no longer needed to support services and products and that all valid user complaints related to actual performance of a newly commissioned NEXRAD radar system have been satisfactorily resolved, through a user confirmation of services program.

3. Evaluating Staffing Needs for Field Offices in Affected Areas

During stage 1 of the modernization, the field offices of primary importance in terms of staffing needs are those which will receive the new NEXRADs and integrate them into daily operations. These offices must have adequate staff to operate and maintain the new radars while carrying on their assigned service responsibilities. The required staffing evaluation will be made in the process of commissioning the NEXRAD, a basic criterion for which is that the staff of the relevant office is adequate to operate and maintain the radar (see criterion I.A.2.b.). This evaluation element addresses staffing needs for ongoing operations by requiring the office to meet the NWS Stage 1 Staffing Complement as set forth in the Human Resources and Position Management Plan for the National Weather Service Modernization and Associated Restructuring, available upon request (see ADDRESS section). This means, for example that all offices must have a complement of at least 5 meteorologists and 5 hydro-meteorological technicians in order to maintain round the clock shifts seven days a week. The actual evaluation elements are found in the referenced sections of the WSR–88D Evaluation Package, for example, to ensure that at least two maintenance persons have completed the WSR–88D maintenance course.

In addition, during state 1 many field offices will be integrating the ASOS into their operations and must also have adequate staff to operate and maintain this new technology. As in the case of the NEXRADs, evaluation of their staffing needs will occur at the time of commissioning. The two criteria for commissioning an ASOS related to staffing needs are that adequate operations staff are available (see criterion I.A.1.h.) and that proper maintenance personal are available (see criterion I.A.1.i.). Again, specific

evaluation elements are found in the referenced ASOS evaluation package.

Additional criteria may be required for stage 2 when the introduction of the Advanced Weather Interactive Processing System (AWIPS) will result in new office configurations. The NRC has endorsed the present criteria and targets, subject to review in light of the results of the Modernization and Associated Restructuring Demonstration.

B. Certification Criteria

1. Criteria Common to All Certifiable Actions

Actions requiring certification are subject to two sets of criteria: those common to all types of actions and those that are used only for specific actions. The common criteria are based on specific requirements of the Act, *e.g.*, ensuring that advance notification has been provided in the National Implementation Plan, or those requirements in the regulations relating to review and approval at various levels of the NWS. These criteria have been fully developed and are published at this time although they will not be used in connection with a certification for closure or automation until additional criteria unique to these actions have been published as final criteria.

2. Criteria Unique to Specific Certifiable Actions

a. Consolidation. As set forth in the NWS basic modernization regulations, consolidating a field office consists of reassigning some NWS positions from that office to a new office after the commissioning of one or more new NEXRADs allows the NWS to decommission the obsolete radar at the old office and eliminates the old office's responsibility for operating it. The significant questions relating to the possibility of degrading services must be addressed during these commissioning and decommissioning processes and, therefore, the criteria for certifying a consolidation are essentially a combination of the commissioning and decommissioning criteria including user confirmation of services described above.

b. Relocation. The certification criteria unique to relocation actions are closely related to the provisions of § 946.7(f) of the basic regulations which set forth the evidentiary requirements for a relocation certification. Since no new technology is involved, the essence of such a certification is demonstrating that using the old technology in the new location will not result in any degradation of service. Under the regulations and the criteria, the NWS must show that similar office moves have been made successfully and that valid public comments related to this specific relocation have been satisfactorily resolved. Additional criteria ensure adequate backup during the time of the actual relocation. The NRC found that the risks from such a relocation to be quite small and endorsed the criteria.

c. Automation. An automation consists of reassigning NWS employees after their surface observing responsibilities have been eliminated. These responsibilities are eliminated in two distinct phases. In the first phase, a commissioned ASOS eliminates the need for the manual observation. However, the commissioned ASOS does not provide a complete replacement for the manual observation, so NWS employees must augment the ASOS observation and provide backup for the system. Many of the important criteria are those used in commissioning the ASOS.

As a prerequisite for commissioning an ASOS located on an airport, the Act requires a determination by the Secretary in consultation with the Secretary of Transportation, that the weather services provided after commissioning will continue to be in full compliance with applicable flight aviation rules promulgated by the Federal Aviation Administration (FAA). This determination has been completed on a programmatic basis, and a copy will be included with each automation certification in compliance with § 946.5(b) of the basic regulations.

In the second phase, NWS employees are relieved of all remaining surface observing responsibilities, either by enhancement of the modernized surface observing system (adding sensors to ASOS and/or introducing supplementary and complementary products) to eliminate the need for human augmentation and backup; or by transferring augmentation and backup responsibilities to a non-NWS entity. The criteria to achieve this second phase, the automation, are contained in the NWS' Surface Observation Modernization Plan. The NWS is currently in the process of coordinating a draft of this Plan with the FAA.

Since the NRC did express some concerns relating to certain of these criteria for the second phase and, since no automation will take place in the immediate future, the NWS has decided not to publish the criteria for automation until it can finalize the Plan after further consultation with the FAA and the NRC, and after an opportunity to consult with the Committee. No automation will occur until after the final criteria for such actions have been published.

d. Closing. Section 706 of the Act prohibits the NWS from closing any field office until January 1, 1996. After that date, the ability to close a field office will depend on the successful introduction of AWIPS which will provide the new Weather Forecast Offices with the data access, information processing, and communications capability necessary to assume full responsibility for areas that are being serviced by the field offices to be closed. Consequently, as in the case of the criteria for a consolidation, many of the criteria unique to a closing will consist of those for commissioning an AWIPS and decommissioning the old information processing system, known as AFOS.

The AWIPS system is not ready for deployment and the actual commissioning and decommissioning plans have not been written. These plans will be developed in accordance with the NWS Systems Commissioning and Decommissioning Policies and will closely resemble the criteria for commissioning a NEXRAD or ASOS and for decommissioning an outdated radar. On this basis, the NRC has endorsed them. Additional criteria unique to a certification for closing will include provisions for statistical verification that there is no degradation in warning and forecast quality as endorsed by the NRC.

Before closing any field office, the NWS must propose additional regulations governing the necessary certification process and will include the necessary criteria for commissioning AWIPS, decommissioning AFOS, evaluating stage 2 staffing needs, and certifying that the closing will not result in any degradation of service.

C. Regulatory Flexibility Act Analysis

These regulations set forth the criteria for certifying certain modernization actions such as commissioning new weather observation systems and the criteria for certifying that closing, consolidating, automating, or relocating a filed office will not result in a degradation of service to the affected area. These criteria will be appended to the Weather Service Modernization regulations. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these criteria, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities. These proposed criteria are intended for internal agency use, and the impact on small business entities

will be negligible. The proposed criteria do not directly affect "small government jurisdictions" as defined by Public Law 96–354, the Regulatory Flexibility Act.

D. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements of the type covered by Public Law 96–511, the Paperwork Reduction Act of 1980.

E. E.O. 12612

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

F. National Environmental Policy Act

NOAA has concluded that publication of the proposed rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A programmatic Environmental Impact Statement (EIS) regarding NEXRAD was prepared in November 1984, and an Environmental Assessment to update the portion of the EIS dealing with the bioeffects of NEXRAD nonionizing radiation is being reviewed.

List of Subjects in 15 CFR Part 946, Appendix A

Administrative practice and procedure, National Weather Service, Weather service modernization, Certification cmmissioning, Decommissioning.

Dated: December 2, 1993.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

For the reasons set out in the preamble, 15 CFR part 946 is proposed to be amended as follows:

PART 946—MODERNIZATION OF THE NATIONAL WEATHER SERVICE

1. The authority citation for part 946 continues to read as follows:

Authority: Title VII of Public Law 102–567, 106 Stat. 4303 (15 U.S.C. 313 note).

2. An Appendix A is added at the end of part 946 to read as follows:

Appendix A—National Weather Service Modernization Criteria

I. Modernization Criteria for Actions Not Requiring Certification

(A) Commissioning of New Weather Observation Systems

(1) Automated Surface Observation Systems (ASOS)

Purpose: Successful commissioning for full operational use requires a demonstration, by tests and other means, that the ASOS equipment, as installed in the field office, meets its technical requirements; that the prescribed operating, maintenance, and logistic support elements are in place; that operations have been properly staffed with trained personnel and that the equipment can be operated with all other installed mating elements of the modernized NWS system.

Note: It may be necessary to incorporate work-arounds to complete some of the items listed below in a timely and cost-effective manner. A work-around provides for an alternative method of meeting a commissioning criteria through the application of a pre-approved operational procedure implemented on a temporary basis, for example, by human augmentation of the observation for the occurrence of freezing rain, until such time as a freezing rain sensor has been accepted for operational use with ASOS. The ASOS Plan referenced below includes a process for recommending, approving, and documenting work arounds and requires that they be tracked as open items until they can be eliminated by implementation of the originally intended capability.

References: The criteria and evaluation elements for commissioning are set forth and further detailed in the NWS-Sponsored Automated Observing System (ASOS) Site Component Commissioning Plan (the ASOS Plan), more specifically in Addendum I, appendix D of the ASOS Site Component Commissioning Evaluation Package (the ASOS Package).[1]

Criteria: a. ASOS Acceptance Test: The site component acceptance test, which includes objective tests to demonstrate that the ASOS, as installed at the given site, meets its technical specifications, has been successfully completed in accordance with the item 1a, p. D–2 of appendix D of the ASOS Package.

b. Sensor Siting: Sensor sitings provide representative observations in accordance with appendix C of the ASOS Package, Guidance for Evaluating Representativeness of ASOS Observations and item 1b, p. D–2 of appendix D of the ASOS Package.

c. Initialization Parameters: Initialization parameters are in agreement with source information provided by the ASOS Program Office, in accordance with item 1c, pp. D–2 & D–3 of appendix D of the ASOS Package.

d. Sensor Performance Verification: Sensor performance has been verified in accordance with the requirements stated in the ASOS Site Technical Manual and item 1d, p. D–3 of the ASOS Package.

e. Field Modification Kits/Firmware Installed: All critical field modification kits and firmware for the site as required by attachments 3a & b (pp. D–45 & D–46) or memorandum issued to the regions, have been installed on the ASOS in accordance with item 1e, p. D–4 appendix of the ASOS Package.

f. Operations and Maintenance Documentation: A full set of operations and maintenance documentation is available in accordance with items 2a–h pp. D–5 & D–6 of appendix D of the ASOS Package.

g. Notification of and Technical Coordination with Users: All affected users have been notified of the initial date for ASOS operations and have received a technical coordination package in accordance with item 2i, pp. D–6 & D–7 of appendix D of the ASOS Package.

h. Availability of Trained Operations Personnel: Adequate operations staff are available, training materials are available, and required training has been completed, per section 3.2.3.1. of the ASOS Plan, in accordance with items 3a–c, p. D–8 of appendix D of the ASOS package.

i. Maintenance Capability: Proper maintenance personnel and support systems and arrangements are available in accordance with items 4a–e, pp. D–9 & D–10 of appendix D of the ASOS Package.

j. Performance of Site Interfaces: The equipment can be operated in all of its required modes and in conjunction with all of its interfacing equipment per the detailed checklists of items 5a–b, pp. D–11 & D–19 of appendix D of the ASOS package.

k. Support of Associated NWS Forecasting and Warning Services: The equipment provides proper support of NWS forecasting and warning services and archiving, including operation of all specified automatic and manually augmented modes per the checklist, items 6a–e, pp. D20 to D–29, of appendix of the ASOS package.

l. Service Backup Capabilities: Personnel, equipment, and supporting services are available and capable of

[1] Available from NOAA/GCW, SSMC2, room 18111, 1325 East-West Highway, Silver Spring, MD 20910.

providing required backup readings and services in support of operations when primary equipment is inoperable in accordance with items 7a–g, pp. D–30 to D–32, of appendix D of the ASOS Package.

m. Augmentation Capabilities: Personnel are available and trained to provide augmentation of ASOS observations in accordance with augmentation procedures, items 8a–c, p. D–33 of appendix D of the ASOS Package.

n. Representativeness of Observations: Observations are representative of the hydrometeorological conditions of the observing location as determined by a period of observation of at least 60 days prior to commissioning in accordance with appendix C and item 6e, pp. D–27 to D–29 of appendix D of the ASOS Package.

(2) WSR–88D Radar System

Purpose: Successful commissioning for full operational use requires a demonstration, by tests and other means, that the WSR–88D radar system, as installed in the field office, meets its technical requirements; that the prescribed operating, maintenance, and logistic support elements are in place; that operations have been properly staffed with trained personnel; and that the equipment can be operated with all other installed mating elements of the modernized NWS system.

Note: It may be necessary to incorporate work-arounds to complete some of the items listed below in a timely and cost-effective manner. A work-around provides for an alternative method of meeting a commissioning criteria through the application of a pre-approved operational procedure implemented on a temporary basis. The WSR–88D Plan referenced below includes a process for recommending, approving, and documenting work arounds and requires that they be tracked as open items until they can be eliminated by implementation of the originally intended capability.

Reference: The criteria and evaluation elements for commissioning are set forth and further detailed in the NWS-Sponsored WSR–88D Site Component Commissioning Plan (the 88D Plan) and an Attachment to that Plan, called the WSR–88D Site Component Commissioning Evaluation Package (the WSR–88D Package).[2]

Criteria: a. WSR–88D Radar Acceptance Test: The site component acceptance test, which includes objective tests to demonstrate that the WSR–88D radar, as installed at the given site, meets its technical specifications, has been successfully completed in accordance with items 1a–f, p. A–2 of appendix A of the WSR–88D Package.

b. Availability of Trained Operations and Maintenance Personnel: Adequate operations and maintenance staffs are available, training materials are available, and required training has been completed in accordance with items 2a–h, pp. A–3 & A–4 of appendix A of the WSR–88D Package.

c. Satisfactory Operation of System Interfaces: The system can be operated in all of its required modes and in conjunction with all of its interfacing equipment in accordance with items 3a–e, p. A–5 of appendix A of the WSR–88D Package.

d. Satisfactory Support of Associated NWS Forecasting and Warning Services: The system provides proper support of NWS forecasting and warning services, including at least 96% availability of the radar coded message for a period of 30 consecutive days prior to commissioning in accordance with items 4a–kk, pp. A–6 to A–17 of appendix A of the WSR–88D Package.

e. Service Backup Capabilities: Service backup capabilities function properly when the primary system is inoperable in accordance with items 5a–e, p. A–18 of appendix A of the WSR–88D Package.

f. Documentation for Operations and Maintenance: A full set of operations and maintenance documentation is available in accordance with items 6a–n, pp. A–19 to A–25 of appendix A of the WSR–88D Package.

g. Spare Parts and Test Equipment: A full complement of spare parts and test equipment is available on site in accordance with items 7a–e, p. A–26, of appendix A of the WSR–88D Package.

(B) Decommissioning an Outdated NWS Radar

Purpose: Successful decommissioning of an old radar requires assurance that the existing radar is no longer needed to support delivery of services and products and local office operations.

References: The criteria and evaluation elements for decommissioning are set forth and further detailed in the NWS-Sponsored Network and Local Warning Radars (Including Adjunct Equipment) Site Component Decommissioning Plan (the Plan), more specifically in appendix B to that Plan, called the Site Component Decommissioning Evaluation Package, and in Section 3.3 of the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the Weather Service.[3]

Criteria: a. Replacing WSR–88D(s) Commissioning/User Service Confirmation: The replacing WSR–88D(s) have been commissioned and user confirmation of services has been successfully completed, *i.e.*, all valid user complaints related to actual system performance have been satisfactorily resolved, in accordance with items 1a–c, p. B–10 of appendix B of the Plan.

b. Operation Not Dependent on Existing Radar: The outdated radar is not required for service coverage, in accordance with items 2a–c, p. B–11 of appendix B of the Plan.

c. Notification of Users: Adequate notification of users has been provided, in accordance with items 3a–f, pp. B–12 & B–13 of appendix B of the Plan.

d. Disposal of Existing Radar: Preparations for disposal of the old existing radar have been completed, in accordance with items 4a–d, pp. B–14 & B–15 of appendix B of the Plan.

(C) Evaluating Staffing Needs for Field Offices in Affected Areas

References: The criteria and evaluation elements are set forth and further detailed in the ASOS and WSR–88D Evaluation Packages and in the Human Resources and Position Management Plan for the National Weather Service Modernization and Associated Restructuring (the Human Resources Plan).[4]

Criteria: 1. Availability of Trained Operations and Maintenance Personnel at a NEXRAD Weather Service Forecast Office or NEXRAD Weather Service Office: Adequate operations and maintenance staffs are available to commission a WSR–88D, specifically criterion b. set forth in section I.A.2. of this appendix which includes meeting the Stage 1 staffing levels set forth in chapter 3 of the Human Resources Plan.

2. Availability of Trained Operations and Maintenance Personnel at any field office receiving an ASOS: Adequate operations and maintenance staff are available to meet the requirements for commissioning an ASOS, specifically criteria h and i set forth in section I.A.1. of this appendix.

II. Criteria for Modernization Actions Requiring Certification

(A) Proposed Modernization Criteria Common to All Types of Certifications (Except as Noted)

1. Notification: Advanced notification and the expected date of the proposed

[2] See footnote 1.

[3] See footnote 1.

[4] See footnote 1.

certification have been provided in the National Implementation Plan.[5]

2. Local Weather Characteristics and Weather Related Concerns: A description of local weather characteristics and weather related concerns which affect the weather services provided to the affected service area is provided.

3. Comparison of Services: A comparison of services before and after the proposed action demonstrates that all service currently provided to the affected service area will continue to be provided.

4. Recent or Expected Modernization of NWS Operations in the Affected Service Area: A description of recent or expected modernization of NWS operations in the affected service area is provided.

5. NEXRAD Network Coverage: NEXRAD network coverage or gaps in coverage at 10,000 feet over the affected service area are identified.

6. Air Safety Appraisal (applies only to relocation and closure of field offices at an airport): Verification that there will be no degradation of service that affects aircraft safety has been made by conducting an air safety appraisal in consultation with the Federal Aviation Administration.

7. Evaluation of Services to In-State Users (applies only to relocation and closure of the only field office in a State): Verification that there will be no degradation of weather services provided to the State has been made by evaluating the effect on weather services provided to in-State users.

8. Liaison Officer: Arrangements have been made to retain a Liaison Officer in the affected service area for at least two years to provide timely information regarding the activities of the NWS which may affect service to the community, including modernization and restructuring; and to work with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

9. Meteorologist-In-Charge's (MIC) Recommendation to Certify: The MIC of the future WFO that will have responsibility for the affected service area has recommended certification in accordance with 15 CFR 946.7(a).

10. Regional Director's Certification: The cognizant Regional Director has approved the MIC's recommended certification of no degradation of service to the affected service area in accordance with 15 CFR 946.8.

[5] See footnote 1.

(B) Proposed Modernization Criteria Unique to Consolidation Certifications

1. WSR–88D Commissioning: All necessary WSR–88D radars have been successfully commissioned in accordance with the criteria set forth in section I.A.2. of this appendix.

2. User Confirmation of Services: All valid user complaints related to actual system performance have been satisfactorily resolved in accordance with section 3.3 of the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the National Weather Service.

3. Decommissioning of Existing Radar: The existing radar, if any, has been successfully decommissioned in accordance with the criteria set forth in section I.B. of this appendix.

(C) Proposed Modernization Criteria Unique to Relocation Certifications

1. Approval of Proposed Relocation Checklist: The cognizant regional director has approved a proposed relocation checklist setting forth the necessary elements in the relocation process to assure that all affected users will be given advanced notification of the relocation, that delivery of NWS services and products will not be interrupted during the office relocation, and that the office to be relocated will resume full operation at the new facility expeditiously so as to minimize the service backup period.

Specific Elements: a. Notification of and Technical Coordination with Users: The proposed relocation checklist provides for the notification of and technical coordination with all affected users.

b. Identification and Preparation of Backup Sites: The proposed relocation checklist identifies the necessary backup sites and the steps necessary to prepare to use backup sites to ensure service coverage during the move and checkout period.

c. Start of Service Backup: The proposed relocation checklist provides for invocation of service backup by designated sites prior to office relocation.

d. Systems, Furniture and Communications: The proposed relocation checklist identifies the steps necessary to move all systems and furniture to the new facility and to install communications at the new facility.

e. Installation and Checkout: The proposed relocation checklist identifies all steps to install and checkout systems and furniture and to connect to communications at the new facility.

f. Validation of systems Operability and Service Delivery: The proposed relocation checklist provides for validation of system operability and service delivery from the new facility.

2. Publishing of the Proposed Relocation Checklist and Evidence from Completed Moves: The proposed relocation checklist and the evidence from other similar office moves that have been completed, have been published in the **Federal Register** for public comment. The evidence from the other office moves indicates that they have been successfully completed.

3. Resolution of Public Comments Received: All responsive public comments received from publication, in the **Federal Register**, of the proposed relocation checklist and of the evidence from completed moves are satisfactorily answered.

[FR Doc. 93–29805 Filed 12–3–93; 8:45 am]
BILLING CODE 3510–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD63

Testing Modifications to the Disability Determination Procedures—Extension of Comment Period

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules; extension of comment period.

SUMMARY: This document announces an extension of the comment period to January 5, 1994 on the proposed rules "Testing Modifications to the Disability Determination Procedures," which was published in the **Federal Register** on October 22, 1993 (58 FR 54532).

DATES: To be sure that your comments on the proposed rules published on October 22, 1993 will be considered, we must receive them no later than January 5, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Alternatively, you may submit comments by telefax to (410) 966–0869.

Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–1762.

SUPPLEMENTARY INFORMATION: On October 22, 1993 (58 FR 54532), we published a notice of proposed rulemaking entitled "Testing Modifications to the Disability Determination Procedures." We provided a comment period ending November 22, 1993. In order to provide the public with an additional opportunity to comment on the proposed rules, and in light of their unusual significance, we have decided it is appropriate to extend the comment period an additional 30 days to January 5, 1994. This extension of the comment period is also consistent with section 6(a)(1) of Executive Order 12866, dated October 4, 1993 (58 FR 51735) which states that, in most cases, agencies should provide a comment period for proposed rules of not less than 60 days, in order to ensure meaningful public participation in the regulatory process.

Dated: November 12, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: November 29, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–29650 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–29–M

FOOD AND DRUG ADMINISTRATION

21 CFR Part 100

[Docket No. 93N–0439]

Misleading Containers; Nonfunctional Slack–Fill

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revoke a regulation implementing section 403(d) of the Federal Food, Drug, and Cosmetic Act (the act) that became final by operation of law. The agency intends to replace this revoked regulation with one that is published elsewhere in this issue of the **Federal Register** on the circumstances in which a food is misbranded. This action is being taken to clarify many issues that have been raised by public comments during the past few months, and for the agency to both address and respond to these issues so as to ensure adequate implementation of misbranding regulations as well as facilitate their compliance.

DATES: Written comments by December 17, 1993. The agency is proposing that any final rule that may issue in this revocation proceeding become effective on the date of its publication in the **Federal Register.**

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

The Nutrition Labeling and Education Act (the 1990 amendments) became law on November 8, 1990. Section 6 of the 1990 amendments established a procedure under which FDA was given 30 months from the date of their enactment to promulgate final rules implementing that section. Pursuant to that procedure, FDA published a proposal on January 6, 1993 (58 FR 2957), to amend its regulations by implementing new § 100.100 to define the circumstances in which a food is misbranded under section 403(d) of the act (21 U.S.C. 343(d)) ("misleading container proposal").

Section 6(b)(3)(D)(ii) of the 1990 amendments provides that, if the final rule to implement section 403(d) of the act is not promulgated within 30 months of the date of passage of the 1990 amendments (November 8, 1990), then the regulation proposed to implement that section is to be considered a final regulation. Further, section 6 provides that States and their political subdivisions shall be preempted with respect to section 403(d) of the act at that time.

The 30-month period established by the 1990 amendments expired on May 9, 1993. Because FDA was unable to publish a final rule in the proceeding instituted in January 1993 by May 9, 1993, FDA published a document in the **Federal Register** of May 12, 1993 (58 FR 27932), announcing that the regulation that it had proposed in the misleading container proposal in January of 1993 was considered to be a final regulation by operation of law, effective May 10, 1993. This document did not conclude the rulemaking begun in January, 1993, however. Rather, the May 12 document was part of a separate proceeding that is compelled under section 6(b)(3)(D)(ii) of the 1990 amendments (see H. Rept. 101–538, 101st Cong., 2d Sess. 18 and 136 Congressional Record 5842 on the effect of this "hammer" provision).

Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule to conclude the proceeding that it instituted in January of 1993 on the circumstances in which containers are misleading and thus would misbrand the food under section 403(d) of the act (the final rule). In the May 12 document, FDA stated that when it issued such a final rule, it anticipated that the regulation included as part of that final rule would supersede the regulation that had become final by operation of law. The agency is now instituting the rulemaking necessary to bring about this supersession.

II. The Proposal

FDA is proposing to withdraw the regulation that became final by operation of law on May 10, 1993 (the May 10, 1993 regulation). FDA tentatively finds that this action is in the best interests of consumers, manufacturers, and regulatory officials for several reasons.

The May 10, 1993, regulation did not have the benefit of public comment. It reflects FDA's initial views on the circumstances in which a container would be so made, formed, or filled as to be misleading. From the comments received in response to the misleading container proposal, it is clear that the May 10, 1993, regulation does not adequately address several issues related to implementation of section 403(d) of the act. Because the regulation included in the final rule published elsewhere in this issue of the **Federal Register** addresses the comments that the agency received and includes changes that the agency has made in response to those comments to clarify the regulation, FDA tentatively finds that regulation is better able to ensure adequate implementation of section 403(d) of the act than the May 10, 1993, regulation and, because it is a clearer regulation, will facilitate compliance.

Second, FDA tentatively finds that replacing the May 10, 1993, regulation with the regulation included in the final rule will not result in any hardship to manufacturers who have relied on the May 10, 1993, regulation. The regulation in the final rule in most respects is consistent with the May 10, 1993, regulation. The only differences are those modifications that have been

made in response to comments to clarify the regulation and to more fully reflect the situation involving container fill. Thus, replacing the May 10, 1993, regulation with the final regulation published elsewhere in this issue of the **Federal Register** will not present manufacturers with a situation in which they must adjust to a dramatic shift in the standard that they must meet.

FDA is also proposing to limit the comment period to 10 days, the minimum allowed under § 10.40(b)(2) (21 CFR 10.40(b)(2)), and to make any final rule that issues in this proceeding effective on the date of publication. FDA is proposing both of these actions for the same reason. FDA believes that, if the regulation in the final rule is to supersede the May 10, 1993, regulation, this action should proceed as expeditiously as possible. The agency believes that expeditious action will minimize the possibility for confusion and ambiguity created by this action. FDA tentatively finds that the proposed steps are necessary to facilitate expeditious action, and thus that there is good cause for both of these proposed actions.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action by the agency is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA has fully assessed the economic impact of replacing the May 10, 1993, regulation with the regulation contained in the final rule. That assessment is set forth in the final rule published elsewhere in this issue of the **Federal Register**. The agency believes that there is no reason to reproduce that discussion here. However, the agency is incorporating that discussion by reference in this document.

V. Comments

Interested persons may, on or before December 17, 1993, submit to the Dockets Management Branch (address above), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 100

Administrative practice and procedure, Food labeling, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 100 (as published in the **Federal Register** of May 12, 1993 (58 FR 27932) be amended as follows:

PART 100—GENERAL

1. The authority citation for 21 CFR part 100 continues to read as follows:

Authority: Secs. 201, 301, 307, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 337, 342, 343, 348, 371).

§ 100.100 [Removed]

2. Section 100.100 Misleading containers is removed.

Dated: November 30, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–29691 Filed 12–3–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 92N–0308]

Investigational Device Exemptions; Disqualification of Clinical Investigators; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 5, 1994, the comment period on a proposed rule that published in the **Federal Register** of October 6, 1993. The document proposed to revise its medical device regulations to include provisions for the disqualification of clinical investigators. This action is being taken to assure adequate time for the preparation and submission of comments.

DATES: Written comments by January 5, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 6, 1993 (58 FR 52144), FDA published a proposed rule to revise its medical device regulations to include provisions for the disqualification of clinical investigators. Because of an inadvertent error, the date for submission of comments was incorrectly given as November 5, 1993. In the **Federal Register** of October 14, 1993 (58 FR 53245), a correction notice was published to correct the comment date from November 5, 1993, to December 6, 1993.

FDA has received a request for an extension of the comment period for 60 days in order to allow adequate time for comment on this document. FDA agrees in part with the request and is extending the comment period for 30 days to assure adequate time for the preparation of comments. FDA believes that an extension of more than 30 days is unnecessary.

Interested persons may on or before January 5, 1994, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–29767 Filed 12–1–93; 3:37 pm]

BILLING CODE 4160–01–F

21 CFR Parts 812 and 813

[Docket No. 91N–0292]

Investigational Device Exemptions; Intraocular Lenses; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 5, 1994, the comment period for a proposed rule that appeared in the

Federal Register of October 6, 1993 (58 FR 52142). The document proposed to remove regulations on investigational exemptions for intraocular lenses (IOL's). FDA is taking this action to ensure adequate time for the preparation and submission of comments.

DATES: Written comments by January 5, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 6, 1993 (58 FR 52142), FDA published a proposed rule to remove the regulations on investigational exemptions for IOL's. Interested persons were given until December 6, 1993, to respond to the proposal.

FDA has received a request for an extension of the comment period for 60 days in order to allow adequate time for comment on this proposed rule. FDA agrees in part with the request and is extending the comment period for 30 days to ensure adequate time for preparation of comment. FDA believes that an extension of more than 30 days is unnecessary. Accordingly, the comment period for this proposed rule is extended to January 5, 1994.

Interested persons may, on or before January 5, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–29766 Filed 12–1–93; 3:37 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado 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 announcing the receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions for Colorado's proposed rules pertain to roads and noncoal mine waste. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

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

DATES: Written comments must be received by 4 p.m., m.s.t., December 20, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Colorado 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 Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 766–1486

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (46 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Submission of Proposed Amendment

By letter dated June 30, 1993, Colorado submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. CO–552). Colorado submitted the proposed amendment in part at its own initiative and in part in response to certain issues identified in letters dated May 7, 1986, and March 22, 1990 (Administrative Record Nos. CO–282 and CO–496), that OSM sent to Colorado in accordance with 30 CFR 732.17(c). The provisions of 2 Code of Colorado Regulations 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, that Colorado proposed to amend are: definitions for "road," "haul road," "access road," and "light use road" at Rules 1.04(111)(a) through (c); permit application requirements for support facilities, stream fords used as temporary construction routes, and certification of plans and drawings for haul and access roads at Rules 2.05.3(3)(a) and (c)(vi) and (vii); reclamation plan requirements for all roads at Rule 2.05.4(2); permit application requirements for haul roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.1(1) (a), (b), (d), and (e), 4.03.1(2)(b), 4.03.1(3) (c) and (e)(ix), 4.03.1(6)(c), 4.03.1(7)(b) and (b)(ix); permit application requirements for access roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.2(1)(a), (b), (e), and (f), 4.03.2(2)(b), 4.03.2(3)(c), and

(e)(ix), 4.03.2(6) (a) and (c), and 4.03.2(7)(b) and (b)(ix) permit application requirements for light-use roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.3(1) (a) and (b), 4.03.3(2)(b), 4.03.3(3)(c), 4.03.3(6)(c), and 4.03.3(7)(i); performance standards for coal exploration in regard to roads at Rules 4.21.4(3)(b)(i) through (iii), 4.21.4(3)(c)(i) through (iii), and 4.21.4(3)(d)(i) and (ii); permit application requirements for the return of coal mine waste and coal processing waste to abandoned workings at Rules 2.05.3(9)(a) and 2.05.3(10)(a) through (e); performance standards for disposal of spoil in head-of-hollow fills and disposal of noncoal waste at Rules 4.09.3(2)(c) and 4.11.4(3); general backfilling and grading requirements for cut-and-fill terraces at Rules 4.14.2(2) and (2)(c); performance standards for mountaintop removal operations at Rules 4.26.2(2) and (2)(a) through (c); and performance standards for the use of explosives at Rules 4.08.4(10) and (10)(a) through (c), and 4.08.6(1).

In addition to the above revisions, Colorado's amendment also contained a Statement of Basis, Specific Statutory Authority, and Purpose. This statement provides Colorado's rationale for submitting the revisions proposed in the amendment. In particular, Colorado included a policy statement explaining what it would consider, on a case-by-case basis, in making a determination of the program's jurisdiction over public roads. These considerations include whether the road is constructed or improved by an operator, mining related use, and degree of mining-related impacts to the road.

OSM published a notice in the July 21, 1993 **Federal Register** (58 FR 38989) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. CO–555). The public comment period ended August 20, 1993.

During its review of the amendment, OSM identified concerns or requested clarification regarding Colorado's (1) criteria to be used for determining jurisdiction over public roads, specifically with regard to the concept of relative use proposed in the policy statement for Colorado's proposed definition for "road" at Rule 1.04(111); (2) regulation of road dust and dust occurring on other exposed surfaces proposed at Rules 4.03.1(1)(a) and (b), 4.03.1(2) (a) and (b), and 4.03.3(1) (a) and (b); (3) alternative design criteria for haul and access roads proposed at Rules 4.03.1(1)(e) and 4.03.1(2)(e); and (4) the use of the term "solid waste material" instead of the term "noncoal mine waste" proposed in the performance standards for disposal of noncoal waste at Rule 4.11.4(3). OSM notified Colorado of the concerns by letter dated September 30, 1993 (Administrative Record No. CO–575). Colorado responded in a letter dated November 3, 1993, by submitting additional explanatory information and a revised amendment (Administrative Record No. CO–587).

The provisions of the rules that Colorado proposes to clarify or further amend are the (1) policy statement for the definition for "road" at Rule 1.04(111); (2) regulation of road dust and dust occurring on other exposed surfaces proposed at Rules 4.03.1(1) (a) and (b), 4.03.1(2)(a) and (b), and 4.03.3(1)(a) and (b); (3) permit application requirements for haul roads concerning alternative design criteria at Rules 4.03.1(1)(e) and 4.03.1(2)(e); and performance standards for disposal of noncoal waste at Rule 4.11.4(3).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Colorado program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is 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 Colorado program.

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 Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731 and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 23, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–29755 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Program

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

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

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed amendment to the Indiana Abandoned Mine Land Reclamation (AMLR) Program (hereinafter referred to as the Indiana Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended. The proposed amendment is intended to provide the policies and procedures with which Indiana would conduct the Abandoned Mine Land Reclamation emergency program on behalf of OSM. OSM announced receipt of the original submittal of the amendment in the January 14, 1993, **Federal Register** (58 FR 4374). OSM received the proposed changes to the original submittal on October 29, 1993 (Administrative Record No. IND–1303). The proposed amendment is intended to address OSM's comments on the original submittal.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on December 20, 1993.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana 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:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6166

Indiana Department of Natural Resources, Division of Reclamation, P.O. Box 147, Jasonville, IN 47438, Telephone: (812) 665–2207.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by approval of the Secretary of the Interior. Information pertinent to the general background on Indiana's program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 321110). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 30 CFR 914.20 and 914.25.

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), OSM invited States to amend their AMLR Plans for the purpose of undertaking emergency reclamation programs on behalf of OSM. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

Under the provisions of 30 CFR 884.15, any State may submit proposed amendments to its approved AMLR Plan. If the proposed amendments change the scope or major policies followed by the State in the conduct of its AMLR program, the Director must follow the procedures set out in 30 CFR 884.14 in reviewing and approving or disapproving the proposed amendments.

The proposed assumption of the AMLR emergency program on behalf of OSM is a major addition to the Indiana AMLR program. To assume the emergency program, Indiana must revise the Indiana Plan to include conducting the AML emergency program.

II. Discussion of the Proposed Amendment

By letter dated November 12, 1992 (Administrative Record No. IND–1171), the Indiana Department of Natural Resources (IDNR), Division of Reclamation, submitted a proposed Program Amendment to the Indiana Program. This amendment is intended to demonstrate Indiana's capability to effectively perform the AMLR emergency program on behalf of OSM. In support of the proposed amendment, Indiana also submitted responses to OSM's September 29, 1982, guidelines for State proposals to assume the emergency program (47 FR 42729).

OSM announced receipt of the proposed amendment in the January 14, 1993, **Federal Register** (58 FR 4374). On October 29, 1993 (Administrative Record Number IND–1303), Indiana submitted a revised version of the amendment which was submitted on November 12, 1992. The proposed revisions are intended to address OSM's comments on the original submittal. In addition to the proposed revisions, discussions with Indiana concerning grant funding by OSM of the Indiana emergency program are in progress.

Indiana's proposed revisions to the original amendment of November 12, 1992, are summarized below:

Indiana Item 3(a)

Indiana has revised the definition of "emergency" to mean "any unexpected or sudden condition that is determined to be the result of past coal mining practices which directly threatens or affects the public health, safety or general welfare of the citizens of Indiana." The previous version of the definition defined emergency as "any unexpected or sudden condition that is the apparent result of past coal mining practices which directly or potentially threatens or affects the public health, safety or general welfare of the citizens of Indiana. As in all other aspects of the AML program, general welfare includes economic loss." The primary changes are the deletion of the words "apparent" and "potentially," and the deletion of the sentence which begins "as in all other aspects * * *."

Indiana Item 3(b)

Indiana has revised this provision to make it clearer than OSM must both make a finding of fact that an emergency exists, and must approve the scope of the work to abate the emergency.

Indiana Item 4(a)

Indiana has revised the figures presented with the proposed amendment. As revised, Figure 1 is a chart of the organization and management structure of the restoration program including the emergency program staff. This figure was cited in the original submittal but was not provided. Figure 2 shows OSM emergency declarations/investigations by county (1981 through March 1992). This figure was included in the original submittal but was identified as "Figure 1."

Indiana Item 4(d)

Indiana has clarified the initial paragraph in 4(d) by deleting language which had been inadvertently repeated and which had confused the meaning of the paragraph.

Indiana Item 6

Indiana has revised the second paragraph at Item 6 to clarify that Indiana is assuming the administration of the emergency program rather than responsibility for the emergency program. OSM cannot relinquish its responsibility for the emergency program, but can authorize Indiana to administer the program.

Indiana Attachment #2

Indiana has added, on the "Indiana AML Emergency Investigation Report" form, a place for the identification of latitude and longitude.

Indiana Reclamation Plan

Indiana has amended the table of contents, and Part 884.13(c)(3) Emergency Policy, of the Indiana Reclamation Plan to incorporate the Emergency Reclamation Program into the Indiana Reclamation Plan.

The full text of proposed program amendment revision submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the applicable requirements for the approval of State AMLR program amendments. If the amendment is deemed adequate, it will become part of the Indiana 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 Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

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

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)].

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements 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 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–29756 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–4808–1]

RIN 2060–AD71

Regulation of Fuels and Fuel Additives: Standards for Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Section 211(l) of the Clean Air Act requires the use of deposit control additives in all gasoline used in the United States beginning January 1, 1995. The proposed regulation includes a detergent additive certification program, test procedures, performance standards, and enforcement provisions designed to ensure the effective control of fuel injector and intake valve deposits.

DATES: Comments on this proposal will be accepted until February 11, 1994. EPA will conduct a public hearing on January 11, 1994. Additional information on the comment procedure and public hearing can be found under "Public Participation" in the Supplementary Information section of this document.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–91–77 at the following address: U.S.

Environmental Protection Agency, Air Docket Section (LE–131), 401 M Street SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 12 pm and 1 to 3 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying docket materials.

The public hearing will be held at Holiday Inn—North Campus, 3600 Plymouth Road, Ann Arbor, Michigan, 48105. The hearing will begin at 9 a.m. and will continue until all testimony has been presented.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey A. Herzog, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4227, Fax: (313) 741–7816. To request copies of the proposed regulatory text of this NPRM, contact Ms. Carol Connell at the same address; Telephone: (313) 668–4349, Fax: (313) 741–7816.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Legal Authority and Applicability

1. *Section 211(l)*

The accumulation of fuel deposits in motor vehicle engines and fuel supply systems has been shown to have significant adverse effects on exhaust emissions and, in some cases, on fuel economy as well. Detergent additives can help to prevent these deposits[1]. Accordingly, Congress specified in section 211(l) of the Clean Air Act that:

> Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States, any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems * * *.

Section 211(l) further provides that "the Administrator shall promulgate a rule establishing specifications for such additives." As provided in section 211(l), EPA is proposing that all parties involved in the chain of gasoline production, distribution and sale are responsible for compliance with the detergent requirements. For the reasons explained in the enforcement section of this preamble, EPA also is proposing that certain compliance responsibilities apply to manufacturers of detergent, even before it is blended with gasoline.

Section 211(l) refers to "any gasoline," and does not distinguish between gasoline used for highway vehicles and engines and gasoline used in nonroad applications. EPA believes and is proposing that the detergent requirements apply to all gasoline used in highway vehicles and engines (including both reformulated and conventional gasolines,[2] oxygenated gasoline, and the gasoline component of alcohol blends such as M85 and E85), as well as gasoline used in nonroad applications (including racing fuel for stock car racing and marine fuel). EPA's current regulations define "gasoline" to mean "any fuel sold in any State for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline." (40 CFR 80.2). EPA has traditionally interpreted this definition to mean that gasoline includes all fuel that can be used in motor vehicles, even if some sell the fuel for nonroad applications. EPA believes that this interpretation is reasonable because gasoline that can be used in motor vehicles may ultimately be used in motor vehicles, even if it is primarily sold for use in other applications. For example, gasoline sold at a marina for use by boats must still comply with the proposed regulations since the same fuel could reasonably be sold elsewhere for use in motor vehicles. This position is consistent with EPA's interpretation of the applicability of prior regulation of gasoline characteristics, such as volatility control. Further, in the 1990 Amendments to the Clean Air Act, Congress specifically expanded the scope of EPA's general authority to regulate fuels and fuel additives to include authority over fuel for use in nonroad engines and nonroad vehicles. This provision, which reflects Congress's understanding that fuels used in a variety of specified applications might be regulated, supports reading the unqualified language "any gasoline" in section 211(l) to include all gasoline for highway and nonroad applications. EPA proposes that gasoline for military use be covered by this regulation. Comment is requested on whether gasoline for military use in military vehicles should be covered by the detergent requirements, and on any legal basis to exempt such fuel from the requirements. Similarly, comments are requested on the need for and feasibility of applying the requirements to stock car racing, marine and other special purpose fuels, including possible legal bases for exempting any such fuels.

The Agency is also proposing that both leaded and unleaded gasoline be required to contain detergent additives that comply with the proposed regulation. While barred from sale for highway vehicles as of January 1, 1995, leaded gasoline will still be permitted to be sold for off-highway use, for example, in certain construction equipment and farm vehicles. EPA believes that the use of detergent additives in leaded gasolines would have a beneficial impact on the emissions performance of leaded engines.

EPA does not believe and is not proposing, however, that the detergent requirements apply to gasoline used in internal combustion aircraft engines that are separately regulated under part B of title II of the Clean Air Act. While EPA has new authority under part A of the Clean Air Act in the 1990 Amendments to regulate nonroad engines and vehicles (section 213) and expanded authority to regulate fuels used by these sources (section 211(c)), the authority to regulate aircraft emissions was not changed. EPA's part B authority is subject to consultation with the Department of Transportation (DOT), and is subject to disapproval by the President on the basis of a finding by the Secretary of Transportation that the regulation would create a hazard to aircraft safety. In a separate statute, Congress authorized DOT to regulate the content of aviation fuel (see Federal Aviation Act of 1958, as amended, 49 U.S.C. App. section 1421(e)). Given this background, EPA does not believe that Congress intended that the detergent requirements of section 211(l) should apply to aviation gasoline. This is consistent with a staff memorandum from EPA's Office of General Counsel concluding that internal combustion aircraft engines are not included within title II's nonroad provisions.[3] In addition, the gasoline used in internal combustion aircraft engines is generally not appropriate for use in motor

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[1] *See* Sen. Rep. No. 101–228, 101st Cong., 1st Sess. at 116 (Dec. 20, 1989) ("(F)uel additives, such as detergents, are available to maximize the performance of engines and minimize emissions.").

[2] Reformulated and conventional gasolines are both defined in the following **Federal Register** notices: Notice of Proposed Rulemaking for Regulation of Fuel and Fuel Additives; Standards for Reformulated and Conventional Gasoline, 56 FR 31176 (July 9, 1991); Supplemental Notice of Proposed Rulemaking, 57 FR 13416 (April 16, 1992); Second Supplemental Notice of Proposed Rulemaking, 58 FR 11722 (Feb. 26, 1993).

[3] Memorandum from John Hannon, Attorney, through Alan W. Eckert, Associate General Counsel, to William G. Rosenberg, Assistant Administrator for Air and Radiation (August 8, 1991).

vehicles. Such gasoline is very high octane for use in very high compression aircraft engines. Since such gasoline is generally not sold for use in motor vehicles, exclusion of this gasoline is also consistent with EPA's general approach under 40 CFR 80.2.

2. *Section 211(c)*

EPA is issuing today's proposal under the authority of section 211(c) as well as section 211(l) so that the preemption provisions of section 211(c)(4) will apply. This is consistent with the approach EPA has taken in its proposed reformulated gasoline regulations. *See* 57 FR at 13493. As explained there, whenever the federal government regulates in an area, the issue of preemption of State action in the same area is raised. Here, as with reformulated gasoline and the associated "anti-dumping" program, the regulations will affect virtually all of the gasoline sold in the United States. Also, in contrast to commodities produced and sold in a single area of the country, gasoline produced in one area is often distributed to other areas. The national scope of gasoline production and distribution suggests that federal rules like those proposed in this notice should preempt State action to avoid an inefficient patchwork of potentially conflicting regulations. Section 211(c), enacted in the 1977 Amendments to the Clean Air Act, provides that federal fuels regulations adopted under that authority preempt non-identical State controls except under certain specified circumstances set out in section 211(c)(4). Those exceptions apply: (1) to any State for which application of section 209(a) of the Act has at any time been waived under section 209(b); and (2) where non-identical State regulations are included in a State implementation plan as necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. Thus, only California may regulate gasoline detergency under the first exception. Other states may adopt nonidentical regulations only upon the specified showing under the second exception.

Section 211(c) authorizes the Administrator, by regulation, to "control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle" if, under section 211(c)(1)(A), emission products of the fuel or additive cause or contribute to air pollution endangering the public health or welfare, or, under section 211(c)(1)(B), if emission products of the fuel or additive will impair to a significant degree the performance of an emission control device in general use. While EPA believes that it has clear authority to regulate gasoline detergency under section 211(c)(1)(A), the Agency also recognizes that it may also have such authority under section 211(c)(1)(B). That gasoline emissions cause or contribute to harmful air pollution is now undisputed, and a requirement for proper detergent additization to mitigate such emissions is appropriate under this authority. Also, deposits from the process of gasoline combustion may significantly impair the performance of engines designed to control emissions. In particular, deposits in fuel injectors may undercut the effectiveness of engines' oxygen sensors in ensuring the best fuel/air ratio to control emissions. EPA requests comment on its authority to regulate gasoline detergency under this provision, and on the cost benefit analysis that must be provided under section 211(c)(2)(B) to support such authority. EPA also believes that the broad authority of section 211(c) supports certain program elements that EPA is proposing in order to make the detergent program most effective. As explained further below, these include a certification scheme and, as explained in the enforcement section of the preamble (Section X), application of certain requirements to detergent manufacturers even prior to blending of detergent with gasoline.

EPA believes consideration of the factors under section 211(c)(2)(A) support its authority under section 211(c)(1)(A). Air pollution from gasoline vehicles is clearly harmful. Further, while vehicle technology can affect deposit formation, EPA does not believe that deposit formation and the associated emissions effect can reasonably or cost effectively be addressed by requiring changes in vehicle design. Vehicle manufacturers have an incentive and continue to work to minimize susceptibility to deposit formation, which affects driveability as well as emissions. In addition, detergents are also important to control deposits in vehicles currently in use and prone to deposit formation which will continue to remain in use for some time.

B. Overview of the Proposed Program

1. *Regulatory Approach*

In developing its proposed implementation approach, EPA has primarily considered two basic regulatory strategies. First is a "command-and-control" or "formula" approach, and second is a performance standard. Under the first strategy, EPA would establish chemical specifications for detergent additives that would be considered acceptable for compliance. EPA would also establish additive concentrations (gasoline treatment rates) for each specified detergent. While this "formula" approach appears relatively simple on its face, EPA believes it to be impractical and unsatisfactory. Any list of specific detergent additives or chemical formulas which EPA could establish to be acceptable for use would have to be limited to well-known substances with extensive prior validation of effective treatment levels. This would nearly preclude the use of special proprietary additives with potentially equal or greater effectiveness and would inhibit or stifle research and innovation in the field. The ability to tailor additive treatment levels to the deposit-forming characteristics of the fuel would also be severely hampered under this approach. This is because EPA, without controlling the characteristics of the fuel itself, would have great difficulty in establishing specifications that varied depending on the fuel and would therefore have to set specifications that would be applicable to all fuels.

The second basic strategy EPA considered, and the one EPA is proposing today, would entail a performance-based certification process. Under this strategy, all gasoline distributed and sold in the United States would be required to contain a detergent additive which, in the context of prescribed vehicle testing, had the demonstrated ability to meet specified standards of deposit control performance in a predetermined series of test fuels. Additives meeting the detergent performance standards would qualify for certification. They would then be acceptable for meeting gasoline deposit control requirements when used at the treatment rates which were needed to meet the performance standards during testing.

The proposed performance-based certification process would require the detergent certifier to submit a brief package of information to EPA to apply for a certification number. The package would include a short summary of test data and an attestation that all testing and performance requirements were satisfied. In issuing the certification number, EPA would in many cases accept the applicant's attestation as the sole basis for issuing the number. Thus, to a large degree, the certification process is actually a process of self-certification. However, EPA would reserve the right to examine any and all of the required data to verify compliance, and could deny or revoke

a certification based on this review (see Sections IV and X).

This performance-based certification strategy would be far more flexible than the implementation approach based on adherence to predetermined additive "formula" requirements. It would allow the fuel and fuel additive industries and the general competitive marketplace to decide which additives should be used. It would thus encourage continued development and innovation by the industry of new products which could offer functional and/or economic advantages over existing detergent additives. By offering the opportunity to tailor the certification test fuel specifications to fit relatively circumscribed gasoline pools, this strategy could also permit additive treatment rates to be adjusted according to the deposit-forming tendencies of the fuel.

While section 211(l) authorizes EPA to promulgate a rule establishing specifications for detergent additives (under either a formula or performance standard approach), it does not explicitly call for a certification procedure. Nevertheless, EPA believes that certification requirements are necessary to make program implementation most effective, and are authorized under sections 211(1), 211(c) and 301(a). Because EPA is choosing a performance standard approach, the Agency believes certification based on testing to verify that the gasoline and detergent meets the performance standards prior to marketing and sale is an important component of its enforcement program.

The Agency reserves the right to duplicate certification test procedures to confirm that the detergent meets the certification standard under these procedures. However, duplicate testing is complex and time-consuming. Therefore, EPA "confirmatory" testing, while potentially an occasional ancillary enforcement tool, would be impractical and unworkable as the program's basic enforcement strategy. The mandatory certification approach, on the other hand, simplifies enforcement by determining an additive's effectiveness up-front, and reducing the remaining enforcement task to ensuring that the proper type and amount of previously certified additive has been added to the gasoline in the market. For this purpose, actual detection and measurement of the amount of detergent additive in gasoline would be very difficult and, in some cases, would not currently be possible with acceptable precision. However, such follow-up determinations could be accomplished through paper audit "mass balance" procedures rather than actual chemical or vehicle-based testing. EPA is not proposing to test randomly selected samples of in-use gasoline in various vehicle technologies to confirm the proper level of performance in all vehicles.

Based on these considerations, EPA believes that mandatory certification of detergent gasoline is a necessary and appropriate strategy to best establish specifications under section 211(l). Section 301(a), which authorizes the Administrator "to prescribe such regulations as are necessary to carry out his (or her) functions under this Act," supports EPA's authority to require certification. EPA's authority to collect information for such certification also derives from section 208, which permit EPA to require a person to maintain records, provide information, and/or conduct testing "* * * to determine whether the person has acted or is acting in compliance with this part * * * and regulations thereunder, or to otherwise carry out the provision(s) of this part* * *." Finally, as in the reformulated gasoline program, EPA's authority under section 211(c) to "control or prohibit" the sale of fuels and fuel additives includes the authority to place conditions on sale, including certification.

EPA anticipates that all detergent additives used in compliance with this proposed regulation will be properly registered according to existing regulations in 40 CFR part 79. Detergents are also expected to conform to applicable criteria which define fuels and additives considered by EPA to be "substantially similar" to certification fuels (see 56 FR 5352, February 19, 1991). Additional registration requirements have been proposed (see 57 FR 13168, April 15, 1992), involving manufacturer responsibilities for testing the potential health effects of the emissions of fuels and fuel additives. Detergent additives used in compliance with this proposed regulation would also be subject to these additional registration requirements, upon finalization of that rule.

2. *Timing Factors*

EPA currently anticipates promulgating this rule late in 1994. Section 211(1) clearly specifies that all gasoline contain detergent additives beginning January 1, 1995. This statutory provision is self-implementing, and is effective whether or not EPA promulgates regulations effective January 1, 1995. Thus, the industry would have only a few months to comply with the requirements of the rule. The Agency does not believe these few months after final promulgation would provide sufficient lead time by 1995 for industry to comply with the certification program being proposed, including requirements to locate test fuels conforming to the required specifications and to conduct complex vehicle-based performance tests using these test fuels.

EPA believes that one-year lead time is sufficient, and is proposing that the full set of requirements, including locating test fuels and conducting vehicle testing, be applicable beginning January 1, 1996. For the first year of the program EPA is proposing simpler requirements. This simpler program would provide a regulatory structure to avoid difficulty in enforcing the self-implementing statutory provision, and will establish specifications for clear and consistent minimum detergency requirements. As noted, all gasoline is required to contain appropriate detergent additives beginning January 1, 1995. During the first year of the program, an optional simplified set of certification requirements would be in effect. Those wishing and able to certify under the more complicated requirements would have the option to do so for 1995.

The interim option proposed for the first year would primarily require that certified detergent additives be composed of chemicals with known detergency action and be present at least at a minimum functional concentration. Again, some manufacturers may nevertheless wish to utilize the full set of certification options to demonstrate the required levels of performance. Thus, additives with chemical compositions that do not conform to the list of known detergent additives could still be used, provided that the necessary certification testing was conducted. Also, during the first year of the program a detergent certified under the California detergent additive program (Title 13, section 2257 of the California Code of Regulations) would be acceptable for gasoline marketed nationally. The details of these phase-in requirements are discussed in detail in Section IX "Alternative Interim Detergent Additive Program" and Section X, "Enforcement".

3. *Organization of the Notice*

The remainder of this notice includes a detailed description of EPA's proposed performance-based certification strategy and the interim detergent registration program. Following background discussions in Sections II and III on fuel deposit formation and effects, Section IV describes three primary options which

would be available to applicants for detergent/gasoline certification: a nationwide option (in which a detergent would be certified for use in gasoline sold throughout the United States); a Petroleum Administration Defense District (PADD) certification option (in which a detergent would be certified for use in gasoline in a particular region); and a fuel-specific option (in which a detergent would be certified for use in a particular refiner's or group of refiner's segregated fuel). Under the national and PADD certification options provisions are provided for the certification of detergents for use in either moderately severe gasolines or the more severe gasolines within the given certification region. Potential re-certification requirements are also addressed in Section IV. In Section V, other alternatives, including specific certification provisions for premium grade, oxygenated, and reformulated/conventional gasolines, are discussed for consideration. Specifications for the certification test fuels which are proposed for use under each of the proposed options and the alternative options are proposed in Section VI. The vehicle tests and detergent additive performance standards proposed for certification are discussed in Section VII. In Section VIII, proposed provisions are included for coordinating the federal certification requirements with the detergent gasoline program already implemented in the State of California. The proposed interim program is detailed in Section IX and proposed enforcement procedures are discussed in Section X. The remainder of the notice provides additional information on the program's costs, benefits, and various administrative issues.

The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A–91–77 or by request from the EPA contact persons designated earlier in this notice free of charge. The proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for a 1200, 2400, or 9600 bps modem. If more information on TTN is needed, call the systems operator at (919) 541–5384.

C. List of Key Acronyms

CCD: Combustion chamber deposit(s)
IVD: Intake valve deposit(s)
ORI: Octane requirement increase
OVI: Oil viscosity increase
PFI: Port fuel injector(s). (Note: "Fuel injector" is understood to be shorthand for "port fuel injector")
PFID: Port fuel injector deposit(s)

II. Background

Engine and fuel supply system deposits can be grouped into three categories: Fuel system deposits (primarily carburetor or fuel injector deposits), intake system deposits (primarily intake valve deposits, (IVD)), and combustion chamber deposits (CCD). Depending on their location, quantity, morphology, and chemical composition, such deposits can cause significant performance problems, including increased emissions, reduced fuel economy, reduced durability, impaired driveability, and an increase in the octane requirement of the engine.

The quality and frequency of use of deposit control additives have steadily increased since 1986. Based on discussions with various representatives of the petroleum, gasoline additive, and automobile industries, EPA estimates that 90 percent of the gasoline sold nationwide in 1990 contained additives which provide some level of carburetor/fuel injector deposit control. Of this 90 percent, EPA estimates that some level of intake valve deposit control was provided in 65 to 75 percent of the gasoline sold. However, these estimates do not address whether the level of protection provided is sufficient or what a sufficient level of protection is. An estimated 10 percent of U.S. gasoline contained no deposit control additives in 1990. This fraction has remained relatively constant since 1987. EPA requests comment on these estimates.

Numerous variables, including fuel quality, engine design, lubricating oil use, driving cycle, and other vehicle operating conditions, can have a highly significant effect on both the deposition rate and character of the deposits and the severity of deposit-related effects. Furthermore, some additives intended for control of deposits in one location may increase deposition in another location. For example, carburetor/fuel injector deposit control additives can themselves contribute to the formation of IVD. Also, some additives used to control carburetor, fuel injector, and/or intake valve deposits may increase or alter CCD in such a way as to incrementaly raise the engine's octane requirement. Some of these additives may also cause the viscosity of the lubricating oil to increase between normal oil changes, potentially causing the oil viscosity to exceed the level recommended by the vehicle manufacturer. This oil viscosity increase (OVI) can cause impaired cold startability, reduced fuel economy, reduced engine durability, and increased hydrocarbon emissions. To help provide a foundation for the requirements of this proposed rule, the following sections review the information currently available about the types, causes, and effects of fuel deposits.

A. Fuel System Deposits

Carburetor deposits can cause improper enrichment of the fuel/air mixture, which can result in rough idling, stalling, poor acceleration, reduced fuel economy, and higher emissions of hydrocarbons (HC), carbon monoxide (CO) and, in some cases, nitrogen oxides (NO_x).[4] Conventional amine type detergent additives are effective in preventing the accumulation of carburetor deposits at doses of 20 to 60 ppm, and can clean up existing deposits at higher concentrations.[5] Since their introduction in 1954 for the control of carburetor deposits, detergent additives have steadily evolved to meet the changing demands of vehicle and fuel technology. Driveability problems encountered with fuel injected vehicles in 1986 resulted in the use of higher levels of carburetor detergents and the use of more effective detergent packages such as polymeric detergents/dispersants to maintain the needed level of fuel injector cleanliness. Port fuel injectors require a higher level of gasoline detergency action than do carburetors or throttle body injectors to prevent the accumulation of deposits and maintain proper performance.[6] Therefore, detergent additives capable of controlling port fuel injector deposits (PFID) are also believed to be effective in controlling the accumulation of deposits in carburetors and throttle body injectors.[7]

A number of recent papers provide specific information on the formation, characteristics, and effects of PFID. PFID form in the narrow annular region at the injector tip, on the surface of the metering orifice, and on the pintle

[4] "Reformulated Gasoline: Proposed Phase 1 Specifications, Technical Support Document", State of California Air Resources Board, August 13, 1990.

[5] *Gasoline and Diesel Fuel Additives*, Critical Reports on Applied Chemistry, Volume 25, Editor K. Owen, The Society of Chemical Industry, 1989.

[6] "Deposits in Gasoline Engines—A Literature Review", Gautam T. Kalghatgi, SAE Technical Paper Series No. 902105.

[7] "Final Statement of Reasons for Rulemaking Including Summary of Comments and Agency Responses", Agenda Item No. 90–15–1, Public Hearing to Consider Adoption of and Amendments to Regulations Regarding Reformulated Gasoline: Phase 1 Gasoline Specifications, (Deposits Control Additives and Lead, September 28, 1990, State of California Air Resources Board.

valve.[8] These deposits may form unequally on different injectors in the same engine, causing an imbalance in the air/fuel mixture supplied to the individual cylinders. They may also disturb the injector spray pattern, resulting in impaired fuel/air mixing. Similar to carburetor deposits, PFID can result in reduced fuel economy, impaired driveability, reduced vehicle durability, and higher levels of exhaust emissions. Unlike carburetor deposits, however, PFID do not form when the engine is operated continuously. Repeated cycles of vehicle operation to bring the vehicle to operating temperature followed by vehicle hot soak (when a hot engine is turned off and allowed to cool slowly the vehicle is said to hot soak) are essential for PFID formation. Fuel quality also has a significant effect on the rate of deposition and the character of the deposits formed, as does vehicle design and operating condition. These fuel and vehicle effects are discussed in Sections III and VII, respectively.

The performance of detergent additives varies greatly depending on their composition, treatment rate, gasoline quality, and nature of deposits. Conventional amine carburetor detergents were initially used at higher concentrations to control PFID; however, the thermal decomposition of these additives on the intake valves at high concentrations often led to an unacceptable increase in IVD.[9] Today, polymeric detergent/dispersants are predominantly used. These agents rely more on dispersion of deposit precursors than on surface protection (as the conventional amine carburetor detergents do), possess better gasoline solubility, and are usually more thermally stable.

Once formed, fuel injector deposits that contain a particularly high percentage of inorganic material may be very difficult or impossible to remove.[10] Under most circumstances, however, both "clean-up" and "keep-clean" performance have been demonstrated using effective additives and treatment rates. Polymeric detergent/dispersants are much more effective in their clean-up performance than the conventional amine detergents.[11] (EPA believes that conventional amine detergents are unlikely to be used because EPA does not expect that they will be able to satisfy the proposed IVD control requirements.) For example, fouled port fuel injectors (approximately 10.7 percent average flow restriction) can be cleaned to a near pristine condition (approximately one percent average flow restriction) using the more effective polymeric detergent packages at clean-up treatment levels (200 ppm) in approximately 800 miles of vehicle operation. It appears that clean-up of fouled injectors can also be accomplished with typical keep-clean treatment levels of additives over longer periods of vehicle operation, (2400 to 3000 miles). Typical treatment rates for "keep-clean" performance are 60 to 100 ppm and up to 200 ppm for "clean-up" performance.[12] An additive's ability to maintain fuel injector cleanliness, however, does not necessarily ensure adequate protection from intake valve deposit formation, as discussed in the following section.

B. Intake System Deposits

Intake system deposits which may affect engine performance are located on the intake valve, intake port and manifold, intake valve stem, and the ridge area of the intake port.[13] Depending on many variables, intake system deposits may increase HC, CO and NOx emissions, impair driveability, reduce engine durability, possibly increase the octane requirement of the engine, and may effect fuel economy.[14, 15] Recently, the focus of attention in providing intake system deposit control has been on the intake valve because the deposits located there have had the largest impact on driveability. EPA believes that IVD control ensures adequate control in other areas of concern in the intake system.

IVD are of two types: A heavy black carbonaceous, relatively nonporous, sometimes oily type, and a thin, low volume, relatively evenly distributed, porous type.[16] The heavy deposit type is associated more with carbureted engines and the thin type is associated more with fuel injected engines. Heavy deposits may partially block the flow of the air/fuel mixture, thereby increasing the mixture imbalance among the cylinders. This imbalance may lead to higher HC and CO emissions due to the inability of the single oxygen sensor to compensate for this imbalance.[17] There may also be a link between the weight of these deposits and an increase in NO_x emissions. It is hypothesized that this increase may be due to the deposit's effect on swirl, combustion rate, and the level of residual gases. An increase in the engine octane requirement may also occur, due to the disruption in the swirl of the air/fuel mixture created by intake system deposits.[18] This type of IVD may cause a measurable loss in vehicle performance without being detected by the driver as impaired driveability.[19]

On the other hand, due to both the nature of the deposits and the type of vehicle in which they are likely to occur, the performance effects of the thin type valve deposits are more likely

[8] "Deposits in Gasoline Engines—A Literature Review", G. Kalghatgi, SAE Technical Paper Series No. 902105.

[9] "Gasoline Additive Requirements for Today's Smaller Engines", J. Udelhofen, and T. Zahalka, SAE Technical Paper Series No. 881644.

[10] "Deposits in Gasoline Engines—A Literature Review", Gautam T. Kalghatgi, SAE Technical Paper Series No. 902105.

[11] "Gasoline Additive Requirements for Today's Smaller Engines", J. Udelhofen, and T. Zahalka, SAE Technical Paper Series No. 881644.

[12] "Deposits in Gasoline Engines—A Literature Review", Gautam T. Kalghatgi, SAE Technical Paper Series No. 902105.

[13] "A New Concept in Engine Deposit Control Additives for Unleaded Gasolines", R. Lewis et al, Society of Automotive Engineers of Japan, Technical Paper No. 830938.

[14] "Reformulated Gasoline: Proposed Phase 1 Specifications, Technical Support Document", State of California Air Resources Board, August 13, 1990.

[15] "Deposits in Gasoline Engines—A Literature Review", G. Kalghatgi, SAE Technical Paper Series No. 902105.

[16] "Intake Valve Deposits—Effects of Engines, Fuels, & Additives", R. Tupa, and D. Koehler, SAE Technical Paper Series No. 881645.

[17] "Performance Robbing Aspects of Intake Valve and Port Deposits", J. Gething, SAE Technical Paper Series No. 872116, 902104.

[18] "Some New Aspects of Deposit Effects on Engine Octane Requirement Increase and Fuel Economy", L. Graiff, SAE Technical Paper Series No. 790938.

[19] "Large Scale Testing Results", Don Koehler, The Lubrizol Corporation, Proceedings of the CRC Workshop on Intake Valve Deposits, August 22–24, 1989, Published by the Coordinating Research Council, Atlanta, Georgia.

to be detected by the driver.[20] Several theories have been offered regarding the mechanism by which the thin type intake valve deposits contribute to increased emissions and affect driveability.[21, 22, 23, 24] It has been widely accepted that the primary mechanism is the adsorption of gasoline onto the IVD during engine cold start and warm-up. This adsorption of fuel may cause a temporary lean imbalance in the air/fuel ratio among the cylinders with associated increase in NO_x emissions. If enough fuel is adsorbed, lean misfire may result, with a further increase in NO_x emissions. When the throttle is closed, the fuel adsorbed on the valve deposits vaporizes, resulting in a temporary rich imbalance in the air fuel ratio with associated increases in HC and CO emissions. Another mechanism which may contribute to increased emissions is that the intake valve deposits may insulate the fuel spray from the hot valve surface, thereby reducing the amount of fuel vaporized and leading to poor mixture preparation.

Based on the above discussion, it had been widely accepted that the largest emissions impact of intake valve deposits is limited to approximately the first 15 to 30 seconds after cold start.[25] However, a recent study revealed that there is a significant emissions increase in bags two and three of the Federal Emissions Test Procedure as well as bag one, demonstrating that the emissions impact of IVD persists even after the vehicle reaches operating temperature.[26]

The degree to which intake valve deposits form and the severity of their emissions impact is dependent on numerous factors, including gasoline composition, vehicle technology, oil consumption, driving cycle, and other operating conditions. The effect of fuel composition on the tendency to form intake valve deposits is detailed in Section III, while vehicle effects are discussed in Section VII.

As noted earlier, low molecular weight conventional amine type carburetor/PFI detergents may tend to contribute to the formation of IVD due to their thermal instability and high degree of attraction to the valve surfaces. Higher molecular weight detergents have better performance since they are less attracted to the metal surfaces, are more mobile, and generally possess good thermal stability. Polymeric detergents such as polybutene amine (PBA) with carrier oil and polyether amine (PEA) have been shown to be effective at maintaining a satisfactory level of intake valves cleanliness. The type and concentration of carrier oil used with the PBA detergents significantly affects the ability of such detergent/carrier oil combinations to control IVD. One study reported effective IVD control when 500 ppm PBA was combined with 600 ppm mineral based carrier oil.[27] When the carrier oil was reduced to 200 ppm much higher levels of IVD resulted. The study also showed that 50 ppm of synthetic based carrier oil provided equivalent deposit control to 150 ppm mineral based carrier oil when used in conjunction with 500 ppm PBA. Polyether amine detergent/dispersants are effective in controlling intake valve deposits at similar treat rates but do not require a carrier oil for the dispersant activity to take place.[28]

Although the ability to keep intake valves clean with the proper additive and treatment rate has been well-demonstrated, the ability to effectively clean up existing deposits is less certain. Some data suggest that partial clean-up may be possible for some vehicles and deposit types.[29] However, IVD build-up resulting from the occasional use of deposit-forming gasoline may at best require a significantly longer period of vehicle operation using gasoline containing a superior detergent additive to see any meaningful valve clean-up. Even so, any possible IVD clean up would be highly dependent on additive type and vehicle technology. Consequently, there is likely to be a tendency for valve deposits to build up continually without the use of additives which can prevent deposits in gasolines of widely differing intake valve deposit-forming severity. Detergent additives that provide control of the thin-type intake valve deposits are also likely to provide effective control of the thick type of deposits. The Agency requests comment on these assessments.

The types of detergent additives noted above at the concentrations which are typically employed for the control of IVD are also effective in controlling the accumulation of fuel injector deposits. EPA requests comment on whether other additive types may provide adequate protection against IVD without providing fuel injector deposit control.

Some intake valve additives, especially those which use carrier oil, can significantly increase combustion chamber deposits with associated octane requirement increase and oil viscosity increase. The mechanisms by which these adverse effects occur, their impact, and the potential methods of control are discussed in the following section.

C. Combustion Chamber Deposits and Octane Requirement Increase

The formation of combustion chamber deposits (CCD) is governed by the combustion process and the high temperatures on the surfaces of the combustion chamber. The chemical and physical properties of combustion chamber deposits, and hence their effect on engine performance, are determined by fuel quality, engine operating conditions, engine oil consumption and composition, and additive usage. The limited data available suggests that combustion chamber deposits may significantly increase HC and NO_x emissions.[30] Hydrocarbon emissions are likely increased by absorption of unburned fuel during the compression stroke and its subsequent discharge during the exhaust stroke. Test data on earlier model year vehicles (1966–1968) showed that the removal of equilibrium

[20] "Large Scale Testing Results", Don Koehler, The Lubrizol Corporation, Proceedings of the CRC Workshop on Intake Valve Deposits, August 22–24, 1989, Published by the Coordinating Research Council, Inc., Atlanta, Georgia.

[21] "Performance Robbing Aspects of Intake Valve and Port Deposits", J. Gething, SAE Technical Paper Series No. 872116.

[22] "Gasoline Additive Requirements for Today's Modern Engines", J. Udelhofen, and T. Zahalka, SAE No. 881644.

[23] "Intake Valve Deposits—Effects of Engines, Fuels, & Additives", SAE No. 881645.

[24] "The Impact of Intake Valve Deposits on Exhaust Emissions", K. Houser, and T. Crosby, SAE No. 922259.

[25] "Large Scale Testing Results", Don Koehler, The Lubrizol Corporation, Proceedings of the CRC Workshop on Intake Valve Deposits, August 22–24, 1989, Published by the Coordinating Research Council, Inc., Atlanta, Georgia.

[26] "The Impact of Intake Valve Deposits on Exhaust Emissions", K. Houser, and T. Crosby, SAE Technical Paper Series No. 922259.

[27] "Intake Valve Deposit Control—A Laboratory Program to Optimize Fuel/Additive Performance", T. Bond et al, SAE Technical Paper Series No. 892115.

[28] "A New Concept in Engine Deposit Control Additives for Unleaded Gasolines", R. Lewis et al, SAE Technical Paper Series No. 830938.

[29] "Intake Valve Deposit Control—A Laboratory Program to Optimize Fuel/Additive Performance",

[30] "Deposits in Gasoline Engines—A Literature Review", G. Kalghati, SAE Technical Paper No. 902105.

level combustion chamber deposits resulted in a decrease in HC emissions of 17 to 29 percent.[31] The large increase in HC emissions due to CCD in this study would likely be much smaller in current vehicles due to improvements in emissions control technology; however, CCD may also significantly increase HC emissions in modern vehicles. Combustion chamber deposits are also likely to increase NO_x emissions due to the insulating effect of these deposits and the higher resultant combustion chamber temperatures.[32] Two studies show that the increase in NO_x may be sizeable.[33, 34] However, the use of leaded fuels for mileage accumulation for some of the vehicles in these studies may obscure the effect that may be expected for unleaded fuel.

Combustion chamber deposits are largely responsible for the increased octane demand of an engine over time. Gasoline engines require a minimum level of gasoline octane (a measurement of a gasoline's tendency to resist preignition) in order to operate without the engine knock. Over time, an engine will tend to require a higher minimum octane gasoline in order to maintain proper operation. This phenomenon is called octane requirement increase (ORI). Based on a test which employed mechanical clean-up of deposits, the relative contribution of CCD to ORI is likely to be at least two-thirds of that which the vehicle experiences, with the balance coming from intake system deposits, if present.[35] However, not all vehicles experience increased ORI with intake system deposits,[36] and hence the relative contribution of CCD to ORI may be much greater than two-thirds.

Three mechanisms have been identified by which combustion chamber deposits may cause ORI.[37] First, the space occupied by deposits in the combustion chamber increases the compression ratio slightly. This appears to account for less than 10 percent of the total ORI. Second, CCD produce a thermal insulating effect causing higher combustion chamber temperatures and pressures and potentially premature ignition of the fuel/air charge due to hot spots in the chamber. Third, the chemical composition of the deposits may unfavorably interact with certain knock-inhibiting chemical species, thereby contributing to pre-ignition and ORI. As reported in the cited reference, the thermal mechanism is likely to be dominant among these three mechanisms in contributing to ORI.

For most in-use vehicles, equilibrium ORI is reached in 8000 to 16000 kilometers and ranges from 3 to 15 octane numbers. The average stabilized octane requirement increase is approximately 6 to 7 octane numbers.[38, 39] Some detergent additives and carrier oils used to control intake valve deposits contribute to the formation of CCD. It is hypothesized that this contribution to CCD is due to the slow or incomplete combustion of these substances, which then oxidize and polymerize to form deposits.[40] In order to reduce the incremental contribution to CCD, a detergent additive must have adequate thermal stability to function on the intake valve, while being able to decompose quickly and thoroughly in the combustion chamber.

Use of a polybutene amine and carrier oil intake valve detergent additive package was shown in a fleet test to increase ORI over that experienced for the base fuel alone by an average of two octane numbers.[41] Some sensitive vehicle models in this fleet experienced an incremental increase in ORI of four octane numbers due to additive use. Nevertheless, the magnitude of the incremental ORI which can be attributed to additive use for the fleet as a whole is uncertain. A study of octane requirement survey data spanning 1981 through 1990 from the Coordinating Research Council did not show an increase in the stabilized octane requirement for the in-use fleet as a whole over the years during which PFI/IVD detergent additives became more widely used.[42] However, vehicle technology changed considerably over these years and any ORI detriment may have been overshadowed by technology changes that manufacturers implemented to optimize performance.

Significant effort has been focused by industry to limit the additive contribution to CCD and ORI. One study showed that the ORI which resulted from mileage accumulation on a base fuel with an advanced intake valve additive package was 4 to 5 octane numbers as compared to an 8 to 9 octane number increase when the same base fuel containing a first generation additive was used.[43] A study done to compare the effects of a polyether amine detergent additive package containing no carrier oil with those from a polybutene amine/carrier oil package reported that the use of the polyether additive gave only a slightly greater CCD mass over that which was attributed to the base fuel alone, and 50 percent less CCD mass than was observed with the polybutene additive.[44]

There has also been some research into reducing the base fuel contribution to CCD and ORI through detergent additive use. One recent study reported that use of a new additive type can achieve reductions in the ORI which results from the base fuel by approximately 70 percent.[45] The additive is thought to limit ORI by controlling the deposit thickness, by changing the physical character of the deposits (such as porosity), by making the deposits more thermally conductive, or by providing that more knock-inhibiting molecules are absorbed into the deposit surface. This same study also reported a 10 percent reduction in HC emissions with additive use which was attributed to the prevention and/or modification of CCD. A fuel economy benefit of approximately 1.5 percent was also reported.

Although vehicle manufacturers design their vehicles to compensate for

[31] "The Effect of Leaded and Unleaded Gasolines on Exhaust Emissions as Influenced by Combustion Chamber Deposits", H. Leikkanen, and E. Beckman, SAE Technical Paper Series No. 710843.

[32] "Deposits in Gasoline Engines—A Literature Review", G. Kalghati, SAE Technical Paper No. 902105.

[33] "The Effect of Fuel Anti-Knock Compounds and Deposits on Exhaust Emissions", J. Gagliardi, SAE Technical Paper Series No. 670128.

[34] "Influence of Engine Variables on Exhaust Oxides of Nitrogen Concentrations from a Multi-Cylinder Engine", T. Hills, and H. Nickol, SAE Technical Paper Series No. 670482.

[35] "Fuel Additive Effects on Deposit Build-up and Engine Operating Characteristics", T. Valtadoros et al, Symposium on Fuel Composition/Deposit Formation Tendencies Presented before the Division of Petroleum Chemistry, Inc., American Chemical Society, Atlanta Meeting, April 14–19, 1991.

[36] "Deposits in Gasoline Engines—A Literature Review", G. Kalghati, SAE Technical Paper No. 902105.

[37] "Octane Requirement Increase Control—A New Way of Saving", M. Nelson et al, SAE Technical Paper Series No. 911739.

[38] "A New Concept in Engine Deposit Control Additives for Unleaded Gasolines", R. Lewis et al, Society of Automotive Engineers of Japan Inc., Paper No. 830938.

[39] "Octane Requirement Increase Control—A New Way of Saving", M. Nelson, SAE Technical Paper Series No. 911739.

[40] "A New Concept in Engine Deposit Control Additives for Unleaded Gasolines", R. Lewis et al, Society of Automotive Engineers of Japan Inc., Paper No. 830938.

[41] "A New Concept in Engine Deposit Control Additives for Unleaded Gasolines", R. Lewis et al, Society of Automotive Engineers of Japan Inc., Paper No. 830938.

[42] Letter to Jeffrey Herzog, EPA, from Tom Haydon, Texaco, April 15, 1992, available in the public docket.

[43] "System 3 Gasoline Features Advanced Deposit Control Additive", Michael Rawdon, Thomas Hayden, Texaco Research Inc., Fuel Reformulation, January/February 1992.

[44] "A New Concept in Engine Deposit Control Additives for Unleaded Gasolines", R. Lewis et al, Society of Automotive Engineers of Japan Inc., Paper No. 830938.

[45] "A Broad-Spectrum, Non-Metalic Additive, for Gasoline and Diesel Fuels: Performance in Gasoline Engines", O. Nelson et al, SAE Technical Paper Series No. 890214, "Octane Requirement Increase Control—A New Way of Saving", M. Nelson, SAE Technical Paper Series No. 911739.

ORI experienced in-use, some vehicles may experience a level of ORI which necessitates the use of higher priced premium fuels to maintain performance. One study notes that the need to produce higher octane fuels may also significantly increase the national demand for crude oil as more crude is required to produce higher octane fuels.[46] In addition, the artificial constraint placed on engine designers in accounting for ORI in the field inhibits efforts toward optimization of engine performance, such as increasing the compression ratio, to achieve better fuel economy and energy savings. As the engine compression is increased the gasoline octane requirement increases as well. Thus, if ORI in field use was not so great, engine designers could utilize higher engine compression ratios.

On the other hand, the effects of CCD are not always detrimental. Some field tests have shown that fuel economy is increased as much as 13 percent for some vehicles when CCD are formed.[47] This benefit may be due to a reduction in heat loss to the coolant coupled with faster flame development. Therefore, the improvement in fuel economy noted for new vehicles, especially within the first 3000 miles, which has been attributed to "new vehicle break-in" and reduced friction, may be more appropriately attributed to the effects of CCD. However, the engine performance optimization efforts which could be undertaken for new vehicles if ORI were not so significant may tend to surpass any potential losses in fuel economy resulting from the prevention of CCD.

Several automobile manufacturers have recently received complaints related to mechanical interference of combustion chamber deposits in the narrow region between the top of the piston and the cylinder head ("squish area") for certain late model vehicles. This interference can cause difficult starting and, if sufficiently severe, can prevent operation of the vehicle. There may be a trend towards the reduction of the "squish area" as vehicle manufacturers attempt to further reduce hydrocarbon emissions. Therefore, problems with the mechanical interference of CCD may become increasingly more pronounced for modern technology vehicles. Industry is just beginning to focus on this problem and as of yet there is little data on which to base an evaluation.

[46] "Octane Requirement Increase Control—A New Way of Saving", M. Nelson, SAE Technical Paper Series No. 911739.

[47] "Deposits in Gasoline Engines—A Literature Review", G. Kalghatgi, SAE Technical Paper Series No. 902105.

D. Oil Viscosity Increase

Under normal operating conditions, some of the additive/carrier oil package may remain unburned and be retained along with the oil on the wall of the combustion chamber.[48] Engine blow-by can then cause a fraction to penetrate into the crankcase, causing oil viscosity increase (OVI). One study showed that a high viscosity polybutene/carrier oil package caused an increase in oil viscosity of one grade during mileage accumulation of 10,000 kilometers. This degree of OVI may cause excessive bearing wear.[49] It is also possible that OVI may result in increased hydrocarbon emissions under cold start conditions due to the need for longer cranking time.

In formulating additive packages, manufacturers using high viscosity additives such as those mentioned above seek a balance between maximizing the level of intake valve cleanliness on one hand and minimizing OVI on the other. A satisfactory balance of these conflicting criteria may be achieved with the use of carefully formulated additive blends, such as polybutene/carrier oil additive packages. Manufacturers have also sought to limit OVI by using a lower viscosity polyether additive which does not need a carrier oil to function properly in maintaining intake valve cleanliness.[50] It is reported that use of this polyether additive did not seriously impact OVI during mileage accumulation of 24000 kilometers.[51]

E. Focus of The Proposed Regulation

Based on the background discussion in the previous section, today's notice proposes port fuel injector and intake valve keep-clean performance standards for certification of detergent additives. ("Keep-clean" refers to the ability of detergent additives to prevent deposits from forming, whereas "clean-up" refers to the ability of detergent additives to remove preexisting deposits.) The proposed PFID performance standards would be expected to control deposits in carburetors and throttle body injectors as well, and the IVD standards would be expected to protect other areas of the intake system. Therefore, EPA is not proposing additional performance standards for these areas.

A consistent level of keep-clean protection would, for the most part, maintain a satisfactory level of fuel injector cleanliness for the vehicle fleet as a whole, and existing fuel injector deposits would likely be cleaned up by keep-clean levels of most fuel injector detergents in a relatively short time. Therefore, EPA believes that, over the long term, a more stringent fuel injector clean-up performance standard is not necessary. Furthermore, EPA believes that the relatively small environmental benefit that an interim PFID clean-up standard would have in the short term would not justify the added difficulty and expense of the certification process.

EPA is also not proposing a clean-up performance standard for IVD. EPA believes that the proposed specifications on certification test fuel severity (see Section VI) would ensure a sufficient level of IVD control to prevent a significant deleterious impact on emissions. Furthermore, an adequate test procedure to assess IVD clean-up performance is not currently available. The Agency solicits comment on the adequacy of relying on fuel injector and intake valve keep-clean standards as opposed to requiring clean-up performance standards. EPA may implement PFI and/or IVD clean-up standards in the future if data supports the need.

The Agency currently is not proposing combustion chamber deposit control performance standards due to the lack of adequate data on the impact of CCD on emissions and the lack of a suitable test procedure. Lack of adequate test procedures also prevents EPA from proposing performance criteria to evaluate and limit the detergent additive effect on increasing ORI and OVI at this time.

However, EPA anticipates that the regulation proposed today (including the proposed interim detergent additive registration program, effective during 1995, and the full certification testing program, effective on January 1, 1995 and mandatory on January 1, 1996) may be the first of two deposit control regulations. There are several potential reasons for a two phase approach. First, revisions to the regulations may be necessary to implement improved test procedures for fuel injector and intake valve detergency performance. The Coordinating Research Council (CRC) is currently developing new procedures, which will not be completed in time to be included in this rule due to the notice and comment requirements. These new procedures are expected to employ vehicles/engines which are

[48] "A New Concept in Engine Deposit Control Additives for Unleaded Gasolines", R. Lewis et al, Society of Automotive Engineers of Japan Inc., Paper No. 830938.

[49] "Intake Valve Deposits—Fuel Detergency Requirements Revisited", B. Bitting, SAE Technical Paper Series No. 872117.

[50] "A New Concept in Engine Deposit Control Additives for Unleaded Gasolines", R. Lewis et al, Society of Automotive Engineers of Japan Inc., Paper No. 830938.

[51] Ibid.

more representative of modern technology than the vehicles used in the test procedures currently in use and proposed in this notice. Second, the ability to select representative certification test fuels may improve as new data emerges on the effect of various fuel parameters on a fuel's deposit-forming tendency. Third, when fully implemented in the year 2000, the proposed reformulated gasoline requirements and anti-dumping provisions may result in decreases in the concentrations of some of the nonoxygenate fuel parameters used to evaluate a gasoline's tendency to form deposits and define certification test fuels. Hence, there may be the need to adjust the certification requirements to account for this change. (This issue is explored in more detail in section VI.C.) Fourth, EPA plans to continue evaluating the feasibility, cost, and benefits of controlling the additive contribution to CCD, ORI and OVI, and the base gasoline contribution to CCD and ORI. Based on this evaluation the Agency may, at a later time, propose test procedures and performance standards for the control of CCD, ORI, and OVI. EPA requests data that would be useful in evaluating the need, feasibility, and costs of regulating CCD, ORI, and OVI.

While today's proposal would require the use of detergent additives at treatment levels not to fall below those used during certification testing, it does not specify a maximum treatment level. Such a specification on the maximum treatment level allowed might become necessary if CCD, ORI, and/or OVI control were addressed in a later regulation. This is because CCD, ORI, and/or OVI may be caused by high levels of certain detergents. Comments on this specific point are also requested.

A concern in the regulation of deposit control additives is their compatibility for use in alternative fuel vehicles, such as flexible-fueled vehicles, which are designed to operate on gasoline and either M85 or E85. (M85 is a mixture of 85 percent methanol and 15 percent gasoline. E85 is a mixture of 85 percent ethanol and 15 percent gasoline.) Studies by industry are currently underway to investigate whether gasoline detergent additives are contributing to the filter plugging seen in some flexible-fueled vehicles. Presently there are insufficient data to determine if a problem with gasoline detergent additive incompatibility exists. EPA will continue to evaluate this issue and may take regulatory action to ensure the compatibility of gasoline detergent additives in flexible-fueled vehicles if a need is demonstrated.

III. Gasoline Parameters That Impact Deposit Forming Severity

The proper selection of fuel parameters to use in defining the test fuels for certification is of vital importance in ensuring the desired level of gasoline detergency performance for in-use vehicles. The parameters that affect gasoline's severity (i.e., its tendency to form PFID and IVD) are not completely defined, and the way in which these parameters interact to affect fuel severity is even less well understood. However, the concentrations/levels of the following gasoline parameters have traditionally been used with reasonable success by industry to help predict a gasoline's tendency to form fuel injector and/or intake valve deposits: Olefins, sulfur, T–90 (the temperature at which 90 percent of a gasoline by volume is evaporated), aromatics, and oxygenates. An increasing concentration/level of these fuel parameters has been shown to increase the quantity and/or adversely affect the composition of PFID and/or IVD and hence their effect on vehicle emissions performance. Following is a discussion of published studies that illustrate fuel compositional effects on the formation of PFID and IVD.

A. Fuel Parameter Effects on PFID Formation

1. Study Results

Existing data indicate that increasing the olefin content increases a gasoline's tendency to form fuel injector deposits. One pertinent study, which was conducted at twelve laboratories, employed 38 total vehicle tests with three test fuels and three different vehicle models.[52] The effect of olefin concentration on fuel injector fouling, as shown by this study, are summarized in Table 1. It should be noted that the levels of fuel parameters other than olefin content were not controlled in this study and may also have affected the results. The test fuels contained no detergent additives.

TABLE 1.—INJECTOR SET AVERAGE FLOW REDUCTION

[Percent of Original]

Veh/fuel	A (Percent)	B (Percent)	C (Percent)
5.01 V–8	~23	~12	~3.5
2.21 I–4 Turbo	~12	~6	~2
3.81 V–6	~9.5	~4.5	~1.5

Fuel "A": 28.5 vol percent olefins.
Fuel "B": 14.5 vol percent.
Fuel "C": 4.5 vol percent olefins.

Other indications about the potential role of olefins come from early investigation into field complaints resulting from PFID. In one early study, gasoline samples were taken from the tanks of customer complaint cars and from service stations that were suspected of supplying gasoline that promoted deposits.[53] Most of the field samples were shown to have high olefin content (ranging from 8–23 volume percent, with a mean of 16 volume percent) as compared to AAMA (American Automobile Manufacturers Association) summer 1985 survey data (2–16 volume percent with a mean of 7 volume percent).

Another study assessed the effect of olefin and aromatic content on PFID fuel severity by conducting mileage accumulation tests using identical vehicles operated on four fuels of varying composition.[54] This study demonstrated the expected impact of olefin content on PFID fuel severity, and also suggested that the aromatic content

[52] "A Vehicle Test Technique for Studying Port Fuel Injector Deposits—A Coordinating Research Council Program", Robert Tupa, Brian Taniguchi, and Jack Benson. SAE Technical Series, Paper No. 890213.

[53] "The Effects of Fuel Composition and Additives on Multiport Fuel Injector Deposits", Jack Benson, and Philip Yaccarino. SAE Technical Series, Paper No. 861533.

[54] Ibid.

of gasoline may not have an impact on PFID fuel severity. The results of these tests are summarized in Table 2, which shows the impact of olefin and aromatic content on PFID fuel severity. The test fuels contained no detergent additives. A model year 1985 5.0 liter V8 test vehicle was used. Note that for the 6000+ fuels, the test was terminated at 6000 miles with less than a 10 percent flow restriction.

TABLE 2.—MILES ACCUMULATED TO PRODUCE >10% INJECTOR FLOW RESTRICTION

Fuel composition (percent)	Miles
Olefins: 22 vol. ..... Aromatics: 36 vol.	~700
Olefins: 10 vol. ..... Aromatics: 34 vol.	~1800
Olefins: 0 vol. ..... Aromatics: 36 vol.	6000+
Olefins: 1 vol. ..... Aromatics: 59 vol.	6000+

The results of another vehicle and laboratory engine test program help to provide a preliminary understanding of the interactive effects on PFID fuel severity of gasoline olefin, sulfur, and nitrogen content, and distillation temperature.[55] The vehicle phase of this program used ten fuels in a series of mileage accumulation tests in two vehicle types. The results showed a general relation between high olefin content and PFID fuel severity. However, some gasolines with high olefin content formed deposits slowly, indicating that high olefin content in itself may not adequately characterize a gasoline's PFID fuel severity.

These issues were more thoroughly examined in a laboratory test program that used a fuel injected single cylinder Cooperative Fuel Research (CFR) engine.[56] The laboratory test engine was operated using two base fuels as well as modified formulations of these base fuels to investigate the effects of several fuel parameters. The properties of the test fuels are summarized in Table 3.

TABLE 3.—TEST FUELS USED IN SINGLE CYLINDER CFR ENGINE TESTS

	Base fuel		Modified base fuel "S4"			
	"S1"	"S4"	A	B	C	D
Olefins (vol. %)	20	23	21	19	23	21
Aromatics (vol. %)	30	24	25	28	26	24
Sulfur (ppm)	396	417	340	434	421	336
Total Nitrogen (ppm)	210	144	3	195	120	3
Diolefins (vol. %)	0.31	0.27	0.20	0.26	1.20	1.35

Modified Base Fuel "S4"
A: Base fuel "S4" treated with silica gel.
B: Base fuel "S4" with polar material added.
C: Base fuel "S4" with 1 Wt % Cyclopentadiene added.
D: Base fuel "S4" with 1 Wt % Cyclopentadiene added and treated with silica gel.

The authors of this study caution that their results are preliminary, and that the impact of these and other factors and the complex interactions between them require further analysis. However, the results offer valuable insights into the impact on PFID fuel severity of the concentration of olefins, polar materials, sulfur, and nitrogen. The results of single cylinder CFR engine tests are summarized in Table 4, and a discussion of their significance follows.

TABLE 4.—IMPACT OF DIOLEFIN, SULFUR, AND POLAR MATERIAL CONTENT ON PFID FUEL SEVERITY

Test fuel	No. tests	Flow restr.
Base Fuel "S1"	3	7
"S1" + 100 ppm DTBDS[1]	2	10
Base Fuel "S4"	4	7
Fuel "S4"–A	1	0
Fuel "S4"–B	1	11
Fuel "S4"–C	1	13
Fuel "S4"–D	1	3

Fuel "S4"–A: Base Fuel "S4", Silica Gel Treated.
Fuel "S4"–B: Base Fuel "S4"+ Polar Material.
Fuel "S4"–C: Base Fuel "S4"+ 1.0 Wt % Cyclopentadiene.
Fuel "S4"–D: Base Fuel "S4"+ 1.0 Wt % Cyclopentadiene and Silica Gel Treated.
Notes:
(1) Ditertiary Butyl Disulfide.
(2) Tests conducted using a CFR engine operated 100 cycles using 15 minute run/45 minute soak cycle.

Fuel S4–A was treated by passing it through a column of silica gel to extract polar compounds from the fuel. This treatment reduced the nitrogen content from 144 ppm to 3 ppm and the sulfur content from 417 ppm to 340 ppm. No deposits were formed in the one test run on this fuel, suggesting that the concentration of polar compounds of sulfur and nitrogen impact PFID fuel severity. A fraction of the polar materials was recovered from the silica gel column and added to another batch of base fuel S4 to produce fuel S4–B. This increased the concentration of nitrogen to 195 ppm and the concentration of sulfur to 434 ppm, and increased the PFID fuel severity as well. These results suggest that fuel nitrogen may have an impact on PFID fuel severity. However, additional investigation is needed to confirm the relevance of fuel nitrogen concentration to PFID fuel severity over the range of concentrations that normally occur in production gasolines.

Researchers have suggested that diolefins may have the most impact on a fuel's PFID fuel severity in relation to other olefinic species. To examine the impact of diolefins, one percent cyclopentadiene was added to base fuel S4 to produce fuel S4–C, resulting in a four-fold increase in diolefin content

[55] "Injector Deposits—The Tip of Intake System Deposit Problems", Brian Taniguchi, Richard Peyla, Gary Parsons, S. Hoekman, and Douglas Voss, SAE Technical Paper Series No. 861534.

[56] Ibid.

over that for fuel S4. The one engine test run using fuel S4–C resulted in a marked increase in flow restriction as compared with base fuel S4. This supports the importance of diolefin concentration in affecting PFID fuel severity.

To illustrate that fuel olefin (or more specifically, diolefin content) cannot be used alone to predict a fuel's PFID fuel severity, a sample of fuel S4–C was treated by being passed through the silica gel column to remove polar compounds in the fuel. This treatment had no effect on diolefin concentration. The test result on this fuel (fuel S4–D) showed a flow reduction of only three percent in comparison to 13 percent for the test conducted using the untreated fuel (fuel S4–C). These results suggest complex interactive effects occur between the various fuel parameters considered, and that high olefin content in itself may not predict a high PFID fuel severity.

One further finding in this study was that the addition of 600 ppm ditertiary butyl disulfide (DTBDS) to base fuel S1 caused an increase in PFID fuel severity. This finding is supported by another study, conducted using a laboratory injector test rig constructed to simulate the conditions that form PFID.[57] Each fuel was operated on the fuel injector laboratory test rig for 126 cycles of operation. The results of this study, summarized in Table 5, indicate that PFID fuel severity increases with fuel sulfur content. Although certain species of sulfur may have a greater impact than others on a fuel's PFID severity, the data from these two studies suggest that the concentration of fuel sulfur is a useful parameter in helping to determine a gasoline's PFID fuel severity.

[57] "Fuel Property Requirements for Multiport Fuel Injector Cleanliness", Akio Shiratori, Kenichiro Saitch. SAE Technical Paper Series No. 912380.

TABLE 5.—Impact of Sulfur Content on PFID Fuel Severity, Laboratory Test Rig Results

Test fuel	"7"	"27"	"28"
Olefins (vol %)	31.3	31.3	31.3
Sulfur (ppm)	288	493	1055
Diene #[1]	1.8	1.8	1.8
% Clean injector flow remaining at end of test	95%	70%	70%

Notes:
(1) The Diene number relates to the concentration of diolefins.

Another vehicle test program suggests that, although diolefins may be critical to the process of PFID deposition, high diolefin content alone does not cause a fuel to be severe for PFID deposits when other reactive materials (other olefinic compounds) are absent.[58] The results of this study are summarized in Table 6.

[58] "The Relationship of Gasoline Diolefin Content to Deposits in Multi-port Fuel Injectors", David Hilden, SAE Technical Paper Series No. 881642.

TABLE 6.—IMPACT OF OLEFINS AND DIOLEFINS ON PFID FUEL SEVERITY

	Fuel used in vehicle test			
	Test I (fuel "4")	Test II fuel "4" + diolefin mix[1])	Test IV (fuel "2A")	Test V (Fuel "2A" + diolefin mix[1])
Olefins, (vol %)	20.6		0	
Sulfur, (mass %)	0.09	Note 2	0.05	Note 2
Aromatics, (vol %)	38.9		5	
Test miles	3801	2910	6004	3257
Mean injector flow reduction	1.3	0.0	0.7	2.7

Notes:
(1) The "COM001" same diolefin mixture was added to each base fuel (fuels 4 & 2A) at the same concentration.
(2) The concentration of the diolefin mixture added to the base fuel (fuels 4 & 2A) was relatively small and hence it is assumed that the concentration of the other fuel parameters did not change significantly.
(3) Each fuel was tested in one vehicle test using a 1985 MY 5.0L V–8.

As shown in Table 6, the addition of diolefins to base test fuel 4, which contained mono-olefins, was associated with a large increase in injector flow restriction (Test II vs. Test I). When this same mixture of diolefins was added to base fuel 2A, which had no olefin content, the result was a much smaller increase in flow reduction (Test V vs. Test IV). This indicates that although diolefins may be necessary to the PFI deposit process, mono-olefins must also be present for a fuel to have high PFID fuel severity.

Evidence on the impact of ethanol on PFID fuel severity is mixed. To investigate the effect of ethanol on PFID fuel severity, vehicle tests were conducted using the same high olefinic base fuel cited in Table 6, with and without the addition of 10 percent ethanol.[59] The test fuels contained no detergent additives, and the test vehicle was a 1985 MY 5.01 V8. As illustrated in Table 7, the ethanol blend was less severe than the base fuel in this study. However, the author of this study theorized that this result may reflect, in part, the dilution of the olefin content by the addition of ethanol.

[59] ibid

TABLE 7.—EFFECT OF ETHANOL ON PFID FUEL SEVERITY, VEHICLE TEST RESULTS

	Base fuel	Base+10% ethanol
Average miles accumulated	638	1,508
Number tests	12	2
Std Deviation (miles)	272	499

A second study, using a fuel injector laboratory test rig to simulate PFID forming conditions, evaluated the impact of ethanol, methanol, and MTBE on PFID fuel severity.[60] As shown in Table 8, the results indicated that the fuel containing ethanol was much more likely to form deposits than the fuel containing the other oxygenates. However, this study did not address the relative severity of the oxygenated fuels tested to nonoxygenated gasoline.

[60] "Fuel Property Requirements for Multiport Fuel Injector Cleanliness", Akio Shiratori, Kenichiro Saitch, SAE Technical Paper Series No. 912380.

TABLE 8.—EFFECT OF OXYGENATES ON PFID FUEL SEVERITY, LABORATORY TEST RIG RESULTS

	Test fuel "8"	Test fuel "9"	Test fuel "10"
Olefins (vol. %)	15.2	15.2	15.2
Sulfur (ppm)	242	242	244
Diene #[1]	1.6	1.6	1.6
Oxygenate	5% MeOH and 5% TBA	10% EtOH	10% MTBE
Percentage of clean injector flow[2]	95%	78%	98%

Note:
(1) The Diene number relates to the concentration of diolefins.
(2) Remaining at End of Test. Each fuel was operated on the fuel injector laboratory test rig for 125 cycles of operation.

As shown in Table 8, fuel #8, containing 5 volume percent methanol (MeOH) and 5 volume percent tert-butyl alcohol (TBA), and fuel #10, containing 10 percent Methyltertiarybutylether (MTBE) produced relatively little injector flow restriction and hence were judged not to promote fuel injector deposits for the purposes of the laboratory study. Correlation between the results from this test rig and vehicle tests was not demonstrated. However, in contrast to the previous study, these results suggest that ethanol may significantly increase a fuel's tendency to form PFID. The results on the MTBE and MeOH/TBA mixtures suggest that these oxygenates may have a neutral

effect on PFID fuel severity, although additional analysis is needed in order to draw a firm conclusion. The same laboratory test program investigated the effect of increasing the concentration of unwashed gums on PFID fuel severity. No impact on deposit formation was found.

A review of the test data presented above on the factors that affect PFID fuel severity provides good support for the use of fuel olefin content in defining the certification test fuels. While diolefin content is also likely to be an important factor, its impact on fuel severity does not appear to be independent of mono-olefin concentration. Also, EPA believes that total olefin content is a satisfactory indicator of both mono-olefin and diolefin content in commercially available fuels. Therefore, EPA believes that a specification on the total olefin content in certification test fuel adequately accounts for the effect of both mono-olefinic and di-olefinic content.

The data discussed above also provide adequate support for the inclusion of fuel sulfur in the list of parameters to be used to define certification test fuels. The data also suggest that fuel nitrogen may play an important role. At this time, however, EPA does not propose to include nitrogen content as a test fuel parameter, given the uncertainties regarding the relative impact of sulfur and nitrogen content, the current lack of data to adequately characterize the nitrogen content of gasoline, and the fact that fuel nitrogen has not been widely used by industry to help define a fuel's deposit severity.

Data on the effect of ethanol on PFID fuel severity are mixed. However, considering the widespread and growing use of ethanol in gasoline, and its potential effect on PFID, EPA believes that it is prudent to include fuel ethanol content as a certification test fuel parameter for its effect on PFID severity. In relation to PFID fuel severity, the data appear to discount the usefulness of aromatic and unwashed gum content in defining certification fuels.

In summary, studies indicate that increases in gasoline olefin, sulfur, and ethanol content tend to increase the tendency to form PFID, and thus are likely to require higher additive treatment rates for effective detergent performance. Therefore, EPA proposes to include these factors among the parameters used to define certification test fuels.

B. Fuel Parameter Effects on IVD Formation

1. *Study Results*

Increasing olefin concentration has also been shown to have an adverse impact on a gasoline's tendency to form intake valve deposits (IVD fuel severity) as evidenced by the results of an engine dynamometer test program summarized in Table 9.[61] The test fuels with an olefin concentration of 15 volume percent caused the accumulation of significantly greater mass of intake valve deposits than did the fuels with an olefin concentration of 5 or 6 volume percent.

TABLE 9.—IMPACT OF OLEFINS ON IVD FUEL SEVERITY, ENGINE DYNO TEST RESULTS

Test engine	Test fuel	Olefin (vol %)	Intake valve deposits (average of all valves)
2.3L	ULR (2 tests)	15	1049, and 1120 average = 1084.
2.3L	ULM (6 tests)	5	525 to 620 average = 593.
2.2L	ULR	15	1477.
2.2L	ULP (2 tests)	6	597, and 628 average 612.
2.2L	ULM (3 tests)	5	540, 617, and 661 average 606.

Legend:
(1) Fuel ULR is an unleaded regular CRC reference fuel.
(2) Fuel ULM is a commercial unleaded mid grade gasoline.
(3) Fuel ULP is a commercial unleaded premium grade gasoline.
(4) Test fuels were not detergent additized. Other slight variations in fuel composition were assumed to be negligible regarding their effect on the relative tendency of the test fuels to form intake valve deposits.

Another engine dynamometer test program revealed that, although aromatic content does not appear to correlate with the total mass of IVD formed, the aromatic content of a fuel has a significant impact on the character of the deposits formed.[62] Fuels with higher aromatic content tended to form deposits containing more inorganic materials that were less soluble in hexane and acetone. These deposits tended to be hard and dry, and appeared carbonaceous. As discussed in Section II, dry carbonaceous intake valve deposits have a greater tendency to cause driveability and emissions problems than do "wet" types. Therefore, EPA believes that aromatic content needs to be considered in defining test fuels for certification.

To examine the relative impact on IVD fuel severity of various gasoline boiling fractions, five cracked gasoline components were each separated by distillation into the following five fractions: IBP (initial boiling point) −55°C, 55°C−110°C, 110°C−150°C, 150°C−190°C, and 190°C+.[63] Each of these boiling fractions, in addition to the full boiling range fuel component, was then tested for its tendency to form intake system deposits (ISD) in a laboratory test rig. For four out of five of the gasoline components, the 190°C+ fraction showed the highest tendency to form ISD, ranging between 15.4 and 23.6 mg of deposit formed. The other fractions in each of these four components produced less than 2 mg of deposits. All fractions of the fifth gasoline component produced less than 2 mg of deposits and the greatest deposits formed by the 110°C+ fraction. The results of this study suggest that the high boiling point fractions of gasoline, particularly those fractions above the T–90 point, may play a significant role in promoting the formation of IVD. Table 10 shows intake system deposits as a function of boiling fraction range. These data support the inclusion of T–90 as a parameter in defining test fuels for certification.

[61] "Intake Valve Deposit Control—A Laboratory Program to Optimize Fuel/Additive Performance", Thomas Bond, Frank Gerry, and Richard Wagner, SAE Technical Paper Series 892115.

[62] "The Effects of Fuel Composition and Fuel Additives on Intake System Detergency of Japanese Automobile Engine", T. Nishizaki, Y. Maeda, K. Date, and T Maeda, SAE Technical Paper Series No. 790203.

[63] "Mechanism of Deposit Formation: Deposit Tendency of Cracked Components by Boiling Range", Pedro Martin, Frances McCarty, and Douglas Bustamante, SAE Technical Paper Series No. 922217.

TABLE 10.—IMPACT OF GASOLINE BOILING FRACTION ON THE TENDENCY TO FORM ISD

Gasoline component	Boiling fraction range (°C)					
	IBP–55	55–110	110–150	150–190	190+	Full rng
Component #1	nil	nil	nil	<0.5mg	23.6mg	1.2mg.
Component #2	nil	nil	nil	<1mg	16.2mg	0.6mg.
Component #3	nil	nil	nil	nil	15.4mg	0.0mg.
Component #4	<0.5mg	<0.5mg	<0.5mg	<0.5mg	16.4mg	0.2mg.
Component #5	nil	<0.5mg		2mg (110°C+) .		0.0mg.

Note: The ISD tests were conducted using an apparatus developed by the U.S. Army Fuels and Lubricants Research Laboratory, that simulates the conditions which lead to the formation of IVD. Fuels which produce >2 mg of deposits during the test run (during which 100 ml of fuel is consumed) are considered severe.

The effects of ethanol on IVD fuel severity are shown by the results of a vehicle test program, summarized in Table 11.[64] When ethanol was added to the test fuel containing no detergent additive, the resulting deposits were increased by more than a third (vehicle tests 1 & 2). A comparison of vehicle tests 4 and 7 shows that, to maintain the same level of intake valve cleanliness at 10,000 miles with the addition of 10 percent ethanol, the treatment rate must be increased by 50 percent for the detergent additive studied.

TABLE 11.—IMPACT OF ETHANOL ON INTAKE VALVE DEPOSIT FUEL SEVERITY, VEHICLE TEST RESULTS

Veh tst #	Test fuel= base +		Avg intk deposit wt	
	ISD additive level	ETOH	Miles	
			5000	10000
1	None	None	101	
2	None	10%	137	
3	Level 1	10%	187	
4	Level 1		46	60
5	Level 2	10%	41	
6	Level 3	10%	5	
7	Level 2	10%	35	68

ISD Additive Level:
– ISD Level 1 is an intake system detergent additive that meets the BMW unlimited mileage standard for intake valve cleanliness.
– ISD level 2 is additive ISD at 1.5 x the treatment level of level 1.
– ISD level 3 is additive ISD at 2 x the treatment level of level 1.
– The valve weight of valve #3 was not included in computing the average.
– All tests were conducted using BMW 318i vehicles that accumulated mileage on the road.

A second vehicle test program supports the conclusion that ethanol has an adverse impact on IVD fuel severity and suggests that other alcohols may have a similar adverse impact.[65] In this study the addition of 5 percent methanol in combination with 5 percent TBA caused a 160 percent increase in average valve deposit weight as compared to the base case. The addition of 10 percent ethanol caused a 265 percent increase over the base case. These results are summarized in Table 12.

TABLE 12.—IMPACT OF ALCOHOLS ON IVD FUEL SEVERITY, VEHICLE TEST FLEET RESULTS

	A	B	C
Olefins (volume %)	6	5.8	5.8
Aromatics (volume %)	35.8	35.2	36.7
Sulfur (weight %)	0.13	0.10	0.10
T–90 (°F)	330	364	363
Alcohol		5% MeOH 5% TBA	10% EtOH
Difference between 2 tests [1]	~100mg	~150mg	~100mg
Avg valve deposit wt both veh.	359.7mg	930.9mg	1,318.8mg

Fuel Blends:
A=Base Fuel.
B=Base Fuel + Oxynol-50.
C=Base Fuel + Ethanol.
Note:
(1) Each fuel was tested in two BMW 1.8L test vehicles that accumulated 15,000 miles on a road driving cycle.

Another study which utilized a bench rig test suggests that the addition of either ethanol or MTBE may increase a gasoline's tendency to form intake valve deposits.[66] The results of this study are summarized in Table 13.

[64] "Effect of Intake Valve Deposits of Ethanol and Additives Common to the Available Ethanol Supply", Clifford Shilbolm, and Gary Schoonveld, SAE Technical Paper Series No. 902109.

[65] "Intake Valve Deposits—Fuel Detergency Requirements Revisited", Bill Bitting, F. Gschwendtner, W. Kohlhepp, M. Kothe, C Testroet, and K Ziwica, SAE Technical Paper Series No. 872117.

[66] Translation of Japan Society of Automotive Engineers Technical Paper Series No. 912267, Presentation to EPA by Toyota, June 6, 1993, and a follow-up letter to this meeting from Toyota to EPA dated June 28, 1993 [A copy of the materials presented at this meeting and the follow-up letter have been placed in the public docket], and "Mechanism of Intake Valve Deposit Formation, Part III: Effects of Gasoline Quality," K. Ohsawa, Y. Nomura, H. Moritani, M. Okada, M. Kato, and M. Nakada, SAE Technical Paper Series No. 922265.

TABLE 13.—IMPACT OF MTBE AND ETHANOL ON IVD FUEL SEVERITY, LABORATORY TEST RIG STUDY

	Fuel #1	Fuel #2	Fuel #3	Fuel #4
T–50 (°C)	89	.....	.....	86
Aromatics (volume %)	20.0	18.0	18.0	21.9
Olefins (volume %)	8.1	7.3	7.3	9.6
Ethanol (volume %)	0	10	0	0
MTBE (volume %)	0	0	10	10
Deposit mass accumulation (mg/10hr)	~5.5	~7.2	~8	~7.3

Note:
(1) The concentration of aromatics and olefins was measured in fuels #1 and #2. The values for fuels #2 and #3 were calculated based on the dilution of the base gasoline (fuel #1) with 10% ethanol (Fuel #2) or 10% MTBE (Fuel #3).

The results of engine dynamometer tests lend further support to the theory that oxygenates have an adverse impact on IVD fuel severity.[67] In one study, using a 2.3 liter engine, the addition of 10 percent MTBE to a base fuel caused the average intake valve deposit weight to increase from 388 mg to 545 mg, or 40 percent. Engine tests were also conducted in Europe to evaluate the impact of various oxygenated fuels on the formation of IVD.[68] The following fuels were tested: A: no oxygenate, B: 11 percent MTBE, C: 13 percent ETBE, D: 17 percent ETBE, and E: 13 percent ETBE plus 2 percent EtOH. All of the test fuels used in this study contained a specific multi-functional detergent additive package, and the impact of oxygenates in the presence of other additive chemistries may be different. Also, the composition of the base fuels varied, introducing the possibility that variations in fuel parameters other than oxygenate content may have impacted the fuel's IVD severity. Nevertheless, the results are noteworthy due to the relative scarcity of data on the effect on IVD fuel severity of new oxygenates entering the market.

Tests conducted on the five test fuels (A through E) using the Daimler Benz M 102 E engine dynamometer IVD test showed no significant difference in the IVD severity of oxygenated and non-oxygenated fuels. However, tests on fuels A, B, C, & D using the Opel Kadett engine dynamometer IVD test indicate that ETBE may have an adverse impact on IVD fuel severity. Specifically, the average deposit weight per valve was approximately 10 mg for the nonoxygenated and MTBE-containing fuels (A and B), 118 mg and 90 mg, respectively, for the ETBE-containing fuels (C and D). The accumulation of less than 40 mg/valve during the Opel Kadett test is accepted as not impacting performance.

To analyze the impact of polycyclic aromatics on IVD fuel severity, engine dynamometer tests were conducted using ten gasolines that contained various concentrations of polycyclic aromatics from heavy reformate gasoline.[69] Heavy reformate is a high octane gasoline blending component that commonly contains polycyclic aromatic hydrocarbons (PAH). The concentration of PAH in heavy reformate is influenced by feed quality to the reformer, reformer severity, and can be reduced by post-distillation.[70]

As shown in Table 14, a high correlation between the IVD mass formed and the combined concentration of anthracenes and pyrenes (A+P) was reported (correlation coefficient = 0.95). No correlation between IVD and naphthalene concentration was reported. The author of this study hypothesized that the different impact on IVD formation of naphthalene and A+P may be due to differences in boiling point and hence residence time on the intake valves prior to vaporization. In addition, higher ringed aromatics generally polymerize more readily.

TABLE 14.—IMPACT OF POLYCYCLIC AROMATICS ON IVD FUEL SEVERITY, ENGINE DYNAMOMETER TEST RESULTS

Test fuel[1]	Engine test No.	Average IVD deposits per valve (mg)	Polycyclic aromatic fuel analysis (PPM mass)		
			Naphthalene	Anthracenes	Pyrenes
#1	4	103	8756	2	0
	3	109	.....	.....	.....
	7	118	.....	.....	.....
	18	138	.....	.....	.....
#2	41	184	6880	4	3
#3	30	462	4586	61	34
	26	403	4202	67	36
#4	44	126	8790	7	3
#5	1	163	4821	4	4
#6	53	305	6279	9	4
	49	155	5147	24	8
	50	100	.....	.....	.....
	58	161	.....	.....	.....
#6 + 0.4% RFB[2]	54	560	7587	57	31
#6 + 0.1% RFB[2]	55	337	5524	27	11
#6 + 0.2% RFB[2]	56	334	6064	30	16

[67] "Intake Valve Deposits—Effects of Engines, Fuels & Additives", Robert Tupa, and Donald Koehler, SAE Technical Paper Series No. 881645.

[68] "Use of MTBE and ETBE as Gasoline Reformulation Components", J. Kivi, A Niemi, N. Nylund, M. Kyto, and K. Orre, SAE Technical Paper Series, Paper No. 922379.

[69] "An Analysis of Intake Valve Deposits from Gasolines Containing Polycyclic Aromatics", Bruce Bunting, SAE Technical Paper Series, Paper No. 912378.

[70] Ibid.

TABLE 14.—IMPACT OF POLYCYCLIC AROMATICS ON IVD FUEL SEVERITY, ENGINE DYNAMOMETER TEST RESULTS—Continued

Test fuel[1]	Engine test No.	Average IVD deposits per valve (mg)	Polycyclic aromatic fuel analysis (PPM mass)		
			Naphthalene	Anthracenes	Pyrenes
#6 + 0.5% RFB[2]	57	739	9258	111	57

Notes:
(1) The test fuels were normal refinery blends. Some of these blends had reformer bottoms added.
(2) Base fuels with weight percent of reformer bottoms added.
(3) Engine tests were run using a MY 1987, 2.5L, 4 cylinder, throttle body fuel injected engine.

This study suggests that higher anthracene and pyrene content increases the tendency of a gasoline to form IVD. A major gasoline producer currently markets a gasoline that was specially refined to remove the high boiling fractions, based on the claimed air quality and engine cleanliness benefits. Thus, for gasoline produced by special refinery practices performed to reduce the deposit forming tendency, A+P concentration may serve to help define IVD fuel severity. However, for fuels produced by normal refinery practices, EPA estimates that aromatic content and the T–90 distillation point are adequate predictors of A+P and hence the use of A+P content is not necessary. Therefore, EPA is not proposing that A+P concentration normally be used in defining certification fuels.

Those marketers who perform additional distillation steps to reduce A+P content would need to segregate their fuel from the fungible gasoline supply to be able to take advantage of any benefits which reduced IVD severity might confer in terms of the detergent additive treatment level required. For these marketers, aromatic content and T–90 distillation point may also serve as a useful predictor of IVD fuel severity. However, it may be necessary to allow the use of A+P concentration as a supplement to those fuel parameters discussed previously, to help in defining certification test fuels for these segregated gasoline pools. This topic is considered further in section VI.

C. Selection of Fuel Parameters for Defining Certification Test Fuels

EPA proposes that the following five fuel parameters be used in defining certification test fuels, for both PFID and IVD deposit control testing, due to their potential impact on the quantity and/or type of fuel injector and/or intake valve deposits: Olefins, sulfur, T–90, aromatics, and oxygenates (by type). EPA proposes that other fuel parameters may be used in addition if their effect on PFID or IVD fuel severity can be demonstrated (see section VI.D.).

Ethanol appears to be the most severe oxygenate in terms of its tendency to promote deposits. However, given the lack of data on the impact of other oxygenates, and the potential that additive packages may respond differently to different oxygenates, EPA does not believe that it is appropriate to rely solely on vehicle test data on ethanol-containing fuels to ensure adequate detergent additive performance in the presence of all oxygenate types.

Considering the anticipated widespread use of MTBE and the data indicating that it may promote deposit formation, EPA proposes to require additional data to demonstrate performance on MTBE-containing fuel. Lack of data on the impact of other oxygenates would appear to preclude their use as standard certification fuel parameters at this time. However, this seems acceptable given that ethanol and MTBE are expected to be the largest volume oxygenates used, and testing on ethanol and MTBE-containing fuels may offer reasonable assurance of adequate detergent additive performance in the presence of other oxygenates. The details of EPA's proposal related to the definition of certification test fuels are contained in section VI. Comments are requested on the appropriateness of the parameters selected for defining the certification test fuels.

IV. Certification Options

To provide for the cost effective distribution of gasoline by pipeline and other means, much of the gasoline used in the United States is commingled after leaving the refinery or import terminal. To ensure the proper certification of this fungible gasoline, and minimize disruption to the fungible gasoline distribution system, it is essential to provide certification options that cover pools of gasoline that have boundaries which conform to patterns in the gasoline distribution system. Proper levels of detergency control must also be ensured for relatively more severe gasoline localized within distinct areas of the fungible gasoline distribution system. In addition, EPA believes that an option should be made available to those refiners who wish to optimize additive treatment level for segregated fuels. EPA believes that it is important to develop certification options which provide industry the flexibility to minimize the compliance burden and cost while still meeting the requirements of the statute.

To provide this flexibility, EPA is proposing three main certification options: National certification, PADD certification, and fuel specific certification. EPA is proposing two certification tiers within the national and PADD certification options, whereby a detergent would either be certified for use in gasolines of moderate severity or for gasolines of greatest severity within the given certification area. EPA is also proposing a special fourth option, whereby data used to gain a certification under the existing CARB detergent additive regulation could be used to support an application for federal PADD V certification (CARB-based PADD V certification). Under certain circumstances, recertification might also be required. In addition, an interim certification option is proposed, permitting simplified procedures to be used to comply with certification requirements from January 1 to December 31, 1995 (see section IX). A marketer of gasoline in California could use any certification option for the purpose of complying with the federal detergent additive certification requirements. However, only the CARB-based PADD V certification or interim certification based on CARB certification would in themselves be sufficient to satisfy both the federal and California certification requirements. Under certain circumstances, recertification might also be required.

EPA believes that these certification options, discussed in detail below, would ensure that the program's deposit control goals are met while providing the flexibility needed by industry to comply with the performance standards in an efficient manner. EPA requests comment on these assessments. Three

alternative certification options, which might allow for further flexibility and optimization, are detailed in Section V.

A. Certification Applications

To comply with the proposed certification requirements, the detergent certifier would be required to apply to EPA to obtain a certification number. To obtain this certification number, the certifier would be required to submit a short information package to EPA as detailed below. Included in this package would be an attestation that the certification requirements under one of the available certification options had been satisfied. EPA could issue a certification number based solely on this attestation. However, EPA would reserve the right to scrutinize any and all information contained in the application package, or other data required by EPA to be retained by the applicant/certified party, at the time of submittal or at any other time, to verify compliance with the certification requirements. Based on this scrutiny, EPA could reject the application for a certification number or revoke a previously issued certification number if it were discovered that the certification procedures were not in compliance. EPA would also reserve the right to conduct confirmatory vehicle testing, or gasoline compositional testing, to verify compliance, and a certification number could also be denied or revoked based on the results of this testing (see Section X).

EPA is not proposing that issuance of a certification number would explicitly or implicitly represent that each application has been scrutinized for compliance by EPA. EPA anticipates that such scrutiny by EPA would be conducted on a random basis on a certain number of applications, or would be based on irregularities in the composition of the candidate detergent additive and/or the treatment rate used or other apparent deficiencies in the application. Throughout this notice, the term "certification" is used to denote the process of selfcertification by the applicant and issuance of a certification number by EPA.

EPA is proposing that the application for an EPA certification number under the national, PADD, fuel specific, CARB-based PADD V, or interim certification options must include the following data and information: (1) The name of the detergent manufacturer and the detergent as given to EPA by the detergent manufacturer to satisfy the additive registration requirements per 40 CFR 79.21, (2) a complete description of the detergent additive's chemical composition such that the chemical structure of each of the components in the detergent package can be determined to the fullest extent possible, (3) the exact weight percent of each of the components that compose the detergent package, (4) an appropriate procedure for sampling from a detergent storage tank which will ensure the integrity of the detergent sample for subsequent analysis by infrared spectrophotometry, (5) a fourier transform infrared spectroscopy (FTIR) test method which will yield a qualitative and quantitative infrared spectrum of the detergent additive package both in its pure state and in finished gasoline, and, (6) an actual infrared spectrum of the detergent additive package and each component part of the detergent additive package obtained from this test method. The test procedure must be capable of identifying the detergent additive package both in its pure state and after it has been added to gasoline at the concentration at which it is used, and must be reasonably acceptable to the Administrator. EPA reserves the right to reject aspects of this procedure if the Administrator determines that they are insufficient, or otherwise unacceptable, and may reject an application for certification number based on this judgement. EPA may use these test methods to confirm compliance with this regulation as discussed in Section X.

Except in regard to applications under the interim certification option, certifiers would also be required to disclose the highest concentration of the detergent additive package which had been used to demonstrate compliance with the specified performance standards in any of the relevant test fuels during certification testing. This concentration would be the minimum concentration necessary to comply with detergent gasoline requirements. Applications for a certification to allow the use of a detergent in more severe gasoline under the national and PADD certification options must include the level of each of the relevant nonoxygenate fuel parameters which was contained in each test fuel. Applications under the CARB-based PADD V certification would also be required to include a copy of the certificate granted under the California Air Resource Board's certification program, and the compositional limits on the base gasoline that can be used to formulate detergent gasoline under the CARB certification. Applications under the interim certification option must include additional data as specified in Section IX.

In addition to the requirements described above, EPA is proposing that applicants for EPA certification numbers under the national, PADD, and fuel specific options would be required to retain in their own possession a detailed report of the vehicle test program and the composition of the certification test fuels used. For each certification test fuel used in these tests, the report must specify the composition of the test fuel and the location from which it was drawn, to demonstrate compliance with the test fuel requirements associated with the certification option selected. For each certification test fuel, EPA is proposing that the report specify the concentration of each component of the detergent (as mixed in the fuel) and, to the extent known, the chemical composition, purpose-in-use, and concentration by weight of other additives present in the test fuel. EPA further proposes that applicants under the fuel-specific option would be required to retain data that demonstrates compliance with the requirements under which the applicable segregated gasoline pool was defined (see Section VI. D.). EPA proposes that the applicant/certified party would be required to retain the report/data while the certification remains valid, or five years, whichever is longer. It is further proposed that the applicant/certified party would be required to provide a copy of this report/data to EPA within thirty days of notification by EPA. Comment is requested on the application requirements proposed above and on alternatives which would assure equal or better compliance with the proposed certification requirements.

B. Certification Options Based on Geographical Area

The geographically defined certification options are the national and PADD-specific options. In addition, a special provision is proposed for certification of detergents for use in the most severe gasolines within a given geographical area. This two tiered certification approach is discussed in the following sections.

1. National Certification Option

Under the national certification option, the applicant must demonstrate a detergent additive's compliance with the performance standards via testing on a matrix of test fuels defined on the basis of nationwide fuel survey data (see Section VI). EPA proposes that a certification created under the national option would be valid for any type of gasoline, oxygenated or nonoxygenated, unleaded or leaded, of any octane grade,

that is sold in the United States, including imported gasoline.

The national certification option provides the most broadly applicable method to certify a detergent. EPA anticipates that a number of major gasoline marketers will use the national certification option because of the ease of certification and the maximum degree of uniformity in the detergency requirements prescribed for the certified party's facilities across the nation. The national certification option also facilitates spreading of the cost of certification testing among several refiners, thereby easing the burden of this regulation, especially for small refiners. EPA anticipates that a number of applications for national certification will be for the same detergent additive package, with the necessary support for these applications being provided by the additive manufacturer. Therefore, the same certification test data may be used to support the certification of a number of separate refineries. Under this scenario, EPA anticipates that the additive manufacturer's costs for the certification testing would likely be passed to fuel manufacturers in the cost of the detergent additive supplied to them. The cost of certification testing could thus be spread over a sufficiently large volume of gasoline to minimize the certification cost impact on any one party.

EPA believes that certification under the national option would achieve the program's deposit control goals while allowing the broadest possible area in which a certification would be valid and the maximum degree of flexibility for the regulated industry. However, since the prescribed additive treatment levels needed will generally be based on a spectrum of nationwide gasolines, the possibility exists that in some batches of low-severity gasoline more additive will be used than is necessary to maintain proper performance. Thus, additive costs might also tend to be higher than necessary for some gasoline. The other certification options, described below, are based on progressively finer definitions of test fuels. By providing opportunities to better optimize the detergent additive package to the characteristics of the fuel, these options create the potential for cost savings over the national certification option.

2. PADD Certification Option

The composition of gasoline tends to differ between various regions of the United States as the result of different sources of crude oil to refineries and relatively stable patterns of gasoline production and distribution.[71] The United States is divided into five Petroleum Administration for Defense Districts (PADDs) which have commonly been used to examine regional differences in the production and supply of petroleum products. PADD I includes the states of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New York, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and the District of Columbia. PADD II includes Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, and Wisconsin. PADD III includes Alabama, Arkansas, Louisiana, Mississippi, New Mexico, and Texas. PADD IV includes Colorado, Idaho, Montana, Utah, and Wyoming. PADD V includes Alaska, Arizona, California, Hawaii, Nevada, and Oregon.

EPA proposes that gasoline sold in United States territories (Virgin Islands, Guam, Puerto Rico, Northern Marianas Islands) must also comply with the detergent requirements contained in today's notice. Marketers of gasoline sold in U.S. territories could naturally satisfy the federal detergent requirements by obtaining a national or fuel specific certification. EPA believes that it may also be appropriate to include U.S. territories under the PADD certification option and requests comment on how they would appropriately be assigned to the various PADDs. Comment is requested on whether special circumstances affecting gasoline supply, distribution, and/or marketing might make compliance with this proposed rule unreasonably burdensome in some or all of the territories. Comment is also requested on any potential need for special provisions or exemptions for the U.S. territories, along with any potential legal basis for such provisions.

The fuel compositional differences between the five PADDs indicate that there may be a significant difference in the fuel severity (the tendency to form deposits) and hence a significant difference in the detergent additive treatment rate which would be needed to meet the performance standards within each PADD. The differences in fuel composition between the PADDs are examined in Figures 1–4. American Automobile Manufacturers of America (AAMA) fuel survey data, unleaded gasoline, 1989–1991, all gasoline grades, was used in preparing these graphs.[72] The "percentile concentration" refers to a specific concentration for a fuel parameter that is greater than or equal to the values in a certain percentage of the samples in the database. For example, Figure 4 shows that the 80th percentile concentration of sulfur in PADD III is approximately 0.04 weight percent. This means that 80 percent of the fuel survey samples within PADD III had a sulfur content of less than or equal to 0.04 weight percent.

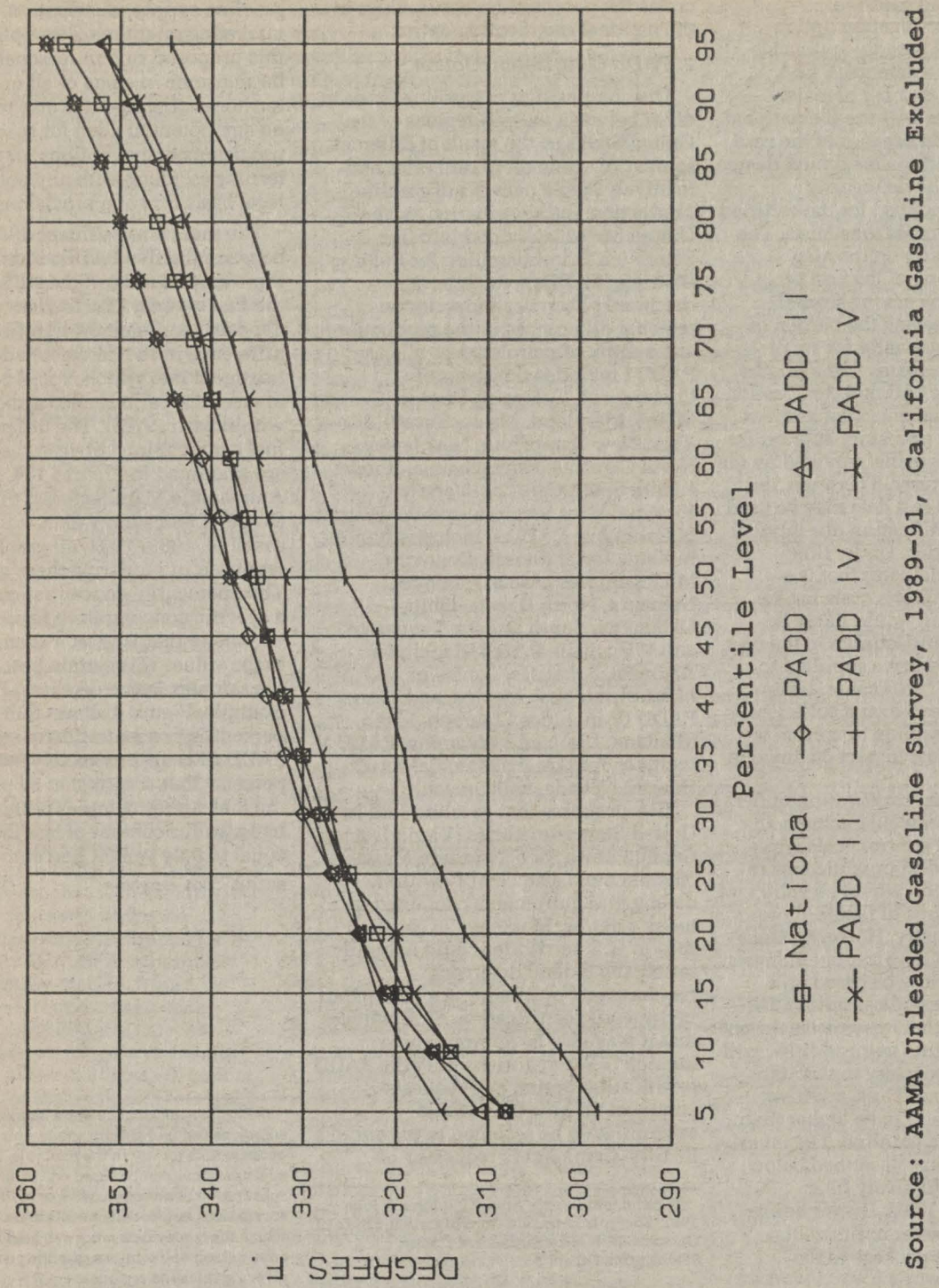
BILLING CODE 6560-50-P

[71] Petroleum Supply Annual, Volume 1, June 1992, Energy Information Administration, Office of Oil and Gas, U.S. Department of Energy, Washington, DC.

[72] EPA may recalculate these distributions and adjust the test fuel specifications which are based on these data for use in the final rule. Such adjustments would be based on the addition/substitution of more extensive or more current fuel survey data, and/or refinements to the method by which the survey data were weighted to reflect the composition of the in-use gasoline pool within given certification regions.

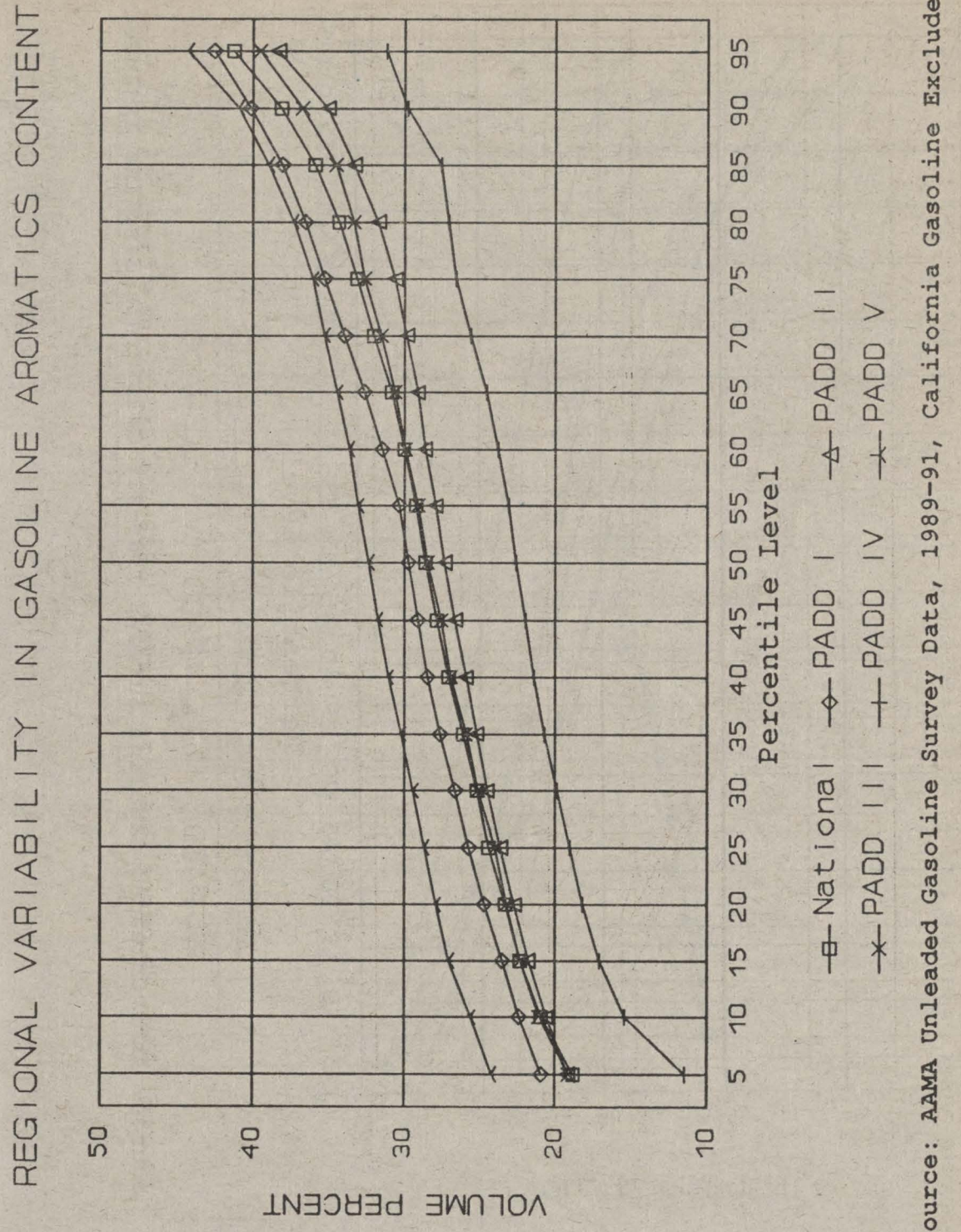
Figure 1

REGIONAL VARIABILITY IN T-90 DISTILLATION POINT



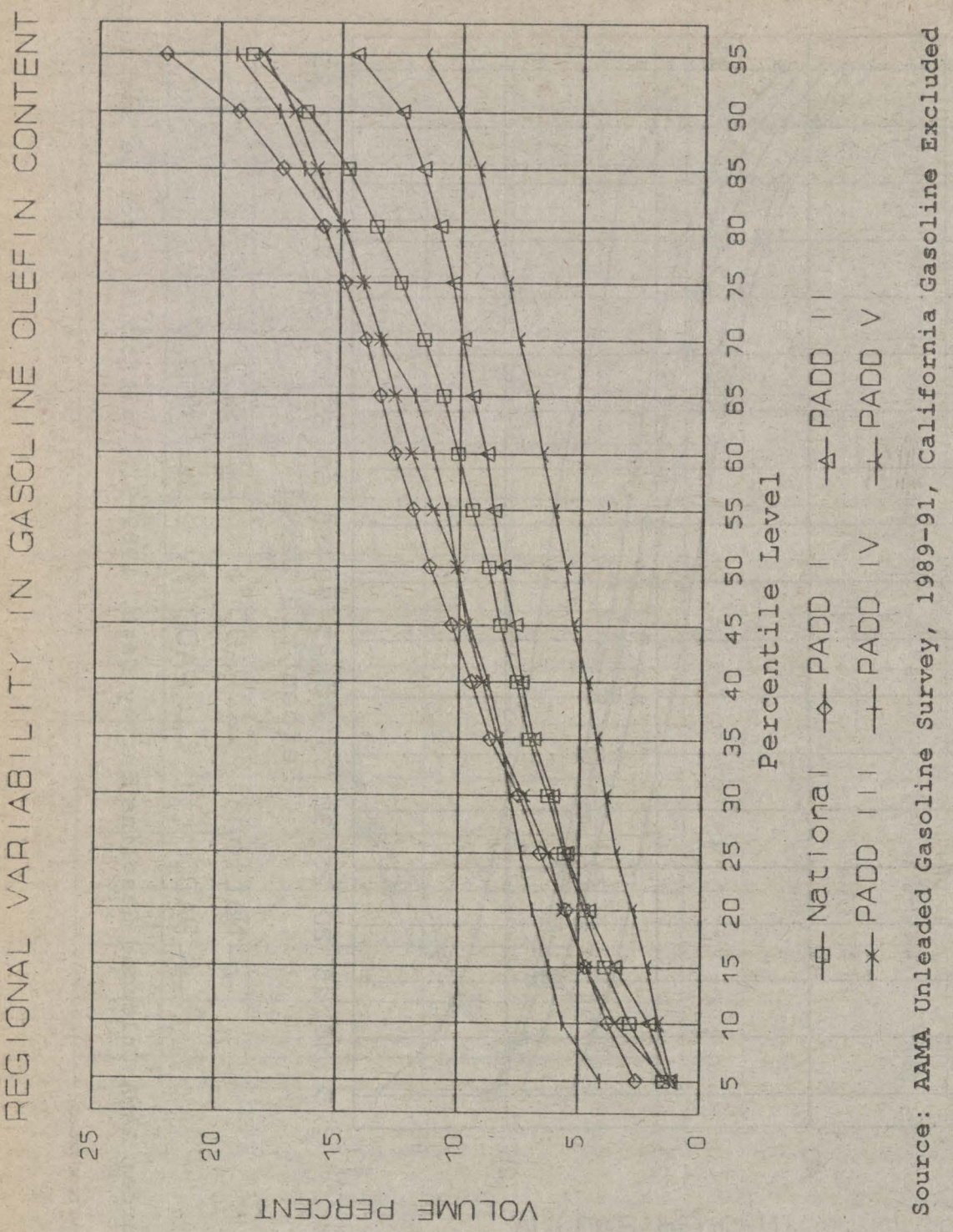
Source: AAMA Unleaded Gasoline Survey, 1989-91, California Gasoline Excluded

Figure 2



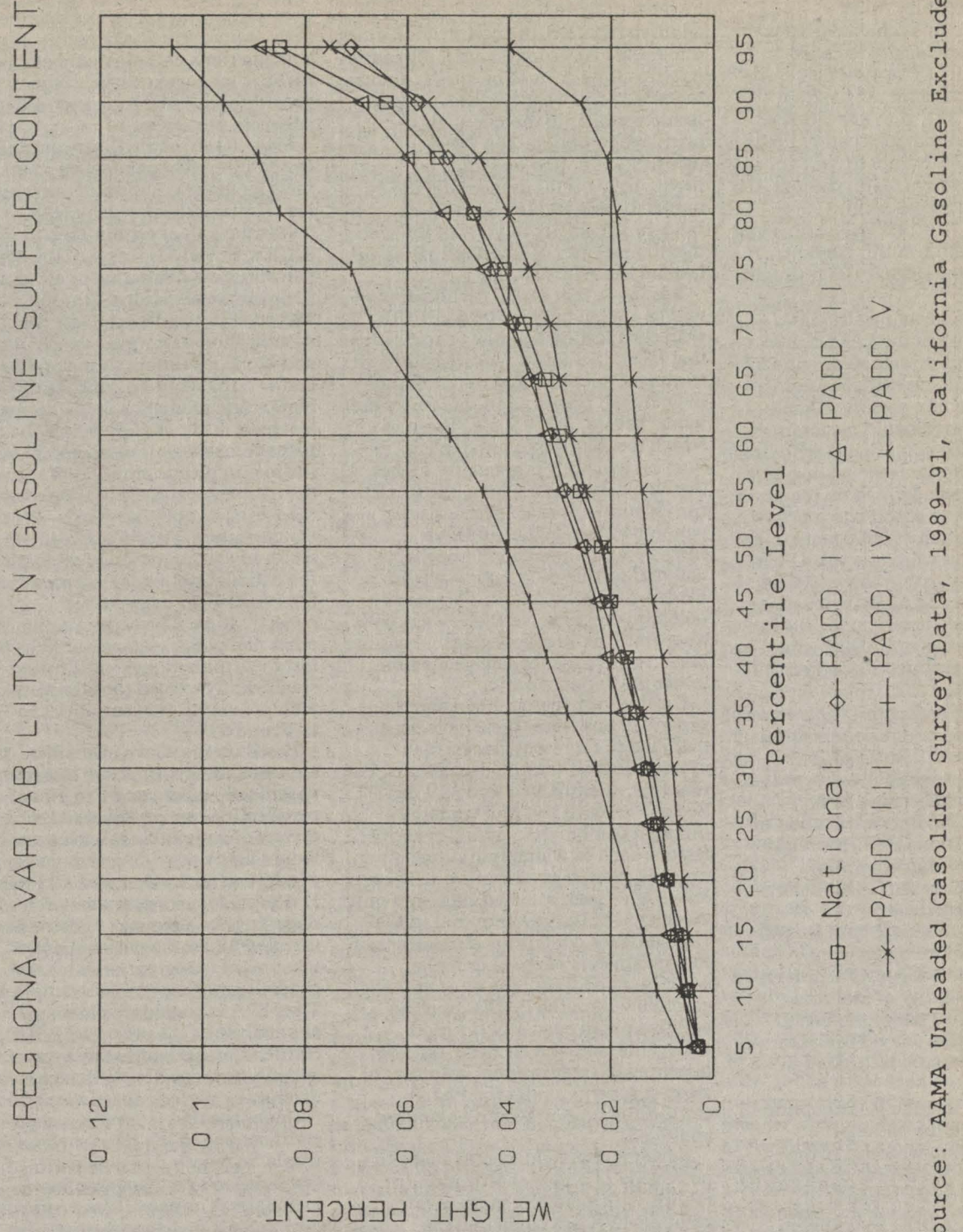
Source: AAMA Unleaded Gasoline Survey Data, 1989-91, California Gasoline Excluded

Figure 3



Source: AAMA Unleaded Gasoline Survey, 1989-91, California Gasoline Excluded

Figure 4



Source: AAMA Unleaded Gasoline Survey Data, 1989-91, California Gasoline Excluded

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A review of the data in Figures 1–4 clearly indicates that fuels in different regions of the country differ significantly in those characteristics which have a propensity to cause deposit formation. The 65th percentile T–90 distillation point ranges from approximately 331 °F to 344 °F. The 65th percentile aromatics content ranges from approximately 24.5 to 34.5 volume percent. For gasoline olefin content, the 65th percentile ranges from approximately 7 to 13.3 volume percent. The 65th percentile sulfur content ranges from about 0.016 to 0.06 weight percent.

Given these fuel compositional differences between the PADDs, EPA believes it is appropriate to provide for certification of detergents for use in gasoline sold within specific PADDs. Such a certification could be obtained by demonstrating compliance with the performance standards via testing on a matrix of test fuels defined on the basis of fuel survey data specific to a given PADD. Certification of detergents under the PADD option would be valid only for gasoline sold within the specified PADD. For example, additive treatment levels determined based on testing in fuels representative of PADD I would be valid only for gasoline sold in PADD I (see Section VI).

PADD V certification test fuels would be selected based on the composition of gasolines sold within PADD V but outside of California. EPA believes that this is appropriate because EPA anticipates that federal certification of gasoline sold within California will be based on data used in obtaining certifications under the CARB detergent additive regulation (see Section IV. D.), due to the need to satisfy both federal and State of California detergent requirements. EPA requests comment on the continued validity of including California gasoline under the PADD V certification option when the California gasoline requirements take effect in April of 1996.

EPA believes that the PADD option in conjunction with the national certification option would give the regulated industry a degree of flexibility toward optimizing the amount of detergent additive used in fungible gasoline. The choice for each applicant of what combination of PADD and national certifications to undertake would be made according to the characteristics of the applicant's particular refinery and distribution network, weighing the additional cost of certification in multiple areas against the potential savings in the amount of additive required.

In addition to providing the opportunity for significant cost savings by potentially reducing the amount of additive required, the certification areas under the PADD option are sufficiently large to allow costs to be spread among refiners to share certification costs in a fashion similar to the national certification option. The PADD certification option may thus be particularly useful in reducing the burden of this regulation to small refiners, especially in view of the fact that the majority of small refineries are located in PADDs IV and V.

It is likely that PADD certifications will be sought only for those PADDs with certification test fuel specifications that result in a lower required additive treatment rate than that required under the national certification option. In the more "severe" PADDs, i.e., those in which the distribution of deposit forming tendency is generally higher than the nation as a whole, the PADD certification test fuel specifications would result in higher additive treatment requirements. Thus the national certification option would likely be chosen instead. This raises a potential concern that the PADDs with a generally more severe gasoline supply might receive inadequate protection under the national option.

For this very reason, however, the generic national test fuels have been designed to represent greater than average deposit-forming conditions. For example, as explained in detail in Section VI, each test fuel contains a different combination of fuel severity factors, each of which individually exceeds average severity levels. These levels have been selected such that only 20 percent of the gasoline sold in the United States contains combinations of fuel parameters of equal or higher severity. In addition, the most severe gasoline within the PADDs must be additized with specially certified detergents (see next section), thereby lessening the concern that gasolines of greatest severity under the PADD certification option would be under-additized.

Nevertheless, to further evaluate the possibility of under-additization in PADDs with generally more severe gasoline, EPA has compared the required test fuel concentration for generic national certification of each of the defining fuel parameters (see Table 17 in Section VI) to the 50th percentile concentration of that parameter in each of the PADDs (see Figures 1–4). It is reasonable to assume that national certification would ensure adequate protection in such a PADD, provided that the majority of the individual fuel parameters occur at concentrations which exceed the PADD-specific 50th percentile values. The fact that the test fuels are proposed to contain combinations of these parameters at higher-than-average levels would provide additional assurance of adequate protection.

Most of the required concentrations of the defining fuel parameters in the test fuels for generic national certification are significantly above the 50th percentile values within each of the PADDs. In PADDs II and III the 50th percentile concentration of all of the fuel parameters is significantly exceeded in the national test fuel specifications. However, in PADDs I, IV, and V, some exceptions occur. For PADD I, the required concentrations of olefins and aromatics in the national test fuels occur slightly below the 50th percentile concentration. For PADD IV, the required concentration of sulfur in the national test fuels is approximately the PADD IV 40th percentile concentration. For PADD V, the required concentration of aromatics in the national test fuels is approximately the PADD V 29th percentile concentration. The concentration of the other fuel parameters required in the test fuels for national certification significantly exceed the corresponding 50th percentile concentrations in PADD I, IV, and V.

Based on the above evaluation, it appears that the proposed test fuel specifications for generic national certification, which are based on a review of national gasoline composition, would likely provide an adequate level of additive performance in all PADDs. However, some concern may remain regarding the adequacy of detergents certified under the national option when used in regions which have generally more severe fuel supplies. Thus EPA is considering several alternatives to the proposed PADD certification option that may provide added assurance of a sufficient level of detergency performance in each PADD.

Under the first alternative, separate certifications in the more severe PADDs would be required to obtain a certification to market gasoline nationally. The above discussion on how the test fuel specifications for national certification relate to PADD-specific compositional values suggests which PADDs are relatively more severe. For PADDs I, IV, and V, the 50th percentile concentrations for some parameters exceed the concentration required in the proposed test fuels for national certification, while this is not the case for PADDs II and III. This indicates that gasoline sold in PADDs I,

IV, and V may be more severe than the national average in some respects, while gasoline in PADDs II and III is likely to be less severe. Therefore, one might conclude that certification in PADDs I, IV, and V would also ensure adequate protection in PADDs II and III. As a result, EPA is considering requiring that separate certifications in PADDs I, IV, and V would be required to sell gasoline in all 5 PADDs. In a second alternative, national certification could still be obtained by vehicle testing using a single matrix of test fuels; however, the specifications on national test fuel severity would be increased to provide additional assurance of adequate stringency for all PADDs. This alternative and the way test fuel specifications would be increased is discussed in greater detail in Section VI. C.

EPA requests comment on the usefulness of the PADD certification option to fuel manufacturers and on whether the option, as proposed, would ensure that gasoline in all PADDs contains an adequate concentration of detergent additive. Comment is also requested on the alternatives to the PADD and national options discussed above, and on other alternative definitions of regional certification areas within the United States.

3. Special Provisions for Highest Severity Gasolines

EPA believes that the proposed national and PADD certification options described above can provide adequate deposit control for the vast majority of the nation's gasoline supply. However, the severity of the gasoline sold in each PADD and in the nation as a whole (as measured by the levels of the specified fuel severity parameters) varies along continuous distribution curves (see Figures 1–4). For gasolines falling at the extreme high ends of these distributions, the detergent additive treatment rates prescribed by the certification testing in generic test fuels may not provide adequate protection. This could be particularly problematic in areas which are supplied with exceptionally severe gasoline for prolonged periods of time.

To address these concerns, EPA is proposing two certification tiers within both the national and PADD options. The first tier would provide generic certification of detergents for use in all but the most severe gasoline sold nationwide or in a specific PADD. The second tier would provide for certification of detergents for use in gasolines of greatest severity within the area of interest. Detergents certified for use in gasoline of greatest severity could also be used in less severe generic gasoline within the same certification area. EPA proposes that gasoline exceeding the national or PADD specific 95th percentile for any particular fuel severity factor would be required to be additized with a detergent certified under the second (more stringent) certification tier. EPA believes that this duel tier approach is necessary to provide an effective level of detergency performance in gasoline with the highest deposit-forming tendency, while avoiding over-additization in the general gasoline pool.

The difference between the generic detergent certification requirements and those applicable to gasoline of greater severity is the composition of the detergent certification test fuels. Under the generic requirements described above in Sections B.1 and 2, an applicant for certification must demonstrate compliance with the performance standards in a matrix of test fuels defined by EPA on the basis of national or PADD-specific fuel survey data. Certification of detergents for use in the most severe gasoline would be conducted using a matrix of test fuels with higher levels of the parameters associated with deposit forming severity. Thus, the same detergent package could be certified for use in both generic and severe gasoline at different concentrations by being tested in both test fuel matrices. A detailed discussion of these test fuels requirements is presented in Section VI.

To implement these special provisions, EPA proposes that under both the national and PADD certification options, detergent blenders would be required to collect data from their facilities that characterize the composition of their specific gasoline pool in regard to the levels of aromatics, olefins, sulfur, and T–90 distillation point using the test procedures proposed in section VI. G. EPA proposes that this data must include, at a minimum, consecutive weekly evaluations of gasoline composition at each of the detergent blender's facilities, initially including six months of data. EPA further proposes that the data used to characterize the composition of the detergent blender's gasoline must not have been collected prior to January 1, 1993.

The analysis of this fuel survey data would be used by the refiner/importer to determine whether a detergent certified for use in generic gasoline could be used or if a detergent certified for use in severe gasoline would be required. If the highest measured level of each of the four parameters in the detergent blender's gasoline pool was less than or equal to the respective 95th percentile value in the subject certification area (national or PADD, see Figures 1–4) then detergents certified for use in generic gasolines in the area would be acceptable for use in the detergent blender's gasoline pool. If, on the other hand, the highest measured level of any one of the relevant parameters in the detergent blender's gasoline pool exceeded the relevant 95th percentile value then a detergent certified for use in more severe gasoline would be required.

EPA requests comment on whether the proposed two tier approach under the national and PADD certification options provides an appropriate level of detergency performance in the most severe gasolines while providing the maximum practical flexibility for certification of gasolines of moderate severity. Specific comment is requested on whether the 95th percentile decision criterion is appropriate, for the national case and within each PADD, and on alternatives that would provide a proper level of protection from deposits for in-use vehicles given the likelihood that certain localized regions within a given certification region may consistently be supplied severe gasoline.

EPA proposes that detergent blenders using national or PADD-certified detergents would be required to monitor the composition of their gasoline on at least a weekly basis to demonstrate compliance with the base gasoline compositional limits associated with certification. At its option, EPA could examine records of these tests or conduct its own testing to verify the composition (see section X). Comments are requested on whether weekly monitoring procedures would be sufficient or whether more frequent testing (e.g., for each batch) should be required. EPA also requests comments on the extent to which parties upstream of the detergent blender in the gasoline production/distribution network should share in the responsibility to determine the composition of the detergent blender's gasoline pool. In particular, EPA requests comment on the availability of the required data to the various parties in the gasoline production and distribution system, and on methods by which this data could be utilized by the detergent blender to fulfill the proposed requirements.

EPA is considering an alternative approach to ensure that more severe gasoline is properly additized that is similar to the unleaded gasoline program found in 40 CFR 80.21 - 80.23. Under this alternative, detergent blenders would not be required to perform the gasoline compositional

survey proposed above to determine if their gasoline required detergent certified for severe gasoline. Instead, detergent blenders would be required to perform gasoline compositional testing on a batch-by-batch basis to determine whether a detergent certified for severe gasoline would be required. Each batch of gasoline would then be required to be additized with the appropriate detergent and the results of the gasoline compositional testing would be included in the gasoline product transfer document. EPA requests comments on the relative effectiveness and costs of the proposed survey-based approach and this alternative approach. Specifically, EPA requests comment on the extent to which such batch-by-batch gasoline compositional testing would constitute a new requirement and the degree to which such testing already occurs as part of normal business practice.

C. Fuel Specific Certification Option

As noted previously, it is possible to use special refinery practices such as post-distillation to reduce a gasoline's deposit-forming tendency. Specially processed gasoline, if kept segregated from the general gasoline supply, could potentially satisfy the performance requirements using a reduced concentration of detergent additive. A large savings in additive cost could potentially result. Therefore, EPA proposes that certification of a detergent additive for use in such a segregated gasoline would be allowed. This option would require demonstration of the performance standards via testing on a matrix of test fuels defined according to the particular composition of the subject segregated gasoline pool.

To define the characteristics of the segregated pool, EPA proposes that the applicant would be required to conduct fuel compositional testing. This compositional testing would include measurements of the gasoline's aromatics, olefin, and sulfur content, and T–90 distillation point. Furthermore, EPA proposes that the applicant could petition the Agency to use additional fuel parameters to define the test fuels for certification. Measurements on the relevant fuel would be required to be conducted over time using ASTM-approved test procedures at each of the applicant's facilities. This data would be used by the applicant to construct the required statistical distributions describing the variability in gasoline composition.

A detergent certified under the fuel specific option would be valid for use only in gasoline produced in the facilities included in the fuel compositional survey. Furthermore, EPA proposes that the certification would become invalid if the composition of the subject segregated pool changed beyond a prescribed amount. EPA requests comment on the usefulness and adequacy of the fuel specific option in providing the flexibility needed to optimize of detergent additive treatment levels in uniquely refined segregated gasolines. Comment on any specific revisions is encouraged.

D. California Federal Equivalency Certification Option

As discussed later in the Section VIII, EPA believes the California Air Resources Board's (CARB's) existing regulation of detergent gasoline sold within California to be at least as protective as the proposed federal requirements for all gasoline. Therefore, EPA proposes that obtaining a federal certification based on a CARB certification would be accepted as adequate compliance with the federal certification requirements for the gasoline pool covered under the applicable CARB certification. A CARB certification is already required to sell gasoline to the ultimate consumer within California, and EPA believes that it would be duplicative to require new testing for the federal program for detergents already certified in California.

EPA also proposes that a federal certification based on a CARB certification would be accepted to demonstrate adequate compliance with federal certification requirements for all gasoline sold within PADD V. As discussed in greater detail in Section VIII, this option would be valid only to the extent CARB's requirements do not change. EPA would consider extending this option depending on the substance of CARB's changes. Gasoline sold in California accounts for approximately 65 percent of all gasoline sold within PADD V, and a review of fuel survey data reveals that the composition of gasoline sold in California is very similar to the gasoline sold in the remainder of PADD V. This similarity is illustrated in Figures 5 - 8, which compare the composition of gasoline sold in PADD V outside of California with that sold within California. Gasoline survey data for the entire nation (excluding California) are also shown. EPA again requests comment on whether this similarity will continue upon the introduction of California reformulated gasoline in 1996.

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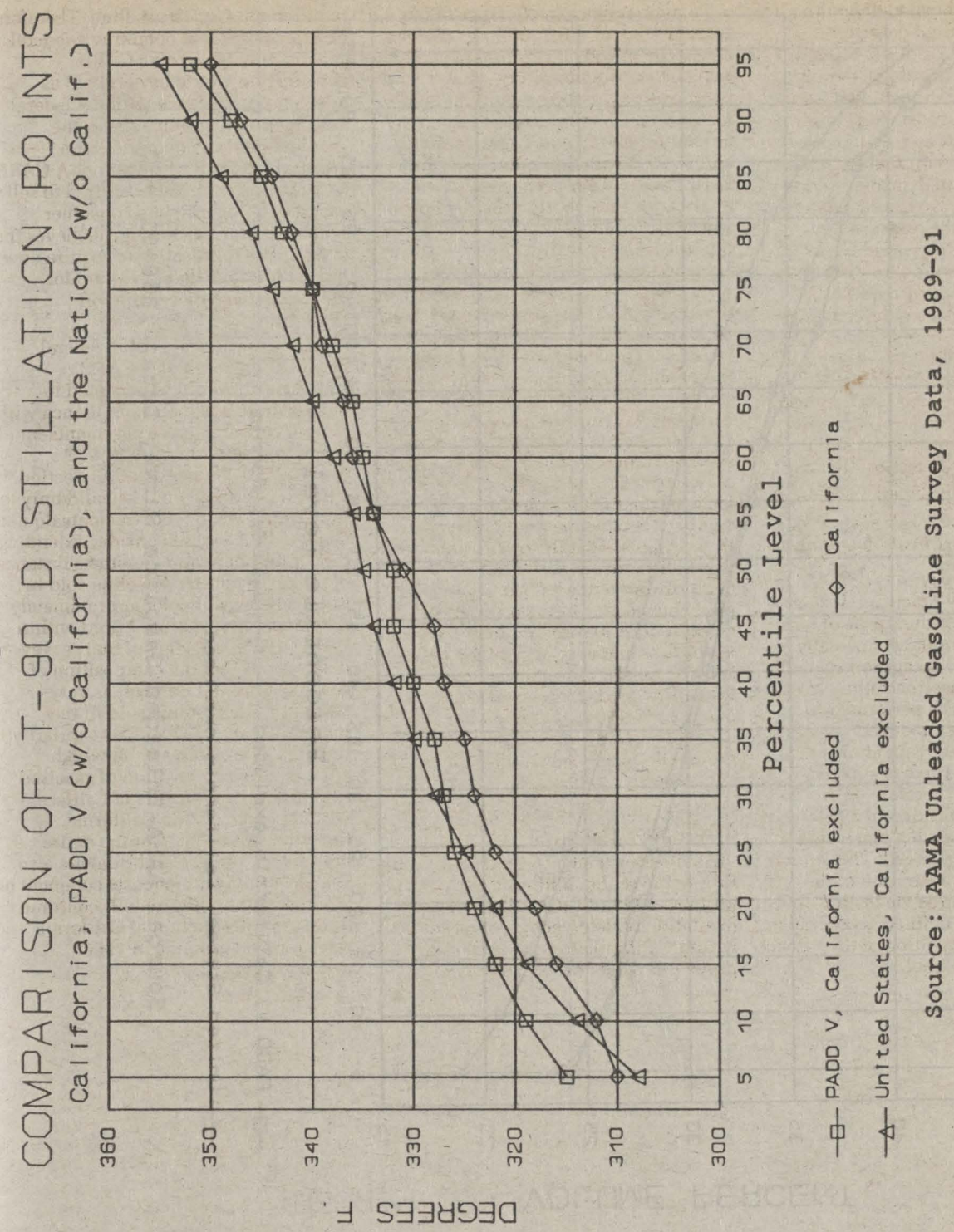
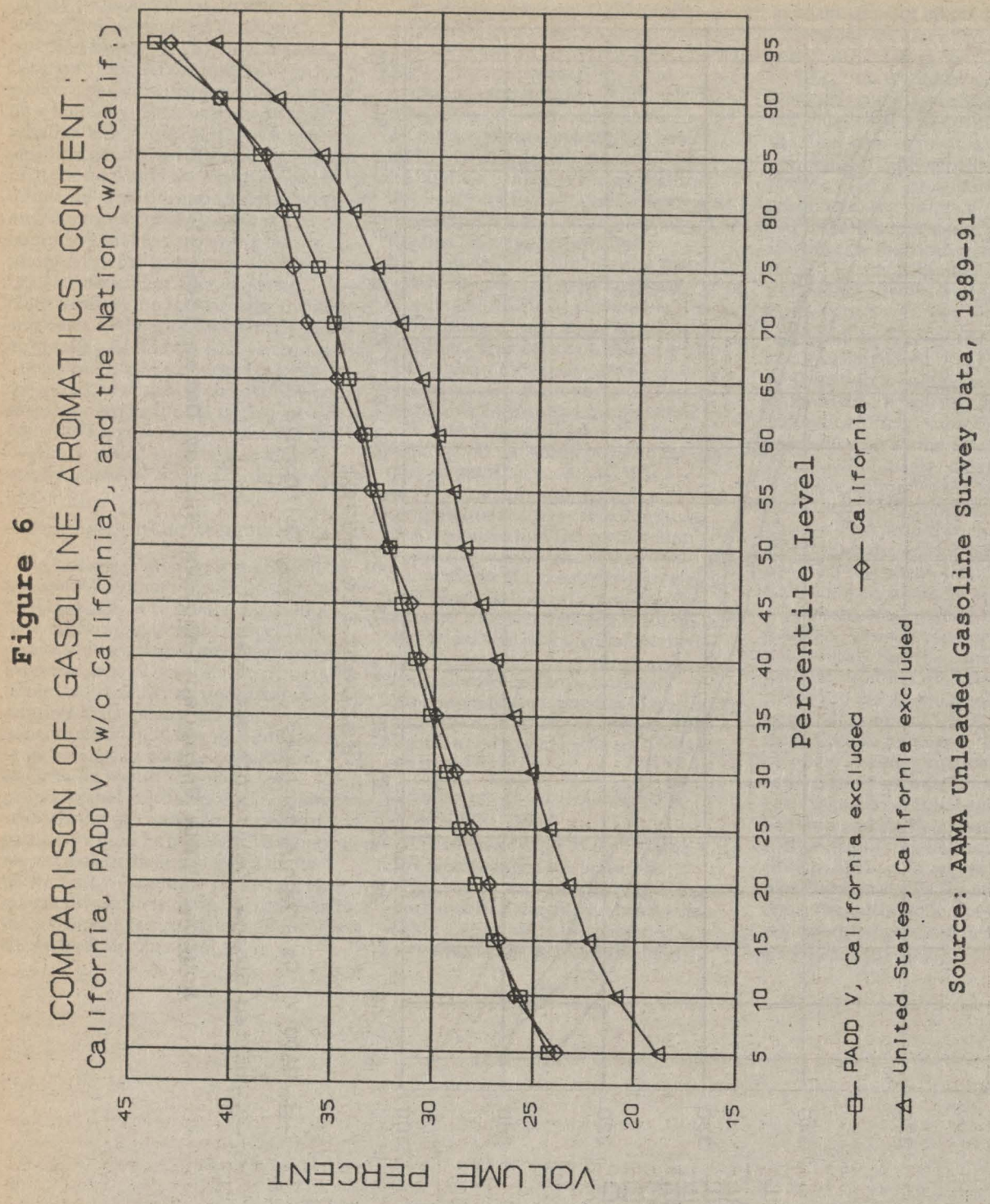
Figure 5



Source: AAMA Unleaded Gasoline Survey Data, 1989-91

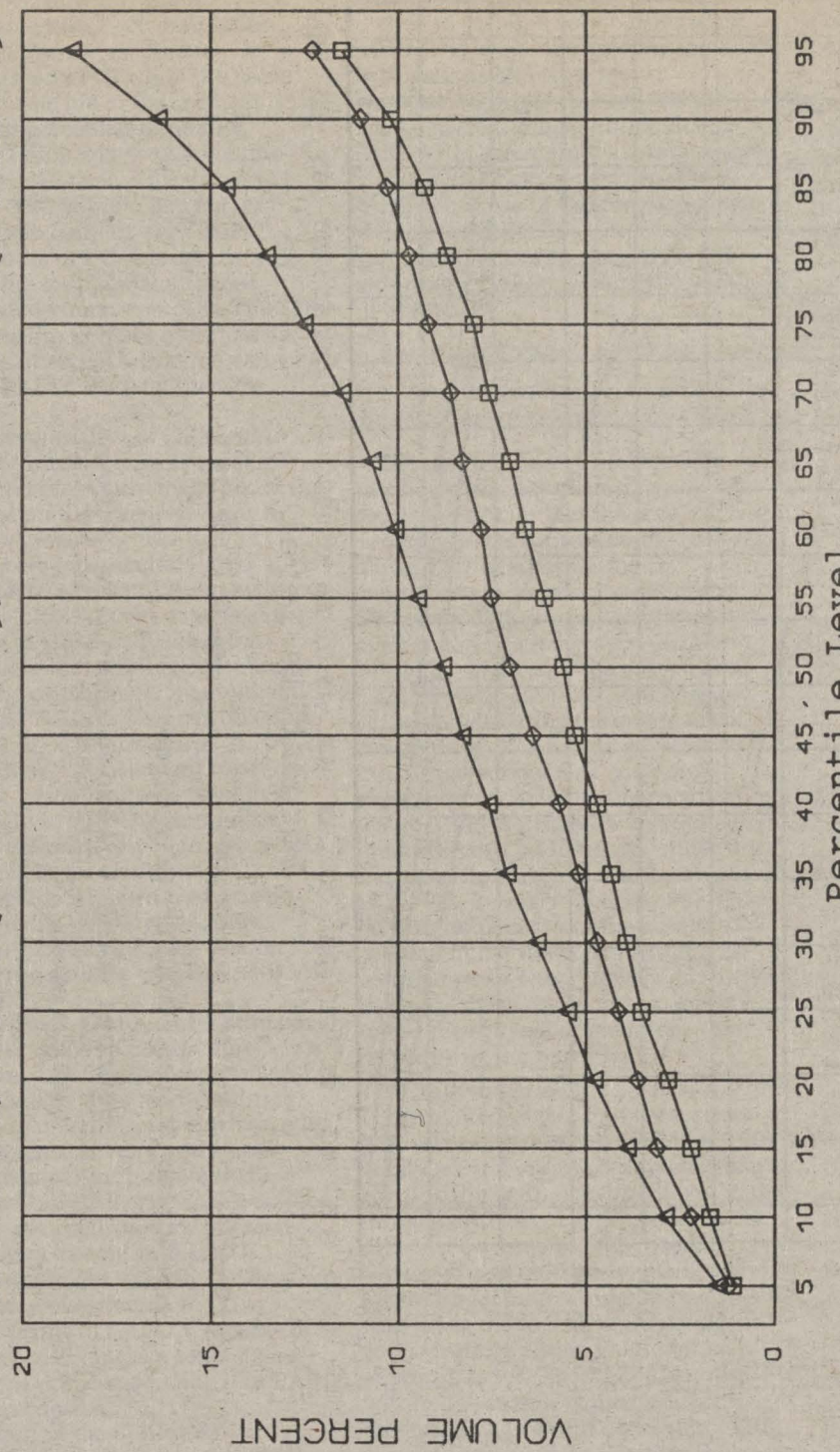
Figure 6



Source: AAMA Unleaded Gasoline Survey Data, 1989-91

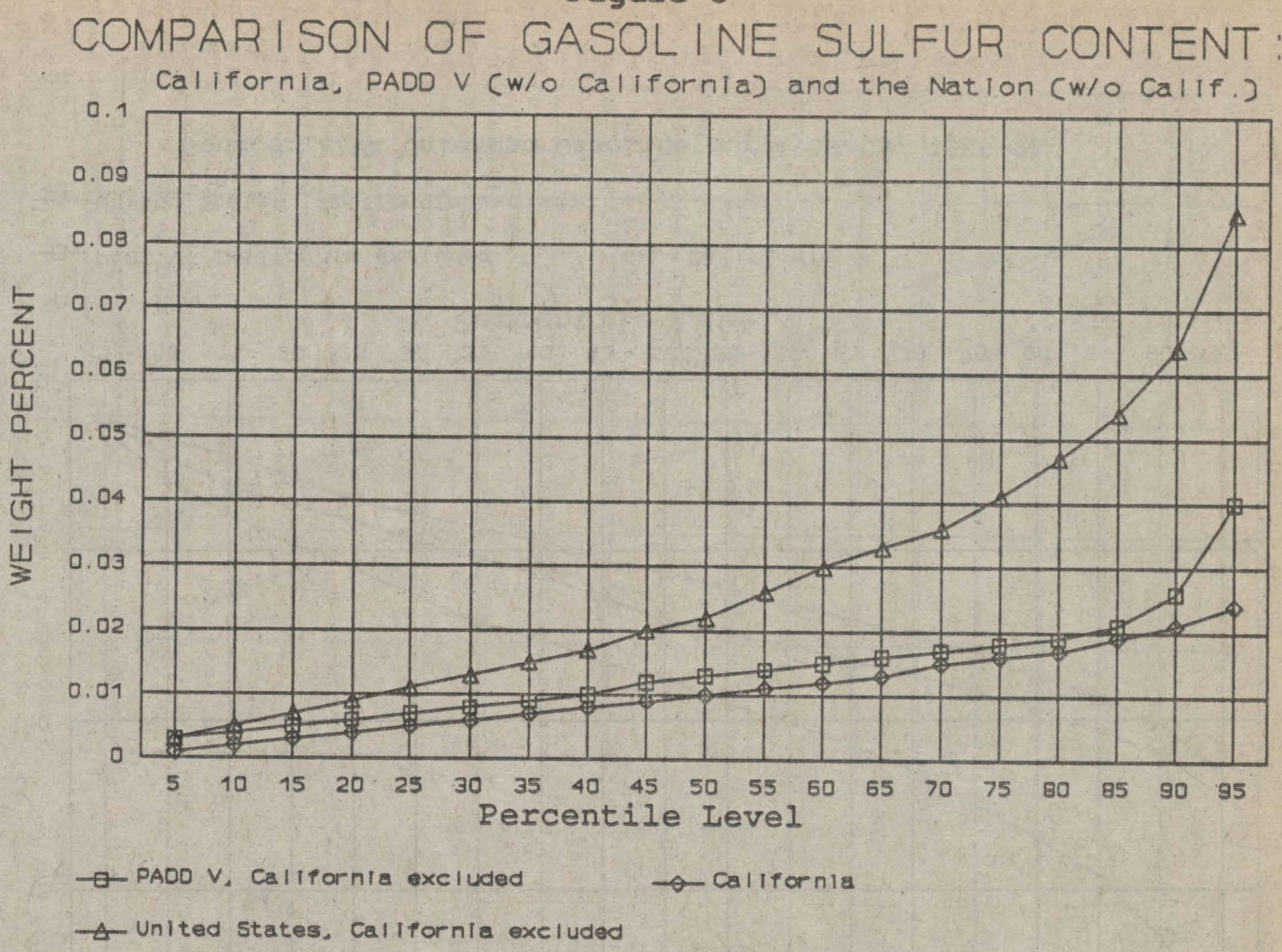
Figure 7

Comparison of Gasoline Olefin Content: California, PADD V (w/o California), and the Nation (w/o Calif.)



Source: AAMA Unleaded Gasoline Survey Data, 1989-91

Figure 8



Source: AAMA Unleaded Gasoline Survey, 1989-91

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The figures show, for example, that the 50th percentile T–90 distillation point for California gasoline is approximately 331 °F while the value for PADD V outside of California is 332 °F. The 50th percentile aromatics content for California is 32.4 volume percent while the value for the rest of PADD V is 32.3 volume percent. For gasoline olefin content, the California 50th percentile is 7.0 volume percent and the value for the remainder of PADD V is 5.6 volume percent. The 50th percentile sulfur content in California is 0.010 weight percent while the value in the rest of PADD V is 0.013 weight percent.

Given the similarity of California gasoline with that sold in the rest of PADD V, and the requirement under the CARB program that relatively severe levels of the nonoxygenate fuel parameters are represented in the certification test fuels, EPA believes that it is reasonable to accept data used in obtaining a CARB certification for purposes of demonstrating compliance with federal certification requirements throughout PADD V. This certification option would be referred to as "CARB-based PADD V". A detergent certified under this option could be used in all gasoline sold in PADD V, including those that are relatively more severe. As an option, EPA is considering monitoring this similarity, and could discontinue the validity of CARB certification for all of PADD V or for the more severe gasolines within PADD V if warranted.

By accepting a CARB certification as the basis for demonstrating compliance with federal certification requirements in all of PADD V, fuel manufacturers who already market in California would not need to perform any additional testing to comply with the federal program within PADD V. This would be especially advantageous for the many small refiners located in PADD V. Refiners who might wish to demonstrate the adequacy of different additive treatment levels in PADD V outside of California could obtain a separate certification under the national or PADD certification option.

As a result of the California reformulated gasoline program (RFG), effective April 1, 1996, California gasoline is expected to experience decreases in the concentration/level of all of the nonoxygenate fuel parameters proposed by EPA to define a gasoline's deposit forming tendency. These changes may result in a decrease in the deposit forming tendency of gasoline marketed in California and the need for a lower concentration of detergent additive to maintain the same level of performance in California gasoline relative to gasoline sold in the rest of PADD V. If this is the case, future CARB certifications based on fuel compositional data that reflects the change in California gasoline due to CARB's RFG program may not provide adequate detergency performance in PADD V outside of California. In light of this possibility, EPA requests comment on the appropriateness of accepting a CARB certification within all of PADD V.

E. Recertification Requirements

1. Recertification Requirements Under the Fuel Specific Certification Option

The composition of fuel specific gasoline must stay within reasonable bounds to ensure that the level of deposit control protection demonstrated during certification testing is maintained in production gasolines. Therefore, EPA is proposing a mechanism whereby recertification would be required if the composition of a fuel specific gasoline pool changed sufficiently to bring the adequacy of control into question. In addition to the initial fuel survey data collection requirements to define the certification test fuels, EPA proposes that the party that receives a certification under the fuel specific option would be required to provide a yearly report to the Agency on the composition of the gasoline covered under the certification. The certified party would also need to attest that only those oxygenates covered under the original application were used during the past year.

If the 50th percentile level of any one of the nonoxygenate fuel parameters (i.e., aromatics, olefins, sulfur, or T90) in any annual report was greater than or equal to the 60th percentile level in the initial certification application, or if different oxygenates were used, then the certification would no longer be valid. The manufacturer would be required to stop using the fuel specific detergent and substitute either a national or appropriate PADD certified additive within one month of the certification renewal date to avoid a violation. EPA requests comment on whether the yearly reporting period is appropriate or whether a shorter period (6 months) or longer period (2 years) is more appropriate. EPA also requests comment on whether the recertification trigger proposed here (i.e., when the median fuel composition shifts to the original 60th percentile) would provide adequate protection while ensuring that recertification would not be required unnecessarily.

2. Recertification Requirements Under the National and PADD Certification Options

Recertification of detergents certified under the national and PADD options could also be required if gasoline composition within the covered areas changed significantly. In such instances, the Administrator would publish a **Federal Register** notice proposing that detergents holding certification numbers under the national or affected PADD options would be required to recertify. This notice would also propose new test fuel specifications for use in recertification testing. Public comment would then be accepted by EPA regarding the need to recertify and the test fuel specifications, and a final determination would be made after evaluation of such comment.

To determine when recertification requirements might be indicated, EPA would monitor trends in the composition of the national and PADD-specific gasoline pools, using the same (or equivalent) fuel survey data as that used in defining the initial certification test fuels. EPA would periodically calculate the national and PADD-specific percentile concentration values for the relevant nonoxygenate parameters, based on fuel survey data collected over the previous three years. The use of three year average fuel survey data would reduce the impact of temporary shifts in fuel composition and would help ensure that a lasting trend in gasoline composition had occurred before any action would be taken. A potential need for recertification would be indicated if the newly calculated 50th percentile level of any one of the monitored fuel parameters was greater than or equal to the 60th percentile level in the fuel survey data applicable to the original certification application. Under such circumstances, a notice would be published proposing recertification requirements for detergents holding applicable certification numbers.

In the event that recertification were required in a PADD, a nationally certified detergent would be required to be used for gasoline sold in that PADD until the PADD recertification was completed. The substitution of a nationally certified additive would be required in order to avoid enforcement actions for the sale of uncertified gasoline. In the case of recertification under the national option, EPA proposes to allow one and one-half years to complete the necessary testing for recertification after a final notice appeared in the **Federal Register** announcing the need for recertification.

During this time the national certifications in question would remain valid.

EPA requests comment on whether a shift of the 50th percentile concentration of any parameter to its original 60th percentile concentration is an appropriate trigger for proposing recertification requirements. Suggestions regarding additional or alternative criteria are also solicited. Comments are also requested on any potential difficulties in using a review of the fuel survey data described above to initiate requirements to recertify, and on the additive substitutions and recertification time limits proposed to apply in the event that recertification is required.

F. Confirmatory Testing by EPA

EPA reserves the right to conduct confirmatory testing on detergent additives to verify compliance with the certification requirements under any of the proposed certification options. At its discretion, EPA could choose to conduct one or more vehicle test(s) on one or more test fuel(s) to determine compliance. If the applicable performance standard(s) were not satisfied, the certification number would not be issued, or the previously issued certification number would be revoked by EPA as discussed in section X.

Under the national, PADD, or fuel specific options, confirmatory vehicle testing would be conducted using the vehicle test procedure(s) described in Section VII. Confirmatory testing using the intake valve deposit control test procedure would use the test standard used in the testing conducted to obtain the subject certification (see Section VII: Either the 10,000 mile/100 mg or 5,000 mile/25 mg standard). The concentrations/levels of the relevant fuel parameters in the test fuels used in the confirmatory vehicle testing would be no greater than those used in the certification testing conducted for the subject certification (see Section VI). All other applicable fuel compositional requirements as discussed in Section VI would also be observed in selecting the confirmatory test fuel(s).

EPA is proposing that confirmatory testing for CARB-based certification be conducted generally following CARB testing procedures as discussed below. The CARB procedures are discussed in Section VIII, and this section should be referenced in connection with this confirmatory testing discussion. Confirmatory testing to verify compliance under the CARB-based PADD V certification option would be conducted using one or both of the keep-clean detergency vehicle test procedures per CARB's regulation of detergent additives. The CARB "supporting data" is intended to verify, based on correlation of data collected on less exacting procedures generated in the past, that the subject test gasoline would meet the performance standards following CARB's strict test procedures even though such procedures were not actually followed. The concentrations/levels of the relevant fuel parameters (sulfur, T–90, olefins, aromatics, and oxygenates) in the confirmatory test fuels would be no greater than those used in the certification testing conducted to apply for the subject CARB certification. The confirmatory test fuel(s) could be based on the specifications of CARB's "typical" certification test fuel or on the specifications used to define CARB's "supporting data" certification test fuels (see Section VIII). A confirmatory test fuel based on the supporting data test fuel specifications would have the concentration/level of the single fuel parameter of focus at or below that used in the CARB certification application. The other nonoxygenate fuel parameters in such a confirmatory test fuel could be at any value.

The Agency anticipates that confirmatory vehicle testing would be used by EPA sparingly. EPA may choose to conduct random confirmatory testing and may also do so if the certification application was suspect. EPA requests comment on whether the confirmatory test requirements proposed above are adequate and would provide a fair evaluation of compliance.

V. Alternative Certification Options Under Consideration

Three additional provisions under consideration within the national and PADD certification options are discussed below. The first additional alternative would allow the separate certification of premium gasoline, the second would provide for the separate certification of oxygenated and nonoxygenated gasolines (oxy/nonoxy certifications), and the third would provide for separate certifications of reformulated and conventional gasolines. EPA envisions that both the premium and oxy/nonoxy certification options could be adopted and used in any combination. For example, separate national or PADD certifications could be obtained for nonoxygenated and oxygenated premium gasolines. The proposed two-tiered certification approach proposed for the national and PADD options would also apply under the alternative certification options discussed below.

A. Alternative Premium Grade Certification Option

An analysis of American Automobile Manufacturers Association (AAMA) fuel survey data shows that premium gasolines, defined as having an octane rating of ≥91 (R+M)/2 (determined according to the current ASTM approved test procedure), tend to have lower olefin content, sulfur content, and T–90 than regular and intermediate grade gasolines. Of the four pertinent nonoxygenated fuel parameters, only aromatic content is higher in the premium grade. This suggests that premium fuels may require a lower concentration of detergent additive to maintain the same level of deposit control performance. In contrast, the AAMA data shows that regular and midgrade fuels are quite similar to each other in the concentrations/levels of the nonoxygenate fuel parameters of interest, and hence there is not likely to be a significant difference in the additive requirements between these two lower grades. A summary of the AAMA fuel survey analysis discussed above is contained in Figures 9–12.

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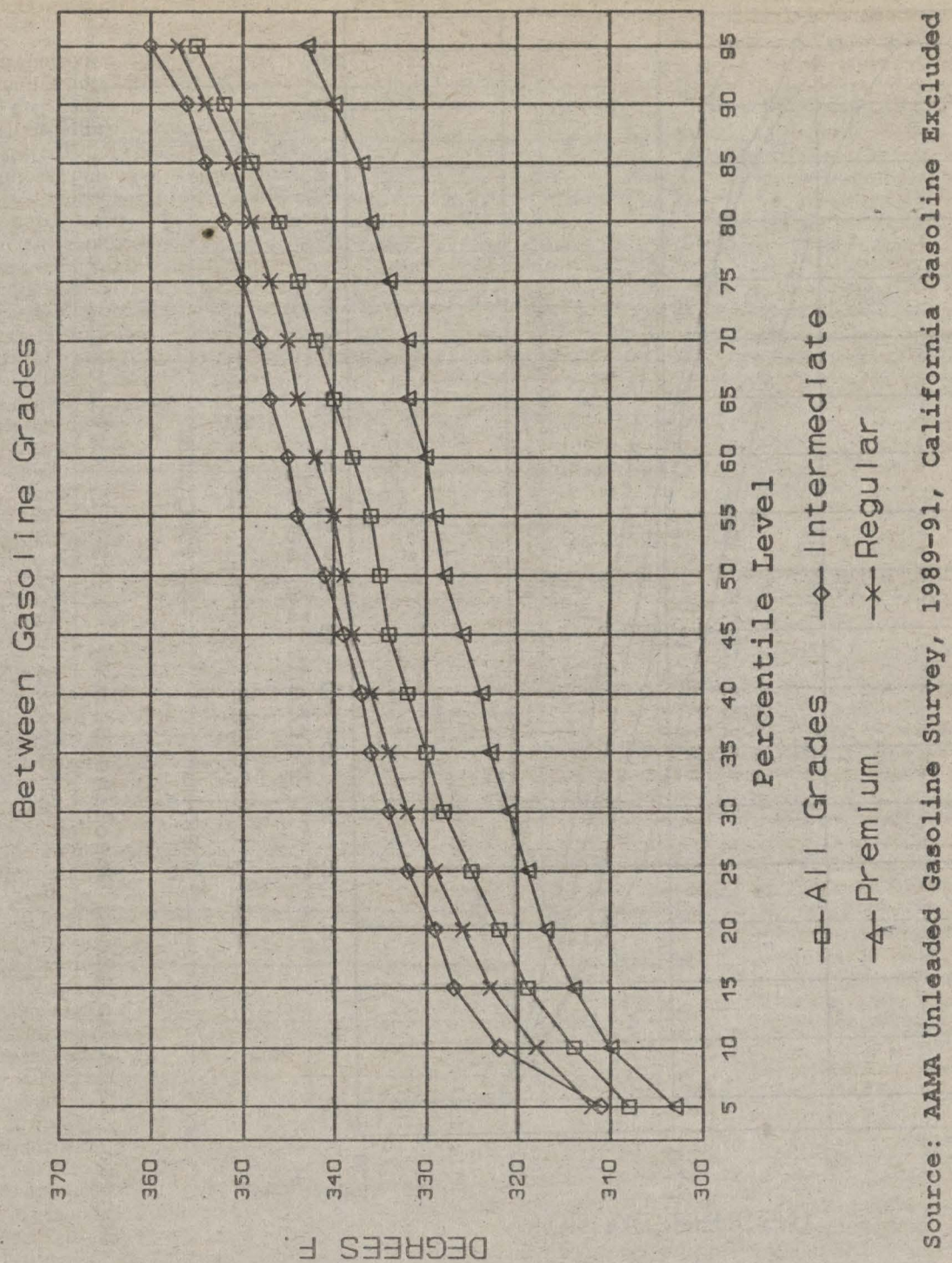
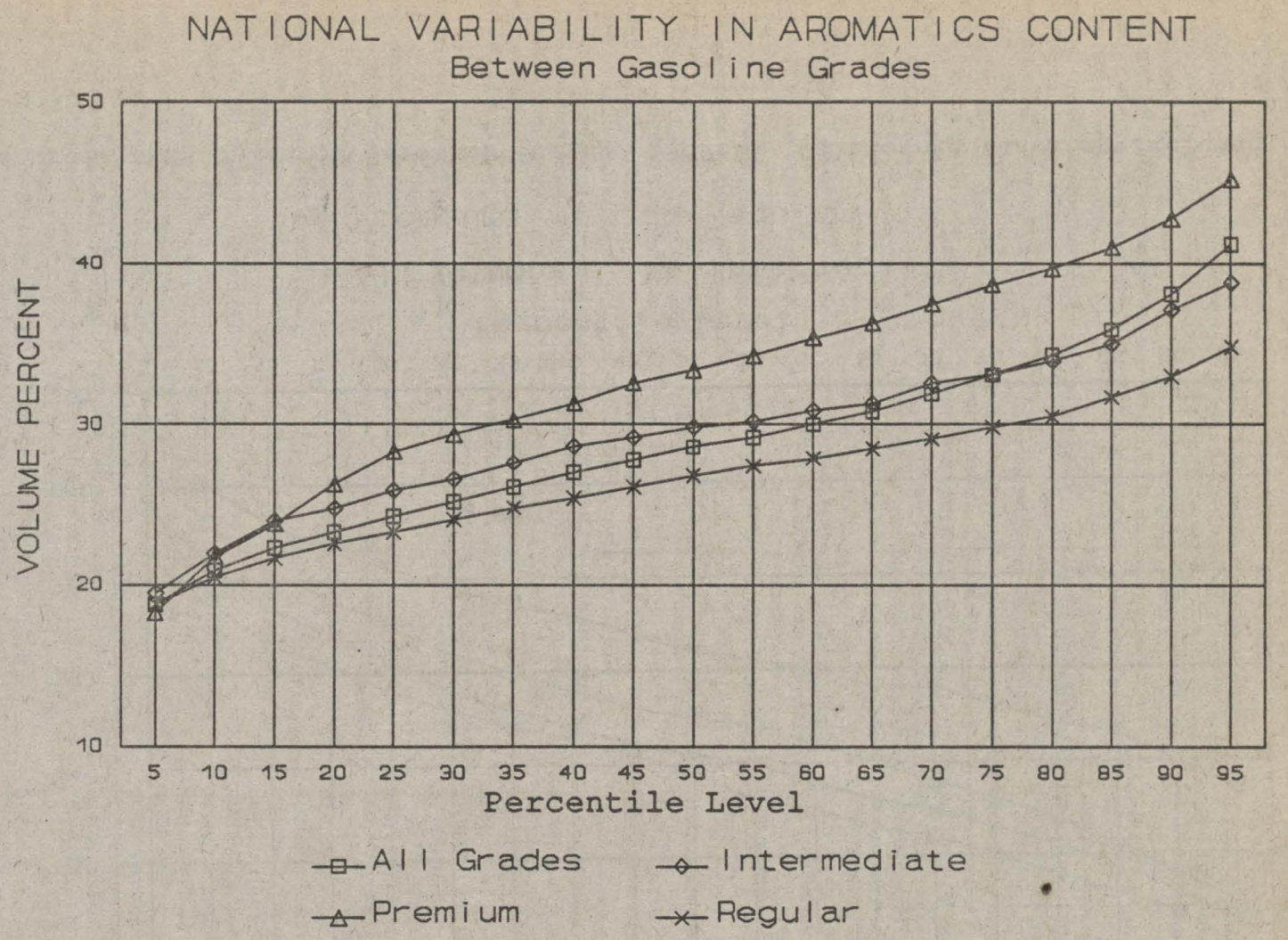
Figure 9



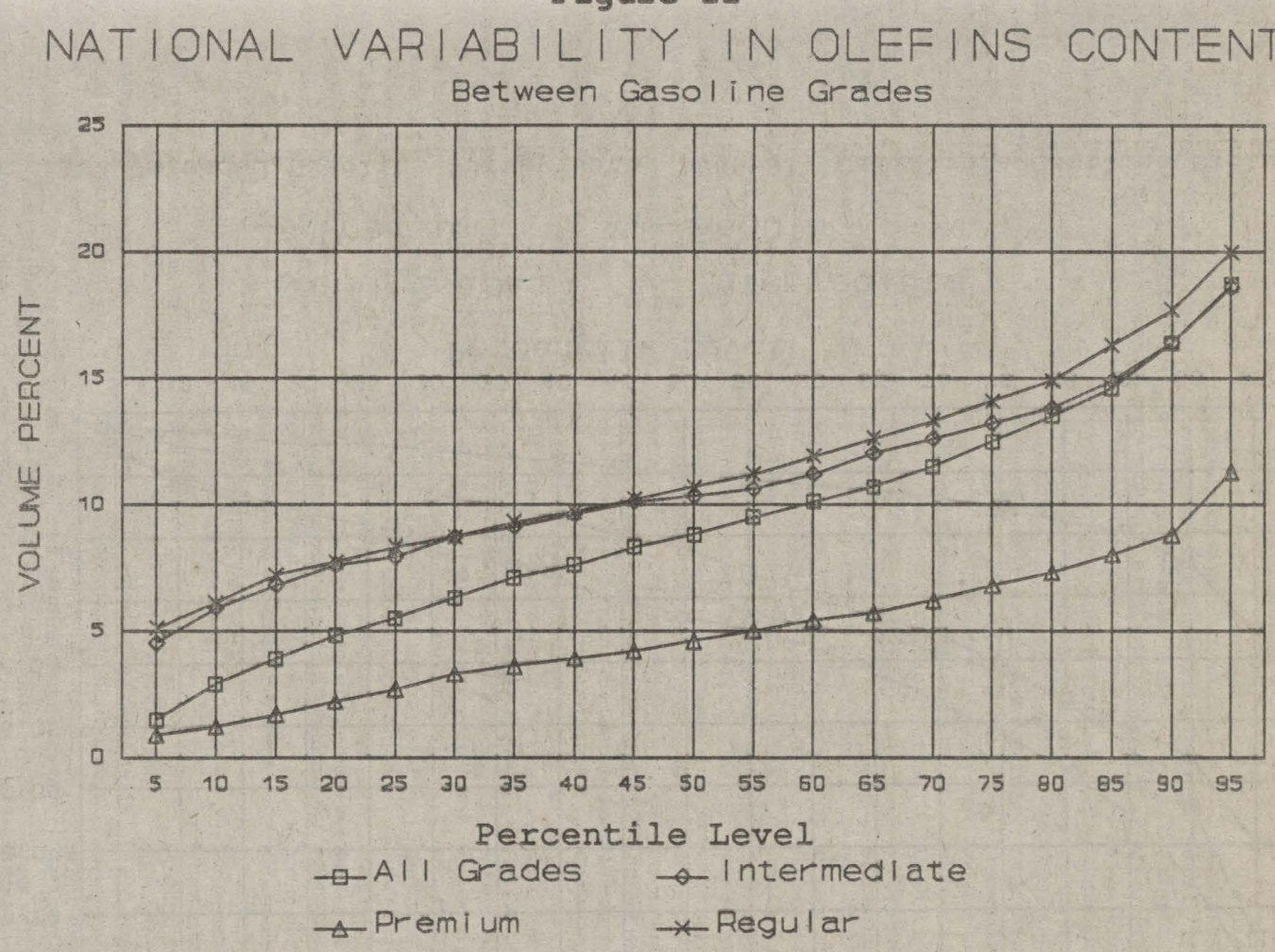
Source: AAMA Unleaded Gasoline Survey, 1989-91, California Gasoline Excluded

Figure 10



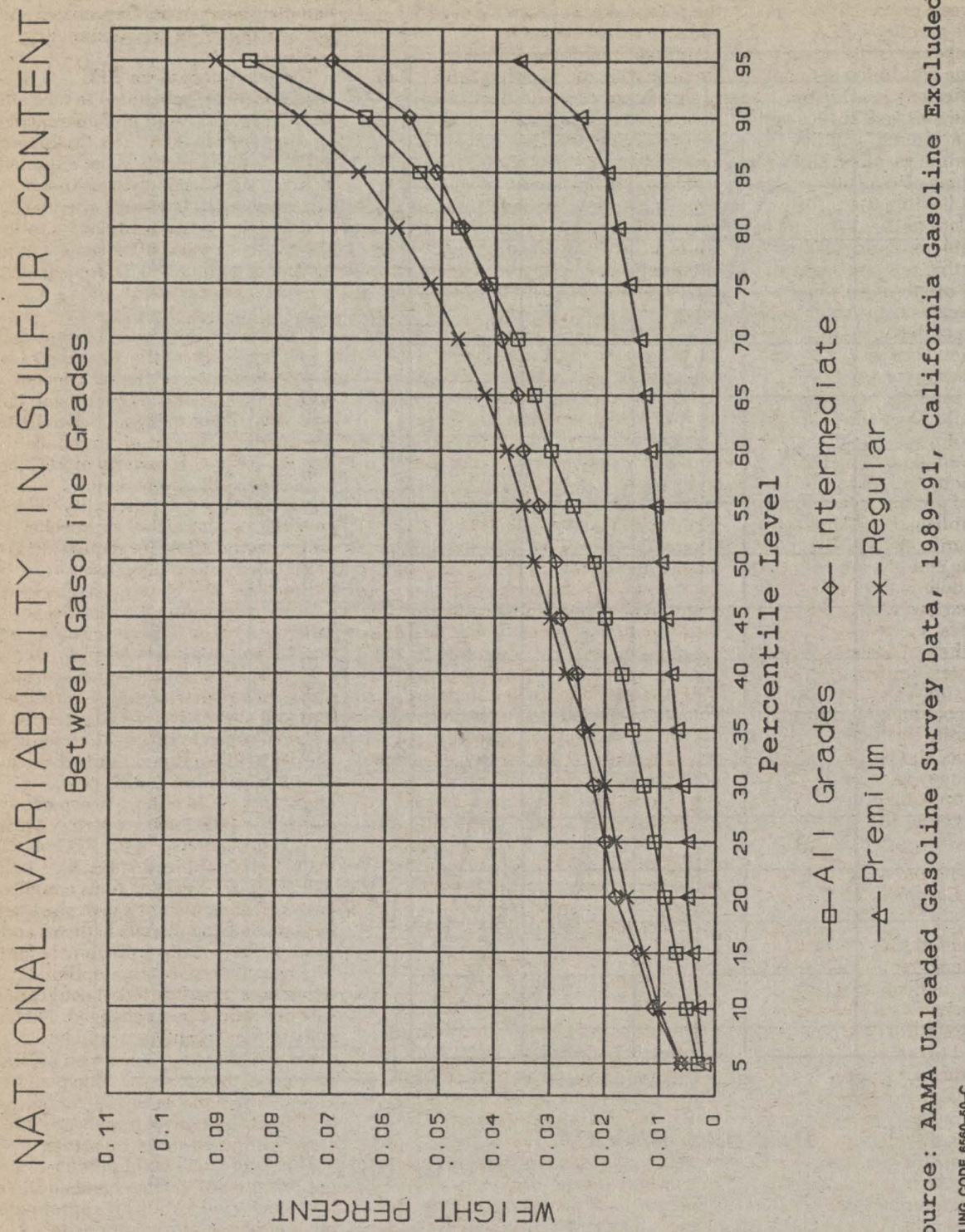
Source: AAMA Unleaded Gasoline Survey, 1989-91, California Gasoline Excluded

Figure 11



Source: AAMA Unleaded Gasoline Survey, 1989-91, California Gasoline Excluded

Figure 12



Source: AAMA Unleaded Gasoline Survey Data, 1989-91, California Gasoline Excluded

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Based on these compositional differences between premium and regular/midgrade gasolines, EPA believes that a separate certification for premium gasoline within the national and PADD options may provide the industry with the means to reduce costs by reducing the amount of additive required in premium gasoline. However, this alternative may also result in greater potential liability for additization violations due to failure to properly segregate premium gasoline. EPA anticipates that refiners might choose to certify premium gasoline separately if the expected savings in the required amount of detergent additive offset the additional certification and logistical expenses involved. EPA envisions that a separate premium certification would be optional and that all grades of gasoline could still be covered under a single national or PADD certification.

Certification of premium gasoline would be accomplished in a similar fashion to the certification of all grades, by demonstrating compliance with the performance standards through vehicle testing on a prescribed matrix of premium grade test fuels. The composition of the test fuels for regional certification of premium gasoline is discussed in Section VI.

EPA requests comment on the utility of allowing separate certification of premium gasoline, and on difficulties that this scheme may cause in segregating and tracking of fuels of different octane grades for enforcement purposes.

B. Alternative Separate Oxygenated/ Nonoxygenated Gasoline Certification Option

The data presented in Section III, on the fuel parameters that impact deposit-forming severity, indicate that the addition of oxygenates such as ethanol and MTBE increases the amount of additive required to maintain the needed level of deposit control protection. Available test data also suggest that this is likely to be the case for all oxygenates, although the impact of different oxygenates would be expected to vary. Also, it should be noted that the performance of all detergent additive types may not be adversely affected by the addition of oxygenates.

As described previously, EPA is proposing a single certification which would prescribe the additive treatment level for both oxygenated and nonoxygenated (oxy & nonoxy) gasolines. This reflects EPA's concern that the additional costs and logistical problems associated with separate oxy and nonoxy certifications may outweigh the potential benefits in reduced additive requirements for nonoxygenated fuels. However, the single-certification approach may lead to significant over-additization of nonoxygenated gasoline, and thus EPA is considering two alternative approaches. The first would require a separate certification for oxy and nonoxy gasoline, while the second would allow separate certifications while maintaining the option of obtaining a single certification for both.

Also under consideration for oxygenated gasolines are options similar to those described in Section VI under the discussion of the test fuels for the fuel specific option, whereby certification testing would be conducted on fuels which contain only those oxygenates that will be used in the applicant's fuels. For example, the certification test fuels used to certify only for the use of MTBE would contain no other oxygenate than MTBE. This alternative may allow for some fuel manufacturers to optimize their additive treatment rate if certain oxygenates were found to have less tendency to promote the formation of deposits. The details on the required test fuels under this alternative are contained in Section VI.

EPA requests comment on the potential benefits, problems, and costs of either providing for or requiring a separate certification for oxygenated and nonoxygenated fuels, and on the appropriate specificity regarding the oxygenate to be used in certification testing. In particular, EPA requests comment on the potential difficulties and costs associated with differentiating oxygenated and nonoxygenated gasolines for enforcement purposes.

C. Alternatives for Certification of Reformulated and Conventional Gasolines

The proposed federal reformulated gasoline (RFG) regulations may result in decreases in the concentrations of some of the nonoxygenate fuel parameters which define a gasoline's tendency to form deposits (T–90, aromatics, olefins, and sulfur) for gasoline sold in certain areas where the national air quality standards have not been attained. These changes may result in a decrease in the deposit-forming tendency of gasolines sold within the designated nonattainment areas relative to current gasolines. A minimum oxygenate content in RFG will also be required. Because of the anti-dumping program that has been proposed in connection with the reformulated gasoline program, conventional gasoline should not be adversely affected by the implementation of RFG in the nonattainment areas. Oxygenates will not be required in conventional gasoline.

The first phase of the RFG requirements is scheduled to take effect January 1, 1995, with more stringent requirements in 2000. The first phase of the RFG requirements is not expected to result in significant changes in the deposit forming tendency of either reformulated or conventional gasoline. The mandatory use of oxygenate in RFG may actually increase its deposit forming tendency relative to conventional gasoline. However, the effect of oxygenates must be considered for all fuels under today's proposal and is therefore not a particular concern with respect to RFG. Beginning in the year 2000, more stringent reformulation requirements may result in reduced deposit-formation severity of RFG (apart from the use of oxygenates).

Anticipating this possibility, EPA is considering alternative approaches which would allow (or require) RFG to be certified separately. These alternatives may be proposed by EPA in a future rulemaking if a significant difference in the deposit forming tendency of reformulated and conventional gasoline was suspected based on a review of fuel survey data. The first alternative would establish an optional separate certification for RFG similar to the option described above for premium gasoline. In this case, applicants could choose to separately certify their RFG using a series of test fuels representative of the RFG pool in the nation or applicable PADD. Alternatively, RFG test fuels could be based on an applicant's own segregated RFG pool, using the mechanisms and procedures described previously for the fuel-specific certification option. In either case, certification of conventional gasoline would be unchanged. That is, conventional gasoline would be certified using test fuels based on fuel surveys of the entire gasoline pool in the nation or applicable PADD, including both RFG and conventional gasoline areas within the surveyed areas.

This approach would permit optimization of the detergent additive treatment level for RFG if appropriate, but would not address opposite concerns which could arise concerning possible under-additization of the conventional gasoline pool. As the contribution of RFG in the general gasoline pool becomes reflected in future fuel survey data, and if reformulated gasoline proves to have significantly less deposit-forming tendency than conventional gasoline, there might be concerns that the

associated new test fuel specifications would not be severe enough to assure adequate deposit control in conventional gasoline.

EPA is thus considering the adoption of another approach, which would make separate certifications mandatory for RFG and conventional gasoline. For this purpose, EPA would calculate fuel specifications for RFG certification based on fuel surveys representative of RFG areas of the country, and separate sets of test fuel specifications for certification of conventional gasoline, based on fuel surveys in areas where conventional gasoline is sold. The methodology used would parallel that proposed in today's notice.

A third overall approach to accommodating the introduction of RFG recognizes that separate certification of RFG need not be a mandatory requirement, since applicants will voluntarily take advantage of a separate RFG certification option if the test fuel specifications suggest that this would provide a real opportunity for significant detergent additive optimization in RFG. This option should also accommodate concerns over the possible under-additization of conventional gasoline. Under this third approach, test fuel specifications would be provided separately for RFG and conventional gasoline. The RFG test fuel specifications would be available for optional separate certification of RFG. The conventional gasoline specifications would be based only on the gasoline surveyed in non-RFG areas.

EPA requests comments regarding the appropriateness of allowing or requiring separate certification of reformulated gasoline and on the advantages and disadvantages of the alternative strategies described above for accommodating the expected introduction of RFG into the fuel supply. Suggestions as to other methods of ensuring the efficient certification and effective additization of RFG and conventional gasoline are also welcome. In addition, comment is requested on the application of the fuel-specific certification option to RFG.

VI. Certification Test Fuels

A. General Approach

Section III of this preamble reviewed the available data regarding specific fuel parameters which appear to increase the deposit-forming tendency (i.e., the "severity") of gasoline. Based on that review, EPA proposed to define the certification test fuels required for this program according to the concentration or level of five severity factors: Olefins, sulfur, T–90, aromatics, and oxygenates. In general, the oxygenates to be examined were proposed to be ethanol and MTBE.

This section describes the level of each severity factor proposed for the certification test fuels. Separate discussions are included for the test fuels related to each certification option. The proper choice of certification test fuel severity is of vital importance to ensure that detergent additives will provide an appropriate level of protection for in-use fuels, while not requiring the use of a greater amount of detergent additive than is necessary. As noted earlier, detergent additive overuse is a concern due to the potential for increased combustion chamber deposits, octane requirement, and oil viscosity, as well as the desire to minimize the cost. Thus, it would be inadvisable to require testing on worst-case gasolines, because additive overuse would frequently result. On the other hand, it is not feasible to identify certification fuels that will provide an optimum level of engine cleanliness in all batches of in-use fuels. Therefore, a balance must be found that provides for a satisfactory overall level of protection for the gasoline pool covered by a particular certification. This is especially true for the national certification option given the variability in fuel composition between the PADDs. As discussed above, this may also be true if a significant difference in the deposit forming tendency of gasoline in reformulated and conventional gasoline areas develops.

Due to compositional differences between batches, the gasoline within a given certification area will differ in terms of the PFID and IVD severity of the base fuel component prior to the addition of detergent additive. Since the amount of detergent additive required will be determined using certification test fuels that are broadly representative of the certified gasoline pool, some gasoline batches will inevitably contain less detergent additive than is needed to maintain cleanliness, while others will contain more detergent than is required. The question that must be addressed is, to what extent must the composition and resulting severity of certification test fuels be adjusted from the average fuel severity for a given geographic area, and for a given fuel severity range (per the two tiered approach), in order to ensure a sufficient overall level of protection in that area?

As discussed previously, available data suggest that existing fuel injector deposits can be removed over time with the use of detergent additives at concentrations calibrated merely to keep the fuel injectors clean. The data also show that existing fuel injector deposits are quickly removed when even higher concentrations of some detergent additives (sometimes seen in commercial gasolines) are used. It cannot be assumed that all types of PFID-control additives perform equally well in removing existing deposits; however, if certification test gasolines were of average severity in relation to the relevant gasoline pool, geographic variability in fuel composition were adequately considered, and all vehicles were operated on a representative mix of gasolines, one might conclude that fuel injectors would experience cyclical periods where deposits were formed and then removed without a significant net effect on emissions performance.

On the other hand, the data on the ability of detergent additives to remove existing intake valve deposits is not nearly as extensive as that for fuel injector deposits. Therefore, concerns over potential differences between additive types in their ability to remove IVD are more pronounced than for PFID removal. The data suggest that intake valve deposits are removed at a much slower rate than are fuel injector deposits. Consequently, if additive certification treatment levels were based on providing adequate protection for a gasoline of average deposit-forming severity, and if fuels of varying severity were used, there would be a higher likelihood that IVD's would accumulate over time.

Another significant concern arises from the possibility that some vehicle owners, such as centrally fueled fleets, may use gasolines from a set group of suppliers for extended periods of time. If this is the case, a fraction of vehicles may consistently use gasolines that are significantly more severe than average, and hence may tend to accumulate deposits. (As discussed above this may also be true if a significant difference in the deposit forming tendency of gasoline in reformulated and conventional gasoline regions results from the Reformulated Gasoline and Anti-Dumping rule.)

These considerations suggest that, while certification test fuels should not be "worst case," they must be of greater than average severity for a given pool of gasoline in order to prevent the accumulation of deposits and the resulting degradation in emissions performance. EPA believes that the test fuel specifications proposed in the following sections adequately account for the variability in the deposit forming tendency of gasoline within and between the specified regions. Test fuel compositions for both generic certifications and for certifications

applicable to the most severe gasoline in each region are included. EPA requests comment on the proper degree of certification test fuel severity in relation to the average severity for the gasoline pool covered by a certification, especially in relation to the geographic variability in fuel composition within and between the proposed certification regions. EPA also requests comment on the ability of detergent additives to remove existing intake valve deposits, and the extent to which the consistent use of gasolines from a specific set of marketers within a certification region would tend to cause certain vehicles to accumulate deposits.

To help account for unknown factors in gasoline composition that may affect fuel severity, EPA proposes that the gasoline samples for certification testing must be drawn from normal production gasoline stock taken from normally operating refinery and/or terminal facilities. To ensure that any interactive effects between detergent additives and non-detergent additives are taken into account, the Agency proposes that the composition of certification test fuels must not differ in any way from fuels that are dispensed to the ultimate consumer in regard to the type of non-detergent additives that are commonly used, and the concentration at which these additives are normally used. These non-detergent additives may include but are not necessarily limited to antioxidants, corrosion inhibitors, and metal deactivators. Naturally, certification test fuels must not contain any detergent additives prior to being treated with the candidate detergent additive package.

The certification test fuels would contain no lead or phosphorous-based additives. The Agency is proposing that leaded gasoline not be included in the database used to define the certification test fuels. EPA does not believe that detergent certification testing specific to leaded gasoline would generate additional emissions benefits that would justify the cost, given that the amount of leaded gasoline sold in the U.S. is now low and continues to dwindle. EPA is also concerned that the test procedures proposed for unleaded gasoline using unleaded gasoline vehicles would be inappropriate for testing leaded gasoline. Therefore, EPA proposes that the certification governing detergent additive use in unleaded gasoline be considered applicable to the use of detergent in leaded gasoline as well. EPA requests comments on whether the certification testing done on unleaded fuels can be applied to leaded gasolines, or whether an alternative approach is necessary. Such comments should take into account the fact that the emissions control equipment on the vehicles used in the detergent certification program which have engines designed to operate on unleaded gasoline would be compromised by operation on leaded gasoline.

B. Test Fuels for Generic National Certification

The test fuel matrix proposed for generic national certification of detergents (i.e., for use in all but the most severe gasolines nationwide) is intended to account for the impact of increasing levels of the selected severity factors and their potential interactive effects. A series of four test fuels is proposed, each of which contains at least a minimum acceptable concentration/level of two of the four nonoxygenate severity factors (i.e., olefins, sulfur, T–90, and aromatics). Oxygenates would then be accounted for by splash-blending them into selected fuels defined by this method. The concentrations/levels of the nonoxygenate fuel parameters not specified in a particular test fuel would be allowed to float. That is, they could be at any value otherwise occurring in the test fuel, but could not be artificially adjusted. The requirement that samples are to be drawn from normal refinery production streams, as proposed earlier, should ensure that the levels of these floating parameters would not be inappropriately low. Also, EPA believes that this approach is conservative since match blending to lower the octane level of the gasoline blend stock would tend to reduce the level of aromatics and hence the severity of the test fuel.

The Agency is considering an alternative approach whereby two of the nonoxygenate fuel parameters would be held at a relatively high concentration in a particular test fuel, and the other two would be required to meet or exceed a specified minimum concentration. EPA is considering a 35th percentile minimum concentration specification on the other two fuel parameters. This alternative would provide additional assurance that the levels of the two otherwise floating parameters in each certification fuel would not be inappropriately low. However, this approach might unreasonably increase the difficulty of locating the required test fuels among normal refinery streams. EPA requests comment on whether the added assurance offered by this alternative would outweigh the additional difficulties that it would impose.

There are six possible combinations of the four nonoxygenate fuel parameters taken two at a time. However, a review of the AAMA fuel survey data reveals that certain parameters tend to vary together. Thus, the members of certain parameter pairs occur together at high levels more often than do members of other parameter pairs. This point is illustrated by examining the relative predominance of fuel samples for which both of the fuel parameters in a pair occur at least at their respective 65th percentile concentrations. The results of this examination are summarized in Table 15.

TABLE 15.—NATIONAL CORRELATION OF HIGH CONCENTRATIONS/LEVELS OF TWO FUEL PARAMETERS TAKEN TOGETHER

Ranking by No. samples w/both params at ≥65th percentiles[1]	Pair of fuel parameters examined[2]	Pct of samples w/both params at ≥65th percentiles	Normalized sample avail.[3]
1	T–90 & Sulfur	13.1	2.7
2	T–90 & Olefins	12.0	2.5
3	Olefins & Sulfur	10.7	2.3
4	Aromatics & T–90	7.4	1.5
5	Arom. & Sulfur	5.4	1.1
6	Arom. & Olefins	4.8	1.0

Notes:

(1) The 65th percentile level means the specific concentration/level for a fuel parameter that is ≥ that found in 65 percent of the fuel survey samples when considering the subject fuel parameter individually. The 65th percentile level was calculated individually for each fuel parameter based on a review of AAMA unleaded gasoline fuel survey data: 1989–1991, summer and winter, all grades of gasoline, California gasoline excluded.
(2) The two fuel parameters not in the pair were held at ≥ their respective 35th percentile levels for the purpose of this study.
(3) Calculated by dividing the percentage of fuel samples for the subject parameter pair by the percentage of fuel samples for the least predominate pair (i.e., pair #6).

In the table, all six possible combinations of the four defining fuel parameters are listed in descending frequency order. For example, the most common of the fuels (fuel 1) is defined by the occurrence of both members of the parameter pair T–90 and sulfur at values equal to or greater than their respective 65th percentile levels. In all, 13.1 percent of samples in the fuel survey correspond to this specification. This sample frequency is 2.7 times higher than the frequency of the lowest-ranking fuel (fuel 6), which is defined by the aromatics-olefins parameter pair and occurs in only 4.8 percent of fuel survey samples.

To provide for effective certification testing while limiting the number of test fuels required, EPA proposes that certification testing would be conducted on four fuels that would be defined by specifications related to the first four ranked fuel parameter pairs in Table 15. This scheme largely takes into account the fuel types in which high concentrations of two fuel parameters are normally linked due to refinery practices, and each of the four nonoxygenate fuel parameters is evaluated in at least one test fuel.

The first three test fuels emphasize the individual and paired effects of fuel olefin, sulfur content, and the fuel's T–90 distillation point. The impact of high aromatic content in combination with T–90 would be considered in the fourth test fuel. It should be noted that the interaction between fuel olefin and sulfur content, which has a demonstrated effect on PFID fuel severity, is accounted for according to specifications on pair three. EPA requests comment on whether the use of four test fuels is sufficient to account for the interactive effects of the nonoxygenate fuel parameters, or if it is necessary to require testing on additional fuels. For example, testing could be required on a matrix of six test fuels that include consideration of each of the possible six combinations of the nonoxygenate fuel parameters. EPA also requests comment on whether it is acceptable to allow two of the four test fuels to be used for oxygenate testing, or whether additional test fuels should be required for this purpose. These alternatives are discussed in more detail later in the text.

Setting the required values for each of the fuel parameters in each of the four proposed test fuels is made difficult by the lack of data correlating fuel severity (tendency to form PFID and IVD) to specific concentrations/levels of the relevant fuel parameters, especially regarding the interactive effects between the parameters. As discussed earlier, EPA believes that the certification test fuels should reflect greater than average fuel severity. Thus, to begin with, each of the two fuel severity factors which define a particular test fuel must be at a level no less than the 50th percentile for that parameter in the national gasoline pool. Beyond the 50th percentile, EPA proposes that the minimum levels for each pair of parameters should be based on fuel sample availability, as determined by actual fuel survey data. In other words, the minimum level required for each of the two parameters highlighted by a given test fuel would be determined by an analysis of fuel survey data, such that a certain target fraction of all randomly chosen fuel samples, for example 20 percent, would be expected to meet or exceed the specified minimums for the two parameters.

Fuel sample availability is important for two reasons. First, the test fuel specifications must be set so that the gasoline samples that meet these specifications can be obtained without undue difficulty and expense. In addition, although a direct correlation between sample availability and test fuel severity does not exist, the ability to locate gasoline samples that satisfy certification test fuel requirements does offer some indication of test fuel severity as well as the likelihood of finding more severe fuels in use.

For example, if test fuel specifications were satisfied in 15 percent or less of randomly selected gasoline samples, one could not simply assume that the test fuels were more severe than 85 percent of all gasoline. However, one could assume that the test fuels were significantly more severe than average. Actual fuel severity probably lies somewhere between percentile concentration specifications placed on the individual parameters and the inverse of sample availability. For example, if a 60th percentile concentration specification on each of the two individual fuel parameters in a given test fuel yielded a 20 percent sample availability, EPA believes that one might reasonably conclude that the certification test fuel would be more severe than 60 to 80 percent of the gasoline sold within the area sampled for the fuel parameter pair considered. Note that the percentile concentration values for individual parameters are such as those illustrated in Figures 1–4, while the sample availability refers to the percentage of fuel samples that have two fuel parameters at a given concentration or higher.

Using AAMA national fuel survey data, EPA evaluated three fuel severity scenarios. The results are shown in Table 16. The first scenario is constructed to provide a 25 percent sample share; i.e., at least 25 percent of the fuel survey samples would have levels of the two fuel parameters in each test fuel at or above the values specified. Similarly, the second scenario would provide a 20 percent sample share and the third a 15 percent sample share. Each of these fuel severity scenarios would result in different test fuel specifications, and hence a different requirement on the amount of additive that would be required for in-use fuels. The specific percentile concentrations shown in the table for the paired fuel parameters defining each certification test fuel were determined by calculating the percentage of samples that satisfied fuel compositional requirements under these various scenarios. By an iterative process, percentile concentration values were determined that would provide the desired sample availabilities. Gasoline sold in California was excluded from the fuel survey data used to define the national certification test fuels. EPA believes that this is appropriate because the Agency anticipates that gasoline marketed in California would comply with the federal certification requirements through use of data used to obtain certifications under the CARB detergent certification program (see Section IV. D.), because this is the most efficient way to satisfy both federal and state detergent certification requirements.

TABLE 16.—NATIONAL (ALL-GRADE, OXY/NONOXY) CERTIFICATION TEST FUELS

	Nonoxy fuel parameters on which the test fuel requirements are based[1]	25% sample share severity scenario: min level required[2]	20% sample share severity scenario: min level required	15% sample share severity scenario: min level required
Test Fuel #1	Sulfur (weight %)	60th=0.030%	65th=0.033%	70th=0.036%.
	T–90 (degrees F)	60th=338°	65th=340°	70th=342°.
Test Fuel #2	Olefins (volume %)	60th=8.8%	65th=10.7%	70th=11.5%.
	T–90 (degrees F)	60th=338°	65th=340°	70th=342°.
Test Fuel #3	Olefins (volume %)	60th=8.8%	65th=10.7%	70th=11.5%.
	Sulfur (volume %)	60th=0.03%	65th=0.033%	70th=0.036%.
Test Fuel #4	Aromatics (volume %)	50th=28.6%	55th=29.2%	60th=30.0%.
	T–90 (degrees F)	50th=335°	55th=336°	60th=338°.

Note:
(1) Selected oxygenates would be required to be blended into two of the fuels defined above in accordance with the requirements discussed below.
(2) Percentile concentration and corresponding specific concentration/level. The percentile concentration is defined as the percentage of fuel survey samples that have a concentration of the fuel parameter considered (taken individually) that is equal to or less than a selected value.

EPA believes that the scenario in Table 16 based on a 20 percent sample share provides an appropriate balance of test fuel severity versus availability. A one in five random chance of finding one of the required test fuels should not cause inordinate cost. (See the Draft Regulatory Impact Analysis in the public docket.) Therefore, the test fuels for the national certification option (all gasoline grades, including both oxygenated and nonoxygenated fuels, i.e., National All-grade, Oxy/Nonoxy Certification) are proposed to be based on this scenario. As the table shows, the individual parameters in test fuels 1, 2, and 3 occur at their respective 65th percentile values and, in the designated paired combinations, provide 20 percent sample availability. In test fuel 4, the same sample availability is provided with the individual parameters occurring at their respective 55th percentile values.

To account for the potential impact of oxygenates on a gasoline's deposit forming tendency, EPA proposes that 10 percent fuel grade ethanol be splash blended into one of the test fuels defined above and 15 percent MTBE into another. Very little data is available on which to base the determination of which of the test fuels should be targeted for blending with oxygenates. EPA believes that, in view of the demonstrated interactive effect between fuel olefin and sulfur content, test fuel 3 should not be selected for oxygenate blending because such blending would tend to dilute the olefin and sulfur content in the finished test fuel. EPA proposes that 10 percent fuel grade ethanol must be added to the test fuel which conforms to the compositional requirements of fuel 1 in Table 15 and that 15 percent fuel grade MTBE be added to the test fuel conforming to the compositional requirements of fuel 2 in the table. In summary, EPA proposes the four certification test fuels for the national certification option detailed in Table 17.

TABLE 17: TEST FUELS FOR NATIONAL CERTIFICATION (ALL GRADES, OXY/NONOXY)

	Test fuel/min param vals			
	#1	#2	#3	#4
Sulfur (Wt %)	0.033	.....	0.033	.....
T–90 (°F)	340	340	.....	336
Olef. (Vol %)	.....	10.7	10.7	.....
Aromat (Vol %)	.....	.....	.....	29.2
Oxygnt (Vol %)	10% EtOH	15% MTBE	None	None

By demonstrating compliance with both the PFID and IVD control performance standards in vehicle tests using each of these four test fuels, an applicant could obtain certification for the subject detergent additive for use in all but the most severe gasoline sold in the United States, including imported gasoline. This certification would be valid for use of the additive in gasoline containing any oxygenate compound as well as in nonoxygenated gasolines. EPA requests comment on whether this scheme adequately accounts for the impact of oxygenates. Comments with accompanying data would also be welcome that would help to refine the determination of which test fuels are most appropriate for oxygenate blending. In addition, comment is solicited on the extent to which testing on ethanol- and MTBE- containing fuels adequately demonstrates that the subject detergent additive could maintain the required level of performance in fuels containing any other oxygenates.

To provide additional flexibility, EPA further proposes that an applicant for detergent additive certification under both the national and PADD certification options could choose to test the additive in fewer than four test fuels if the following criteria were satisfied: (1) The specified "high level" of each of the nonoxygenate and oxygenate parameters required in the proposed four test fuels for the nation or PADD must be represented in the abbreviated test fuel matrix. (2) Ethanol and MTBE must be tested in separate test fuels. (A minimum of two test fuels is thus required.) (3) The pairs of "high level" parameters in the proposed four test fuels must also be represented in the abbreviated test fuel matrix. Thus, in the case of national certification each of the following parameter pairs must be present in combination at the levels in Table 17 in the same test fuel: Sulfur and T–90, olefins and T–90, olefins and sulfur, and aromatics and T–90.

While a large variety of combinations is possible, the following two fuels could be used, for example, rather than the four test fuels specified in Table 17 to accomplish national certification. The first test fuel could have 0.033 weight percent sulfur, 10.7 volume percent olefins, and T–90 distillation point of 340 °F prior to the addition of oxygenate, and contain 10 percent splash-blended ethanol. This fuel would satisfy the third criterion above for three of the four required parameter pairs (i.e., sulfur and T–90, olefins and sulfur, and olefins and T–90). Thus the second test fuel would need to have the fourth required parameter pair at the specified levels (i.e., 29.2 volume percent aromatics and T–90 of 336 °F prior to the addition of oxygenate) as well as containing 15 percent splash-blended MTBE. Comments are requested on the usefulness and appropriateness of this proposal to allow certifiers to collapse the four-fuel test matrix into as few as two fuels.

On the other hand, EPA is considering an alternative applicable to both the national and PADD certification options whereby the basic testing framework would require six test fuels instead of four. For national certification, the first four certification test fuels would conform to the specifications on the nonoxygenate parameters for fuels 1–4 in Table 17, but would contain no oxygenates. To account for the impact of oxygenates, testing for national certification testing would also be required on two additional fuels that would conform to the specifications for fuels 1 and 2 in Table 17. Test fuels for PADD certification would be defined in a similar fashion.

The opportunity to collapse the number of test fuels could be retained under this alternative six-fuel testing framework. All the criteria listed above for collapsing the four-fuel matrix into as few as two fuels would hold, except that under the six-fuel testing framework a minimum of three fuels would be required. One would contain ethanol, one would contain MTBE, and the third would contain no added oxygenate. Each such fuel would be required to contain at least one of the "high-level" parameter pairs, and all specified parameter pairs would need to be represented in at least one fuel.

The six-fuel testing framework might improve the effectiveness of the certification testing program because the impact of the parameters of interest would be evaluated with and without dilution by oxygenate blending. However, the additional test fuels would naturally increase the certification cost. EPA requests comment on whether the benefits of this option outweigh the costs. The reader is directed to Section VI for a discussion of other alternatives for certifying nonoxygenated and oxygenated fuels.

As described previously, EPA proposes that the national certification test fuels must be drawn from normal production gasoline at normally operating gasoline distribution and/or production facilities within the United States. Certification test fuels may not be adjusted artificially to change the chemical characteristics of any of the four nonoxygenate fuel parameters discussed above. The certification gasolines do not necessarily need to be drawn from facilities that are owned and/or operated by the certification applicant. To ensure that the test fuel composition is not unique to a special refinery process, EPA proposes that national certification test gasolines may not be drawn from gasoline stock that is certified under the fuel specific option.

To further ensure that national certification test fuels are truly representative of the deposit forming tendency of the gasoline pool, and to help account for unknown factors in fuel composition which may vary from one region of the nation to the next, EPA proposes that each of the required test fuels must be drawn, one each, from a separate refinery or distribution facility. Furthermore, EPA proposes that the certification test fuels must be drawn from at least two different PADDs. A review of AAMA fuel survey data indicates that the percent availability of any given test fuel within PADDs I & III is greater than for the nation as a whole. Conversely, availability within PADDs II and IV tends to be less than the national average. Therefore, the proposed requirement that the certification test fuels come from at least two different PADDs does not further restrict the ability to locate the needed test fuels, whereas requiring that each test fuel come from a separate PADD would tend to do so. EPA requests comment on whether the requirement for sampling from two different PADDs is sufficient.

C. Test Fuels for Generic PADD Certification

EPA proposes that, under the PADD certification option, conformance to the required performance standards would be demonstrated via testing on a set of four designated certification test fuels drawn from facilities within the PADD for which a certification is sought. Fewer than four test fuels could be used according to the same criteria described under the national certification option, as applied to the test fuel matrix specified for a given PADD certification. A certification number granted on the basis of testing in the generic PADD-specific test fuels would be valid for use of the certified detergent in all but the most severe gasolines sold within the PADD in question.

The manner in which the proposed specifications for the PADD test fuels were determined parallels that described for the national option, with the exception that the fuel survey data used was specific to the PADD under consideration. Similar to the national option, the relative predominance of fuel samples that have both of the fuel parameters in a pair at least at their respective 65th percentile concentrations was examined in each PADD. As evidenced in Table 18, there are several differences within the PADDs in terms of the likelihood of finding both of the parameters in the various parameter pairs at a high concentration/level in the same fuel sample. The differences between the PADDs were considered by EPA in deciding which parameter pairs to use in defining the certification test fuels for each PADD.

TABLE 18.—CORRELATION OF HIGH CONCENTRATIONS/LEVELS OF TWO FUEL PARAMETERS TAKEN TOGETHER WITHIN THE PADDS

Fuel parameter pairs examined (nat'l ranking) [2]	Ranking w/in PADD–No. of fuel samples w/both params at ≥65th percentile levels [1]				
	PADD I	PADD II	PADD III	PADD IV	PADD V
T–90 & sulfur (nat'l pair #1)	1	2	1	3	[3] 1/2
T–90 & olefins (nat'l pair #2	3	1	2	2	[3] 1/2
Olefins & sulfur (nat'l pair #3)	2	3	3	6	3
Aromatics & T–90 (nat'l pair #4)	[3] 4/5	4	[3] 4/5	1	5
Aromatics & sulfur (nat'l pair #5)	[3] 4/5	6	[3] 4/5	4	6

TABLE 18.—CORRELATION OF HIGH CONCENTRATIONS/LEVELS OF TWO FUEL PARAMETERS TAKEN TOGETHER WITHIN THE PADDs—Continued

Fuel parameter pairs examined (nat'l ranking) [2]	Ranking w/in PADD–No. of fuel samples w/both params at ≥65th percentile levels [1]				
	PADD I	PADD II	PADD III	PADD IV	PADD V
Arom. & olefins (nat'l pair #6)	6	5	6	5	4

Notes: (1,) (2): See notes 1 and 2 Table 17.
(3) Ranking of these pairs was essentially the same within the subject PADD.

Within PADDs I, II, III, and V the top three ranked fuel pairs (T–90/Sulfur, T–90/Olefins, and Olefins/Sulfur) are the same as those ranked in the top three nationally (See Table 15), although the relative ranking among the three pairs varies in relation to the national ranking. In PADD IV, fuels with high olefin and sulfur content (nationally ranked pair 3) have a relatively low incidence of occurrence and are not included in the top three. However, due to the demonstrated impact on deposit forming tendency of fuels with high olefin and sulfur content (See Section III) EPA believes that it is necessary that this pair be included in defining certification test fuels. Therefore, the top three national fuel parameters are also proposed for use in defining the first three test fuels for certification within each of the PADDs.

To represent gasoline aromatics content in the PADD certification test fuel matrix, EPA believes that a fourth test fuel should be defined according to specifications on the fuel parameters in pair 4. EPA believes that fuel pair 4 is the best choice among the other pairs which include aromatics because of the relatively high ranking of fuel pair 4 within the PADDs, and the uniformity of test fuel requirements that this would provide.

Based on these considerations, the test fuel matrix specified for national certification would be a reasonable choice for certification within each of the PADDs. Therefore, EPA proposes that this matrix be used for PADD certification testing, with the required percentile concentration values for each test fuel set relative to fuel compositional variability within the subject PADD.

EPA is also considering an alternative whereby the PADD certification test fuels would be defined based on the four most predominant fuel pairs in each PADD. Thus the certification test fuels for PADDs I, II, and III would be defined based on specifications on the same four parameter pairs used to define the national certification test fuels: T–90/Sulfur, T–90/Olefins, Olefins/Sulfur, and Aromatics and T–90. However, the certification test fuels in PADDs IV and V would be defined by different parameter pairs. The PADD IV certification test fuels would be based on the following parameter pairs: T–90/Sulfur, T- 90/Olefins, Aromatics/T–90, and Aromatics/Sulfur. In PADD V, the test fuels would be defined by specifications on the following parameter pairs: T–90/Sulfur, T–90/Olefins, Olefins/Sulfur, and Aromatics/Olefins. Because these certification test fuels would be based on the combinations of fuel parameters most likely to occur at high concentrations together in each PADD, this option might be considered to provide more representative certification testing results. However, under this option, the important combination of high olefins and high sulfur would not be represented by a certification test fuel in each PADD. Therefore, EPA believes that this option would not provide superior assurance of proper levels of additization in the PADDs. EPA requests comment on the adequacy and appropriateness of the proposed and alternative methods for defining test fuels for the PADD certification option.

As in the national certification option, EPA analyzed three scenarios regarding the severity of certification test fuels, based on the availability of gasolines within each PADD that satisfy given compositional requirements. These results are presented in Tables 19–23. As for the national option, EPA believes that the test fuel specifications that yield a 20 percent fuel availability provide the proper balance of test fuel severity and reasonable likelihood of finding such fuels in use. Consistent with that position, EPA proposes that PADD test fuel specifications based on 20 percent fuel availability be used to define the certification test fuels within each PADD. The resulting test fuel specifications are presented in Tables 24–28. The proposed requirements on oxygenate blending into the certification test fuels are identical to those detailed under the national certification option.

TABLE 19.—PADD I (ALL-GRADE, OXY/NONOXY) CERTIFICATION TEST FUEL SEVERITY SCENARIOS

	Nonoxy fuel parameters on which requirements are based [1]	25% sample severity scenario: min. level required [2]	20% sample severity scenario: min. level required	15% sample severity scenario: min. level required
Test Fuel #1	Sulfur (weight %)	60th=0.032%	65th=0.036%	70th=0.039%.
	T–90 (degrees F)	60th=341°	65th=344°	70th=346°.
Test Fuel #2	Olefins (volume %)	60th=12.7%	65th=13.3%	70th=13.8%.
	T–90 (degrees F)	60th=341°	65th=344°	70th=346°.
Test Fuel #3	Olefins (volume %)	60th=12.7%	65th=13.3%	70th=13.9%.
	Sulfur (volume %)	60th=0.032%	65th=0.036%	70th=0.039%.
Test Fuel #4	Aromatics (volume %)	45th=29.1%	50th=29.7%	55th=30.3%.
	T–90 (degrees F)	45th=336°	50th=338°	55th=339°.

Notes:
(1) 10% fuel grade ethanol must be added to a fuel which conforms to the compositional requirements of fuel #1. 15% fuel grade MTBE must be added to a fuel which conforms to the compositional requirements of fuel #2.
(2) Percentile concentration & corresponding specific concentration/level.

TABLE 20.—PADD II (ALL-GRADE, OXY/NONOXY) CERTIFICATION TEST FUEL SEVERITY SCENARIOS

	Nonoxy fuel parameters on which requirements are based[1]	25% sample severity scenario: min. level required[2]	20% sample severity scenario: min. level required	15% sample severity scenario: min. level required
Test Fuel #1	Sulfur (weight %)	60th=0.033%	65th=0.035%	70th=0.040%.
	T–90 (degrees F)	60th=338°	65th=340°	70th=341°.
Test Fuel #2	Olefins (volume %)	60th=8.9%	65th=9.5%	70th=9.9%.
	T–90 (degrees F)	60th=338°	65th=340°	70th=341°.
Test Fuel #3	Olefins (volume %)	55th=8.6%	60th=8.9%	65th=9.5%.
	Sulfur (volume %)	55th=0.030%	60th=0.033%	65th=0.035%.
Test Fuel #4	Aromatics (volume %)	55th=27.9%	60th=28.6%	65th=29.1%.
	T–90 (degrees F)	55th=337°	60th=338°	65th=340°.

Notes: (1), (2) See notes for Table 19.

TABLE 21.—PADD III (ALL-GRADE, OXY/NONOXY) CERTIFICATION TEST FUEL SEVERITY SCENARIOS

	Nonoxy fuel parameters on which requirements are based[1]	25% sample severity scenario: min. level required[2]	20% sample severity scenario: min. level required	15% sample severity scenario: min. level required
Test Fuel #1	Sulfur (weight %)	60th=0.028%	65th=0.030%	75th=0.036%.
	T–90 (degrees F)	60th=342°	65th=344°	75th=348°.
Test Fuel #2	Olefins (volume %)	60th=12.0	65th=12.7%	70th=13.3%.
	T–90 (degrees F)	60th=342°	65th=344°	70th=346°.
Test Fuel #3	Olefins (volume %)	60th=12.0%	65th=12.7%	70th=13.3%.
	Sulfur (volume %)	60th=0.028%	65th=0.030%	70th=0.032%.
Test Fuel #4	Aromatics (volume %)	50th=28.4%	55th=29.1%	60th=29.9%.
	T–90 (degrees F)	50th=338°	55th=340°	60th=342°.

Note: (1), (2) See notes for Table 19.

TABLE 22.—PADD IV (ALL-GRADE, OXY/NONOXY) CERTIFICATION TEST FUEL SEVERITY SCENARIOS

	Nonoxy fuel parameters on which requirements are based[1]	25% sample severity scenario: min. level required[2]	20% sample severity scenario: min. level required	15% sample severity scenario: min. level required
Test Fuel #1	Sulfur (weight %)	55th=0.045%	60th=0.052%	65th=0.060%.
	T–90 (degrees F)	55th=327°	60th=329°	65th=331°.
Test Fuel #2	Olefins (volume %)	55th=10.5%	60th=11.2%	70th=11.9%.
	T–90 (degrees F)	55th=327°	60th=329°	70th=331°.
Test Fuel #3	Olefins (volume %)	50th=10.2%	55th=10.5%	60th=11.2%.
	Sulfur (volume %)	50th=0.040%	55th=0.045%	60th=0.052%.
Test Fuel #4	Aromatics (volume %)	60th=23.8%	65th=24.6%	70th=25.6%.
	T–90 (degrees F)	60th=329°	65th=331°	70th=332°.

Note: (1), (2) See notes for Table 19.

TABLE 23.—PADD V—WITHOUT CALIFORNIA (ALL-GRADE, OXY/NONOXY) CERTIFICATION TEST FUEL SEVERITY SCENARIOS

	Nonoxy fuel parameters on which requirements are based[1]	25% sample severity scenario: min. level required[2]	20% sample severity scenario: min. level required	15% sample severity scenario: min. level required
Test Fuel #1	Sulfur (weight %)	55th=0.014%	60th=0.015%	70th=0.017%.
	T–90 (degrees F)	55th=334°	60th=335°	70th=338°.
Test Fuel #2	Olefins (volume %)	60th=6.6%	65th=7.0%	70th=7.6%.
	T–90 (degrees F)	60th=335°	65th=336°	70th=338°.
Test Fuel #3	Olefins (volume %)	60th=6.6%	65th=7.0%	70th=7.6%.
	Sulfur (volume %)	60th=0.015%	65th=0.016%	70th=0.017%.
Test Fuel #4	Aromatics (volume %)	45th=31.7%	50th=32.3%	55th=33.0%.
	T–90 (degrees F)	45th=332°	50th=332°	55th=334°.

Note: (1), (2) See notes for Table 19.

TABLE 24.—PADD I MINIMUM TEST FUEL PARAMETER VALUES

	#1	#2	#3	#4
Sulfur (Wt %)	0.036	.....	0.036	.....
T–90 (°F)	344	344	.....	338
Olefins (Vol %)	.....	13.3	13.3	.....

TABLE 24.—PADD I MINIMUM TEST FUEL PARAMETER VALUES—Continued

	#1	#2	#3	#4
Aromatic (Vol %)	.....	.....	.....	29.7
Oxygent (Vol %)	10% EtOH	15% MTBE	None	None

TABLE 25.—PADD II MINIMUM TEST FUEL PARAMETER VALUES

	#1	#2	#3	#4
Sulfur (Wt %)	0.035	.....	0.033	.....
T–90 (°F)	340	340	.....	338
Olefins (Vol %)	.....	9.5	8.9	.....
Aromatic (Vol %)	.....	.....	.....	28.6
Oxygent (Vol %)	10% EtOH	15% MTBE	None	None

TABLE 26.—PADD III MINIMUM TEST FUEL PARAMETER VALUES

	#1	#2	#3	#4
Sulfur (Wt %)	0.030	.....	0.030	.....
T–90 (°F)	344	344	.....	340
Olefins (Vol %)	.....	12.7	12.7	.....
Aromatic (Vol %)	.....	.....	.....	29.1
Oxygent (Vol %)	10% EtOH	15% MTBE	None	None

TABLE 27.—PADD IV MINIMUM TEST FUEL PARAMETER VALUES

	#1	#2	#3	#4
Sulfur (Wt %)	0.052	.....	0.045	.....
T–90 (°F)	329	329	.....	331
Olefins (Vol %)	.....	11.2	10.5	.....
Aromatic (Vol %)	.....	.....	.....	24.6
Oxygent (Vol %)	10% EtOH	15% MTBE	None	None

TABLE 28.—PADD V (W/O CALIF.) MIN. TEST FUEL PARAMETER VALUES

	#1	#2	#3	#4
Sulfur (Wt %)	0.015	.....	0.016	.....
T–90 (°F)	335	336	.....	332
Olefins (Vol %)	.....	7.0	7.0	.....
Aromatic (Vol %)	.....	.....	.....	32.3
Oxygent (Vol %)	10% EtOH	10% MTBE	None	None

EPA proposes that PADD certification test fuels must not be drawn from segregated gasoline stock that is covered by a fuel specific certification. To enhance their representativeness (in terms of deposit-forming tendency), EPA further proposes that each of the test fuels for PADD certification must be drawn from a separate facility within the subject PADD. EPA requests comment on these proposed test fuel requirements.

In parallel to the national case, EPA is considering an alternative approach to PADD certification which would require testing on six fuels rather than four. The first four fuels would be the same as those proposed in Tables 24–28, except without oxygenate. Fuels 5 and 6 would be identical to fuels 1 and 2 in Tables 24–28. As discussed for the national certification option, this alternative approach would also include the opportunity to collapse the total number of required test fuels down to as few as three. The same guidelines would be in effect, as applied to the PADD-specific fuels.

D. Fuel Specific Certification Test Fuels

Unlike the test fuels described above for certification testing under the national and PADD options, which are designed to represent fungible fuel supplies, the certification test fuels under the fuel specific option must be tailored to represent the unique deposit-forming tendency of segregated gasoline pools. EPA believes that, in many cases, the fuel parameters used under the regional options above can be used to adequately characterize an applicant's gasoline composition under the fuel specific option, and proposes that specifications on these parameters would provide the primary basis by which fuel specific certification test fuels would ordinarily be defined. However, EPA proposes that other parameters could be used in addition to the standard parameters (aromatics,

olefins, T–90, and sulfur). In order to use other parameters, the applicant for fuel specific certification would need to submit test data to EPA to demonstrate that the subject parameters affect deposit-forming severity of the segregated gasoline pool for which the certification is sought. In addition, the applicant would be required to submit to EPA a test method approved by the American Standards for Testing and Materials (ASTM) to measure the subject fuel parameters in finished gasoline. The use of additional parameters would be subject to EPA's prior approval. The Agency would respond to such requests within 90 days after receiving the test data to support the use of the additional parameters. Comments are requested on the likelihood that additional fuel parameters would be used by applicants for fuel specific certification, since the fuel specific test fuel might in any case reflect average levels of other parameters. One reason why the use of additional parameters might be useful is to ensure that EPA confirmatory testing was conducted using a test fuel(s) that did not have an inappropriately high level of subject additional parameter.

EPA proposes that in order to characterize the composition of a segregated gasoline pool for fuel specific certification, an applicant would be required to create and maintain fuel survey data from each of the facilities that contribute to the subject pool for a complete year. At a minimum, this data would include monthly measurements of gasoline aromatics, olefin, and sulfur content, T–90 distillation point, and any other fuel parameters which the applicant may propose to use for defining the test fuels. The applicant would also be required to calculate and provide to EPA the percentile concentrations/levels for each of the fuel parameter studied for the segregated pool as a whole.

Test fuels for fuel specific certification would be drawn from normally operating facilities that contribute gasoline to the subject segregated pool that are not otherwise modified. In the base case, EPA proposes the use of four test fuels for the fuel specific certification option, characterized by higher-than-average severity for the same pairs of parameters that define the proposed test fuels under the national and PADD certification options. (Different certification test fuels would, of course, need to be defined when other fuel parameters were determined applicable to the segregated gasoline pool of interest.) EPA proposes that the concentrations of each of the two fuel parameters highlighted in each of the certification test fuels would be required to be at least at the 65th percentile concentration relative to the composition of the subject segregated gasoline pool. Based on a review of the data on regional fuel composition presented in the above sections, EPA believes that this specification would provide the proper balance in fuel severity, and would ensure that test fuel samples could be located from normal production gasoline. EPA also anticipates that locating certification test fuels would be simplified by the degree of control over refinery practices present in refineries producing fuel specific gasoline. As an equal alternative, EPA is also considering an option whereby the applicant would be required to calculate the required percentile concentrations for each test fuel based on providing 20 percent fuel availability as was done under the regional certification options. Comments are requested on the advantages and disadvantages of both approaches.

Refiners who certify under the fuel specific option may wish to obtain a certification that would be tailored to the oxygenates which are to be used in their particular segregated gasoline pool. To provide the needed flexibility, EPA proposes that the following options would be available to the applicant for fuel specific certification. If an applicant wishes the certification to hold only for nonoxygenated gasoline, then the four required test fuels would not be required to contain oxygenate. If certification for ethanol blending only was desired, then 10 percent fuel grade ethanol would be added to the test fuel defined by the sulfur/T–90 parameter pair (i.e., containing the 65th percentile value for each parameter). If certification for blending of MTBE only was desired then 15 percent fuel grade MTBE would be added to the test fuel defined by the olefin/T–90 parameter pair. Certification for the blending of all oxygenates could be obtained by performing certification testing on both the ethanol and MTBE blends. The applicant could also certify for the use of oxygenates other than ethanol and MTBE by observing the following requirements: test fuel 1 would contain the largest volume oxygenate to be used at the maximum concentration used, test fuel 2 the second largest volume oxygenate, and test fuel 3 the third largest volume oxygenate used. If more than three oxygenates were to be used then additional test fuels would be required.

EPA believes that the requirements detailed above are sufficiently flexible to provide that the certification test fuels will be adequately representative of the various segregated pools for which applications are anticipated. In light of the potential for reduced variability in the composition within such segregated gasoline pools, EPA requests comment on alternative ways in which the certification test fuels could be defined in order to reduce the number of test fuels required.

EPA also requests comment on whether a refiner's segregated gasoline is less variable in composition, and therefore, whether a simplified certification procedure which utilizes a test fuel of average composition would be more appropriate. One alternative that EPA is considering would require certification testing on a single fuel containing each of the nonoxygenate parameters at least at their respective 50th percentile concentration. Testing on this single fuel would be sufficient to obtain a certification if no oxygenates were used. If the use of oxygenates were to be covered under the certification, then test results on additional oxygenated test fuels would be required, with the same priorities described above. Under the alternative approach, the composition of the base fuels into which the oxygenates would be blended to produce the required additional test fuels would conform to the same specifications as those for the single test fuel used for nonoxygenated fuel certification. Comments are requested on this potential alternative approach for defining test fuels for the fuel specific option. EPA also requests comment on requiring 6 certification test fuels as considered under the national and PADD options.

E. Test Fuels for Certification of Detergent Additives for Use in High-Severity Gasolines

As previously described, EPA proposes that gasoline which exceeds the national or PADD-specific 95th percentile level of sulfur, T–90, olefins, and/or aromatics must be treated with a detergent which has met deposit control performance standards in more severe certification test fuels than are otherwise required. Since detergent additive treat rates are specified on the basis of certification test results, the purpose of this proposed special provision is to ensure that gasolines which fall at the high extremes of the severity factor distribution curves will still be provided with effective deposit control.

Two different approaches are under consideration for defining the certification test fuels needed to implement this provision. Under the first approach, the high-severity test fuel

requirements for additives would vary, depending on the characteristics of the particular supply of fuel to be additized. In some respects, this approach resembles the test fuel selection method proposed for the fuel-specific certification option. The responsible detergent blender, having determined that the gasoline supply at a particular terminal or other distribution point exceeds the 95th percentile for at least one of the four designated fuel parameters, would be required to construct and analyze a distribution curve for each such "over-the-limit" fuel parameter, using data specific to the detergent blender's own gasoline pool. The 65th percentile value(s) of these distribution(s) would then be compared with the corresponding parameter value(s) in the generic test fuels. The higher of the two compared values would be the minimum level required to be present in any relevant test fuels in order for a detergent certification to be valid for this gasoline pool. (In this context, "relevant" test fuels are those which have specifications applicable to the parameter of concern. For example, in Table 17, Test Fuels #1 and #3, which include specifications for sulfur content, would be the "relevant" test fuels when sulfur is the parameter of interest.)

EPA proposes that the distribution curves constructed to determine the high-severity test fuel requirements must include, at a minimum, consecutive measurements obtained from each facility contributing gasoline to the severe gasoline pool on a weekly basis, initially including at least six months of data. EPA further proposes that all such data must have been collected after January 1, 1993. The distributions would be required to be updated with additional weekly measurements of the parameters of interest, and the 65th percentiles recalculated every six months. At the time of the first recalculation, and there after, a full year of data would be required to be used to produce the distributions. If the distribution had shifted upward such that the newly calculated 65th percentile were found to exceed the previously calculated 75th percentile, then the detergent additive requirements would change. Specifically, the gasoline pool would now require detergent certified in a test fuel matrix which contained the new 65th percentile level in the relevant test fuels. The responsible detergent blender would be allowed three months time to make the detergent change, if required. Finally, if the severity characteristics of the gasoline pool should permanently shift downward, such that in an entire year of weekly measurements the fuel supply no longer exceeded the national or PADD 95th percentile for any severity factors, then these special provisions for gasoline of greatest severity would no longer apply. While EPA would not routinely require submission of the weekly measurements and parameter distribution curves, detergent blenders would be required to retain them for up to five years, and to provide them for inspection at EPA's request.

To illustrate this first approach, suppose a hypothetical detergent blender wishes to use a detergent certified under the PADD certification option for the gasoline he sells in PADD II. The generic test fuel specifications for detergent certification applicable to PADD II are presented in Table 25. However, this detergent blender's fuel supply at a particular terminal in PADD II is characterized by unusually high levels of aromatics and olefins, with some measurements of these parameters during the past six months exceeding the PADD–II 95th percentile levels shown in Figures 2 and 3 (i.e., exceeding approximately 37 volume percent aromatics and 14 volume percent olefins). For the gasoline at this terminal, generic detergent certifications are not valid. Thus, the detergent blender must further analyze aromatic and olefin measurement surveys which have been collected on this gasoline pool.

Suppose the analysis shows that the 65th percentile values for aromatics and olefins in this gasoline pool are 35 volume percent and 13 volume percent, respectively. These values exceed the aromatic and olefin concentrations specified in Table 25 for generic PADD II certification test fuels (28.6 volume percent aromatics and 8.9 volume percent olefins). Thus, the detergent blender must select a detergent which has undergone certification testing in test fuels which better reflect the severity characteristics of the fuel which supplies this terminal. The required test fuels would be the same as presented in Table 25, except that Test Fuels #2 and #3 would each be required to contain at least 13 volume percent olefins (instead of the generic test fuel requirements of 9.5 percent and 8.9 percent) and Test Fuel #4 would be required to contain at least 35 volume percent aromatics (instead of the 28 percent required in generic PADD II test fuels).

The second approach under consideration for certifying detergents for use in highest-severity gasolines would be based on more standardized certification test fuels, instead of varying for each fuel supply. Under this alternative, if the gasoline supply at a particular terminal or other distribution point exceeded the national or PADD-specific 95th percentile for at least one of the four designated fuel parameters, then the 95th percentile value(s) for the parameter(s) of concern would be required to be represented in the relevant test fuels in order for a detergent certification to be valid for use in the gasoline.

For example, suppose a detergent blender is interested in using detergent certified under the national certification option for a particular supply of gasoline. Ordinarily, such detergents would undergo certification testing in the test fuels specified in Table 17. However, suppose further that fuel survey data on this detergent blender's gasoline pool indicate that its T–90, aromatic, and olefin levels are below the respective national 95th percentile levels (depicted in Figures 1–3), but that it has exceeded the nationwide 95th percentile value for sulfur (approximately 0.085 weight percent as shown in Figure 4) at least once during the past six months. In this case, the detergent blender would be required to use a detergent for this gasoline pool which has been certified in test fuels similar to those specified in Table 17, except instead of 0.033 weight percent of sulfur, Test Fuels #1 and #3 would be required to contain 0.085 weight percent sulfur.

Under either of the two approaches described in this section, transfer documents for detergent additives certified for use in the high severity gasolines would be required to indicate the levels of the fuel severity parameters in which they were tested. This would permit determination of the applicability of the detergent certification for any given pool of high severity gasoline. This requirement is further discussed in Section X.

EPA requests comment on which of the two described approaches would be most appropriate for defining the test fuels applicable to the certification of detergents for use in gasolines of greatest severity. Comments are also requested on the appropriateness of the specific percentile values, timing requirements, and record retention requirements proposed under both of these alternatives. For example, instead of using the 95th percentile value as the trigger which would require a detergent blender to comply with these special provisions, EPA is also considering the 90th percentile as a potential trigger point. In addition, under the second potential approach, EPA is considering whether the 90th percentile value rather than the 95th percentile value would be more appropriate for including in the

test fuel requirements. Finally, EPA solicits suggestions in regard to other alternative methods for defining test fuels for this purpose.

F. Possible Alternative Certification Test Fuels

1. Certification Test Fuels with Increased Severity for use in Generic National Certification Testing

As previously discussed in Section IV.B, EPA is considering two alternatives that would increase the severity of the test fuels for generic national certification in order to provide extra assurance that use of the national certification option would not result in under-additization within PADDs with higher- than-average gasoline severity. Under the first alternative, the parameter concentrations specified for the national test fuels (noted in Table 17) would be increased as necessary to ensure that the 50th percentile concentration of each fuel parameter in each PADD was met or exceeded in the national test fuel specifications. While this approach would increase the severity of the national test fuel specifications and result in higher additive treatment levels, it would also significantly reduce the chance of finding the required certification test fuels. Also, in PADDs where the gasoline pool tends to have lower deposit-forming tendency, significant over-additization might occur. This possibility is illustrated by noting in Figure 4 that the 50th percentile concentration of sulfur in PADD IV lies between the 70th and 80th percentile concentration in PADDs I, II, and III, and corresponds to the 95th percentile concentration in PADD V. As another example, the 50th percentile concentration of olefins in PADD I is the 80th percentile concentration in PADD II and the 93rd percentile in PADD V.

Another approach which could be used to raise the severity of the national certification test fuels would be to define them according to the most severe PADD certification test fuel for each parameter pair (See Tables 24–28). This alternative may provide better assurance that the national certification option would ensure adequate detergency performance in the PADD with the greatest fuel severity. Under this alternative, where it was not clear which was the most severe test fuel, EPA would make the determination by attempting to maximize the concentration of all fuel severity factors. Under this alternative, test fuels 1 and 2 in PADD I, test fuel 3 in PADD IV, and test fuel 4 in PADD V would provide the specifications for the national certification test fuels. As with the first approach, concerns regarding over-additization in some PADDs would arise under this option. Comments are requested on these alternative approaches in comparison with the main proposal described earlier for defining the national certification test fuels.

2. Test Fuels for Separate Premium Grade Certification

If separate detergent additive certification were allowed for premium gasoline, as described in Section V.A, the methodology for defining the associated test fuels would parallel the method proposed above for the all-grade test fuels under both certification tiers. The same pairs of fuel parameters would be used to define the premium grade certification test fuel matrices. The test fuel severity for generic certification under this alternative would be based on attaining a 20 percent fuel availability in premium gasolines. The test fuel severity for certification of more severe premium gasoline would be defined in parallel to the method described in section VI. E. The requirements on the testing of oxygenates would also remain unchanged. The required certification test fuels under the alternate separate premium gasoline option are detailed in a memo to the docket.[73]

3. Test Fuels For Separate Oxygenate/ Nonoxygenate Gasoline Certification

Another alternative approach under consideration, as described in Section V.B., is to establish separate detergent additive certification procedures for oxygenated and nonoxygenated gasolines. If this scenario were adopted, the test fuel specifications detailed in the preceding sections would provide the foundation for the definition of the required certification test fuels. The test fuel matrices under the national and PADD options would be unchanged except for the requirements on the oxygenates to be blended into the various test fuels. Similar arrangements would pertain if the premium certification option were also adopted, such that separate certifications for oxygenated and nonoxygenated premium and regular/midgrade gasolines would be allowed.

Certification of nonoxygenated gasoline would be accomplished by performing the required vehicle testing using the required national or PADD test fuels with no oxygenate added. EPA is considering several test fuel alternatives for the certification of oxygenated gasolines. One approach would require that oxygenates be blended in an identical fashion to that under the proposed national and PADD options. Another would allow the same flexibility on oxygenate blending as was discussed under the fuel specific option. EPA requests comments on these alternative approaches. Comment is specifically requested on the implications that these specifications would have in regard to the system for tracking gasoline from refinery to retail outlet, which would be necessary to ensure compliance with the varying detergent additive blending requirements that would result from these alternatives.

F. Measurement of Gasoline Fuel Parameters.

As proposed above, applicants for certification under the national, PADD, and fuel specific options must locate test fuels for use in certification testing that conform to specifications on the concentration/level of sulfur, olefins, aromatics, T–90, and oxygenates. Also, detergent blenders using detergents certified under the national and PADD options must conduct fuel surveys of their production/distribution facilities in order to determine whether detergent certified for use in generic or more severe gasoline is required. Detergent blenders using detergents certified under the fuel specific option must also conduct fuel surveys to determine the test fuel specifications which must be followed to certify the detergent(s) used. In addition, detergent blenders must monitor the composition of their gasoline regularly to ensure that the concentrations/levels of the relevant fuel parameters do not exceed those for which the certification of the detergent used was granted.

For these purposes, EPA proposes to allow certain specified procedures published by the American Society of Testing Materials (ASTM) as well as other procedures previously proposed for use under the reformulated gasoline (RFG) program. EPA desires to provide the greatest flexibility in the procedures required to be used to measure the concentrations/levels of such fuel parameters while ensuring the needed measurement precision. Also, EPA hopes to coordinate testing and compliance requirements across both the RFG and detergent additive rulemakings. As the RFG regulations cited are still in draft form, they are subject to revision. This rule will likewise incorporate any changes to those RFG regulations cited that EPA

[73] "Certification Test Fuels for Detergent Additive Certification in Premium Gasoline", Memorandum to the Docket from Jeffrey A. Herzog, RDSD, OMS.

deems appropriate to the regulation of deposit control additives.

Standard Method ASTM D 86–90 allows a tester to characterize the temperature at a point on a fuel sample's distillation curve. EPA proposes this method for determination of the temperature at which 90% of a fuel sample has been evaporated.

EPA proposes to allow manufacturers to use Standard Method ASTM D 1319–89 for determining both the volume percent of aromatic and the volume percent of olefinic compounds from a fuel sample. The gas chromatographic (GC) technique proposed in the RFG program for aromatics determination would also be satisfactory. It allows the manufacturer to determine the volume percent of individual aromatic compounds in the fuel sample as well as the volume percent of aromatic compounds. EPA asks for comment as to the desirability of substituting the GC technique for either or both the fuel aromatic and olefin volume percent determinations under ASTM D 1319–89.

To determine the individual volume percent of two or more oxygenated additives to a fuel or the total oxygen volume percent of a fuel, EPA is proposing that manufacturers use a GC technique which determines oxygen content in gasolines under the draft RFG program regulations.

EPA proposes that ASTM D 2622–92, wavelength-dispersive x-ray fluorescence, be used to determine the weight percent of sulfur in fuel samples. This standard is required, at present, for sulfur determinations in diesel fuel testing and enforcement. In proposing this method, EPA's hope is for greater standardization of procedures across fuel families.

EPA acknowledges that several other procedures have been routinely used to report sulfur content of fuels. These potential alternatives include ASTM D 4294–90, energy-dispersive x-ray fluorescence, ASTM D 3120–92, oxidative microcoulometry, and ion-coupled plasma atomic emission spectrometer (ICP–AES), as proposed in the RFG program. EPA may also allow the continued use of ASTM D 1266–91, Lamp Method, for measuring sulfur in petroleum products, as it is cited in the ASTM Standard for unleaded gasolines, ASTM D 4814–89. EPA requests comment on all the methods cited as possible alternatives to the above proposed sulfur weight determination procedure and their appropriateness for the intended purpose.

EPA is proposing that the measurement of any additional fuel parameters under the fuel specific option (see Section VI. C.) would be required to be conducted using ASTM approved test procedures. EPA requests comment on the proposed measurement requirements.

VII. Certification Tests and Performance Requirements

Numerous factors related to vehicle technology, driving cycle, and other operating conditions can have a significant affect on deposit formation. To provide adequate protection for the in-use vehicle fleet as a whole, the test procedures used to evaluate the tendency of a fuel/additive mixture to form PFID and IVD must employ vehicle technology and mode of operation that are relatively severe in their tendency to promote the formation of deposits. This chapter reviews the key vehicle-based factors which should be taken into account in the certification test specifications and discusses the proposed test procedures and performance standards.

The proposed certification tests described below are standardized versions of test procedures which are widely used by industry. These procedures employ specific vehicle models (i.e., a model year 1985–1987, 2.2 liter turbocharged Chrysler for the PFID test, and a model year 1985, BMW 318i for the IVD test) which may be somewhat outdated. While EPA has some concern that these relatively older vehicles may not be truly representative of the in-use fleet, validated alternative test procedures using more modern vehicles are not available at this time. As mentioned earlier, the Coordinating Research Council is currently developing new procedures employing newer engines/vehicles. When these are completed, EPA will evaluate them and if appropriate may incorporate these new procedures (by rulemaking) in a later version of this program.

A. Fuel Injector Deposit Control Requirements

1. Vehicle Technology and Operation Factors [74,75,76,77,78]

The maximum temperature that the fuel injector reaches during hot soak (which can exceed 100 °C), and thus anything which may impact hot soak conditions, has been shown to have a significant effect on the quantity of PFID formed. Various aspects of engine design such as the presence and location of turbocharger and engine venting and cooling systems may play a predominant role in determining the maximum hot soak temperature. Large swings in ambient temperature may also have a significant effect on the maximum injector tip temperature reached during hot soak. The length of the hot soak and the rate of cooling from the maximum injector tip temperature may also significantly impact the deposition rate and the character of the deposits.

The degree to which particulates are present in the intake air and the presence and operation of a positive crankcase ventilation valve (PCV) and exhaust gas recirculation (EGR) system may also affect the rate of deposition. Fuel injector design can have a significant effect as well. One study reported that certain modern injector designs are significantly less prone to deposit formation than the first generation pintle type with plastic tip which were in use when deposit related problems were first noted.[79]

The severity of fuel injector deposit formation is significantly influenced by the ratio of vehicle operation to hot soak. Under a high-duty cycle, (i.e., high speed and/or high load) the temperature of the hot soak may be severe enough to form deposits, but the higher fuel flow rate may provide more of a chance to wash away deposits. Also, if the hot soak period is not long enough, the deposit components may not polymerize, and may be removed with less difficulty.

Consequently, a worst-case vehicle/driving cycle combination is likely to involve high-duty engine operation of sufficient duration to elevate injector tip temperatures to their equilibrium, relatively low fuel consumption, and a hot soak of adequate duration to allow deposits to form. Some vehicles may have too high a fuel flow and hence are not good candidates as test vehicles. A driving cycle of 15 minutes at 55 mph followed by a 45 minute hot soak has been shown to be severe for deposit formation. The factors described above and others were considered by industry in developing the various test procedures commonly used to evaluate the efficacy of detergent additives in controlling the formation of PFID. These

[74] "Injector Deposits—The Tip of Intake System Deposit Problems", B. Taniguchi et al, SAE Technical Paper Series No. 861534.

[75] "Port Fuel Injector Deposits—Causes/Consequences/Cures", R. Tupa, SAE Technical Paper Series No. 872113.

[76] "Gasoline Additive Requirements for Today's Smaller Engines", J. Udelhofen, T. Zahalka, SAE Technical Paper Series No. 881644.

[77] "Deposits in Gasoline Engines—A Literature Review", Gautam T. Kalghatgi, SAE Technical Paper Series No. 902105.

[78] "Gasoline Port Fuel Injectors—Keep Clean/Clean Up With Additives", R. Tupa, and D. Koehler, SAE Technical Paper Series No. 861536.

[79] "An Engine Dynamometer Test for Evaluating Port Fuel Injector Plugging", F. Caracciolo, and R. Stebar, SAE Technical Paper Series No. 872111.

procedures form the basis of the proposed detergent additive certification test described below.

2. Test Procedure

The port fuel injector keep-clean test procedure which has been most widely used by industry utilizes the Chrysler 2.2 liter turbocharged vehicle. This procedure utilizes a test engine, injector technology, driving cycle, and other aspects of vehicle technology which are severe in their tendency to form fuel injector deposits. The recent CARB detergent additive regulation adopted the Chrysler 2.2 liter procedure to evaluate both an additive's keep-clean and clean-up performance.

Although the basic elements of the Chrysler 2.2 liter procedure have been widely accepted, a true industry standard version of this procedure has yet to be developed. The basic elements of the procedure have been observed by all test laboratories but numerous details of the procedure differ from lab to lab. An ASTM task force is currently working to improve and standardize the Chrysler 2.2 liter procedure in order to limit potential variability in results, especially between testing laboratories. A number of improvements have resulted from the work of the ASTM task force, including modified test rejection criteria, a narrowed list of the acceptable test vehicles, improved specificity in the procedure including the driving cycle, and modified quality assurance procedures.

While a draft ASTM test procedure has been prepared, this procedure may not be approved by ASTM in time for use in this rulemaking, consistent with notice and comment requirements. Therefore, EPA is proposing an enhanced Chrysler 2.2 liter keep-clean procedure that reflects many of the improvements that ASTM is considering. The details of the proposed test are contained in the draft regulatory text for this NPRM, which is available in the public docket. Comments on this proposed test procedure are requested. In particular, comment is requested on whether the proposed specification on injector hot soak temperature ensures a sufficiently elevated hot soak temperature of adequate duration. EPA also requests comment on whether the proposed volumetric-based flow test procedure provides the necessary precision in measuring injector flow, and if it is appropriate to require that the mass-based flow test procedure be used. In addition, comment is requested on whether mileage accumulation, on public roads should be allowed as proposed. EPA is also considering allowing engine dynamometer testing in addition to the other proposed means of mileage accumulation and requests comment on whether adequate correlation of the results of engine dynamometer testing can be assured.

EPA may adopt the ASTM procedure in the final rule if the draft is finalized by ASTM in time and there are no changes that would require further public notice and comment. A copy of the draft ASTM procedure ("Standard Test Method for Vehicle Evaluation of Unleaded Automotive Spark Ignition Engine Fuel for Fuel Injector Deposit Formation", Draft Procedure, American Society for Testing and Materials) has been placed in the public docket for review.

3. Standard

The historical industry standard for the Chrysler 2.2 liter fuel injector keep-clean test procedure requires less than 10 percent flow loss for each injector over the accumulation of 10,000 test miles. The 10 percent standard has been accepted by industry largely because it was deemed sufficient to prevent consumer driveability complaints in the vehicle fleet as a whole during the years when problems with fuel injector deposits were first experienced. However, given the decrease in combustion efficiency which occurs with uneven fuel injector flow, EPA believes that PFID-related emissions and fuel economy impacts are likely to precede driveability problems and that a more stringent performance standard is necessary.

In its regulation of detergent additives, CARB requires less than 5 percent flow loss in any one injector over the accumulation of 10,000 miles. CARB implemented the 5 percent standard because of concerns that a less stringent standard would permit significant deterioration in vehicle emissions performance. Although zero percent flow loss is the preferred standard, it is impractical due to difficulties in maintaining this level of cleanliness and due to the limits on accurately measuring injector flow. Widespread compliance with the CARB standard has shown that the 5 percent standard is quite feasible at low cost.

EPA therefore proposes that the maintenance of less than 5 percent flow loss in any injector over the accumulation of 10,000 miles be adopted as the standard for this regulation. EPA believes that this standard is necessary to prevent significant deterioration of low mileage emissions and can be readily met with current additive technologies at small increased cost. Discussions with industry representatives indicate that it is the keep-clean control of intake valve deposits rather than fuel injector deposits which normally present the biggest detergency challenge and which therefore drive the additive treat rate requirements for effective control overall.[80] Thus, EPA believes that in the case of most detergent additive products, the requirement to meet a 5 percent rather than a 10 percent standard for PFID would not be expected to increase the treat rate beyond the level already needed to comply with IVD control requirements. EPA requests comment on this point, with supporting data if possible. In addition, EPA would be interested in any comments and test results regarding the degree to which the effects of deposits on vehicle emissions and/or fuel economy precede their effects on vehicle driveability. EPA would also welcome data which would help clarify the quantitative relationship between the formation of fuel injector deposits and the vehicle emission rate, and specifically, would help quantify the difference in emissions which could be expected given either a 10 percent or 5 percent PFID standard. Comments on any difference in compliance costs between these two alternative standards are also requested.

One alternative being considered to the proposed 5 percent standard requires the maintenance of no more than 10 percent flow loss in any one injector, with the percent difference in flow between any two injectors no greater than 5 percentage points over the accumulation of 10,000 test miles. This approach is based on the understanding that the primary effect of fuel injector fouling on emissions comes from the difference in flow restriction between injectors. This option seeks to allow more flexibility in meeting the fuel injector requirements while still adequately controlling vehicle emissions. The weakness of this approach is that it is based on the premise of consistent injector fouling rather than cleanliness of all injectors, and there is no evidence particular detergents are more capable of promoting consistent fuel injector fouling as opposed to cleanliness generally. EPA invites comments on this option as well as the proposed 5 percent standard.

[80] See the memo to the docket regarding phone conversations with industry representatives, prepared by Jeffrey Herzog, Regulation Development and Support Division.

B. Intake Valve Deposit Control Requirements

1. Vehicle Technology and Operation Factors

Although the factors affecting the formation of IVD are not completely understood, the following stand out as likely having a significant impact on both the quantity and character of intake valve deposits. Valve temperature has a significant impact on deposit formation, and wetted valves have been shown to run 20 to 30 °C cooler than nonwetted surfaces.[81] One study showed that deposit levels were halved when the average valve temperature was reduced by lowering the coolant level below 200 °C for 60 percent of the time rather than 20 percent of the time.[82] However, increasing valve temperature increases the deposition rate only up to the film boiling temperature of the fuel. After this temperature is exceeded, very little deposition on the intake valves occurs.[83] Valve rotation and injector spray pattern affect the degree to which valves are wetted by fuel. Valves which do not experience adequate wetting are likely to form heavier and/or uneven deposits, as wetting is necessary for the dispersant action of the additive to function.[84]

Engine oil consumption can have a significant impact on valve deposits for some vehicles. Engine oil that leaks between the valve guide stem during idle contains oxidized materials, contaminants accumulated from blow-by, and thermally unstable materials which may contribute to deposits. The degree to which engine oil contributes to deposits is governed by the rate of oil leakage and the spray pattern of the fuel injectors. Fuel spray directed at the valve stem tends to wash oil onto the valve tulip, thereby contributing to deposit formation. Oil consumption is likely to contribute to deposits up to a certain flow rate, after which the oil may actually tend to cleanse and cool the valve.[85] [86] [87] [88] In most modern technology vehicles, with tightly controlled oil consumption, the effect of engine oil on valve deposits may be relatively minor.

Intake valve deposition is also affected by numerous factors related to vehicle operation, including driving cycle, targeting of the fuel injector spray, and the extent of valve rotation. These factors are important due to their effect on valve temperature, valve wetting, and perhaps other conditions, as well. These factors have been considered by industry in developing the test procedures generally used to evaluate a detergent additive's ability to control the formation of IVD. Due to uncertainties regarding the test parameters which can impact the rate of IVD formation, adequate specificity on the test equipment and procedure requirements along with thorough quality control procedures are vitally important to ensure that the test results are representative.

2. Test Procedure

The intake valve keep-clean test procedure which has been widely used by industry utilizes a BMW 318i vehicle that is tested for 10,000 miles.[89] Both the test engine and driving cycle are relatively severe in their tendency to form the type of intake valve deposits which have the most significant impact on vehicle performance. A form of this test procedure was used by CARB in its recent regulation of detergent additives.

As with the Chrysler 2.2 liter procedure, the basic elements of the BMW test have been widely accepted, but a true industry standard version of the BMW procedure has yet to be developed and certain details of the procedure differ from test lab to test lab. An ASTM task force is also currently working to standardize the BMW procedure in order to decrease test variability. Many improvements have resulted from the work of the ASTM task force, such as modified test rejection criteria, improved specificity in the procedure including the driving cycle and modified quality assurance procedures.

A draft ASTM test procedure has been prepared, and EPA's proposed BMW keep-clean procedure is based closely on this current ASTM draft. The proposed test specifications are contained in the draft regulatory text for this NPRM, which is available in the public docket. Comments on this proposed test procedure are requested.

EPA may adopt the ASTM procedure in the final rule if the draft is finalized by ASTM in time and there are no changes that would require further public notice and comment. A copy of the draft ASTM procedure ("Standard Test Method for Vehicle Evaluation of Unleaded Automotive Spark Ignition Engine Fuel for Intake Valve Deposit Formation", Draft Procedure, American Society for Testing and Materials) has been placed in the public docket for review. It should be noted that the draft ASTM procedure may change prior to its potential adoption as an ASTM standard.

3. Standard

The historical standard for the BMW 318i intake valve deposit keep-clean test procedure requires that the average valve deposit weight may not exceed 100 mg during the accumulation of 10,000 miles. This is also the standard adopted by CARB in its regulation of detergent additives. EPA is proposing here to adopt the 100 mg standard. However, the 100 mg standard was accepted by industry to prevent driveability complaints in in-use vehicles, and EPA believes that the emissions effect of IVD is likely to precede the impact on driveability. Thus, EPA believes that a more stringent standard might be more appropriate to correspond to the onset of emissions impacts. EPA requests comment on the adequacy of the 100 mg average standard and data to support the adoption of a different standard that would be more closely based on the emissions impact of IVD. For example, EPA is considering the adoption of a standard requiring that no single valve may accumulate more than 100 mg during 10,000 miles, rather than allowing an average of 100 mg deposit per valve.

To allow added flexibility and reduce cost, the Agency also proposes an optional 5,000 mile duration test to the 10,000 mile test described in the ASTM draft. All aspects of the test procedure would remain unchanged except that the test validation criteria would be adjusted to account for the shorter test length. EPA proposes that the test standard for the alternate 5,000 mile test

[81] "Intake Valve Temperatures and Video in a BMW 325", Paul Berlowitz, Exxon Research & Engineering, Proceedings of the CRC Workshop on Intake Valve Deposits, August 22–24, 1989, Published by the Coordinating Research Council, Inc., Atlanta, Georgia.

[82] "Intake Valve Deposit Control—A Laboratory Program to Optimize Fuel/Additive Performance", T. Bond et al, SAE Technical Paper Series No. 892115.

[83] "Deposits in Gasoline Engines—A Literature Review", G. Kalghatgi, SAE Technical Paper Series Paper No. 902105.

[84] Reformulated Gasoline: Proposed Phase 1 Specifications, Technical Support Document, State of California Air Resources Board, August 13, 1990.

[85] "Mechanism of the Deposit Formation at Inlet Valves", G. Lepperhoff et al, SAE Technical Paper Series No. 872115.

[86] "Performance-Robbing Aspects of Intake Valve and Port Deposits", J. Gething, SAE Technical Paper Series No. 872116.

[87] "Intake Deposits—Fuel Detergency Requirements Revisited", B. Bitting et al, SAE Technical Paper Series No. 872117.

[88] "Gasoline Additive Requirements for Today's Smaller Engines", SAE Technical Paper Series No. 881644.

[89] "Intake Valve Deposits-Fuel Detergency Requirements Revisited", B. Bitting et al., SAE Technical Paper Series No. 872117.

would be the accumulation of less than 25 mg per valve. EPA based this proposal on a review of data from numerous BMW 318 tests that had the valve deposit weight evaluated at both 5,000 and 10,000 miles. These data showed that the accumulation of intake valve deposits does not vary linearly with test miles and suggested that the proposed alternate 5,000 mile/25 mg standard would provide an adequately equivalent degree of protection as the 10,000 mile/100 mg standard.[90] The data show that roughly 85 percent of test vehicles that had less than 25 mg of deposits at 5,000 miles had accumulated less than 100 mg at 10,000 miles. EPA is proposing to conduct confirmatory 100 control testing using whichever standard (5,000 mile/25 mg or 10,000/100 mg) was used during the certification testing conducted for the subject certification. EPA is considering conducting all confirmatory testing using the 10,000 mile/100 mg standard. However, EPA believes that this is likely inappropriate because the data suggests that as many as 15 percent of tests which satisfy the 5,000 mile/25 mg standard may exceed the 10,000 mile/100 mg standard. EPA further proposes that if the engine is disassembled at 5,000 miles for a deposit weight inspection that the test be terminated at this point, and that a continuation to 10,000 miles not be allowed. The Agency believes that allowing the test to continue after the valves are removed for inspection may result in the introduction of excessive test variability due to the potential for the removal/alteration of deposits during the procedure. This could occur if the valves were handled improperly while being removed and reinstalled as the deposits can be delicate. EPA requests comments on the adequacy and usefulness of the alternative 5,000 mile/25 mg test and standard.

C. Use of Data Collected on Non-Federal Test Procedures

Other than the CARB equivalent option (See Section IV), EPA believes that the use of test data collected using other test procedures cannot be permitted, because it does not appear to be possible to develop satisfactory correlations between such procedures and those being proposed today. The Agency requests comment on the feasibility of accepting other test procedures to comply with federal certification requirements. Specific comment is requested on the correlation criteria which could be used.

[90] See the memo to the docket entitled "Alternate Standard for the Intake Valve Deposit Control Test Procedure", prepared by Jeffrey Herzog, Regulation Development and Support Division.

VIII. Relationship Between California and Federal Detergent Additive Certification Programs

As described in Section I of this Notice, this rule is proposed to be promulgated under both sections 211(l) and 211(c) of the Clean Air Act. Section 211(c)(4) generally prohibits states from adopting their own detergent additive requirements upon promulgation of a detergent additive regulation by EPA. However, section 211(c)(4)(B) permits such state-implemented controls in California based on waivers granted to California under section 209(b), notwithstanding the preemption that would apply to the other states.

In fact, as noted previously, a detergent additive certification program was implemented by the California Air Resources Board (CARB) effective January 1, 1992 (Title 13, section 2257 of the California Code of Regulations). EPA is proposing that, for gasoline sold in California, the existing CARB certification test procedures would be considered to be adequate to demonstrate compliance with the federal certification procedures. Furthermore, under the CARB-based PADD V option discussed in Section IV.D, gasoline sold elsewhere within PADD V would be permitted to be certified based on data used in gaining a valid CARB certification rather than requiring additional testing under the federal test procedures.

These proposed relationships are based on EPA's comparison of the CARB and proposed federal detergent additive certification testing programs. This comparison, summarized below, indicates that, for California (and other PADD V) gasoline, the current CARB test procedures should afford deposit control as least as effective as would be provided by the proposed federal testing requirements. Thus, little or no incremental benefit would likely be achieved by requiring compliance in California with the substantially duplicative federal test procedures. Three key factors were considered before coming to this conclusion: (1) Performance standards, (2) test procedures, and (3) certification test fuel specifications.

Performance standards. The performance standards used to evaluate control of intake valve deposits are the same in both the CARB and proposed federal programs (less than 100 mg deposit build-up on any one valve during the test cycle). Similarly, both programs include the same keep clean performance standard for PFID (less than 5 percent flow loss in any one fuel injector). However, the CARB program includes an additional PFID clean-up standard, which is intended to evaluate the additive's ability to remove pre-existing deposits from fouled fuel injectors. Because the proposed federal program does not include such a clean-up standard, the CARB program could be considered somewhat more stringent than the proposed federal program. EPA agrees that, when the CARB program was first implemented, the clean-up PFID standard may have been appropriate, since there was a strong possibility of exposure to unregulated out-of-state gasoline. However, the need for clean-up requirements will be greatly reduced or eliminated under the federal program, since a consistent level of PFID detergency protection would be ensured. Thus, the performance standards of the CARB and proposed federal programs are likely to provide reasonably equivalent protection against both intake valve and fuel injector deposits.

Certification Test Procedures. The federal test procedures proposed in today's notice are modified versions of procedures that have been extensively used by industry. The CARB regulation also utilizes modified versions of the same industry-accepted procedures. Thus, in most respects, the two programs require equivalent test procedures.

For example, the federal and CARB PFID keep-clean procedures utilize the same test vehicle (a Chrysler 2.2 liter turbocharged vehicle), the same driving cycle (15 minutes operation followed by 45 minutes hot soak to accumulate 10,000 miles), and the same performance standard. The main differences lie in the additional test validation criteria and increased level of specificity of the test procedures and equipment in the proposed federal procedure. These factors are proposed to reduce potential test variability, especially between laboratories. The federal procedure has tighter specifications on the allowed models of the Chrysler 2.2 liter vehicle and has stricter limits on the variation allowed in the prescribed driving cycle and engine operating conditions. To prevent test variability, the proposed federal test procedure also prohibits periodic flow testing of the injectors during the procedure, which is allowed in the CARB procedure. CARB also permits use of data collected on engine test stands. At this time, EPA is not proposing to allow this option, although it is under consideration for inclusion in the final rule, and comments on this possibility are requested.

The proposed federal and CARB IVD test procedures are also very similar to one another. They utilize the same test vehicle (a BMW 318i), the same driving cycle (a specified mix of city and highway driving to accumulate 10,000 miles), and the same performance standard. Again, the main differences lie in the federal program's additional test validation criteria and increased procedure and equipment specificity. The federal procedure has stricter limits on the variation allowed in the prescribed driving cycle and engine operating conditions, and does not allow for weighing of the valve deposits at the midpoint of the mileage accumulation, as is allowed in the CARB procedure.

EPA believes that, compared to the current CARB requirements, the tighter specifications included in the proposed federal test procedures will reduce sources of potential variability, especially between different test laboratories. In other respects, however, the federal and CARB certification tests are very similar, and there is little likelihood that the two sets of procedures would lead to different conclusions. EPA thus considers the current CARB certification test procedures to be reasonably comparable to the Federal procedures. Any potential differences in the results would be minimal, and would not justify a requirement for California gasoline already certified under CARB's procedures to undergo a second round of certification testing under federal procedures. It should be noted, however, that this conclusion pertains specifically to the procedures currently in use in California, and is subject to reassessment by EPA should the CARB procedures be modified in the future.

Certification Test Fuels. Test fuels under the CARB program are defined in a different fashion than those proposed for federal certification. Applicants for CARB certification are required to demonstrate PFID and IVD performance using a fuel that is typical of the gasoline which they market in California. This typical fuel is required to have levels of sulfur, aromatics, olefins, T–90, and gum that are approximately average for the applicant's California gasoline. This typical fuel also must contain the applicant's most widely used oxygenate.

To augment test results on this typical fuel, CARB requires "supporting data" on gasolines that have levels of the selected non-oxygenate parameters that are close to the maximums which are expected to be found in the applicant's production gasolines. The applicant also is required to demonstrate performance using this supporting data for a selected group of oxygenates (ethanol, MTBE, TAME, & ETBE) if the applicant intends to use these oxygenates. The test requirements on this supporting data are not as stringent as those for testing on the applicant's typical fuel, and some of this supporting data may have been accumulated using different test procedures if correlation is demonstrated. The CARB program does not require any combinations of fuel severity parameters as required under the federal proposal.

Without specific comparison testing, it is difficult to predict which certification test fuel requirements are more stringent: The proposed federal test fuel requirements, which include combinations of fuel severity factors at considerably higher than average levels, or the CARB specifications, which require full testing only on a manufacturer's average fuel, but supplemented by supporting data to demonstrate the detergent additive's performance in fuels containing high levels of individual severity factors. It is noteworthy that, for three out of the four non-oxygenate severity factors which define the proposed generic national certification test fuels (as shown in Table 17 in Section VI.B), the specified values are less than the 95th percentile value in California for those same factors (as shown in Figures 5–8 in Section IV.D). For example, Table 17 shows that national certification test fuel number 4 would have T–90 equal to 336 °F and would contain aromatics at 29.2 percent by volume. In comparison, Figures 5 and 6 show that, for California gasoline, the 95th percentile for T–90 is approximately 348 °F and the 95th percentile for aromatics is about 43 volume percent. With the exception of sulfur, which is found in exceptionally low concentrations in California gasolines, the same relationship applies to the parameter values specified for the other proposed national tests fuels. The significance of California's 95th percentile values is that these values are presumed to reasonably reflect the composition of the worst-case test fuels for which the supplemental data is required in the CARB certification program. This suggests that, in some respects, the CARB certification fuels may provide a more rigorous performance challenge to the detergent additives than the generic national test fuels under the proposed federal program.

Two alternatives are being considered by EPA for the definition of the test fuels used to certify detergents for use in the most severe national gasoline (see Section VI. E.). Under the first alternative, the test fuel severity specifications are based on the particular detergent blender's 65th percentile levels of the relevant fuel parameters and thus would result in lower levels of these parameters than would be required for the same gasoline pool under the CARB certification program. Under the second alternative, the levels of these parameters would be set at the national 95th percentile values determined by EPA. This approach is similar to CARB's in that the level of each parameter is set at the 95th percentile for a given gasoline pool.

Taking into account the similarities and differences in performance standards, test procedures, and certification test fuels, EPA believes that it is appropriate to allow the CARB certification test program to remain in effect for gasoline sold in California. In addition, the CARB program appears to be at least as stringent as the proposed federal program, and thus EPA proposes to consider a federal certification based on compliance with the CARB testing regulations, for gasoline sold within California and PADD V, to be equivalent to a federal certification based on compliance with the federal certification test procedures. The potential for any differences between the two programs, such as reduced testing variability with the federal test procedures, would be outweighed by the redundancy of new testing if the federal procedures were to be added to the existing CARB program. On the other hand, EPA proposes not to accept CARB certification as a basis for federal certification in other areas of the United States, which are serviced by different networks of refineries and a different gasoline distribution system. This restriction recognizes the regional differences in gasoline composition illustrated by the graphs in Section VI, as well as concerns over unknown fuel compositional factors which are likely to vary from one region of the country to the next.

EPA requests comment on the comparison between the CARB and proposed federal certification testing programs and, specifically, on the extent to which the CARB program can be expected to provide comparable deposit control in California gasoline. The proposed equivalency of the CARB program would be withdrawn in the final rule if EPA should receive substantiated information from commenters or other sources indicating that the CARB program is likely to be less protective than the federal program, i.e., that California gasoline containing CARB-certified detergent additives

would be unable to satisfy the performance standards under federal certification conditions. In such a case, California (and PADD V) gasoline would be required to be certified under the federal detergent additive certification regulations notwithstanding any prior certification under the CARB program.

While EPA believes the CARB certification test procedures are roughly equivalent to the otherwise applicable federal procedures within the State of California, EPA believes that the proposed federal enforcement procedures (as discussed in Section IX) are more stringent than the CARB enforcement provisions. Therefore, EPA is proposing that federal enforcement provisions such as record keeping, product transfer documentation, and the mass balance requirements, would apply to all gasoline sold in the U.S., including California. However, if fuel producers choose to conduct federal certification test procedures on their California gasoline in addition to the required CARB procedures, then the federal enforcement activities would be based on the federal certification test procedures. Marketers of gasoline in California would thus be required to comply with both federal and California enforcement mechanisms. EPA believes that this should not be overly burdensome since compliance with the stricter federal enforcement requirements would also ensure compliance with the California requirements. Comments are requested on the proposed enforcement plan.

EPA would only continue to accept data collected to establish a CARB certification as basis for a federal certification as long as the CARB testing requirements remain unchanged or if the CARB vehicle test procedures became identical to the federal procedures proposed in Section VII. Any other change in the CARB detergent additive program would require EPA to revaluate the equivalency of CARB based certifications in another rulemaking.

IX. Alternative Interim Detergent Additive Program

The statutory effective date by which all gasoline sold in the United States to the ultimate consumer must contain effective detergent additives is January 1, 1995. As noted earlier, the regulations proposed today by EPA to implement this requirement are not expected to be published in final form until late in 1994. EPA is concerned that industry may not have enough time between publication of the final rule and January 1, 1995 to complete the testing and information gathering required under the proposed certification program. Therefore, the Agency is proposing a simplified alternative interim detergent additive certification program ("interim program") as an option to the regulated industry during 1995. As noted above, the statutory prohibition against sale of gasoline without detergent additives beginning January 1, 1995 is self-implementing. EPA believes adoption of the simplified requirements will help to provide clarity and consistency for purposes of enforcing this prohibition during 1995.

During this interim period, all gasoline would be required to contain detergent additives, but compliance with the proposed full certification testing program would not be required until January 1, 1996. Based on the California experience, EPA expects the certification testing process to take up to one year, largely because of the small quantity of independent commercial laboratories equipped to conduct certification tests. EPA believes there are currently three such non-affiliated laboratories. While many large refiners and detergent manufacturers are capable of conducting the required testing in-house, others would have to compete for limited independent laboratory resources. Therefore, the interim program is proposed as an option to accommodate industry in regard to lead-time concerns. Refiners who wish to comply with the full certification program during the first year would, of course, be encouraged to do so.

Under the interim program, all gasoline sold to the ultimate consumer (unless certified under the proposed full certification program) would be required to contain a detergent which had been registered under the 40 CFR part 79 Fuels and Fuels Additive Registration Program and which: (1) Is composed primarily of at least one, or a combination of, the four acknowledged classes of detergents that EPA believes to be effective based on current industry practices (see below); or (2) has been approved under the California Air Resources Board detergent certification program. The intent of these interim provisions is to provide a reasonable expectation of detergent effectiveness, even with the temporary delay of the more extensive certification program. However, EPA believes that the full certification program will better assure that all detergent additives used for compliance, and the concentrations in which they are used, are fully effective in preventing engine or fuel system deposits.

The four classes of detergents that EPA proposes to accept under the alternative interim certification program are: Polyalkyl amines, Polyether amines, Polyalkylsuccinimides, and Polyalkylaminophenols. Based on discussions with industry, EPA believes that the detergent additives in each of these classes must have an average molecular weight of at least 900 in order to ensure some level of effectiveness in controlling intake valve deposits, and hence is proposing this as an additional requirement.[91] Detergents that meet these specifications would be required to be used at least at the minimum concentration recommended by the additive manufacturer for keep-clean control of intake valve deposits.

Detergents used to comply with the interim program requirements would be required to have an EPA interim detergent certification number. This would be granted if the additive is registered under the part 79 Registration program and (1) the additive is one of the accepted detergent types listed above or has been certified additive under the CARB program; (2) the applicant submits the additive manufacturer's minimum recommended concentration of the detergent to maintain keep-clean fuel injector and intake valve deposit performance and, if the detergent is being authorized based on prior CARB certification, the minimum treat level approved under the CARB certification; and (3) the applicant submits to EPA a viable test procedure to identify the composition of the detergent additive in its pure state. EPA proposes that the certified detergent must be added to gasoline at least at the manufacturer's minimum concentration listed in the interim certification, or, for interim certifications based on prior CARB certification, at least at the minimum concentration approved in the CARB certification.

EPA welcomes comments regarding whether this interim detergent additive program would allow all effective detergents to be used in 1995 while preventing the use of substances that are ineffective as detergents or are harmful to emissions or to vehicles. EPA also welcomes comments regarding whether the list of known detergent classes is under-inclusive or over-inclusive.

EPA is also considering whether, in addition to the above, the interim program requirements should include some form of vehicle test data to demonstrate the effective performance of the detergent additives. This

[91] Meeting with the American Petroleum Institute (API) on upcoming "Detergent NPRM", memo to the public docket from Joe Sopata, Field Operations and Support Division.

alternative would require data to demonstrate the additive's IVD and PFID keep-clean performance using some form of the BMW 318i and the Chrysler 2.2 liter procedures respectively (see Section VII). The essential core elements of these test procedures would be required to have been observed, including driving cycle and duration and test vehicle models. The test data from each of these procedures would be required to demonstrate compliance with at least the industry's customary performance standards (i.e., less than 10 percent fuel injector flow loss and less than 100 mg intake valve deposit accumulation), in vehicle tests using commercial gasolines.

These additional requirements could provide additional assurance that the additives used under the interim program have some proven performance level of PFID and IVD control. Because additive and fuel manufacturers commonly rely on such test data, the proposed interim data requirements should involve little if any additional testing. EPA requests comment on this potential requirement, and particularly on what specifications would be necessary on the BMW 318i and Chrysler 2.2 liter test procedures used to collect the required interim data.

X. Enforcement

A. Introduction

The core of EPA's proposed detergent program is the requirement that all gasoline being sold or transferred to the ultimate consumer must contain detergent additive complying with EPA's certification program. This core requirement guarantees that only detergent/gasoline formulations that have proven efficacy in preventing the build-up of deposits in fuel injector systems and intake valves of gasoline engines will be sold.

For several of its other fuel regulations (i.e., the unleaded gasoline and volatility enforcement program, 40 CFR 80.22 and 80.27 respectively) EPA has established a gasoline sampling and testing program as the cornerstone of its enforcement scheme. However, a standardized test does not currently exist to determine both the quantitative and qualitative detergent composition once the detergent is blended in gasoline. Moreover, even the unique tests now used to determine individual detergent package composition in gasoline become ineffective when gasolines with different additives are commingled, a very common practice at the end of the gasoline marketing chain. Although a broadly effective standardized test for both quantitative and qualitative detergent composition could simplify enforcement, the Agency is not hopeful that such a test will become available in the near future. Because detergents are similar in chemical composition but not identical in chemical structure, significant technical problem's arise in isolating each detergent in a commingled gasoline sample and quantifying each detergent. With this problem in mind, the Agency is pursuing the development of a standardized test method and welcomes industry comments and assistance.

In the meantime, in the absence of a sole, reliable, and inexpensive test procedure to accurately monitor detergent additive presence in gasoline, EPA is proposing a multi-faceted enforcement scheme to monitor compliance of the various parties in the gasoline marketing and distribution chain. This scheme will help ensure proper detergent additization even if sampling and testing of additized gasoline cannot be used as the backbone of the compliance monitoring program. However, EPA is contemplating the use of some testing in the detergent compliance program. The contemplated testing includes testing of detergent in its pure state, *i.e.*, unmixed with gasoline, and testing of some additized gasoline, using the non-standardized, unique tests now necessary to ascertain the identity of detergents in gasoline. Under the national and PADD certification options testing of the base gasoline composition could also be conducted to verify that compositional limits were observed.

EPA is proposing the following enforcement scheme: (1) The core requirement that gasoline being sold or transferred to the public, and, in appropriate situations, the component parts of the gasoline, must contain detergent additive conforming to the specifications of a legally complying detergent certification; (2) a requirement that detergent blenders implement a "mass balance" detergent accounting and record keeping program, combined with a prohibition against the sale, transfer, or offering for sale or transfer of gasoline with non-conforming detergent additives as determined by the mass balance accounting process; (3) a requirement that automated detergent blenders must regularly calibrate their blending equipment; (4) a requirement that regulated parties transfer to the next downstream party a detergent additive status transfer document; (5) a requirement that detergent blenders monitor the composition of their gasoline pool to ensure compliance with base gasoline compositional requirements; and (6) the creation of quality assurance, testing, and contractual oversight requirements which certain parties will have to meet as elements of a defense against enforcement actions.

The proposed enforcement scheme will also include liability for violations at a party's own facilities which could not have been caused by any other party; presumptive liability for violations found at a party's own facilities or downstream of the party, when the violations are of a kind that could have been caused by a number of parties; and vicarious liability for branded refiners for violations found at facilities acting under the brand name or control of the branded refiner.

EPA's authority to implement this multi-faceted regulatory scheme is found in section 211(l) of the Clean Air Act, 42 U.S.C. 7545(l), which authorizes the Agency to establish specifications for detergents; sections 208 and 114 of the Clean Air Act, 42 U.S.C. 7414, which creates information gathering authority for the Agency; section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a), which is the EPA Administrator's general authority to prescribe such regulations as are necessary to carry out her functions under the Clean Air Act; and section 211(c) of the Clean Air Act, 42 U.S.C. 7545(c), which gives the Administrator the authority to control the manufacturer, introduction into commerce, and sale of gasoline with detergents. Under these provisions, the Administrator's authority over the introduction into commerce of gasoline with detergents extends to the manufacturers, certifiers, carriers and distributors of the detergents themselves, as well as to the manufacturers, carriers and distributors of such post-refinery components as raffinate, ethanol, etc., to ensure that gasoline as sold to consumers is properly additized.

EPA believes that all the proposed enforcement mechanisms are essential to ensuring compliance with the detergent additization requirements proposed today. Each is one constituent in a multi-faceted approach and each combines with the other mechanisms to create a gasoline production and distribution system in which proper detergent additization can be verified. These enforcement mechanisms are discussed in the following sections.

B. Elements of EPA's Enforcement Scheme

1. Gasoline, and in Appropriate Circumstances, Its Component Parts, Must Conform to Legally Complying Detergent Certification Specifications

(a) Gasoline Compliance.

EPA is proposing as its core enforcement requirement that gasoline being sold or transferred to the ultimate consumer, and to those parties who sell or transfer to the ultimate consumer, must be additized in conformity with a legally valid detergent certification. Under this proposal, gasoline must be blended with detergent that has been certified pursuant to the detergent certification regulations and must contain the detergent at a concentration level that conforms with the detergent certification. In addition, the detergent must be blended with the base gasoline appropriate to the detergent certification option used to certify the detergent. Any components added to the base gasoline after the refining process must be authorized components under the detergent certification, and the gasoline must be sold within the restrictions of the detergent certification option used to certify the detergent. These requirements are discussed more fully below.

In regard to the requirement that all gasoline sold to the ultimate consumer must be additized with a certified detergent, one issue is the compliance of commingled, additized product. It is common at the retail end of the gasoline marketing industry for product already additized with one detergent to be mixed in the retailer's storage tank with product additized with another detergent. As long as each of the commingled gasolines is properly additized pursuant to a detergent certification, EPA is proposing that such commingled gasoline be considered properly additized, whether commingled at the retail outlet or previously. There is no scientific evidence that such commingled product's performance is worse than segregated product.

The second facet of certification conformity involves detergent concentration level. Each detergent certification will specify the minimum level of the specified detergent package that must be blended with a gasoline of a given composition in order for the gasoline to be in compliance. Certain detergents will hold certifications for use in generic national or PADD gasoline, others for use in fuel specific gasoline, and still others for use in national or PADD gasoline pools of highest severity. The detergent certifications that allow their use in gasolines of highest severity will specify the maximum levels of the relevant fuel parameters (sulfur, olefins, T–90, and aromatics) which are allowed in the base gasoline used. EPA requires that the minimum detergent concentration must be found in the entire gasoline product, including any components added to the base gasoline after the refining process ("post-refinery components"). Therefore, if components such as ethanol or raffinate are added before or after the gasoline has been additized, provision must be made to blend additional detergent to prevent dilution of the overall product's detergent concentration level.

The remaining three gasoline conformity requirements pertain to the type of certification option used to certify the detergent. Each of these different certification options have different requirements for: (1) The base (unadditized) gasoline, (2) the appropriate places where the additized gasoline may be sold, and (3) the ability to add post-refinery components to the gasoline.

The generic national certification option is the most inclusive, permitting the detergent to be used with any base gasoline produced in the United States or abroad (including imported gasoline) providing that specified base gasoline compositional limits are satisfied (see Section IV. B. 1.). Gasoline in which these limits are exceeded must contain additives certified for use in more severe fuels. PADD certification is the next most inclusive certification option. The only difference from the national option is that the gasoline additized pursuant to the PADD option may only be transferred or sold for ultimate sale within the specified PADD. It follows that gasolines and post-refinery components additized with detergents specifying different PADDs cannot be commingled, since they would be required to be sold in different PADDs. This does not mean that gasoline additized with a PADD specific detergent may only be sold or transferred within that PADD. On the contrary, a party may sell or transfer gasoline additized with a certified detergent additive anywhere within and outside the United States, provided that the subject gasoline is accompanied by documents establishing that it is being directed for ultimate sale into the specified PADD.

As proposed elsewhere, if a gasoline was misadditized with an additive certified for use in a PADD other than that in which it was intended to be sold to the ultimate consumer, such a misadditization could be "cured" by the addition of the proper PADD certified additive or a nationally certified additive. EPA requests comment on whether allowing such a cure of misadditization is appropriate given that it may result in the subject gasoline containing an improperly high concentration of detergent additive which in turn may cause increased levels of CCD, ORI, and/or OVI in the vehicles operated on this gasoline (see Section II).

Gasoline additized with detergents certified pursuant to the California equivalency certification (CARB-based PADD V certification) are subject to the same restrictions as gasoline certified under the other PADD specific options. In California, gasoline must comply with both the federal and CARB programs. The easiest way for marketers to do this would be to use detergents federally certified based on the California equivalency option. Under this option, double testing of the detergent to comply with both federal and state requirements would be avoided. If California marketers chose instead to fulfill the federal certification testing requirements by using the national, PADD, or fuel specific certification option, they would need to ensure that their gasoline also complied with the California regulation of detergent additives. In any case, apart from testing requirements, federal enforcement provisions such as mass balance accounting and product transfer documentation are to apply to all gasoline, including gasoline in California. Because the federal enforcement provisions are more inclusive than California's, compliance with the federal enforcement requirements would appear to constitute as an assistance in compliance with the California-mandated enforcement requirements as well.

Detergents certified pursuant to the fuel specific option have the most restrictions on use. Such detergents may only be used with base gasolines segregated according to the particular certification and they may only be used with oxygenates that are specifically authorized in the certification. Under this proposal, product identification requirements will help ensure proper additization under a fuel specific certification. The Agency is proposing that a product transfer document specifying key information about the detergent status of the product must accompany all gasoline and detergent. Segregated base gasoline intended to be blended with the fuel specific detergent must be designated as fuel specific base gasoline on its product transfer

document. The EPA identification number of the fuel specific detergent must also be listed on the product transfer document for such base gasoline. A fuel specific detergent can only be blended into a base gasoline whose transfer document identifies the gasoline as segregated for use with the fuel specific detergent.

Similarly, base gasolines cannot be used with detergent certified for use in gasoline with a particular fuel-specific identification number unless the gasolines are accompanied by transfer documents identifying them as covered by the same fuel specific EPA certification number. A party who wrongly identifies commingled product as a particular fuel specific base gasoline and uses detergent certified for use only with the particular gasoline would be in violation of the product transfer document requirement and the blending restrictions under a fuel specific certification. On the other hand, a detergent certified under the national or PADD options may be blended into base gasoline identified as fuel specific. The product transfer document for the resultant additized gasoline should no longer identify the additized gasoline as fuel specific.

Special care must also be given to the use of post-refinery components with detergents certified under the fuel specific certification option. Fuel specific detergents may not necessarily be certified for use with gasolines containing any post-refinery components. EPA proposes that the oxygenates contained in the certification test fuels would be the only post-refinery components that would be permitted to be used in formulating detergent gasoline certified under this option (see Section IV. D.). EPA is further proposing that the product transfer documents for fuel specific gasolines must list the oxygenates that may be used under the particular fuel specific detergent certification. Other post-refinery components, such as raffinate, would inappropriately affect the concentrations/levels of the nonoxygenate fuel parameters used to define the segregated gasoline pool covered under a fuel specific certification, and hence would not be allowed to be added to gasoline certified under the fuel specific option.

If a party commingles an unauthorized post-refinery oxygenate with a fuel specific base gasoline, then the base gasoline may not be identified on the product transfer document as fuel specific base gasoline for use with a fuel specific detergent. A party that so identified the gasoline would be responsible for violating the proposed product transfer document requirements. The party would also be responsible for causing detergent additization violation if fuel specific detergent were improperly blended with the gasoline because of the gasoline's mislabeled product transfer document. A party that blends an unauthorized post-refinery oxygenate with fuel specific gasoline that was already additized with the fuel specific detergent would be responsible for creating a noncompliant a blend.

Under today's proposal, all gasoline would be required to be additized properly, in conformity with a legally complying detergent certification, prior to offering for sale to the ultimate consumer. However, this is not intended to preclude the ability of certified parties to "cure" misadditization if this comes to their attention. Parties could cure misadditization by means of re-additization of the subject gasoline in a conforming manner, provided that the proper documents were created to demonstrate that this was accomplished.

(b) Compliance Requirements for Component Parts of Detergent Additized Gasoline

EPA is proposing that component parts of detergent additized gasoline must comply with the specifications of the detergent certification in appropriate circumstances. If a detergent, in its pure state, is not in conformity with a certified detergent composition, then, the gasoline blended with the detergent will naturally also be out of conformity. Therefore, EPA is proposing that all detergents to be used in formulating detergent gasoline must conform, standing alone, to a specified composition in an approved detergent certification. If a detergent does not conform to certification specifications, then a regulated party such as a gasoline refiner or distributor would be liable for using, selling or transferring the non-conforming detergent. EPA also is proposing that manufacturers, certifiers, distributors and carriers of detergents who sell or transfer non-conforming detergent would be liable. EPA believes it has authority to reach such parties under section 211(c) and 301(a), in order to effectively regulate gasoline detergency. EPA requests comment on its authority to reach these parties. An alternative approach under consideration would make refiners, or other regulated parties who first purchase the detergent from the detergent manufacturer, legally responsible for the sale or transfer of non-conforming detergent additive. EPA requests comment on the effect of adopting such an alternative.

If post-refinery components are additized separately from gasoline, then these components must also contain the proper kind and amount of detergents under detergent certification. Otherwise, gasoline would be out of conformity with detergent certification requirements once the components were added. EPA is therefore proposing that those who use, sell, or transfer improperly additized components would be liable for a violation. Such parties may also be liable for causing gasoline to be improperly additized because of the mis-additized components. Furthermore, detergent certified under the fuel specific option cannot be blended into an oxygenate unless such oxygenate is authorized under the certification. Nonoxygenate post refinery components are not permitted to be used under the fuel specific certification option.

As with detergent manufacturers, distributors and carriers, EPA is proposing that these requirements also apply to manufacturers, distributors and carriers of post-refinery components who may cause post-refinery component non-conformity. EPA believes it has authority to regulate these parties under section 211(c), since these components, like gasoline, result in emissions and need to be properly detergent-additized. EPA requests comments on its legal authority to regulate these parties under sections 211(c) and 301(a).

(c) Compliance with Certification Procedure Requirements

Another means by which EPA intends to ensure that only properly additized gasoline is sold or transferred to the ultimate consumer is to monitor the procedural compliance of parties who actually certify the detergents. Under the proposed regulations, parties who certify detergents must conduct performance tests to ensure the effectiveness of their detergent. They must then submit accurate and complete applications to EPA in order for EPA to issue them detergent certification numbers. The certifiers must attest to complying with the certification testing and procedural requirements. EPA intends to review the applications for completeness and accuracy, and reserves the right to conduct confirmatory performance testing of the detergent either prior to issuing a certification number or afterwards. Based on the results of the confirmatory testing or on information establishing deficiencies in certification procedural compliance, EPA could deny, suspend, or revoke the certification.

EPA confirmatory deposit control testing would generally be conducted using the test procedures used in satisfying the proposed certification requirements (see Section IV. F.). Confirmatory testing on certifications granted under the CARB-based PADD V certification would be conducted using the strict CARB certification test procedures (see Section IV. F.). EPA is not proposing that confirmatory testing be conducted on certifications granted under the interim certification program. EPA requests comment on the proposed confirmatory testing requirements.

The proposed detergent certification program is more like the motor vehicle certification program in 40 CFR part 86 than the reformulated gasoline certification program proposed in 57 FR 13442. Under the part 86 motor vehicle certificate of conformity program, the manufacturer applies to the EPA for a certificate of conformity, and EPA reserves the right to conduct confirmatory testing before or after granting the certification. Under the proposed reformulated gasoline program, no application procedure is required. EPA has chosen to require a certification number application procedure, with commensurate denial and revocation procedures, for the proposed detergent program, because of the need to ensure that the effectiveness of each detergent package is verified. Under the detergent program, however, EPA will in many instances be relying on the applicant's attestation of compliance, rather than on its own thorough analysis of the applicant's data or on its own confirmatory testing. Certification is not, therefore, intended to represent that the application has necessarily stood up under close EPA scrutiny.

Because EPA is proposing the right to deny, suspend or revoke detergent certifications, the Agency is also proposing procedures to ensure that due process is observed throughout the application procedure. EPA is proposing that applicants for certification number be given the right to dispute any contemplated certification denial, suspension or revocation, and to appeal such decision once made. Regulated parties who would suffer financial harm from suspension or revocation of already outstanding certifications could also dispute or appeal negative decisions. EPA solicits comments about the proposed certification denial and revocation procedures.

EPA also requests comment on its decision to consider a fuel specific detergent certification immediately invalidated when the certifier fails to conduct or submit a required fuel supply survey or when a fuel survey establishes the invalidity of the certification due to impermissible fuel supply deviation. Detergents certified under the national and PADD options would also be invalidated if the required fuel survey data to determine fuel severity was not submitted to EPA upon its request. The Agency intends to confirm such certification invalidity through the mailing to the certifier of a letter of invalidity.

2. Mass Balance Accounting, Record Keeping, and Instrument Calibration Requirements

Industry currently adds detergents to gasoline by two common methods. The most sophisticated method is automated detergent blending. At an automated detergent blending facility, detergent blenders use detergent injectors which are calibrated to deliver the desired amount of detergent to the gasoline. Alternatively, at a hand blending detergent facility, a detergent blender manually adds the desired amount of detergent to the gasoline. A detergent blending facility can sometimes be a truck. For the purposes of this regulation, any detergent blender that does not operate an automated detergent blending facility will be considered an operator of a hand blending detergent facility.

Detergent blenders have already recognized the need to monitor whether the proper amount of detergent is being added to gasoline. Automated detergent blenders currently determine additization accuracy using an inventory accounting system known as the mass balance system. This procedure could also be used at hand blending facilities. Under the typical automated mass balance accounting procedure, the blender records at regular intervals (such as daily or weekly) the beginning and ending detergent inventory as well as inventory purchases and transfers out of the inventory. From these figures, actual use of detergent for the inventory period is determined. The blender also keeps track of the amount of base gasoline into which the detergent was blended during that period as well as the amount of detergent that should have been used to achieve the proper concentrations of detergent for the amount of base gasoline. By comparing the actual versus expected amount of detergent used, the blender can determine whether the proper concentration was achieved, on average, during the accounting period. As an averaging accounting method, mass balance accounting does not measure per-gallon detergent accuracy.

EPA believes that this mass balance accounting approach is a necessary tool for determining detergent additization compliance in the absence of standardized, reliable per-gallon test methods. The Agency is therefore proposing that all detergent blenders, including hand blenders of detergent, create and use mass balance accounting recordkeeping. These records must be kept in regard to the use of detergent in gasoline and/or in post-refinery components. Failure to comply with recordkeeping and maintenance elements of the mass balance accounting procedures would constitute violations whether or not misadditization has occurred.

If mass balance accounting indicates that the amount of detergent actually used fails to equal or exceed the amount which should have been used, EPA will conclude that the gasoline and/or post-refinery component sold during the accounting period was not in compliance with the certification. Each day of the mass balance compliance period is proposed to constitute a separate day of violation, or, if a greater number of days of violation would result, every transfer of non-conforming gasoline or post-refinery component would constitute a separate violation. For purposes of penalty calculation, EPA is equally considering the following two alternative approaches.

Under the first approach, the total violation would be based on the length of time during which the non-conforming product remains anywhere in the gasoline distribution/retail system. The presumption would be that the gasoline remains in the system twenty-five days. This is consistent with (and was explained in) the reformulated gasoline NPRM (57 FR 13452); thus, it would be subject to change, parallel with any applicable changes in the final reformulated gasoline rule. In the case of the reformulated gasoline proposal, the refinery was the starting-point for the projected number of days which gasoline remains in the system. However, because detergent additization occurs most often at the terminal, the retention time after additization would generally be much shorter. Thus, the reformulated gasoline approach may be unduly burdensome in the case of detergent additive violations.

Under the second approach, EPA would base the penalty on the length of the accounting period during which the violation occurred (generally, seven days). This approach reflects the fact that, under the mass balance accounting method, EPA could evaluate additive treat rates only by examining the average amount used during the

accounting period, and would usually not be able to tell the precise number of days on which underadditization occurred.

EPA asks for comment on the relative appropriateness of both alternatives proposed for penalty calculation. In addition, information is requested on the period of time which typically elapses from the point of detergent-additization until the gasoline is no longer in the system. These comments should take into account the fact that, in some instances (e.g., for highest-severity gasolines), violations of the detergent additive regulations might occur at the refinery, rather than downstream at the terminal. Suggestions are welcome regarding other penalty-calculation alternatives which would still maintain the desired deterrent against noncompliance.

EPA is not proposing any regulatory enforcement tolerance for demonstration of noncompliance with the mass balance accounting procedure. EPA is, however, considering using an enforcement tolerance for downward deviations from the standard. Such a tolerance would be based on information about the mechanical precision that can be attained in meeting this requirement, and other relevant information. Additization that exceeds the minimum specification stated in the certification will not be considered a violation at this time, since conclusive scientific data is not presently available establishing what amount of over-additization creates harmful emission effects. Therefore, EPA is currently not proposing an enforcement tolerance for upward deviations.

EPA requests comment on whether an enforcement tolerance for downward deviations from the proposed full compliance requirement should be considered. For example, an enforcement tolerance of five percent for automated detergent blenders might be appropriate, since the error of measurement associated with the most current commonly used flow instrumentation falls well within this range. In addition, the Agency requests comments about precision rates which are achievable based on varying rates of sophistication of detergent injector equipment at automated detergent blending facilities. Comments on mass balance precision rates for injection equipment currently under development are solicited, as well. Also requested are comments about the different precision rates that would be attainable if different mass balance accounting periods, such as monthly or other periods, would be used. Finally, EPA is requesting comments about what, if any, enforcement tolerance should be available to hand blenders. No mechanical precision problems are readily apparent for hand blenders, although tolerance issues might exist for hand detergent blenders due to spillage, measurement inaccuracies, etc. EPA is presently proposing that no enforcement tolerance be permitted for hand detergent blenders.

EPA's proposed mass balance accounting program will apply to all parties who blend detergent into gasoline and, as will be discussed later, into blending stocks and oxygenates which are added to base gasoline after the refining process. EPA's proposed mass balance scheme has been crafted to accommodate the different physical situations under which detergent is presently blended into gasoline (*i.e.*, automated equipment having meters on every detergent injector; automated equipment not having meters on every injector; and hand-blended or other non-automated procedures). Under the proposal, detergent blenders would choose the mass balance accounting system which matches their equipment.

EPA is proposing a weekly mass balance time period requirement for automated detergent blenders because this time frame balances the need to ensure consistently additized gasoline against the cost of record keeping requirements. The mass balance program is an averaging system, because compliance is determined in an accounting time period, and not on a per gallon basis. It is thus important to choose a mass balance accounting time frame that assures compliance on average over a period of time that will come reasonably close to the same result as a per gallon standard. The Agency believes the weekly accounting period is such a time frame.

EPA estimates that an average of ten thousand truckloads of additized gasoline are blended each year at an average detergent blending terminal. This equates to approximately 27 truckloads on a daily basis, 192 in a weekly time frame, and 833 monthly. EPA could require automated detergent blenders to perform mass balance accounting for each batch of gasoline they additize. This would ensure per gallon compliance. However, the Agency is concerned that this requirement would create excessive record-keeping costs for industry, since many automated detergent blenders do not presently have equipment which could record per batch information.

A daily mass balance compliance period, which would typically average only 27 loads, would come the next closest to matching per gallon compliance. However, EPA also believes that a daily mass balance record keeping requirement would create an undue paperwork burden on industry. On the other hand, a monthly mass balance compliance period (based on an average of 833 monthly batches would be very distant from matching per gallon compliance. EPA believes that a weekly mass balance compliance period, based on averaging the estimated weekly figure of 192 loads, would fairly mirror per gallon compliance while, at the same time, not create excessive paper work requirements for industry. A weekly mass balance accounting requirement would not create an excessive labor cost for industry in comparison with a monthly requirement.

Less frequent mass balance requirements could also potentially cause greater amounts of additized gasoline to be out of compliance, because a mechanical error could continue unnoticed for a longer amount of time. Greater potential liability would thus result for violators. The Agency welcomes comments on the appropriateness of the proposed weekly mass balance time period in comparison with other time frames.

Under EPA's proposal, hand-blenders and other non-automated batch blenders must create a mass balance accounting record for each detergent additization that they perform, not for the weekly mass balance period that applies to automated blenders. This is reasonable because hand-blenders and non-automated batch blenders, as opposed to automated detergent blenders, are able to determine exactly how much detergent is being applied to each batch of gasoline they additize. Many automated detergent blenders do not have the equipment to be able to do this. In addition, it should not be burdensome for hand blenders to create per-batch mass balance records because they could fill out such records while finishing their unloading. Requiring mass balance records for each non-automated additization blend will also create some assurance that such additization will be properly performed, which is important because of the lack of the mechanical guarantee of accuracy that exists with automated blending. Conversely, without a batch-by-batch accounting, non-automated detergent blenders could purposefully not comply with the additization requirements and thus gain an economic advantage over their competitors.

For automated detergent blenders, EPA also proposes that a new mass balance accounting record must be

created if the injection rate from a given tank of detergent additive is changed during an accounting period. This would occur if the same tank of detergent is used for treating different categories of gasoline, e.g., national and PADD-specific gasoline, or generic and high-severity gasoline. A new mass-balance accounting record is required in these instances in order for EPA to be able to judge whether the correct amount of detergent is being used in each type of gasoline.

Another unusual mass balance situation occurs when additional substances such as oxygenates or raffinate are added to base gasoline or additized gasoline. EPA is proposing a mass balance accounting procedure for these situations as discussed in Section X. D.

The proposed mass balance enforcement program would be based on review of records. EPA would inspect records at facilities during inspections. Under EPA's proposal, mass balance records and mass balance supporting documentation must be maintained for five years at the facility where the detergent additization occurred. If the detergent additization facility is a truck, record retention would be expected at the operator's closest, appropriate stationary facility. Given the large number of detergent blender facilities and EPA's enforcement resources, EPA does not expect to be able to inspect all detergent blending facilities each year. Under these circumstances, a five year record keeping requirement allows time for enforcement inspections and enforcement actions, where appropriate. However, in view of the provisions of the Paperwork Reduction Act (pursuant to 44 U.S.C. 3501 *et seq.* as implemented at 5 CFR part 1320), comment is requested on whether the records maintenance requirement should be lowered to three years instead of five. Comment on the relative costs of the three- and five-year alternatives is also requested.

Mass balance records must also be maintained in such a manner that EPA can reasonably ascertain the accuracy of the mass balance accounting. EPA is proposing that mass balance records and their supporting documents must be maintained together, to establish that proper additization has occurred, that properly additized gasoline under the mass balance program has been transferred out, and that unadditized base gasoline or unused detergent was also properly transferred. This latter information, in the form of transfer documents for the unused product, will be very important in aiding the Agency in learning what parties receive unadditized base gasoline or unused detergent from detergent blenders. The supporting documents for each accounting period include: Calculation documents; transfer documents for the component parts being blended together under the mass balance accounting procedure; transfer documents for the additized gasoline being transferred out; and transfer documents for the unadditized base gasoline or unused detergent being transferred out. EPA experience has shown that it is very difficult to ascertain compliance with legal requirements if records are scattered or are otherwise not properly maintained.

The Agency is requesting comments on an additional enforcement option under consideration but not currently proposed by EPA that would require detergent blenders to report to the Agency the actual detergent that was used and the correct amount of detergent that should have been used on a yearly basis. Automated detergent blenders would report their figures from their weekly calculations, while hand blenders and other non-automated blenders would report the results from their batch-by-batch calculations. This requirement would allow the Agency to be able to determine that detergent blenders actually are performing the mass balance calculations, and that violations are, or are not, occurring at particular facilities. This reporting option would also enable the Agency to ascertain additization compliance without sole reliance on resource intensive inspections. Comments are solicited about the value, cost, and efficacy of such a mass balance reporting requirement.

Another important aspect of EPA's mass balance proposal is the requirement that all automated detergent blenders must calibrate their blending equipment every calendar quarter (January, April, July and October). This calibration requirement, which applies to both meters and injectors on detergent blending equipment, is proposed to ensure the accuracy of the mass balance inventory accounting, since this accounting is premised on the accuracy of the equipment. The quarterly calibration requirement was chosen to account for the temperature changes associated with seasonal changes, so that re-calibration will address the problem of the expansion of detergents from temperature. The Agency further believes that such regular calibration checks will not be burdensome to industry since industry typically already conducts periodic calibration checks. EPA solicits comments as to whether the proposed quarterly calibration requirement is appropriate, as well as comments about industry practice for calibration of detergent blending equipment.

EPA requests comments regarding alternatives to any part of, or all of, the proposed mass balance system. If alternatives are suggested, rationales for their use are requested. In addition to the comments already solicited above in this section, there are several specific issues on which EPA would like to receive comments. One such issue concerns hand blenders and other non-automated batch blenders of detergents. It is EPA's understanding that most hand blenders of detergents either add detergent to the tank truck before the base gasoline is added to the tank truck, or they add detergent to the retail storage tank before the base gasoline is added. Comments are solicited on the issue of whether the mass balance record keeping system proposed in these regulations is practicable for such non-automated blending situations, and whether there exists a better system for non-automated blenders which would still ensure compliance with the regulatory requirements.

EPA is also concerned that hand blending of detergents may not be as conducive to accuracy of additization as automated blending. Automated additization has some assurance of accuracy because of the ability to calibrate the equipment and because of the records generated by the equipment. EPA welcomes comments about whether hand blending is sufficiently accurate to be an acceptable additization mechanism once detergent additization becomes regulated.

EPA also requests comments on issues regarding meters. As previously mentioned, detergent additization presently occurs using a variety of equipment, and not every detergent injector has a meter. It is logical to assume that the most accurate additization, as well as the most accurate mass balance accounting procedures, would occur under circumstances in which each detergent injector is metered. The Agency would like to receive comments on whether, for the sake of such improved accuracy, a proposed EPA mass balance system should require the use of fully metered detergent injector systems. At issue is the value of detergent additization accuracy versus the cost of the installation of fully metered systems for all automated detergent blenders.

The last mass balance issue for which the Agency is specifically requesting comments concerns the use of markers,

as an alternative either to a test procedure for determining detergent compliance or to mass balance accounting for determining detergent additization accuracy. Under this alternative approach, a specific marker would be added at a concentration relative to each specific detergent, thereby creating a mechanism for both quantitative and qualitative analysis of detergents in gasoline. Both the quantitative and qualitative analysis of each detergent in base gasoline would be determined by the presence of the detergent marker in the gasoline. The known test procedure used for determining the presence of the detergent marker in the base gasoline would be a proprietary chromatograph test procedure.

EPA is not choosing this marker alternative as an option in light of the possibility that parties might be able to add markers to gasoline without also adding the approved detergent. EPA is soliciting comments, however, on whether the use of detergent markers is a feasible approach as an alternative to, or in addition to, the mass balance system. Comments are also requested on what types of markers might be used, their cost, and what proprietary issues might arise in the use of markers for enforcement purposes.

3. Product Transfer Documentation

EPA is proposing that transfer documentation must accompany base gasoline, detergent, and detergent additized gasoline. EPA proposes that it also accompany gasoline blending stocks and oxygenates which are to be added to gasoline after the gasoline refining process (and thus also need additization). The product transfer document requirement is generally similar to the requirement proposed under the reformulated gasoline and anti-dumping program (56 FR 31176). The information required on the detergent product transfer documents would identify the product and provide information necessary for proper routing, commingling and additization of the product. Such information will be useful both for EPA detergent enforcement purposes and to assist regulated parties in complying with these regulations.

EPA assumes that the same document or documents used to comply with the proposed reformulated gasoline and anti-dumping regulations would be expanded to include the detergent additization requirements. Already existing commercial documents presently used to transfer gasoline products could now also serve as the basis for the required detergent product transfer documents. Therefore, EPA expects that regulated parties would not generally need to create additional documentation. However, new transfer information (on existing customary documentation) would need to be included for the transfer of detergents as well as for gasoline blending stocks and oxygenates to be blended into gasoline after the refinery.

Under the proposal, regulated parties, i.e., detergent blenders, gasoline distributors, manufacturers of detergents and of post-refinery gasoline blending stocks and oxygenates, etc., would have the duty to provide transfer documents to their customers, as well as to acquire, where appropriate, transfer documents from their suppliers. Under EPA's proposal, the transferees will have the practical responsibility to obtain transfer documents from their suppliers and to refuse the transfer of improperly documented product.

There are four purposes for the proposed transfer documentation requirement. The first and second purposes are geared to EPA enforcement needs. First, the transfer documents will enable EPA to verify that regulated parties have complied with additization requirements and will identify the certification number of the detergent used in the product. The known difficulties with compliance verification through testing make this records-based compliance verification particularly important. Second, the transfer documentation will enable EPA to determine what non-additized product has been sold or transferred from detergent blender facilities. EPA will then be able to track such product to determine whether proper additization eventually occurred.

The third and fourth purposes of transfer documentation requirements are geared to assisting regulated parties in complying with the detergent requirements. The third purpose is to ensure that important information is given to the transferee about the additive status of the product. For example, from the information on the transfer document, the receiver of gasoline will know whether the gasoline contains detergent additive and, if so, what certified detergent additive has been added; what post-refinery components may be added to fuel specific gasoline; whether a detergent certified for use in high-severity gasoline must be used and, if so, the relevant fuel parameter specifications for detergent certification; and, the designated PADD of destination if PADD-certified detergent has been used. This latter point is essential, since gasoline additized with PADD specific detergent must be sold or transferred for ultimate use within the specified PADD.

The final purpose of the transfer documentation is to create a record for quality assurance review, allowing parties to determine whether their product is being properly commingled, routed and additized.

EPA believes that the transfer document requirements, including retention of these documents, are necessary to allow for effective EPA enforcement of the detergent program. They will also permit industry to be able to acquire the necessary information to comply with the regulations.

4. Quality Assurance, Product Testing, and Contractual Oversight Requirements

EPA believes that the regulated parties with the highest probability of causing violations under the detergent program, *i.e.*, detergent blenders, should implement quality assurance procedures to help ensure compliance. This is especially important since it is not currently feasible or practical to significantly verify compliance by sampling and testing. Therefore, EPA is proposing that, as part of their defense to presumptive liability for violations under this program, detergent blenders must have in place quality assurance programs that will assure the validity of the records they create to establish compliance concerning these violations. After adding detergent to gasoline, detergent blenders must create transfer documents when they transfer the finished product and mass balance records concerning the detergent blending. The transfer documents are supposed to indicate the proper identity and additive status of the finished product, but if they are inaccurate, or if the mass balance records detailing inventory accounting are incorrect, neither EPA nor the parties themselves will be able to know if the product complies with the requirements of a certification. Therefore, to meet their presumptive liability defense, these parties must show the implementation of a quality assurance program, including, but not limited to, a periodic re-check and confirmation of product identity prior to creating transfer documents for finished product, and a periodic re-check and confirmation of information being input to the mass balance records.

EPA is also proposing that manufacturers of detergent must, as part of their defense to liability for detergent program violations, provide test results establishing that the detergent component of the product in violation

was in compliance with the detergent certification or interim detergent authorization, prior to the detergent leaving the detergent manufacturer's facility. This is similar to the test results defense requirement established for refiners in the volatility program, 40 CFR 80.28(g). This defense requirement will help guarantee that detergent leaving a detergent manufacturer's facility is in compliance with a certification.

Similarly, EPA is proposing that branded refiners, whose liability for violations will be discussed in the Liability section below, must implement oversight programs pursuant to contracts with their suppliers, distributors, retailers, etc., to prevent the occurrence of detergent violations at facilities operating under the brand name, or the control, of the refiner. These contractual oversight programs would be part of the branded refiners' defense to vicarious liability for violations that occur at the facilities operating under the name or the control of these refiners. The contemplated programs, such as periodic reviews of relevant documents to confirm the appropriateness of commingling and additization of gasoline and instructions to prevent improper activity, must be conducted at the facilities of the appropriate downstream parties. It is appropriate that branded refiners have this quality assurance defense requirement because of the traditional control they have over the parties that are operating under their name or their authority.

EPA welcomes comments about specific aspects of the proposed detergent additization quality assurance programs and contractual oversight programs that may be of interest to commentors.

5. Testing Exemptions

EPA is aware that industry uses unadditized or experimentally additized gasoline in engine and vehicle testing for research purposes. Such testing and research programs may be necessary to develop improved detergent additives that could result in environmental benefits, and is necessary to conduct certification testing. Therefore, EPA is proposing that parties conducting such research and testing programs would be permitted to apply to EPA to obtain testing waivers from the certification requirements proposed in today's notice (See section 80.160 of the proposed regulatory language.). The proposed testing waiver program follows that promulgated in the volatility program, 40 CFR 80.28(e), and contained in 40 CFR, 79.4(a)(3). The Agency welcomes comment about the need for, the adequacy, and the efficiency of the proposed testing waiver procedures.

6. Gasoline Compositional Requirements Under the National and PADD Certification Options

Detergent blenders who use detergents certified under the national and PADD certification options must first determine whether they must use detergents certified for use in generic or more severe gasoline through compositional testing of their particular gasoline pool conducted on a weekly basis (see Section VI. B. 3.). If an additive certified for use in more severe gasoline is required, this fuel survey data would also be used to determine the levels of the fuel severity factors that must be covered under the subject detergent certification.

Generic national and PADD-specific detergents may only be used in gasolines that have levels of each of the relevant fuel parameters (olefins, sulfur, T–90, and aromatics) that are below their respective 95th percentile levels as determined by EPA for the given certification region (see Section IV. B. 3.). Gasolines that have higher levels would be required to contain detergents certified for use in higher severity fuels. While generic detergents are all required to be certified to the same gasoline severity levels within a given region (i.e., using the same test fuel specifications) this is not the case for detergents certified for use in more severe gasoline. Depending on the approach selected for high-severity test fuel definition, the test fuels for certifying such detergents may have very high standard levels of different fuel parameters or may have varying degrees of parameter severity in the more severe range. Therefore, detergent blenders required to use detergents certified for use in more severe gasoline must also ensure that the detergent used is certified for use in fuels of greater than or equal severity relative to their gasoline pool (see Section VI. B. 3.).

Detergent blenders would be required to update their fuel survey data on a weekly basis and EPA proposes that they must use this data to reassess the type of detergent additive required at least every 6 months (see Section VI. E.). Although EPA believes it to be unlikely, detergent blenders may find it necessary to make this reevaluation on a more frequent basis to avoid repeated enforcement actions if the composition of their gasoline changes rapidly. EPA requests comment on whether the 6 month reevaluation schedule is appropriate or whether a less frequent schedule would be more appropriate (annually or once every 2 years). EPA proposes that the required weekly fuel survey data and parameter distribution curves must be retained by the fuel detergent blender in a single location for 5 years. At its discretion, EPA could require the submission of this data to verify compliance with detergent additization requirements.

EPA proposes that the detergent blender must include in the transfer documents information regarding the type of detergent which has been added (generic or more severe national/PADD certified) and the EPA certification number of the detergent used. If the fuel is subject to the special provisions for high-severity gasoline, then the transfer document must also contain the specific levels of each of the nonoxygenate parameters that the detergent must have been certified to accommodate (see Section VI. E.). This base gasoline information, in combination with corresponding data contained in the detergent additive transfer documents, would be used to ensure that proper additization takes place. EPA could review these transfer documents to monitor compliance. EPA could also measure the levels of the fuel severity factors in a detergent blender's gasoline (using the test methods proposed in Section VI. G.) to verify that the information contained in the transfer documentation is correct and that the gasoline has been properly additized.

EPA believes that the proposed fuel survey requirements would generally not result in the need for additional fuel compositional testing. The required data would likely be available to detergent blenders, and other potential responsible parties, either directly, or from other parties upstream in the gasoline distribution system. EPA requests comment on the availability of this data required. Comment is also requested on whether the requirements proposed above provide adequate assurance that gasoline would be additized with properly certified detergents. Alternatives to the proposed approach are also solicited.

C. Liability Issues

1. Responsibility for Mass Balance and Other Detergent Blender Requirements

EPA is aware that there are many different situations in which detergents are blended into gasoline or post-refinery blending stocks or oxygenates. In order to determine the responsible party for the detergent blender requirements under these regulations, such as mass balance accounting requirements, EPA intends to hold responsible the party or parties who

control the facility or that portion of the facility, such as an individual detergent storage tank, where detergent additization is occurring. EPA welcomes comments from interested parties on the issue of determining responsible parties for detergent blender violations.

2. Presumptive and Vicarious Liability

EPA is proposing that upstream parties be liable for violations that are discovered at facilities downstream of them, if the upstream parties could have caused those violations. This is a presumptive liability scheme that is similar to the liability established in the gasoline volatility enforcement program, 40 CFR 80.28, under which all persons in the gasoline's chain of distribution are considered presumptively liable for volatility violations. Here, EPA is proposing presumptive liability for additized gasoline, detergent, and post-refinery component violations, since these problems could have been caused upstream. However, mass balance violations logically could only be caused by the detergent blender who improperly additized the gasoline, and product transfer document violations will only be caused by the party who fails to properly create, transfer or retain the required documents. Therefore, no presumptive liability for parties upstream of detergent blenders or the parties with the transfer document violations is being proposed for such mass balance or product transfer document violations.

EPA is proposing this presumptive liability scheme, with appropriate defenses, for the same reasons that it was proposed in the volatility regulations. These reasons include the Agency's belief that it would be the most effective and equitable way of placing liability upon the parties responsible for causing the violation; that this type of scheme is currently successfully used in both the unleaded and volatility programs; that it is familiar both to industry and the EPA; that it puts the burden of showing compliance on the responsible parties, which is appropriate since these parties, and not the EPA, have better access to the relevant information; and because enforcement will be less resource intensive to the Agency than a "tracing back to the source" liability scheme.

The Agency is also proposing that branded refiners have vicarious liability imposed on them for detergent program violations occurring at facilities operating under their brand name or under their control, since branded refiners traditionally have had great control over such facilities. Such vicarious liability has similarities to that imposed on branded refiners in other EPA enforcement programs such as the unleaded gasoline and the fuel volatility programs, 40 CFR 80.22 and 80.27 respectively. In the detergent additization program, as in these other EPA programs, branded refiners will have contractual oversight requirements as part of their affirmative defenses.

EPA proposes to continue here its enforcement policy that more than one party of a particular type can be held liable for a violation. The fact that one distributor or refiner may be potentially liable for a violation does not preclude liability from also attaching to other distributors or refiners in the chain of distribution, where appropriate. This is a longstanding enforcement policy of EPA, and it has recently been articulated in the gasoline volatility regulations, 40 CFR 80.28(c).

C. Liability for Violations and Penalties Resulting From Improper Certification

It is possible under the proposed detergent certification program for a party to inaccurately represent a detergent as being properly certified. EPA is proposing that such a marketer, be it a detergent manufacturer, distributer, carrier or merely someone who represents to have certified the detergent, would be liable for the sale of non-conforming detergent and of any non-conforming detergent additized gasoline and post-refinery component additized with the non-certified detergent. Parties who relied on the misrepresentations of the marketer would not generally be considered liable if they can show they did not know of the problem, despite due diligence.

The Agency also proposes to reserve the right to revoke a previously issued certification number that was based on improper or false information, or based on the detergent's failure to meet performance standards upon confirmatory vehicle testing. If the detergent certification is revoked by the Agency because of misconduct such as fraud or negligent disregard for truthfulness or accuracy of the application, then the certification would be considered void ab initio. As discussed above, EPA intends to provide an opportunity to be heard before revocation, consistent with due process. The certifier would be considered liable for the prior and prospective sale of non-conforming detergent and detergent additized gasoline or post-refinery component additized with this non-conforming detergent. Parties relying on the revoked detergent certification to additize their gasoline or post-refinery component would again be protected from liability if they can establish freedom from fault.

D. Blending of Gasoline Blending Stocks and/or Oxygenate Products Into Gasoline After the Gasoline Refining Process.

Another issue concerns the blending of substances such as oxygenates and raffinate into gasoline after the gasoline refining process. Such substances are referred to as "post-refinery components."

The addition of any of these post-refinery components to gasoline increases the need for detergent in the gasoline, since they increase the volume of the product to be additized. The completeness of detergent additization becomes problematic because these components can be added at any point in the gasoline distribution process, sometimes prior to, and sometimes after, the base gasoline has been detergent additized. It is thus easy to lose track of whether or not the total product has been properly additized. Adding to the problem is the fact that these components are themselves sometimes transferred in an already additized condition.

All gasoline being sold to the ultimate consumer, including that containing these post-refinery components, must be properly detergent additized. The Agency considered a requirement that post-refinery components be additized prior to their addition to gasoline. This requirement would create a uniformity of procedure, which would be conducive to greater detergent accuracy.

However, EPA is instead proposing to allow the regulated parties to decide at what point they wish to add the additional detergent to properly account for the post-refinery components. This option is less disruptive of current industry practices. Under this option, whichever party adds the detergent that is needed for the post-refinery component becomes a detergent blender. This party is permitted to add the additional detergent either to the post-refinery component itself or to the gasoline, and must therefore perform mass balance accounting and other detergent blender requirements.

Under this proposal, the detergent blending party is also permitted to over-additize base gasoline to account for the extra volume resulting from the later addition of such post-refinery components, such as ethanol, if the party indicates on its mass balance record that it has changed the ratio of detergent-to-base gasoline from the certified ratio to an over-additizing ratio, to account for the later addition of no more than a specified amount of

post-refinery components. If a party chooses to over-additize to account for post-refinery components to be added at a different time, this party must indicate on the transfer document for the product that the product is over-additized. The transfer document must also indicate the maximum amount of gallons of post-refinery components that may be added at the different time consistent with the amount of over-additization.

A party that adds already detergent-additized post-refinery components to either base gasoline or to detergent-additized gasoline would not be considered a detergent blender. (EPA understands that current industry practices sometimes include adding detergent to ethanol or other blending stocks before such product is blended with gasoline.) Such a party need not perform mass balance accounting concerning the addition of the substance. It would, however, be required to have transfer documentation establishing that each of the component parts of the combined product complies with detergent certifications. This party needs to take special care to note that the product transfer document for fuel specific gasoline authorizes the addition of the particular post-refinery component to the gasoline.

EPA solicits comments from interested parties on the two contemplated options for regulating detergent additization and post-refinery components, as well as any other suggestions for regulating these components.

E. Enforcement Under the Alternative Interim Detergent Additive Program

EPA intends to enforce the simplified program vigorously. EPA is proposing that during 1995 product transfer documents will be required, mass balance accounting requirements will apply, and the liability scheme will apply to the same extent as will apply once certification performance testing is mandatory in 1996.

XI. Public Participation

A. Written Comments

EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposal from all interested parties. Whenever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the EPA Air Docket, Docket No. A–91–77 (see "ADDRESSES"). Comments on this notice will be accepted until the date specified in "DATES".

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it "Confidential Business Information". Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

B. Public Hearing

Any person desiring to present testimony at the public hearing (see "DATES") is asked to notify the contact person listed above at least seven days prior to the day of the hearing. The contact person should also be provided an estimate of the time required for the presentation of the testimony and notified of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling the order of testimony. EPA suggests that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, it would be helpful for EPA to receive an advance copy of any statement or material to be presented at the hearing prior to the scheduled hearing date, in order for EPA staff to give such material full consideration. Such advance copies should be submitted to the contact person listed above. All materials submitted will be made part of the official record for this rulemaking.

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made by a court reporter. Copies will be available for examination in the public docket or for purchase by individual arrangement with the court reporter.

XII. Statutory Authority

The statutory authority for this proposal is provided by sections 211(c), 211(l), 114, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7545(c), 7545(l), 7414, and 7601.

XIII. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether a regulation is "significant" and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual affect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities,

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency,

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". EPA's regulatory impact analysis (RIA), summarized below, indicates that the annual costs to producers for compliance with this proposed rule would be expected to exceed $100 million.[92] On the other hand, offsetting fuel economy benefits would be expected to reduce the total social costs to far less than $100 million per year. Nevertheless, EPA has treated this action as significant, and the action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public docket for this rulemaking.

The costs of the proposed regulation to gasoline producers are estimated to increase from approximately $105 million in 1995 (during the interim program period) to about $132 million in the year 2000. The annual costs during that time period, discounted at a rate of 7 percent, amount to a net present value in 1995 of $639,233,068. About 93 percent of this total estimated cost is the price to gasoline producers of the additional deposit control additive which would be needed to bring all gasoline up to the effective detergency levels which much of U.S. gasoline already contains. This cost is generally expected to be passed along to the

[92] A copy of the RIA has been placed in the public docket.

consumer, increasing the average price of gasoline by about .10 to .25 cents per gallon. This would amount to only a dollar or two per motorist per year, and would be more than compensated by the increased fuel economy and decreased maintenance requirements which improved deposit control would be expected to provide.

The proposed gasoline detergent additive requirements are expected to result in a significant reduction in motor vehicle emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen. As a result, the program is highly cost effective, with an average ratio of producer costs to emission reductions equal to about $170 per ton of emission reduction benefit. When the projected fuel economy benefits resulting from greater control of fuel deposits are factored in, the cost effectiveness of the program becomes even more favorable. The fully implemented program is projected to result in gasoline savings in excess of 145 million gallons per year. The economic value of this fuel savings would more than offset the estimated costs of the proposed program. In effect, the projected air quality benefits are estimated to be achieved at no net cost to the country as a whole.

The program is not expected to be a significant cost burden to individual businesses. As described above, incremental costs for detergent additive are expected to be passed to the consumer. Costs for compliance with the proposed performance testing and recordkeeping requirements are relatively modest. In addition, the proposed regulations offer sufficient flexibility to allow producers to share the costs of certification. Adverse effects on competitive relationships are not expected. In fact, the proposed rule should result in increased sales and business opportunities within the fuel additive industry.

Comments from the affected industry and other interested parties are requested on the cost and benefit estimates and on the overall conclusions of the analysis which are summarized above and presented in detail in the RIA.

XIV. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, federal agencies are required to assess the economic impact of federal regulations on small entities. Accordingly, a Regulatory Flexibility Analysis (RFA) has been prepared. The RFA is included as Chapter V in the Regulatory Impact Analysis described in the previous section of this notice, and is available for review in the public docket.

The RFA shows that the regulatory responsibilities of the various types of businesses affected by the proposed rule, along the chain from gasoline refiner to distributor to retailer, differ markedly. For each type of business, however, even for the small business entities in this chain, the costs of the regulation are estimated to be modest. The largest costs would be incurred by gasoline producers in the price of the additional detergent additive required to be added to gasoline. As described above, this cost is expected to be passed along the distribution chain to consumers. In any case, if small businesses were permitted a special provision allowing under-additization, this could severely jeopardize the realization of the program's projected air quality benefits. Furthermore, opportunities for sharing the costs of certification should further reduce the regulatory burden on small refiners, and costs to other affected businesses are very small. EPA has thus concluded that significant adverse economic impacts on small businesses are extremely unlikely. On the contrary, in the case of small additive manufacturers and additive injection equipment manufacturers, the proposed regulation could result in significant economic opportunities through increased sales.

XV. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the requirements of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1655.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M Street, SW., (2136); Washington, DC 20460 or by calling (202) 260–2740.

Public reporting burden for this collection of information is estimated to vary from less than one minute annually per respondent to 476 hours per one-time certification, with an average of less than one minute to several minutes per year, per respondent. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch; EPA; 401 M Street, SW., (2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked "Attention: Desk Officer for EPA." The Final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline detergent additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: November 22, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–29147 Filed 12–3–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

[RIN 1006–AA32]

Reclamation Reform Act of 1982, Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) intends to propose new rules and regulations for implementing the Reclamation Reform Act of 1982 (RRA), as amended, and to prepare an environmental impact statement (EIS), pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended. The EIS will address the effects of various alternatives considered in developing proposed new rules and regulations. These regulations will apply to Reclamation projects in the 17 Western States: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

A separate notice of intent to prepare an EIS and to conduct scoping meetings will be published in the "notice" section of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Rusty Schuster, Attention: D–5604, Bureau of Reclamation, PO Box 25007, Denver CO 80225. To be placed on a mailing list for any subsequent

information, either write Mr. Rusty Schuster or telephone (303) 236–1061, extension 237.

SUPPLEMENTARY INFORMATION: Among other things, the RRA (43 U.S.C. 390aa, *et seq.*) modified the ownership limitations for receiving Reclamation irrigation water, established limitations on the amount of leased land that is eligible to receive Reclamation irrigation water at a non-full-cost rate, and required the development of water conservation plans. On April 13, 1987, rules and regulations were promulgated to modify the original Acreage Limitation Rules and Regulations (dated December 6, 1983) 43 CFR part 426. The 1987 rules and regulations were challenged in the United States District Court, Eastern District of California, by the Natural Resources Defense Council (NRDC) for failing to comply with the NEPA in the promulgation of rules. As the result of a "Settlement Contract" entered into in September 1993, among the Department of the Interior (Interior), the Department of Justice, and the NRDC, acting on behalf of itself and others, which contract pertains to the litigation styled *NRDC, et al.* v. *Beard*, 9th Cir. Nos. 92–15640 and 92–15643, Reclamation is required, in part, to:

1. Consider proposing new regulations implementing the RRA in the 17 Western States.

2. Prepare an EIS, in compliance with the NEPA (42 U.S.C. 4332), addressing the impact of the various alternatives considered in the development of proposed new rules and regulations. The "Settlement Contract" provides that among the alternatives considered, Reclamation shall include tiered pricing, water conservation rules, alternatives designed to achieve the greatest degree of water conservation and environmental restoration possible under the RRA, alternatives that require Reclamation to collect all data necessary for the enforcement of RRA, and alternatives that require making water conserved through RRA available for fish and wildlife and other beneficial purposes.

3. Consider the impacts to water quality and fisheries of reduced irrigation resulting from different pricing requirements, stronger conservation requirements, and stricter acreage limitation enforcement.

4. Use all relevant compiled data currently in Interior's possession. Additional data need be collected only as required by NEPA and its implementing regulations.

5. Hold hearings to receive comments on the draft EIS and proposed rules.

6. Complete the proposed rules and draft EIS by December 1, 1994, and the final rules and EIS by August 1, 1995.

Dated: November 30, 1993.

J. William McDonald,

Assistant Commissioner, Resources Management.

[FR Doc. 93–29701 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 12 and 16

[CGD 93–051]

RIN 2115–AE54

Proof of Commitment To Employ Aboard U.S. Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations covering applicants for merchant mariner's documents to eliminate the requirement that the applicant provide proof of a commitment of employment as a member of the crew of a United States merchant vessel. Because of new requirements pertaining to applicants of merchant mariner's documents, the requirement for proof of a commitment of employment is no longer necessary. This action will relieve applicants and employers of an unnecessary regulatory burden.

DATES: Comments must be received on or before February 4, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–051), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine Bunnell, Merchant Vessel Personnel Division, Seaman Documentation and Records Branch, Office of Marine Safety, Security, and Environmental Protection, (202) 267–0234.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–051) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Mrs. Justine Bunnell, U.S. Coast Guard, Project Manager, Office of Marine Safety, Security and Environmental Protection and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

Section 12.25–5 of title 46 of the Code of Federal Regulations requires an applicant for an original merchant mariner's document (MMD) endorsed for service in ratings for which no professional examination is required to produce satisfactory proof of a commitment of employment (letter of commitment) as a member of the crew of a United States merchant vessel. This requirement was established in 1937 as a means to ensure that those persons obtaining MMDs were actually to be employed as merchant mariners. Because no fee or renewal requirements had been associated with application for an MMD, many applying for an MMD were doing so to obtain a desirable form of identification, and had no intention

of seeking employment as a merchant mariner.

On March 19, 1993, the Coast Guard published a final rule establishing user fees for services relating to marine licensing, certification of registry, and merchant mariner documentation (58 FR 15228). That rule established an issuance fee of $35 for an MMD with an additional $17 charge for an FBI criminal record check if the application is for an original MMD. As noted in the preamble of the user fee final rule, as a result of the user fee and other expenses, individuals with no intention of returning to sea may choose not to renew a license. Likewise, the user fee will deter individuals with no intention of obtaining employment as a member of the crew of a United States merchant vessel from applying for an MMD. For this reason, the Coast Guard now considers the requirement for a letter of commitment unnecessary.

Discussion of Proposed Amendments

Because the Coast Guard no longer considers the letter of commitment requirement necessary, the Coast Guard proposes to remove 46 CFR 12.25–5. Further, because reference to § 12.25 is made in 46 CFR part 16, the Coast Guard also proposes to revise part 16. Part 16 prescribes the minimum standards and procedures to test covered employees in the maritime industry for the use of dangerous drugs. Section 16.210 provides that no marine employer shall engage, employ, or otherwise give a commitment of employment to, any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer. "Commitment of employment" is defined in § 16.105 as proof of employment required by 46 CFR 12.25–5. Because § 12.25–5 and the requirement to provide a letter of commitment of employment would no longer exist, reference to "commitment of employment" and its definition would be removed from part 16 by this action. Employers will continue to be prohibited from engaging or employing any individual as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer or meets the exception of 46 CFR 16.210(b).

Regulatory Assessment

This proposal is not a significant regulatory action under Executive Order 12866 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Assessment is unnecessary. This action would relieve applicants of the burden of obtaining a letter from a new employer evidencing the employer's commitment to hire the applicant. Employers will be relieved of the burden of supplying such letters. While the cost of obtaining and supplying such letters is considered minimal, this action would relieve industry and applicants of an unnecessary regulatory requirement.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. This action will relieve small entities from an unnecessary paperwork requirement.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to establish regulations pertaining to the issuance of merchant mariner's documents has been committed to the Secretary of Transportation by Federal statute and delegated to the Coast Guard. Documentation of merchant mariners is a matter national in application for which regulations should be of national scope to avoid unreasonably burdensome variances. Therefore, the Coast Guard intends to preempt State action addressing the same matter, although no such action is expected.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES. This action would relieve a paperwork requirement and clearly would have no impact on the environment.

List of Subjects

46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 12 and 16 as follows:

PART 12—CERTIFICATION OF SEAMEN

1. The authority citation for part 12 is revised to read as follows:

Authority: 46 U.S.C. 2103, 7301, 7701, 10104; 49 CFR 1.46.

§ 12.25–5 [Removed]

2. Section 12.25–5 is removed.

PART 16—CHEMICAL TESTING

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

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

§ 16.105 [Amended]

4. In § 16.105, the definition of *Commitment of employment* is removed.

5. In § 16.210, paragraph (a) is revised to read as follows:

§ 16.210 Pre-employment testing requirements

(a) No marine employer shall engage or employ any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer.

* * * * *

Dated: November 28, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–29734 Filed 12–3–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 91–273; FCC 93–491]

Notification by Common Carriers of Service Disruptions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on the proposed amendment to its regulations regarding the reporting of telephone network outages. The amendment will enlarge the outage reporting requirement. The present requirement requires outages that potentially affect 50,000 or more of a carrier's customers to be reported. The proposed amendment would require outages potentially affecting 30,000 or more of a carrier's customers to be reported. Fire-related incidents impacting 100 or more of a carrier's lines and outages affecting "special" facilities (major airports, E911 tandems, nuclear power plants, major military installations and key government facilities) must also be reported under the proposed amendment. This action is necessary to improve the Commission's ability to monitor outages and determine what steps may be necessary to ensure network reliability. The amendment will provide the Commission with the additional information it needs to perform this task.

DATES: Comments must be filed on or before January 21, 1994 and reply comments on or before February 22, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Kimball, (202) 634–7150, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in CC Docket No. 91–273, FCC 93–491, adopted November 5, 1993, and released December 1, 1993. The item is available for inspection and copying during normal hours in the Commission's Dockets Branch (room 230), 1919 M St., NW., Washington, DC, or a copy may be purchased from the duplicating contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037. The NPRM will be published in the FCC Record.

OMB Review

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h). Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037. Persons wishing to comment on this collection of information should direct their comments to Timothy Fain, (202) 395–3561, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 632–7513.

Title: Amendment of part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions (Section 63.100).

OMB Number: 3060–0484.

Action: Proposed revision.

Respondents: Business or other for profit.

Frequency of Response: On occasion. Initial report due 120 minutes or 3 days after incident depending on number of potentially affected customers and nature of disruption. Final report due thirty days after initial report.

Estimated Annual Burden: 200 responses; 5 hours each; 1000 hours total.

Needs and Uses: The Notice of Proposed Rulemaking solicits public comment on the Commission's proposal to modify 47 CFR 63.100 to require that local exchange and interexchange common carriers that operate either transmission or switching facilities and provide access service or interstate or international telecommunications service report outages that affect 30,000 or more customers or that affect special facilities and report fire-related incidents impacting 100 or more lines. With such reports the FCC can monitor and take effective action to ensure network reliability.

Summary of NPRM

1. We propose to amend § 63.100 to require, in place of the present requirements, that selected facilities-based common carriers notify the Commission in writing (1) within 120 minutes of the carriers' knowledge that it is experiencing an outage potentially affects 50,000 or more of its customers for 30 minutes or more, (2) within 120 minutes of the carriers' knowledge that it is experiencing an outage which affects special offices and facilities and continues for 30 minutes or more, (3) within 3 days of the carriers' knowledge that it is experiencing an outage potentially affecting 30,000 to 50,000 of its customers for 30 minutes or more, and (4) within 3 days of the carriers' knowledge that it is experiencing a fire-related incident that impacts 100 or more service lines for 30 minutes or more. These initial reports, in a prescribed format, are to be served on the Commission's monitoring watch officer, on duty 24 hours a day by facsimile or other recorded means. Not later than thirty days after any reportable outage or incident under the proposed rules, the carrier will file a final service report containing any relevant information not contained in the initial report, including specification of the root cause of the outage or incident, with the Chief of the Commission's Common Carrier Bureau. Carriers are not required to report to the Commission outages affecting nuclear power plants, major military installations and key government facilities under the proposed rules, but they must report such outages, under the terms outlined in the proposed reporting requirements for special facilities, to the National Communications System. The National Communications System will determine if national security/emergency preparedness concerns would be adversely implicated by further reporting such outages, and, as further reporting is determined to be appropriate in each instance, report these outages to the Commission. The proposed rules further allow interexchange carriers to use blocked calls to determine whether criteria for reporting an outage have been reached. For purposes of complying with the required 50,000 customer threshold, IXCs would be required to report outages where more than 150,000 calls are blocked during a 30 minute period and, for purposes of complying with the 30,000 customer threshold, to report outages where more than 90,000 calls are blocked during a 30 minute period.

2. Present § 63.100 of the Commission's Rules, which the proposed rule will amend, was established in response to outage incidents that occurred in 1990 and 1991, largely as a result of the introduction of new technology into the

telecommunications infrastructure. In January of 1990, for example, AT&T experienced a large scale service failure when software used with its Signaling System 7 contained a coding error. Other major interexchange carriers also experienced significant outages. In June and July of 1991, local exchange carriers Pacific Bell and Bell Atlantic experienced major outages. At that time, the Commission had no systematic way by which to become informed quickly of significant service disruptions and was unable to determine whether certain kinds of technology or equipment threatened service reliability. Present Section 63.100 provided a vehicle by which the Commission became better and more quickly informed of certain significant outages.

3. The Report and Order adopting present § 63.100, 7 FCC Rcd 2010 (Released February 27, 1992), 56 FR 7883, March 5, 1992, requested that the Network Reliability Council, a federal advisory committee created by the Commission to provide advice to the Commission for enhancing network reliability, study and recommend suitable additions to the reporting requirement in § 63.100. The proposed amendment to § 63.100 incorporates many of the outage reporting recommendations of the Council. The Council's membership included all sectors of the telecommunications industry, as well as state regulators and representatives of large and small telecommunications consumers. All Council meetings were open to the public. Members of the public were invited to present written submissions for the Council's consideration. The final reporting recommendations, sent to the Commission on December 29, 1992, were the result of months of painstaking research by the Threshold Reporting Group, a research committee of the Council composed of industry and consumer telecommunications experts. A variety of possible reporting thresholds and conditions were considered by these experts, by the Council and by the Commission. (For a detailed research summary and analysis, see the Final Recommendation of the Threshold Reporting Group of the Network Reliability Council, December 15, 1992. This item is available for inspection and copying during normal working hours in room 6325 of the Commission's offices at 2025 M Street, NW., Washington, DC 20554; copies 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).

4. The Commission has studied the recommendations and has tentatively concluded that, with certain modifications, their establishment in the form of the proposed new Section 63.100, while cost-effective and not unduly burdensome to the reporting parties, will significantly enhance the capacity of the Commission to monitor outages and to encourage the industry to find ways to further ensure network reliability. As with other Commission regulations, compliance with the proposed reporting requirements, if they are established, may be effectively enforced under 47 CFR 1.80.

Regulatory Flexibility Analysis: We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined in section 601(3) of the Regulatory Flexibility Act. The Secretary shall send a copy of this NPRM, including the certification, to the Chief Counsel for advocacy of the small business administration in accordance with section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1167, 5 U.S.C. 601 *et seq.*

Ex Parte Presentations: This is a nonrestricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as required by Commission rules. *See generally* 47 CFR 1.1202, 1.1203 and 1.1206(a).

Legal Basis: Sections 1, 4, 201–205, 218, 220 and 403 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Service disruptions.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–29710 Filed 12–3–93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Betula Uber (Virginia Round-Leaf Birch) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify *Betula uber* (Ashe) Fernald (Virginia round-leaf birch) from endangered to threatened. This action is proposed due to substantial improvement in the status of this tree species, which is known from one naturally occurring population in southwestern Virginia. Although the natural population has decreased from 41 to 11 plants since the species' rediscovery in 1975, the establishment of 20 additional populations over the past decade has resulted in a dramatic increase in the total population to over 1,400 subadult trees. *Betula uber* seedlings also have been cultivated and distributed to interested individuals, arboreta, and botanical gardens throughout the United States and to two foreign countries.

This proposed reclassification is undertaken in fulfillment of section 4(c) of the Endangered Species Act (Act) of 1973, as amended, which requires the Service to periodically review and reclassify, as needed, the species on the Federal list of endangered and threatened wildlife and plants. The proposed change in classification, based on a thorough review of all information currently available for *Betula uber*, provides formal recognition of progress toward recovery of this species. Reclassification to threatened status will not significantly alter its protection under the Act.

DATES: Comments from all interested parties must be received by February 4, 1994. Public hearing requests must be received by January 20, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Office, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Mignogno at the above address, telephone (413/253–8627).

SUPPLEMENTARY INFORMATION:

Background

The Virginia round-leaf birch was originally described as a variety of the common sweet birch (*Betula lenta* L.) in 1918 by W.W. Ashe from trees he reported growing along the banks of Dickey Creek in Smyth County, Virginia (Ashe 1918). The taxon was subsequently elevated to the species level by M.L. Fernald. The round-leaf birch was not collected or observed during the 1950s and 1960s, and was assumed to be extinct until it was rediscovered in 1975 along the banks of Cressy Creek, approximately 2 kilometers (1 mile) from the type locality (Ogle and Mazzeo 1976). The general consensus among botanists working with the species is that Ashe probably erred in his original reference to Dickey Creek (Sharik and Ford 1984, Sharik, Feret and Dyer 1990). Since 1975, searches in the Cressy Creek and other watersheds over a three-county area have not revealed any additional populations in the wild.

Several lines of evidence now suggest a close evolutionary relationship between the Virginia round-leaf birch and the sweet birch. Both taxa are apparently diploids, with 28 pairs of chromosomes, and isozymes extracted from the cambium of both species show similar patterns (U.S. Fish and Wildlife Service 1990). The taxa overlap completely in flowering times, and they are interfertile (Sharik and Ford 1984, U.S. Fish and Wildlife Service 1990). The offspring of crosses between the two taxa typically possess either the round leaves characteristic of round-leaf birch or the ovate leaf shape typical of sweet birch. Preliminary analysis suggests that this difference in leaf shape may be controlled by a single gene (Sharik et al. 1990, U.S. Fish and Wildlife Service 1990). This subject warrants further data collection and analysis to determine the species' proper taxonomic status.

Betula uber is a moderate-sized tree in the Betulaceae family. It grows to 15 meters (45 feet) in height with smooth, dark brown to black, aromatic bark and a compact crown (Ogle and Mazzeo 1976, Sharik and Ford 1984, U.S. Fish and Wildlife Service 1990). Its leaves are round to slightly oblong and alternately arranged. The catkins have long, smooth scales with three broadly divergent lobes. Three winged nutlets or samaras are borne at the base of each scale (Sharik and Ford 1984). *Betula uber* flowers when the leaves emerge from the winter buds in April to early May (U.S. Fish and Wildlife Service 1986).

At the time of its rediscovery in 1975, the only known natural *Betula uber* population consisted of 41 individuals; by 1977 the population had declined to 26 individuals, and it is now down to 11 trees. This population is confined to a 100 meter-wide (100 yard-wide) band of highly disturbed second-growth forest along a one kilometer (1 mile) stretch of the Cressy Creek floodplain, a site nearly surrounded by agricultural land (Ogle and Mazzeo 1976, Ford, Sharik and Feret 1983). The strip of forest containing the round-leaf birch occurs within a much larger population of related dark-barked birch species (sweet birch and yellow birch, *B. alleghaniensis).* The round-leaf birch population extends over three contiguous ownerships comprising the Mount Rogers National Recreation Area in the Jefferson National Forest and two private tracts. In 1976, the Federal government and the private landowners erected protective fences around their respective segments of the population. This did not, however, prevent subsequent vandalism and transplanting of individual trees by private landowners, with a resultant loss of 12 round-leaf birches on the private lands.

Protection of the species gained momentum in 1977 with formation of the *Betula uber* Protection, Management and Research Coordinating Committee, which consists of representatives from the Federal and state governments, conservation organizations, universities, and the private sector. *Betula uber* was added to the U.S. Department of the Interior's list of endangered and threatened wildlife and plants on April 26, 1978 (**Federal Register** Vol. 43, No. 81, pp. 17910–17916), bringing it under the protection of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The species was also added to the Commonwealth of Virginia's Endangered Plant and Insect Species Act in 1979 (Virginia Department of Agriculture and Consumer Services 1979).

In 1982, the Service approved the Virginia Round-Leaf Birch Recovery Plan (U.S. Fish and Wildlife Service 1982), which was revised in 1986 and updated in 1990. The goal of this plan is to increase the number of round-leaf birches in the wild to a level where the species can be removed from the Federal list; this level is estimated at 500–1,000 individuals in each of 10 self-sustaining populations. These populations may include individuals of sweet birch which carry the roundleaf trait. Any population of round-leaf birch, whether natural or established through plantings, will be considered self-sustaining when it produces 500–1,000 individuals greater than 2 meters (6 feet) tall. Given the present status of round-leaf birch and current knowledge of its life history, this condition is projected to be met by the year 2010 in both the natural and additional populations. The 1990 plan does not document a reclassification objective; nevertheless, significant recovery progress can trigger consideration for reclassification to threatened.

The natural population has been monitored closely since 1978. Given the heavy mortality that has occurred in this population since 1975, an effort to enhance natural regeneration was implemented in 1981. Two small areas were cleared of vegetation within 60 meters (65 yards) of potential seed sources, one on public land and one on private land. Eighty-one round-leaf birch seedlings were recorded on the private property site. Round-leaf birch seedlings were not produced at the public land site, and this was attributed to the absence of a pollen source for the relatively isolated round-leaf birch mother trees growing there (Sharik et al. 1990). Initial survival and growth rates of the seedlings suggested that fitness in round-leaf birch may be as high as that in sweet birch (Sharik et al. 1990). However, all of the 30 round-leaf birch seedlings remaining after the end of the second growing season were gone by 1986, the apparent result of vandalism, as whole plants (including roots) were missing.

In 1984, The Nature Conservancy acquired 14 hectares (35 acres) of land adjacent to the natural population. The land was in turn purchased by the U.S. Forest Service in 1986 and has since been managed as potential round-leaf birch habitat; however, round-leaf birches currently do not occur there.

Given the initial success of experiments with birch regeneration, it was concluded that additional populations could be established and that they could be self-sustaining given periodic disturbance. In preparation for planting of seedlings, 20 small (0.1 hectare) (.3 acre) openings were cleared in wooded areas within the Cressy Creek watershed in locations where sweet birch was abundant. Seeds were collected from six round-leaf birch mother trees and four sweet birch mother trees, germinated in greenhouse conditions, and held in cultivation for two to three growing seasons before transplanting to the cleared areas in 1984 and 1985. Additional seeds were germinated in 1985 for transplanting in 1986 and 1987.

Five populations per year were established over the 4-year period, for a total of 20 populations, with the hope

that a minimum of 10 populations would be self-sustaining. Each newly-established population consisted of 96 individuals, including both round-leaf and sweet birch progeny. Habitat management to promote the establishment of these populations included fencing trees from browsers, removing competing vegetation around individual transplants, and removing competing vegetation from the forests bordering the populations. As of May 1992, survival averaged 77.5% for all populations regardless of the mother tree species, and ranged from 7.2% to 96.9% (Sharik *et al.* 1990). On this basis, 19 of the additional populations offer the possibility of self-maintenance.

Retention of round-leaf germplasm began in 1975 when the U.S. National Arboretum transplanted three seedlings from the wild to its grounds in Washington, DC. Approximately 50 plants were produced from the 3 genotypes; these plants were distributed to arboreta, botanical gardens, and nurseries in the United States and 2 European countries (Sharik *et al.* 1990). In 1988, approximately 2,000 seedlings from crosses of selected genotypes were propagated for distribution to arboreta and botanical gardens for teaching and research. Since 1989, round-leaf birch seedlings have been distributed to other interested organizations and individuals under policy guidelines developed by the Virginia Agricultural Experiment Station. Recipients are required to cover costs and sign a waiver that they will not sell the plants or their offspring.

To increase awareness of the recovery effort and to minimize human impact on the natural population of round-leaf birch located on private property, the trees on public land have been the focus of an ongoing round-leaf birch interpretive program. A sign erected by the U.S. Forest Service gives the location of the largest round-leaf birch in the population—the Mt. Rogers Viewing Area—and a ramp provides a close-up view of the tree, which is enclosed by a chain-link fence. Informational materials and guides tell the round-leaf birch story from its discovery through current recovery activities.

After a decade of coordinated effort by Federal, state, and private agencies and institutions, as well as private landowners, the outlook for the Virginia round-leaf birch has brightened considerably. Because of the significant progress made toward recovery of the species and the species' current status, reclassification of the Virginia round-leaf birch to threatened status is warranted. The current status of *Betula uber* is described below:

1. Ten additional populations have been established in suitable habitat; these populations have showed an average survival rate of ≥ 75% over a 5 to 8 year period and have reached the stage of initiating reproduction.

2. Genotypes have been preserved through a program of sexual propagation and through maintenance of a breeding orchard.

3. The single natural population is extant, and there are opportunities to protect and manage its habitat.

4. Sufficient information is known to facilitate *Betula uber* reproduction through habitat management.

Based on a review of status information, research results, and further planned recovery actions, it appears highly likely that progress toward the delisting objective specified in the recovery plan will continue.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Betula uber* (Ashe) Fernald (Virginia round-leaf birch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Virginia round-leaf birch is a pioneer species that succumbs to competition from longer-lived species. Under natural conditions, Virginia round-leaf birch habitat is threatened by factors such as drought, flooding, and competing vegetation. In this regard, by 1984 flooding and competition with later successional species had caused the death of 14 individual trees in the natural population.

There are 11 trees, 4 reproductively mature adults and 7 subadults, remaining in the natural population. Only 2 of the 11 trees occur on publicly protected land. The nine trees on private lands remain susceptible to adverse habitat modification or to vandalism. However, these threats have been greatly diminished through efforts to achieve landowner cooperation and public awareness together with the widespread distribution of artificially propagated seedlings to the public.

The optimum habitat requirements of this species apparently are very similar to these of sweet birch. Therefore, most of the 20 introduced populations were planted in areas where sweet birch was abundant and could be expected to regenerate well. Additionally, the 20 established populations were planted on U.S. Forest Service lands; thus protecting these individuals from take. Further, their habitats are protected from adverse modification and may be managed specifically to enhance the species' survival.

As part of the U.S. Forest Service's land management activities, competing vegetation is periodically removed from the base of the established trees. Because birches, in general, are known to be sensitive to elevated temperatures and reduced moisture (T.L. Sharik, Michigan Technological University, pers. comm., 1992), care is taken while raking around the trees to avoid removal of too much organic matter and exposure of the roots (C. Thomas, U.S. Forest Service, pers. comm., 1992).

On Forest Service land, a bank stabilization project located near the fenced enclosure of the largest *Betula uber* specimen at the Mt. Rogers Viewing Area was completed in the summer of 1992. This project, which was designed to hold excessive runoff in the existing stream channel in order to prevent flooding or erosion of birch habitat, has apparently achieved its aims without causing any unintended deleterious effects on the birch population.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* To date, the historical loss of 10 of the original 41 individuals in the population discovered in 1975 (Sharik et al. 1990) can be attributed to transplanting of individual trees on the privately-owned tracts and to vandalism. Collection accounts for an additional loss of 30 seedlings in 1981 from the private land portion of the natural regeneration study area (U.S. Fish and Wildlife Service 1990, Sharik et al. 1990). Beginning in 1988, in an attempt to reduce collection pressure, and to protect from loss of genetic diversity due to illegal collecting, seedlings were produced from controlled crosses at a breeding orchard located at the Reynolds Homestead Research Center in Critz, Virginia. The orchard is maintained by periodic mowing, weeding, inspection, and treatment for insects and diseases. The majority of the seedlings are in good to excellent condition.

Beginning in 1988, public arboreta, botanical gardens, nurseries, and other interested parties were informed of the availability of round-leaf birch seedlings produced from the breeding orchard, and many requests were filled, subject to the condition that the plants or their offspring were not to be sold. In

addition to increasing the number and geographical distribution of round-leaf birches in cultivation, making the plants available to the public was viewed as a way of possibly reducing vandalism to the natural population by changing the public's perception of the tree as rare.

While vandalism and collection remain concerns, the distribution of seedlings, along with public awareness efforts such as the interpretive activities at the Mt. Rogers National Recreation Area, and coordination with persons and agencies in the area whose activities could affect the species, have shown at least some indirect success in alleviating these problems. It was noted at the 1992 meeting of the *Betula uber* Protection, Management and Research Coordinating Committee that no vandalism was reported during the previous year in the introduced populations for the first time in five years.

C. *Disease or predation. Betula uber* is subject to a number of compromising factors, including diseases, insects, and herbivory. Additionally, white-tailed deer will rub saplings with their antlers, and this may nearly or completely girdle the main stem. While no serious problems with insect damage or disease have been observed in the natural population, three diseases were observed in the introduced populations during the 1989 growing season (C. Thomas, pers. comm., 1992), cankers, anthracnose, and a putative foliar virus. In 1991, the highest mortality rate of trees with basal cankers occurred in those trees located on poor or exposed sites or those which showed symptoms of die-back during the year. Plots were sprayed with pesticides between May and August 1991 to control fungal pathogens and insects that may be transmitting these fungi or creating wounds through which the fungal canker pathogens can enter. Damage to round-leaf birch leaves has also been incurred from Japanese beetles.

During 1992, considerable mortality of *Betula uber* was attributed to deer rubs. Browsing by deer and rabbit was evident in several of the established populations. While browsing may not cause direct mortality due to the capacity of *Betula uber* to resprout, it may decrease the birch's ability to compete with other plants, resulting in the demise of the tree. Wire cages, which were placed around the smaller trees to prevent further loss from browsing, may have been prematurely removed from some of the birch trees in June 1991. Further fencing is needed for protection. Additionally, approximately ten were found to be leaning. The cause is unknown, but the trees were staked in an attempt to stabilize them.

The maintenance activities described above will continue as part of the recovery program following reclassification of *Betula uber* to threatened.

D. *The inadequacy of existing regulatory mechanisms. Betula uber* is protected by the Federal Endangered Species Act of 1973, as amended, and by the Virginia Endangered Plant and Insect Act of 1979. The Virginia statute prohibits taking of endangered plants on both public and private lands, except by the private landowner. If the proposed reclassification to threatened status becomes final, no substantive change in the protection afforded this species under these laws is anticipated. Populations on private lands will still be subject to loss due to inadequate regulatory protection.

E. *Other natural or manmade factors affecting its continued existence.* Most of the loss in the natural population has been attributed to vandalism and collection. However, loss of individuals could continue to occur from such natural causes as competition from later successional species and flooding of Cressy Creek. Minimal reproduction in the natural population, probably due to the limited source of pollen, may result in the gradual and possibly irreversible decline of this population unless further management actions are taken.

The relatively low numbers and limited range of the species continue to make the Cressy Creek populations vulnerable to natural stresses or catastrophes. However, given the management tools developed for the species, as well as the variety of conditions under which the 20 introduced populations appear to grow, it is unlikely that a single natural stress would result in the loss of *Betula uber* in more than a portion of its existing range.

While the single natural population remains vulnerable to extirpation, due largely to past acts of vandalism and a continuing failure to reproduce, 19 of the 20 additional populations offer the possibility of self-maintenance, suggesting that it is unlikely that the round-leaf birch will disappear from its only known native watershed. The additional populations are believed to encompass the genetic diversity of the natural population. As of May 1992, more than 1,400 individuals occur within the Cressy Creek watershed, as compared to only 41 individuals known to be in existence when the Cressy Creek population was rediscovered in 1975.

Based on a review of the Virginia Round-Leaf Birch Recovery Plan (U.S. Fish and Wildlife Service 1990), the species' present status does not meet the criteria established for delisting the species. However, given the successful propagation and distribution of plants together with its current distribution and afforded protection, this rare birch is not in imminent danger of extinction. The best available data indicate that *Betula uber* qualifies as a threatened species. The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Betula uber* as threatened.

Available Conservation Measures

If made final, this rule would change the status of *Betula uber* at 50 CFR 17.12 from endangered to threatened. This rule would formally recognize that this species is no longer in imminent danger of extinction throughout a significant portion of it's range. The proposed change in classification does not significantly alter the protection for this species under the Act. Anyone taking, attempting to take, or otherwise possessing a *Betula uber* in an illegal manner would still be subject to penalty under Section 11 of the Act. There would be no difference in penalties for the illegal take of an endangered species versus a threatened species. Section 7 of the Act would still continue to protect this species from Federal actions that would jeopardize the continued existence of *Betula uber.*

Conservation measures prescribed by the Virginia Round-Leaf Birch Recovery Plan would proceed. Conservation measures identified in the species recovery plan include: Continued efforts to protect portions of the natural population that occur on private lands; expanded management of the natural population; continued efforts to facilitate natural regeneration; establishment of pollen and seed banks; continued maintenance of the additional populations, including control of disease and insect problems, prevention of browsing, and management of competing vegetation; further research into the plant's reproductive and genetic systems, as well as habitat requirements; and continued efforts to raise the public's awareness in regard to issues affecting this and other endangered plants (U.S. Fish and Wildlife Service 1990). According to the recovery plan, implementation of these recovery actions will take place over a period of

approximately 17 years, with full recovery of the species being achieved by the year 2010.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on *Betula uber* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received by January 20, 1994. Such requests must be made in writing and addressed to the agency identified under **ADDRESSES** above.

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).

Literature Cited

Ashe, W. W. 1918. Notes on *Betula*. Rhodora 20:63–64.

Ford, R. H., T. L. Sharik, and P. P. Feret. 1983. Seed dispersal of the endangered Virginia round-leaf birch (*Betula uber*). Forest Ecology and Management 6:115–128.

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Sharik, T.L. and R.H. Ford. 1984. Variation and taxonomy of *Betula uber, B. lenta*, and *B. alleghaniensis*. Brittonia 36(3):307–316.

Sharik, T.L., P.P. Feret and R.W. Dyer. 1990. Recovery of the endangered Virginia round-leaf birch (*Betula uber*): A decade of effort. Page 185–188. *IN*: Sheviak and D.J. Leopold (eds.) Ecosystem management: Rare species and significant habitats. 1990. New York State Museum Bulletin 471.

Virginia Department of Agriculture and Consumer Services. 1979. Endangered Plant and Insect Species Act. 1979 Cumulative Supplement to Code of Virginia 39: 3–6.

U.S. Fish and Wildlife Service. 1982. Virginia round-leaf birch recovery plan. Newton Corner, MA. 58 pp.

U.S. Fish and Wildlife Service. 1986. Virginia round-leaf birch recovery plan, first revision, Newton Corner, MA. 25 pp.

U.S. Fish and Wildlife Service. 1990. Virginia round-leaf birch recovery plan. Update. Newton Corner, MA. 43 pp.

Authors

The primary authors of this proposed rule are Ms. Mary Parkin and Ms. Donna Surabian, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413) 253–8617.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

2. § 17.12(h) is amended by revising the entry for *Betula uber* under the family Betulaceae 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					
*	*	*	*	*	*	*
Betulaceae—Birch family:						
Betula uber	Virginia round-leaf birch	U.S.A. (VA)	T	39	NA	NA
*	*	*	*	*	*	*

Dated: October 28, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–29566 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 215, 216, and 222

[Docket No. 930404–3104; I.D. 120293A]

RIN 0648–AD11

Protected Species Special Exception Permits

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS is extending the comment period on proposed rules to review regulations for protected species permits for purposes of public display, scientific research, and enhancement (58 FR 53320, October 14, 1993). Three public hearings have been scheduled to give interested members of the public an opportunity to provide comments on the proposed rule (58 FR 58680). NMFS has received requests for an extension of the

comment period. In addition, during both the public briefing and other briefings conducted for interested groups, several persons have requested an extension to the comment period. Therefore, in the interest of providing all interested persons additional time to thoroughly review and carefully prepare comments, the comment period on these proposed rules is extended by 30 days.

DATES: Comments on the proposed rule for protected species special exception permits (58 FR 53320) must be postmarked or received by January 14, 1994.

ADDRESSES: Comments on the proposed rule should be mailed to the Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Proposed Rule Comments." A copy of the proposed rule may be obtained by writing to the same address, or by sending a facsimile to Ann Terbush at (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Ann Terbush or Art Jeffers in Silver Spring, Maryland, at (301) 713–2289.

List of Subjects

50 CFR Part 215

Administrative practice and procedure, Marine Mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 222

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

Dated: November 30, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–29715 Filed 12–3–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 232
Monday, December 6, 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

Animal and Plant Health Inspection Service

[Docket No. 93–156–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and a finding of no significant impact for the shipment of an unlicensed veterinary biological product for field testing. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that the shipment of the unlicensed veterinary biological product for field testing will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**" Please refer to the docket number of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday; except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 571, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; telephone (301) 436–5390; fax (301) 436–8669.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed veterinary biological product for the purpose of conducting a proposed field test, a person must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

In determining whether to authorize shipment of the unlicensed veterinary biological product referenced in this notice for field testing, APHIS conducted a risk analysis to assess the unlicensed veterinary biological product's potential effects on the safety of animals, public health, and the environment. Based on that risk analysis, APHIS has prepared an environmental assessment. APHIS has concluded that the shipment of the unlicensed veterinary biological product for field testing will not significantly affect the quality of the human environment. Based on this finding of no significant impact, we have determined that there is no need to prepare an environmental impact statement.

An environmental assessment and finding of no significant impact have been prepared for the shipment of the following unlicensed veterinary biological product for field testing:

Requester(s)	Product	Field test location(s)
Rhone Merieux, Inc. and the State of New Jersey.	A live, genetically engineered, vacciniavectored rabies vaccine that expresses the rabies virus surface glycoprotein; the vaccine is enclosed in raccoon baits.	The northern part of the Cape May peninsula, NJ.

The environmental assessment and finding of no significant impact have been prepared in accordance with:

(1) National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*),

(2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508),

(3) USDA Regulations Implementing NEPA (7 CFR part 1b), and

(4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 30th day of November 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–29738 Filed 12–3–93; 8:45 am]
BILLING CODE 3410–34–P

[Docket No. 93–148–1]

Monsanto Co.; Receipt of Petition for Determination of Nonregulated Status of Genetically Engineered Soybean Line

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Monsanto Co., seeking a determination regarding the regulatory status of its glyphosate-tolerant soybean line 40–3–2. In accordance with our regulations, we are soliciting comments on whether such soybeans present a plant pest risk. This action is necessary to enable interested persons to advise APHIS on any plant pest issues raised by this petition.

DATES: Consideration will be given only to comments received on or before February 4, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–148–1. A copy of the Monsanto petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, or at USDA, suite 7, (first floor) Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Persons wishing to review the documents are asked to call (202) 690–2817 in advance of visiting the Washington, DC location, or (301) 436–7612 for Hyattsville, MD. A copy of the Monsanto petition may be obtained by contacting Ms. Kay Peterson at (301) 436–7601.

FOR FURTHER INFORMATION CONTACT: Shirley P. Ingebritsen, Regulatory Analyst, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7601.

SUPPLEMENTARY INFORMATION: On September 15, 1993, the Animal and Plant Health Inspection Service (APHIS) received a "Petition for Determination of Nonregulated Status under 7 CFR Part 340" from Monsanto Co. (Monsanto), of Chesterfield, MO. The Monsanto petition seeks a determination that its glyphosate-tolerant soybean (GTS) line 40–3–2 is not a "regulated article" under regulations at 7 CFR part 340 (the regulations).

The Monsanto petition states that the GTS line 40–3–2 should not be regulated by APHIS because it does not present a plant pest risk. GTS line 40–3–2 soybeans have been described by Monsanto as soybeans containing a Roundup Ready™ gene, and any progeny derived from crosses between GTS line 40–3–2 and traditional soybean varieties. The Roundup Ready™ gene contained in GTS line 40–3–2 is a single insert of DNA comprised of the enhanced 35S promoter derived from cauliflower mosaic virus, the chloroplast transit peptide coding sequence from *Petunia hybrida* fused to the 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS) gene derived from *Agrobacterium* sp. strain CP4, and the nopaline synthase 3′ terminator from *A. tumefaciens*. Glyphosate, the active ingredient in Roundup® herbicide, controls weeds due to the inhibition of the enzyme EPSPS. GTS line 40–3–2 soybeans express an EPSPS enzyme tolerant to the herbicide glyphosate, thereby conferring tolerance to Roundup® herbicide.

GTS line 40–3–2 is currently considered a regulated article under the regulations because it contains gene sequences (vectors, promoters and terminators) derived from plant pathogenic sources. In the process of reviewing applications for field trials with GTS line 40–3–2, APHIS determined that the vectors and other elements were disarmed, and that the trials did not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The United States Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 135 *et seq.*). FIFRA requires that pesticides, including herbicides, be registered prior to distribution and sale unless exempt by regulation. Plants which have been genetically modified to confer herbicide tolerance or resistance to the plants are not regulated under this act since they are not themselves considered pesticides.

In cases where the genetically modified plants allow for a new use of a herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. In conducting such an approval, EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide.

When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*). The Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA. FDA's policy statement concerning regulation of plants derived from new plant varieties was published in the **Federal Register** on May 29, 1992, and appears at 57 FR 22984–23005.

Under § 340.6 of the regulations, any person may submit a petition to seek a determination that a particular regulated article should not be regulated by APHIS. In accordance with the regulations, this notice establishes that comments on the petition will be accepted for a period of 60 days from the date of this notice. After reviewing the data submitted by the petitioner, comments received during the comment period, and other relevant information, APHIS will prepare a decision document on the regulatory status of GTS line 40–3–2.

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 30th day of November 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–29739 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Stabilization and Conservation Service Cotton Marketing System

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice requesting comments.

SUMMARY: Several electronic cotton marketing systems are operating in the United States. With today's constant improvements in the technology of computers and electronic data movement, it may be possible to improve the efficiency of the system for the marketing of cotton in the United States. Comment is being sought regarding the Government's role and regulatory authority in fostering improvements in the system through the use of current communication and computer technology.

DATES: Comments must be received on or before Febraury 4, 1994 in order to be assured of consideration.

ADDRESSES: Submit comments to: Acting Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3090–S, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Director, Fibers and Rice Analysis Division, ASCS, USDA, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or telephone 202–720–7954.

SUPPLEMENTARY INFORMATION:

Background

The United States Warehouse Act (USWA) was amended by Section 508 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) and later by Public Law 102–553 to authorize the Secretary of Agriculture to provide for the issuance of electronic warehouse receipts against cotton stored in any warehouse licensed under the USWA. To implement this provision, ASCS published a proposed rule on August 16, 1993, at 58 FR 43298 in which public comments were requested concerning the establishment of electronic warehouse receipt filing systems. The comment period for this proposed rule closed on October 15, 1993.

The proposed rule envisioned privately operated central electronic filing system "providers", each with subscribing warehouses which would transmit electronic receipts to the provider. Warehouses not licensed under the USWA would be permitted to file electronic receipts with a licensed provider. However, ASCS would have no regulatory authority over warehouse receipts issued by unlicensed warehousemen.

The recent amendments to the USWA and the proposed rule address only the issue of converting paper warehouse receipts to electronic warehouse receipts and maintaining a central filing system. However, there are many other facets of the cotton marketing system which could be streamlined through a reduction in unnecessary governmental regulatory burdens and greater use of electronic communications technology, computer systems, and data bases that are currently available.

The question this notice poses is: What role should the Federal government play in the integration of these technologies into the system for marketing cotton in the United States? The following represent examples of areas where this integration could improve the marketing of cotton in the United States.

1. Information collected by different Federal agencies could improve the marketing of cotton if it were publicly available in the proper format. For example, readily available and accurate price information could accelerate the shift toward mill-direct sales by growers, which might reduce the costs of bringing cotton to market and the price paid by consumers.

2. USDA and the cotton industry develop standards for the packaging of cotton bales. USDA encourages adherence to these standards by denying price support loans on bales that do not meet such standards. There may be a larger role for electronic data processing in the establishment and adjustment of these standards. Perhaps, better, more cost effective packaging standards could be more rapidly developed and implemented if bale packaging data were included in the grading data.

3. Most cotton is graded by USDA and receives a set of numerical descriptions of its most important characteristics such as staple length, color, and non-lint content. With state-of-the-art grading equipment, the grade and class data can be stored and transmitted electronically as well as merged with warehouse receipt data thereby allowing the full electronic merchandising of cotton nationwide.

4. The ability of American cotton to remain competitive in world markets, especially in the face of recent extraordinary pressures from the Central Asian nations which were formerly members of the Soviet Union, is extremely important to the health of the U.S. cotton industry. More rapid introduction of electronic data processing into the cotton trade could provide an edge to the U.S. cotton industry given this country's leadership position in the field of computing technology. More integration of the various stages of cotton marketing from ginning and classing through financing and shipping could be brought about through greater use of data processing. The suggested integration will enable the U.S. cotton industry to reduce its overhead costs and to more effectively tie into worldwide cotton markets, thus expanding the international markets for U.S. cotton.

5. Electronic data processing can help relieve information bottlenecks and help warehouses, buyers, shippers, and carriers foresee constrictions and correct them in time. The suggested integration could be used to remove administrative roadblocks now in place which prevent these groups from improving the flow of cotton to the market. For example, ASCS and the Agricultural Marketing Service currently retain certain separate authorities regarding the regulation of the marketing of cotton. The suggested integration might entail the merger of the data bases of these and other related agencies to reduce unnecessary regulatory impediments to the movement of cotton.

It is inevitable that the cotton industry will move toward a more integrated electronic marketing system in the future. The movement toward electronic warehouse receipts is the first step in this process. ASCS is soliciting public comment regarding the Government's role in the electronic integration of the marketing of cotton in the U.S. Specifically, ASCS would like comments on the following questions:

1. What role should the Federal government have in the development of improvements to the marketing system for cotton?

2. What are the specific Government regulatory impediments to the marketing system for cotton?

3. Should the Federal government establish and regulate a single electronic system for the marketing of cotton from the field to the end use or export which would integrate data from the Government and private sources? If so, how would this system be structured, who would have access to it, and what would be the source of funding?

4. Should the Federal government preempt State and commercial liens to establish a single electronic mechanism for the perfection of security interests in baled cotton?

5. Should such a system be limited to Federally licensed warehouses or should it include non-Federally licensed warehouses?

Signed at Washington, DC on November 29, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–29673 Filed 12–03–93; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Noxious Weed Management

AGENCY: Forest Service, USDA.

ACTION: Notice of interim policy; request for comments.

SUMMARY: The Forest Service has issued interim direction for management of noxious weeds in response to new requirements for USDA agencies resulting from the 1990 Farm Bill. The interim directive sets forth new direction to Forest Service personnel on

the management for control of noxious weeds and undesirable plants on National Forest System lands, clarifies responsibilities and authorities for noxious weed management, and provides for an integrated weed management approach. The intended effect is to expand upon existing noxious weed management efforts by increasing cooperation for effective management of noxious weeds and undesirable plants on National Forest System lands through an integrated effort which emphasizes control, containment and prevention measures, including improved knowledge and awareness of the threats to native plant communities and natural ecosystems.

DATES: Comments must be received in writing by February 4, 1994.

ADDRESSES: Send written comments to Director, Range Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. The public may inspect comments received on this interim policy in the Office of the Director of Range Management, 201 14th Street, SW., 3rd Floor, South Wing, Washington, DC, between the hours of 8:30 a.m. and 4 p.m. To facilitate entry into the building, the public is requested to make arrangements for inspection in advance by calling (202) 205–1460.

FOR FURTHER INFORMATION CONTACT: Janette Kaiser, Rangeland Ecosystem Specialist, Range Management Staff, (202) 205–0847.

SUPPLEMENTARY INFORMATION:

Background

Expansion of noxious weed infestation, particularly in the Western United States, is a growing concern due to the potential threat of infestation of susceptible land and water in the United States. Large infestations can adversely affect food production, wilderness values, wildlife habitat, visual quality, forage production, reforestation, recreation opportunities, and land values. In November 1990, Congress amended section 15 of the 1974 Noxious Weed Act in section 1453 of the 1990 Farm Bill (7 U.S.C. 2801 et seq.). This new legislation directs the Secretary of Agriculture to: (a) Develop and coordinate a management program for control of noxious weeds and undesirable plants which are harmful, injurious, poisonous or toxic on Federal lands under the agency's jurisdiction; (b) establish and adequately fund the program; (c) complete and implement cooperative agreements and/or memorandums of understanding regarding the management of noxious weeds on Federal lands under the agency's jurisdiction; and, (d) establish an Integrated Weed Management approach to control or contain species identified and targeted under cooperative agreements and/or memorandums.

Additionally, the act requires cooperation with State, county, and other Federal agencies in the application and enforcement of all laws and regulations relating to the management and control of noxious weeds and directs the Secretary of Agriculture to cooperate with States, counties, and other Federal agencies in the control and containment of noxious weeds. Any non-action by any of the involved parties (States, counties, or others) could result in ineffective and incomplete actions in controlling and containing noxious weeds which cross property boundaries. The Forest Service must also comply with the National Environmental Policy Act (NEPA) requirements to determine the scope of environmental impacts for on-the-ground noxious weed management.

In response to the new legislation, the Forest Service issued an Interim Directive (ID) No. 2080–92–1 to Forest Service Manual Chapter 2080—Noxious Weed Management on August 3, 1992. The ID expires in 18 months. This directive implements an integrated approach for management of noxious weeds on National Forest System lands and clarifies authorities and responsibilities for the noxious weed management program.

Prior to issuance of the ID, Forest Service noxious weed management efforts have been limited to those infestations where actions would be most effective in preventing or reducing the spread of noxious weeds, and cooperation was limited to areas where cooperative efforts were underway, such as organized weed control districts.

The policy in the Interim Directive provides for the control and containment of noxious weeds in an effective manner through application of essential science and technologies related to noxious weed management. More specifically, the objectives are to utilize an integrated weed management approach to meet vegetation management goals documented in Forest Land and Resource Management plans; prevent the introduction and establishment of new noxious weed infestations; contain and suppress existing noxious weed infestations; and cooperate with State agencies, local landowners, weed control districts and boards, and other Federal agencies in management and control of noxious weeds. Additionally, these efforts will enhance efforts to increase knowledge and awareness of employees, users of National Forest System lands, adjacent landowners, and State agencies about noxious weed threats to native plant communities and ecosystems.

Summary

The intended effect of the interim directive is to implement the new legislation by utilizing an integrated noxious weed management approach which includes education, prevention, treatment, containment, and control measures for noxious weed infestations. The Forest Service will encourage development, implementation, and maintenance of an integrated weed management education and training program which promotes the concepts and principles of weed science. Where appropriate, forest officers may require contractors, permittees, and recreationists as a condition of use to comply with prevention measures prior to entry onto National Forest System lands.

The text of the Interim Directive is set out at the end of this notice. Public comment is invited and will be considered in adoption of a final policy, notice which will be published in the **Federal Register**.

Regulatory Impacts

This proposed policy has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this proposed policy does not have the impacts associated with a major rule. The policy will not have an effect of $100 million or more on the economy; substantially increase prices or costs for consumers, industry, or State or local governments; nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this policy as it consists primarily of minor changes in agency procedures and it does not increase costs to the Government or users of the National Forests.

Moreover, this policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Act.

Environmental Impact

This interim policy is within a category of actions excluded from documentation in an environmental assessment or environmental impact

statement as set forth in Forest Service Environmental Policy and Procedures Handbook 1909.15, section 31.1b, paragraph (2): "Rules, regulations or policies to establish Service-wide administrative procedures, program processes, or instructions" (57 FR 43180, 43208, September 18, 1992). There are no extraordinary circumstances involved which would cause the categorical exclusion to be inapplicable.

Dated: June 16, 1993.

Jeff M. Simmon,

Acting Chief.

Editorial Note: This document was received at the Office of the Federal Register on December 1, 1993.

FOREST SERVICE MANUAL

Washington, DC

Interim Directive: 2080–92–1.
Effective Date: August 3, 1992.
Expiration Date: February 3, 1994.

Chapter: 2080—Noxious Weed Management

Posting Notice: Last ID was No. 1, which has expired.

2080.1 Authority. Management of noxious weeds must conform to the following:

1. *The Federal Noxious Weed Act of 1974, as amended* (7 U.S.C. 2801 et seq.), and implementing regulations at 36 CFR 222.8, Subpart A requires cooperation with State, county, and other Federal agencies in the application and enforcement of all laws and regulations relating to management and control of noxious weeds. The Federal Noxious Weed Act directs the Secretary of Agriculture to: (a) Develop and coordinate a management program for control of undesirable plants which are noxious, harmful, injurious, poisonous or toxic on Federal lands under the agency's jurisdiction, (b) establish and adequately fund the program, (c) complete and implement cooperative agreements and/or memorandums of understanding regarding the management of noxious weeds on Federal lands under the agency's jurisdiction, and (d) establish Integrated Weed Management to control or contain species identified and targeted under cooperative agreements and/or memorandums.

2. *The National Environmental Policy Act (NEPA),* and implementing regulations found in 40 CFR 1500–1508 (FSH 1909.15).

3. *Departmental Regulation 9500–10, January 18, 1990,* which sets forth Departmental policy relating to the management and coordination of noxious weed activities among agencies of the USDA and other executive agencies, organizations, and individuals.

2080.2 Objectives. To control and contain noxious weeds in an effective manner through applying the essential science and technologies involved in managing noxious weeds.

Specific objectives of noxious weed management are to:

1. Use an Integrated Weed Management approach to meet vegetation management goals documented in Forest Land and Resource Management Plans (Sec. 2080.5).

2. Prevent the introduction and establishment of new noxious weed infestations.

3. Contain and suppress existing noxious weed infestations.

4. Cooperate with State agencies, local landowners, weed control districts and boards, and other Federal agencies in management and control of noxious weeds.

5. Increase the general knowledge and awareness of employees, users of National Forest System lands, adjacent landowners, and State agencies about noxious weed threats to native plant communities and ecosystems.

2080.3 Policy. Develop, coordinate, and allocate adequate funds, to the extent funds are made available, for a noxious weed management program for NFS lands, consistent with the policies set forth in sections 2080.31 through 2080.36.

2080.31 Forest Planning. Manage noxious weeds on National Forest Systems lands to achieve the goals and objectives identified in Forest Land and Resource Management Plans (FSM 1910, 1920, and 1930).

Specify management direction for prevention, containment, and control of noxious weeds for special areas such as Wilderness, Wild and Scenic Rivers, Research Natural Areas, botanical areas, and so on.

2080.32 Project-level Analysis and Management.

1. Assess the possibility of introducing or spreading noxious weeds, especially when ground disturbing actions are proposed.

2. Use an Integrated Weed Management approach to control and/or contain noxious weed species targeted under cooperative agreements or memorandums of understanding.

3. Ensure that environmental controls and objectives are met for threatened and endangered or other species, as specified in applicable laws, policy, and regulations for project-level actions, as provided in the NEPA process.

4. For projects having moderate to high risk of introducing or spreading these weeds, implement proactive noxious weed management measures (sec. 2080.33–35).

5. Determine the factors which favored the initial establishment and spread of noxious weeds, and design management practices or prescriptions to reduce the need for future treatment(s).

6. Assign a high priority for prevention and control of noxious weeds in potential emergency staging areas, trailheads, camp grounds, and gravel pits.

2080.33 Prevention and Control Measures.

1. Manage noxious weeds through an Integrated Weed Management approach in the following order: (a) Prevent the introduction of new invaders, (b) conduct early treatment of new infestations, and (c) contain and control established infestations.

2. Make every effort to ensure that all seed, feed, hay and straw used on National Forest System lands is free of noxious weed seeds. (FSH 6309.12, sec. 42 and 42.1).

3. Where states have enacted legislation and have an active program to make weed-free forage available, Forest Officers should issue orders restricting the transport of feed, hay, straw or mulch which is not declared as weed-free, as provided in 36 CFR 261.50(a) and 261.58(t).

4. Use contract and permit clauses to prevent the introduction or spread of noxious weeds by contractors and permittees.

5. Where determined to be appropriate, contractors or permittees should be required to clean their equipment prior to entry onto NFS lands to prevent carrying noxious weed seeds or their propagative parts.

2080.34 Cooperation. It is essential to cooperate and coordinate with State agencies, landowners, local governments, universities, and other Federal agencies for the successful prevention and control of noxious weeds.

1. As appropriate, enter into cooperative agreements or memorandums of understanding to coordinate the management of noxious weeds on NFS lands in accordance with FSM 1580.

2. Emphasize cooperative research that defines the ecological requirements of noxious weeds, cost-effective management strategies, and beneficial uses.

3. Assist and promote cooperative efforts with other Federal, State, local, international agencies, and universities. Cooperate with them in the following:

a. Assisting in identifying, rearing, releasing, and redistributing new biological control agents in North America.

b. Formulating and implementing Integrated Weed Management prescriptions and measures based on beneficial uses of noxious weeds.

c. Researching and using desirable plant species that are competitive with noxious weeds.

d. Developing interagency data bases and sharing noxious weed inventory information.

e. Developing educational and public awareness materials and handbooks.

2080.35 Education and Public Awareness. To ensure proficiency, the Forest Service shall develop, implement and maintain an Integrated Weed Management education and training program for employees which covers the concepts and principles of weed science. In addition, Regions and Forests should develop and distribute public education materials which improve public awareness of the problems and impacts associated with noxious weeds.

2080.36 Information Collection and Reporting.

1. Establish and maintain in the Forest Service Range Automated Information System (FSRAMIS) a current inventory of acres infested with noxious weeds, by species and location by Forest, Ranger District, State and County. Use other Regionally approved corporate data bases where regions and forests are not on FSRAMIS (FSM 2270). Delineate three infestation levels as defined in 2080.5.

2. Report the acres treated or retreated during the previous Fiscal Year using the Management Attainment Reporting System (MARS) to the Washington Office Director of Range Management. For acres treated biologically, only report those acres which

had biological agents introduced on them during the reporting period (FSM 6550; FSH 6509.11k).

3. As requested, provide input to the USDA Agricultural Pest Information System.

2080.4 Responsibility.

2080.41 Washington Office, Director of Range Management. The Director of Range Management is responsible for:

1. Representing the Chief on National Committees and ad hoc groups concerned with noxious weed management.

2. Maintaining contact with the Forest Service Research organization, Agricultural Research Service (ARS), Animal and Plant Health Inspection Service (APHIS), and Cooperative Research Service (CRS) program managers, to review the current noxious weed research program, identify additional research needs, set priorities, and help coordinate research efforts for control or prevention of noxious weeds.

3. Coordinating with other Federal agencies in the establishment, application, and use of an Integrated Weed Management approach for the control and containment of noxious weeds.

4. Providing national program leadership for the noxious weed management program through the Forest Service budget process, land and resource management and project-level planning direction, and the Resource Planning Act (RPA) program.

5. Determining national noxious weed information needs.

6. Monitoring regional compliance with national policy.

7. Establishing standards for noxious weed management training and continuing education.

2080.42 Regional Foresters. Regional Foresters are responsible for:

1. Developing and implementing regional guidance or direction, where necessary, which guide forest land and resource management and project-level planning for the control, containment, eradication, and management of noxious weeds on NFS lands.

2. Appointing a coordinator to manage the regional noxious weed program.

3. Establishing and maintaining a noxious weed inventory by Forest, State and Region, which includes species, acreage and infestation level through the FSRAMIS or other regionally approved corporate data bases.

4. Supplementing national policy to address regional priorities and to promote consistency with state laws, as needed.

5. Developing and implementing cooperative agreements or memorandums of understanding with other Federal and State agencies.

6. Developing and coordinating a recurring noxious weed management training and continuing education program.

7. Developing public information and education programs to improve awareness of noxious weed and Integrated Weed Management.

8. Cooperating with State agencies to enforce State legislation requiring noxious weed-free forage or seed on National Forest System lands.

2080.43 Forest Supervisors. Forest Supervisors are responsible for:

1. Preventing and controlling noxious weeds on NFS lands.

2. Appointing a coordinator to manage the Forest noxious weed program.

3. Ensuring that the forest land and resource management plan is sufficient to guide the management of noxious weeds.

4. Establishing and maintaining a noxious weed inventory by Forest, which includes species, acreage and infestation level through the FSRAMIS or other regionally approved corporate data bases.

5. Training employees to identify known and potential noxious weeds in and surrounding the Forest.

6. Preparing noxious weed risk assessments as part of the NEPA process for all ground disturbing and site altering activities.

7. Ensuring that contracts and permits contain appropriate clauses for preventing the introduction or spread of noxious weeds.

8. Cooperating with State agencies to enforce State legislation requiring noxious weed-free forage or seed on National Forest System lands.

9. Where needed, issuing orders under the authority of 36 CFR 261.50(a) and 261.58(t) to control the introduction of noxious weed seeds on NFS lands. Orders may restrict the possession, storage, or transporting of any stock feed, hay, straw, mulch or processed supplemental feed.

10. Enforcing closure or prohibition orders issued under 36 CFR 261.50(a) and 261.58(t) and contract specifications intended to prevent and control the spread of noxious weeds.

11. Coordinating with State and county agencies and landowners in prevention, control, and monitoring efforts involved with the management of noxious weeds.

2080.44 District Rangers. District Rangers are responsible for:

1. Preventing the introduction and establishment as well as the containment and suppression of noxious weeds.

2. Appointing a coordinator to manage the District noxious weed program.

3. Maintaining a noxious weed inventory by District which includes species, acreage, and infestation level through the FSRAMIS or other regionally approved corporate data bases.

4. Monitoring noxious weed infestations and estimating the current and potential impacts to all resources.

5. Training employees to identify known and potential noxious weeds in and surrounding the District.

6. Preparing noxious weed risk assessments as part of the NEPA process for all ground disturbing and site altering activities.

7. Cooperating with State agencies to enforce State legislation requiring noxious weed-free forage or seed on National Forest System lands.

8. Enforcing closure or prohibition orders issued under 36 CFR 261.50(a) and 261.58(t) and contract specifications intended to prevent and control the spread of noxious weeds.

9. Coordinating with state and county agencies and landowners in prevention, control, and monitoring efforts involved with the management of noxious weeds.

10. Ensuring that contracts and permits contain appropriate clauses for preventing the introduction or spread of noxious weeds.

11. Maintaining communication with the local weed district or board.

2080.5 Definitions. The following special terms are used in this chapter:

Cooperative Agreements. The term cooperative agreement means a written agreement between the Forest Service and a State agency entered into pursuant to the Federal Noxious Weed Act of 1974, as amended by Section 1453 of the Food, Agriculture, Conservation and Trade Act of 1990, when there is a exchange of funds from one agency to another (FSM 1580).

Infestation Levels. Infestation levels of noxious weeds are defined as follows: low (5 percent or less canopy cover); moderate (6–25 percent canopy cover); and high (over 25 percent canopy cover).

Integrated Weed Management. A process for managing noxious weeds that considers other resources, uses an interdisciplinary approach, and incorporates a variety of methods for prevention and control. Methods include education, preventative measures, physical or mechanical methods, biological control, chemical methods, and cultural methods such as livestock or wildlife grazing strategies which accomplish vegetation management objective.

Memorandum of Understanding. The term memorandum of understanding to cooperatively contain, control and manage noxious weeds means a written agreement between the Forest Service and a State agency entered into pursuant to the Federal Noxious Weed Act of 1974, as amended by Section 1453 of the Food, Agriculture, Conservation and Trade Act of 1990, when there is no exchange of funds from one agency to another (FSM 1580).

Noxious Weeds. Those plant species designated as Noxious Weeds by Federal or State law. Noxious weeds generally possess one or more of the following characteristics: aggressive and difficult to manage, poisonous, toxic, parasitic, a carrier or host of serious insects or disease, and generally non-native.

State Agencies. A State department of agriculture, other State agency or political subdivision thereof, responsible for the administration or implementation of noxious weed, exotic or undesirable plant laws of a State.

Undesirable Plants. The term undesirable plants means plant species that are classified as undesirable, noxious, harmful, exotic, injurious, or poisonous, pursuant to State or Federal laws, including those designated by the Secretaries of Agriculture or the Interior. Not included are species listed as endangered by the Endangered Species Act of 1973 or plants indigenous to an area where control measures are to be taken.

2081 Management of Noxious Weeds. Where noxious weeds are a major issue, causing significant economic losses to livestock, agricultural crops, wildlife and other resource values develop an Integrated Weed Management (IWM) approach on a project level basis which is consistent with the forest land and resource management plan. The IWM approach should establish

management emphasis priorities based on the National Noxious Weed Classification System (sec. 2081.2)

2081.1 Integration with Forest Planning. The management of noxious weeds is guided by forest plans. Amend forest plans to address management and control of noxious weeds, as needed.

2081.2 National Noxious Weed Classification System. The national noxious weed classification system provides a systematic approach for assigning management emphasis priorities.

1. *Class A*—Those noxious weeds that are non-native (exotic) to the state and are of limited distribution or are unrecorded in the State and pose a serious threat to agricultural crop, rangelands, and other natural resources in the state. Class A plants receive highest priority. Management emphasis is complete eradication.

2. *Class B*—Those noxious weeds that are non-native (exotic) species that are of limited distribution or are unrecorded in a region of the State but are common in other regions of the state. Class B plants receive second highest priority. Management emphasis is to contain the spread, decrease population size, and eventually eliminate the infestation when cost effective technology is available.

3. *Class C*—Consists of any other noxious weeds (non-native or native). This classification receives the lowest priority. Management emphasis is to contain spread to present population size or decrease population.

The noxious weed classes may be further subdivided to meet regional, National Forest, or local needs.

2081.3 Training. Regional Foresters and Forest Supervisors shall conduct or provide training in weed management which covers the concepts and principles of weed science. Included are regional and forest workshops, agency or inter-agency continuing education courses, and university short courses or other course work which includes plant identification, preventative measures, physical, mechanical or chemical methods, biological agents, cultural methods and land management methods for the containment and/or control of noxious weeds.

2082 MEMORANDUMS OF UNDERSTANDING AND COOPERATIVE AGREEMENTS. Use memorandums of understanding (MOU) and cooperative agreements to outline ways of cooperating with State or other Federal agencies to contain, control, and manage noxious weeds. Use cooperative agreements instead of memorandums of understanding when funds are exchanged. Any such MOU agreement shall, as a minimum:

1. Rank and target noxious weed species or group of species to be controlled or contained within a specific geographic area,

2. Describe the Integrated Weed Management system to be used to control or contain the targeted plant species or group of species, and

3. Detail the means of implementing the integrated management system, including defining the duties of the cooperators.

4. Establish a timeframe for the initiation and completion of the tasks specified in the Integrated Weed Management approach.

[FR Doc. 93–29713 Filed 12–3–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Housing Vacancy Survey.

Form Number(s): SCREENS: HVSC, HVSYR, HVSNUM, HVSRM, HVSBD, HVSPLB, HVSKIT, HVSBTH, HVSAC, HVSOCC, HVSVAC, HVSSTA, HVSSTS, HVSRNT, HVSUTL, HVSCOM, HVSPRC.

Agency Approval Number: 0607–0179.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 3,700 hours.

Number of Respondents: 6,000.

Avg Hours Per Response: 3 minutes.

Needs and Uses: The Housing Vacancy Survey (HVS) provides quarterly estimates of national, regional, and state vacancy rates by various characteristics and homeownership rates. HVS data are collected for a sample of vacant housing units in the Current Population Survey. Information is collected from homeowners, realtors, and other knowledgeable persons. Government agencies, national associations, and business firms use the HVS data to gauge the housing inventory over time. In addition, the rental vacancy rate is a component of the leading economic indicators, published by the Department of Commerce.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 30, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–29750 Filed 12–3–93; 8:45 am]

BILLING CODE 3510–07–F

Minority Business Development Agency

Business Development Center Applications: Anaheim, California

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from May 1, 1994 to April 30, 1995, is estimated at $388,898. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Anaheim, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing

business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is January 20, 1994. Applications must be postmarked on or before January 20, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, January 3, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12371, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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 which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

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."

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.

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.

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.

Anti-Lobbying Disclosures—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.

Lower Tier Certifications—Recipients shall require applications/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. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the

instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 24, 1993.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 93–29658 Filed 12–3–93; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 931063–3263]

Precision Measurement Grants

AGENCY: National Institute of Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the National Institute of Standards and Technology (NIST) is continuing a program of research grants, formally titled Precision Measurement Grants, to scientists in U.S. academic institutions for significant, primarily experimental research in the field of precision measurement and fundamental constants.

DATES: Preapplications must be received no later than close of business February 1, 1994. The semi-finalists will be notified of their status by March 25, 1994, and will be requested to submit their full proposals to NIST by May 9, 1994. The successful grantees will be notified of their selection by August 15, 1994.

ADDRESSES: Candidates are requested to submit a preapplication (original and two (2) signed copies) by February 1, 1994, using Standard Form 424 (Rev. 4/88) with a description of their proposed work of no more than five (5) doubled space pages. Standard Form 424A (4–88) and 424B (4–88) are also required. Copies should be sent to the following: Dr. Barry N. Taylor, Chairman, NIST Precision Measurement Grant Committee, Bldg. 221, room B160, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Technical questions concerning the NIST Precision Measurement Grants Program may be directed to the above address or call Dr. Taylor at (301) 975–4220. Prospective candidates are urged to contact Dr. Taylor before preparing their preapplication proposal. Inquiries should be general in nature. Specific inquiries as to the usefulness or merit of any particular project, or other specific inquiries that deal with evaluation criterion can potentially impede the competitive selection process and therefore, cannot be answered.

Administrative questions concerning the NIST Precision Measurement Grants Program may be directed to the Grants Office at (301) 975–6328. Written inquiries should be forwarded to the following address: Grants Office, Acquisition and Assistance Division, Building 301/room B129, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number

Measurement and Engineering Research and Services; 11.609

As authorized by section 2 of the Act of March 3, 1901 as amended (15 U.S.C. 272 (b)(2) and (c)(3)), the National Institute of Standards and Technology (NIST) conducts directly, and supports through grants and contracts, a basic and applied research program in the general area of precision measurement and the determination of fundamental constants of nature. As part of this research program, NIST has since 1970 awarded Precision Measurement Grants to scientists in U.S. academic institutions for significant, primarily experimental research in the field of precision measurement and fundamental constants.

NIST is now accepting applications for two new grants in the amount of $50,000 per year to be awarded for the period October 1, 1994, through September 30, 1995 (fiscal year 1995.) Each grant may be renewed for up to two additional years; however, future or continued funding will be at the total discretion of NIST based on such factors as satisfactory performance and the availability of funds.

NIST sponsors these grants to encourage basic, measurement-related research in U.S. colleges and universities and to foster contacts between NIST scientists and those researchers in the U.S. academic community who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for workers in U.S. academic institutions to pursue new measurement ideas for which other sources of support may be difficult to find. The Precision Measurement Grants Program does not involve the payment of any matching funds and does not directly affect any state or local government. Accordingly, NIST has determined that Executive Order 12372 is not applicable to the Precision Measurement Grants Program.

Research Topics/Who May Apply

There is considerable latitude in the kind of research projects that will be considered for support under the Precision Measurement Grants Program. The key requirement is that they are consistent with NIST's mission in the field of basic measurement science, for example:

(1) Experimental and theoretical studies of fundamental physical phenomena to test the basic laws of physics or which may lead to improved or new fundamental measurement methods and standards.

(2) The determination of important fundamental physical constants.

(3) The development of new standards for physical measurement of the highest possible precision and accuracy.

In general, proposals for experimental research will be given preference over proposals for theoretical research because of the greater expense of experimental work. Proposals from workers at the assistant and associate professor level who have some record of accomplishment are especially encouraged in view of the comparative difficulty aspiring researchers have in obtaining funds.

Typical projects which have been funded through the NIST Precision Measurement Grants Program include:

"Measurement of fundamental constants using three-level resonances in hydrogen," Carl E. Wieman, University of Michigan.

"Quantum limited measurement of a harmonic oscillator," William C. Oelfke, University of Central Florida.

"Fine-Structure constant determination using precision Stark spectroscopy," Michael G. Littman, Princeton University.

"Eotvos experiment-cryogenic version," D.F. Bartlett, University of Colorado.

"A test of local Lorentz invariance using polarized Ne nuclei," T.E. Chupp, Harvard University.

"A new method to search for an electric dipole moment of the electron," L.R. Hunter, Amherst College.

"High precision timing of millisecond pulsars," D.R. Stinebring, Princeton University.

"Precision optical spectroscopy of positronium," S. Chu, Stanford University.

"Quantum-limited cooling and detection with stored ions," D.J. Heinzen, University of Texas/Austin.

Eligibility

U.S. Universities and Colleges.

Proposal Review Process

To simplify the proposal writing and evaluation process, the following selection procedure will be used:

On the basis of the preapplication material, four to eight semi-finalist candidates will be selected by the NIST Precision Measurement Grants Committee and the Outside Review Committee to submit more detailed proposals. The same committees will evaluate the detailed proposals, and on the basis of their evaluation, the two grantees for fiscal year 1995 will be selected.

The criteria to be used in evaluating the preapplication proposals and final proposals include:

1. Importance of the proposed research to science—does it have the potential of answering some currently pressing questions or of opening up a whole new area of activity?

2. The relationship of the proposed research to measurement science—is there a possibility that it will lead to a new or improved fundamental measurement method, basic measurement unit, or physical standard? (Or to a better understanding of important but already existing measurement methods, measurement units, or physical standards?)

3. The feasibility of the research—is it likely that significant progress can be made in a three year time period with the funds and personnel available?

4. The past accomplishments of the applicant—is the quality of the research previously carried out by the prospective grantee such that there is a high probability that the proposed research will be successfully carried out?

Each of these factors are given equal weight in the selection process.

Paperwork Reduction Act

The standard forms 424, 424A, 424B, and LLL referenced in this notice are subject to the Paperwork Reduction Act and are cleared under the Office of Management and Budget (OMB) control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Additional Requirements

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Applicants that incur any costs prior to an award being made do so solely at their 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 pre-award costs.

All primary applicants must submit a Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanation must be provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater, and

Anti-Lobbying Disclosures

Any applicant that has been 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.

Lower Tier Certifications

Grant recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certification 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.

All for-profit and nonprofit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Applicants are reminded that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment as provided in 18 U.S.C. 1001.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received or;

3. Other arrangements satisfactory to DoC are made.

If an application is accepted for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

All awards under this program shall be subject to all applicable Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Dated: November 30, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93–29735 Filed 12–3–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Adminstration

Pacific Coast Groundfish Fishery

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

ACTION: Notice of receipt of an experimental fishing permit application and request for comments.

SUMMARY: This notice announces receipt of an application from the states of Oregon, California, and Washington for experimental fishing permits (EFPs) for vessels participating in a Pacific whiting observation program. The purpose of the observation program is to enumerate the bycatch of salmon in Pacific whiting harvests delivered to shoreside

processing plants. If granted, the EFPs would allow certain vessels operating in the Pacific whiting fishery in the exclusive economic zone off the coasts of Washington, Oregon, and California to delay sorting, until offloading, of prohibited species and other groundfish caught in trawl nets incidental to the Pacific whiting fishery, on the condition that the prohibited species and any groundfish trip limit overages are turned over to the state for disposition. Delaying sorting until offloading would allow state biologists to sample landings. These activities would otherwise be prohibited by Federal regulations.

DATES: Comments on this application must be received by January 3, 1994.

ADDRESSES: Send comments to J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The FMP and implementing regulations at 50 CFR part 663 specify that FEPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application was received on November 4, 1993, from the States of Oregon, California, and Washington for vessels participating in an observation program. The purpose of the observation program is to collect information on bycatch of salmon in Pacific whiting harvests delivered to shoreside processing plants. The EFPs would allow vessels participating in the observation program to delay sorting of salmon and other prohibited species (i.e., Dungeness crab caught seaward of Washington or Oregon and Pacific halibut) and other groundfish from mid-water trawl catches of Pacific whiting until the catch is unloaded at a shoreside processing plant. Groundfish regulations at 50 CFR 663.7(b) stipulate that prohibited species must be returned to sea as soon as practicable with a minimum of injury when caught and brought aboard. Grounfish trip limits restrict the amount of certain groundfish species that may be landed by a vessel (50 CFR 663.7(f)). The EFPs, which would be issued to each designated vessel participating in the experimental fishery, would authorize retention of prohibited species and groundfish overages until delivery shoreside (retention is otherwise prohibited by 50 CFR 663.7(1)). EFPs, if granted, would authorize vessels specified by the states to land unsorted Pacific whiting at designated shoreside processing plants where the incidence of salmon and other bycatch species can be monitored, on the condition that the prohibited species and groundfish trip limit overages are turned over to the state of landing for disposition.

The states anticipate that at least 24 vessels may participate in the experimental fishery from March 1, 1994, when the fishery opens, to December 31, 1994, if fish are still available that late in the year. Unsorted Pacific whiting catches may be delivered to shoreside processing plants in Newport, Hammond, and Warrenton, OR; Crescent City, CA; and Westport and Ilwaco, WA. State port samplers will monitor the offloading of unsorted Pacific whiting, collect biological information on salmon and other bycatch, and arrange for the disposal of salmon. Prohibited species taken will not be sold; disposal options, to be determined by the states, include donation to charitable organizations or reduction to fish meal.

If 110,000 metric tons (mt) of Pacific whiting were landed under the EFPs, about 1,210 salmon would be incidentally caught, based on the observed salmon bycatch rate of 0.011 salmon per mt of whiting observed in 1993 (the salmon bycatch rate was 0.010 in 1992). The development of this shoreside monitoring program and application for an EFP is being pursued by the states at the request of the Pacific Fishery Management Council (Council). Similar EFP's were issued to 18 vessels in 1992 and 21 vessels in 1993 that participated in the state observation program.

The Director, Northwest Region, NMFS, (RD) has made a preliminary determination that the application contains all of the required information and constitutes a valid experimental program appropriate for further consideration.

At the November 15–19, 1993, public meeting of the Council in San Francisco, California, the RD consulted with the Council and the directors of the state fishery management agencies concerning the permit application. The Council recommended that the EFPs be issued with the same terms and conditions as applied to the EFPs in 1993. The decision on whether to issue EFPs and determinations on appropriate permit conditions will be based on a number of considerations, including the Council's recommendation and comments received from the public. A copy of the application is available for review at the NMFS, Northwest Regional Office (See **ADDRESSES**).

This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations (50 CFR part 663).

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

Dated: November 30, 1993.

David S. Crestin,

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

[FR Doc. 93–29714 Filed 12–3–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

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

ACTION: Modification of Scientific Research Permit No. 667 (P132C).

Notice is hereby given that Permit No. 667 issued to Point Reyes Bird Observatory, 4990 Shoreline Highway, Stinson Beach, California 94970–9701, on March 30, 1989 (54 FR 13933, publ. 4/6/89), has been modified. This modification became effective upon signature of the Assistant Administrator for Fisheries.

ADDRESSES: The Permit, as modified, and associated documents are available for review upon written request or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–2289); and Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of §§ 216.33 (d) and (e) of Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the subject Scientific Research Permit authorizes capture and tagging of northern elephant seals (*Mirounga angustirostris*) and harbor seals (*Phoca vitulina*), and the inadvertent harassment of Steller sea lions (*Eumetopias jubatus*), and California sea lions (*Zalophus californianus*).

This Permit has been modified to extend the expiration date to December 31, 1994. No additional animals or new research techniques are authorized.

Dated: November 24, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Services.

[FR Doc. 93–29699 Filed 12–3–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 93–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21 & 22 December 1993.

Time of Meeting: 21 December, 0830–1630 Hours (Closed); 22 December, 0830–1230 Hours (Closed).

Place: Alexandria, VA.

Agenda: The Army Science Board's ad hoc study on "Small Arms Industrial Base" will conduct a meeting to review additional data on "Small Arms," discuss findings and recommendations, and review conclusions and agreement for proposed plan. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–29804 Filed 12–3–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133D]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Inviting Applications for a New Award Under the Knowledge Dissemination and Utilization Program for Fiscal Year (FY) 1994

PURPOSE OF PROGRAM: The Knowledge Dissemination and Utilization is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and from other sources is fully utilized to improve the lives of individuals with disabilities and their families. The final priority for this award is published in this issue of the **Federal Register.** Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their applications.

This notice supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

ELIGIBLE APPLICANTS: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: March 11, 1994.

APPLICATIONS AVAILABLE: December 13, 1993.

AVAILABLE FUNDS: $250,000.

ESTIMATED NUMBER OF AWARDS: 1.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

PROJECT PERIOD: Up to 24 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR parts 350 and 355; and (c) the notice of final priority published elsewhere in this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, room 3417 Switzer Building, 400 Maryland Avenue SW., Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Program Authority: 29 U.S.C. 760–762

Dated: November 29, 1993.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–29758 Filed 12–3–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Projects Nos. 2599–005 and 2580–015 Michigan]

Consumers Power Co.; Availability of Draft Multiple Project Environmental Assessment

November 30, 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 two applications for major license for the existing Hodenpyl and Tippy Hydroelectric Projects, located on the Manistee River in Manistee and Wexford Counties, in west-central Michigan, and has prepared a Draft Multiple Project Environmental Assessment (MPEA) for the projects in cooperation with the U.S. Department of Agriculture, Forest Service, Huron-Manistee National Forests. In the draft MPEA, the Commission and Forest Service staffs analyzed the site-specific and cumulative environmental effects of the existing projects, as proposed in a Settlement Agreement reached between Consumers Power Company and the state and Federal resource agencies. The Commission staff has concluded that approval of the applications for new license, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft MPEA 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.

Please submit any comments within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. Please affix Project Nos. 2599 and 2580 to all comments. For further information, please contact Frank Karwoski, Environmental Coordinator, at (202) 219–2782.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29686 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER93–513–002, et al.]

Idaho Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 26, 1993.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER93–513–002]

Take notice that on October 21, 1993, Idaho Power Company (IPC) supplemented its filing in the above referenced docket regarding a Service Agreement between Idaho Power Company and Clockum Transmission Company. The filing was supplemented to reflect the Commission's recision of a previously ordered refund.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Oklahoma Gas and Electric Company

[Docket No. EC94–4–000]

Take notice that on November 17, 1993, Oklahoma Gas and Electric (OG&E), Applicant, an Oklahoma Corporation with its principal office at 101 N. Robinson, P.O. Box 321, Oklahoma City, Oklahoma, 73101, filed an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations thereunder, for authorization to sell certain transmission facilities to Western Farmers Electric Cooperative (WFEC).

The Company states it is engaged primarily in the generation, transmission, distribution and sale of electric energy in Oklahoma and western Arkansas. The facilities being sold and purchased will be incorporated into WFEC's transmission system.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER94–162–000]

Take notice that on November 17, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies"), submitted for filing a letter agreement dated July 8, 1993, revising the Unit Power Sales Agreement dated July 19, 1988, among Florida Power Corporation and Southern Companies. Specifically, the letter agreement contains an amended and restated Section 5.5, which governs the establishment of an initial return on common equity when the unit power sales commence on July 1, 1994.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER94–164–000]

Take notice that on November 17, 1993, Portland General Electric Company (PGE) tendered for filing Agreement Among the Bonneville Power Administration (BPA), Portland General Electric Company (PGE), and Elf Atochem North America, Inc. (Elf Atochem) for BPA to Transmit Power From PGE to PGE's Retail Customer Elf Atochem. The Agreement includes a provision for the return of transmission losses to BPA by PGE. Copies of this agreement have been served on the parties included in the distribution list defined in the filing letter.

Under the provisions of 18 CFR 35.11, PGE requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow the Agreement to take effect on October 1, 1993.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Tucson Electric Power Company

[Docket No. ER94–163–000]

Take notice that on November 17, 1993, Tucson Electric Power Company (Tucson) tendered for filing an Economy Energy Agreement (the Agreement) between Tucson and the Arizona Power Authority (APA). The Agreement provides for the sale by Tucson to APA of non-firm, economy energy under flexible arrangements, subject to available capacity and transmission interconnections.

The parties request an effective date of November 22, 1993, and therefore request waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER94–165–000]

Take notice that on November 17, 1993, Arizona Public Service Company (APS) tendered for filing Amendment No. 1 to the Purchase and Transmission Agreement (Agreement) between APS and Yuma Irrigation District of the County of Yuma, State of Arizona (YD) (APS-FPC Rate Schedule No. 39), a proposed extension to the Agreement.

Copies of this filing have been served upon the YD and the Arizona Corporation Commission.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. The Susquehanna Power Company

[Docket No. ER94–168–000]

Take notice that on November 18, 1993, The Susquehanna Power Company (SP) tendered for filing a Transmission Service Tariff under which SP will make available its transmission system to enable third-party suppliers to sell power at wholesale to Conowingo Power Company (COPCO).

SP states that a copy of this filing has been served by mail upon COPCO, the Maryland Public Service Commission, the Maryland Office of People's Counsel, the Pennsylvania Public Utility Commission and the parties to Docket No. ER94–8–000.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Philadelphia Electric Power Company

[Docket No. ER94–169–000]

Take notice that on November 18, 1993, Philadelphia Electric Power Company (PEP) tendered for filing a Transmission Service Tariff under which PEP will make available its transmission system to enable third-party suppliers to sell power at wholesale to Conowingo Power Company (COPCO).

PEP states that a copy of this filing has been served by mail upon COPCO, the Maryland Public Service Commission, the Maryland Office of People's Counsel, the Pennsylvania Public Utility Commission and the parties to Docket No. ER94–8–000.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Philadelphia Electric Company

[Docket No. ER94–170–000]

Take notice that on November 18, 1993, Philadelphia Electric Company (PE) tendered for filing a Transmission Service Tariff under which PE will make available its transmission system to enable third-party suppliers to sell power at wholesale to Conowingo Power Company (COPCO).

PE states that a copy of this filing has been served by mail upon COPCO, the Maryland Public Service Commission, the Maryland Office of People's Counsel, the Pennsylvania Public Utility Commission and the parties to Docket No. ER94–8–000.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. WestPlains Energy, a Division of UtiliCorp United, Inc.

[Docket No. ER94–75–000]

Take notice that on November 19, 1993, WestPlains Energy, a Division of UtiliCorp United, Inc. (WestPlains) supplemented its October 29, 1993, filing in this docket by tendering for filing the November 1993 Letters of Intent for service under Service Schedule 92–I–1 Municipal Incremental Power Service for the following Kansas municipal utilities: Asland, Attica, Beloit, Greensburg, Hoisington, Kingman, Lincoln, Osborne, Pratt, Russell, Stockton, and Washington.

A copy of the filing was served each of the subject Kansas municipals and the Kansas Corporation Commission.

Comment date: December 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Baltimore Gas and Electric Company

[Docket No. ER94–176–000]

Take notice that Baltimore Gas and Electric Company (BG&E), on November 19, 1993, tendered for filing an agreement for the sale of Pennsylvania-New Jersey-Maryland Interconnection (PJM) Installed Capacity Credits to Philadelphia Electric Company. Pursuant to the agreement, PJM Installed Capacity Credits will be sold at a rate not to exceed the rate for purchasing capacity as set forth in the appropriate schedule of the PJM Agreement.

Comment date: December 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–175–000]

Take notice that on November 19, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Rate Schedule and a Supplement, to an agreement with Long Island Lighting Company (LILCO) to provide for the sale and purchase of excess energy. The Rate Schedule provides for sales of excess energy to be made subject to a cost based ceiling rate. The ceiling rate for energy sold by Con Edison is $110.82 per megawatt hour and the ceiling rate for capacity sold by Con Edison is $26.00 per megawatt hour. For energy sold by LILCO the ceiling rate is $98.12 per megawatt hour and for capacity sold by LILCO the ceiling rate is $9.50 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: December 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER94–159–000]

Take notice that on November 16, 1993, Niagara Mohawk Power Corporation (Niagara) tendered for filing Supplement No. 10 to Niagara's FERC Rate Schedule No. 172, superseding prior supplement No. 1 between Niagara and Lockport Energy Associates L.P.

Comment date: December 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Howell Power Systems, Inc.

[Docket No. ER94–178–000]

Take notice that Howell Power Systems, Inc. (HPSI) on November 19, 1993, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 1992, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective on January 20, 1994.

HPSI intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where HPSI purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, HPSI will be functioning as a marketer. IN HPSI's marketing transactions, HPSI proposes to charge rates mutually agreed upon by the parties. All sales will be at arms-length, and no sales will be made to affiliated entities. In transactions where HPSI does not take title for the electric power and/or energy, HPSI will be limited to the role of a broker and charge a fee for its services. HPSI is not in the business of producing or transmitting electric power. HPSI does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: December 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Oklahoma Gas and Electric Company

[Docket No. ER94–161–000]

Take notice that on November 16, 1993, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Letter Agreement dated November 5, 1993, with the Oklahoma Municipal Power Authority (OMPA) regarding the installation of communication facilities for the use and benefit of OMPA.

Copies of this filing have been served on OMPA, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: December 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. National Electric Associates Limited Partnership

[Docket No. ER90–168–014]

Take notice that on October 28, 1993, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990, order in this proceeding. 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

17. Commonwealth Edison Company

[Docket No. ER94–153–000]

Take notice that on November 15, 1993, Commonwealth Edison Company (Edison) submitted a Service Agreement, dated October 28, 1993, establishing Wisconsin Public Power Inc. SYSTEM, (WPPI) as a customer under the terms of Edison's Power Sales Tariff PS–1 (Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

Edison requests an effective date of October 28, 1993, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WPPI and the Illinois Commerce Commission.

Comment date: December 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. Barton Villages, Inc. Village of Enosburg Falls Water & Light Department, Village of Orleans and Village of Swanton, Vermont v. Citizens Utilities Company (Vermont Division)

[Docket No. EL92–33–000]

Take notice that Citizens Utilities Company (Citizens) on November 22, 1993, tendered for filing an amendment to its filing in the above-captioned docket. The amendment serves to address certain questions raised by the

Commission in an October 22, 1993, deficiency letter.

Comment date: December 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont, Co., L.P., Wheelabrator Environmental Systems Inc., Signal Environmental Systems Inc., SES Claremont Company, L.P., NH/VT Energy Corp., Wheelabrator New Hampshire, Inc.

[Docket Nos. EL94–10–000 and QF86–177–001]

On November 18, 1993, Connecticut Valley Electric Company, Inc. (Connecticut Valley), pursuant to an order of the New Hampshire Public Utilities Commission, filed a complaint against Wheelabrator Claremont, Company, L.P., (Claremont) the owner and operator of a solid waste facility (Claremont Facility) which was certified by the Commission as a qualifying facility (QF), 34 FERC ¶ 62,212 (1986), and affiliated entities. Connecticut Valley purchases electric power from the Claremont Facility pursuant to a 20-year power sales contract. Connecticut Valley states that since the Claremont Facility commenced service, it has sold Connecticut Valley more output than the Facility has to sell as a QF, *i.e.*, more than the Facility's net electrical output. Connecticut Valley states that it entered into the power sales contract in the mistaken belief that the facility is a QF. Connecticut Valley seeks revocation of the qualifying status of the Claremont Facility pursuant to 18 CFR 292.207(d) (1993), recision or reformation of the power sales contract, a determination of just and reasonable rates for this wholesale power sale and appropriate refunds with interest. In the alternative Connecticut Valley asks the Commission to reform the power sales contract to allow the facility to sell Connecticut Valley only its net electrical output since the date service commenced and asks that Claremont be ordered to refund with interest all revenues it improperly received from the resale of the capacity and associated energy which Claremont bought from Connecticut Valley for internal station use.

A copy of the complaint has been served on the New Hampshire Public Utilities Commission.

Date for comments and answers to complaint: December 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 protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29674 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–01287T Oklahoma-58]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 30, 1993.

Take notice that on November 26, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Sycamore Formation, underlying a portion of Stephens County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 25 and 36, Township 2 North, Range 8 West, Stephens County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29684 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–01286T Oklahoma-57]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 30, 1993.

Take notice that on November 26, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Fanshawe Formation, underlying a portion of Latimer County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 26, 27, 28, 33, 34, and 35, Township 7 North, Range 22 East, Latimer County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29685 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–101–000, et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

November 26, 1993.

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP94–101–000]

Take notice that on November 22, 1993, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94–101–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's

Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to add a new delivery tap for a nonright-of-way grantor, Ronnie Ashby, under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas would install, operate and maintain the facility necessary to provide service to Ashby to be served by Western Kentucky Gas Company in McLean County, Kentucky.

Comment date: January 10, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources Company

[Docket No. CP94–99–000]

Take notice that on November 19, 1993, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94–99–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon sales tap and measuring facilities used for deliveries of natural gas to customers of Arkansas Louisiana Gas Company (ALG) in DeSoto Parish, Louisiana, under AER's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER proposes to abandon its Line RM–23 and one 1-inch sales tap serving ALG's Marsh/Stanley and Pennywell meter stations, and its Line RM–24 and two 1-inch sales taps serving ALG's L.A. Mangum and LSU Medical Laboratory. It is asserted that AER has been experiencing operational problems with the two lines and that these problems have interfered with the service to ALG's customers. It is stated that no services will be abandoned because ALG has rearranged its existing distribution facilities to serve the customers affected by the abandonment.

Comment date: January 10, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP94–91–000]

Take notice that on November 18, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–91–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale, three pipeline laterals, all located in Galveston and Brazoria Counties, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Texas Eastern proposes to abandon Line No. 16–W which consists of 18.35 miles of 4-inch pipeline, Line No. 16–W–1 which consists of an .86-mile 3-inch pipeline, and Line No. 16–W–2 which consists of 2.02 miles of 4-inch pipeline, all constructed under Texas Eastern's budget-type construction certificates.

Comment date: December 17, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP94–92–000]

Take notice that on November 18, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP94–92–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate pipeline facilities to replace a river crossing in Ohio and West Virginia, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to install approximately 0.67 mile of 30-inch pipeline and related facilities to replace approximately 0.66 mile of a multiple 12-inch river crossing, crossing the Ohio River between Wayne County, West Virginia, and Lawrence County, Ohio. It is stated that the existing facilities were installed in 1948 and have deteriorated to the point where they can no longer provide adequate service. It is asserted that the condition of the facilities has caused decreases in pressure and increases in maintenance costs. The construction cost is estimated at $5.59 million, which would be generated from internal sources. Columbia states that the proposal would not cause any change in service to existing customers.

Comment date: December 17, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29675 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TA94–1–23–002]

Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff

November 30, 1993.

Take notice that on November 22, 1993, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective November 1, 1993.

Eastern Shore states that the subject tariff sheets are being filed to comply with the Commission's letter order dated November 5, 1993 in the above-referenced docket. Such order directed Eastern Shore to file revised Index of Purchaser tariff sheets reflecting current contract demand levels. Such order also directed Eastern Shore to file a revised refund report showing the dates refunds were received and the date refunds were distributed.

ESNG states that copies of the filing have been served upon its jurisdictional customer and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29680 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ94–2–23–000 and TM94–4–23–000]

Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff

November 30, 1993.

Take notice that on November 26, 1993 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective December 1, 1993.

Eastern Shore states that the purpose of the instant filing is two fold: (1) To reflect higher commodity and demand sales rates: and (2) to track changes in Eastern Shore's storage service rates.

Eastern Shore states that it seeks to increase its CD Commodity and Demand sales rates by $0.0925 and $0.1006 per dt, respectively, as compared to those sales rates filed in Eastern Shore's Out-of-Cycle PGA Filing in Docket No. TQ94–1–23–000. Such reductions reflect: (1) Higher prices being paid to Eastern Shore's suppliers under its market responsive gas supply contracts: and (2) higher prices being paid to Eastern Shore's upstream pipeline suppliers for firm transportation.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 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 December 7, 1993. 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. 93–29683 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–57–000]

National Fuel Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

November 30, 1993.

Take notice that on November 23, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 237–A and 237–B, with a proposed effective date of December 1, 1993.

National states that the proposed tariff sheets reflect out-of-period adjustments to National's Account Nos. 191 and 186 Balances, and the recovery of stranded Account No. 858 costs. National is authorized to recover such costs pursuant to Section 21 of its tariff, and tendered its filing as a limited application pursuant to Section 4 of the Natural Gas Act.

National also states that its filing provides for direct billing of a total of $64,704.85 of demand costs and of $163,610.67 in commodity costs attributable to gas purchase and transportation activities prior to August 1, 1993.

National further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before December 7, 1993. 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. 93–29677 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–58–000]

National Fuel Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

November 30, 1993.

Take notice that on November 23, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 237–C, with a proposed effective date of December 1, 1993.

National states that the proposed tariff sheets flow through to National's customers the initial direct bill proposed by CNG Transmission Corporation (CNG) for collection of Account Nos. 191 and 186 transition costs from National and CNG's other customers. National is authorized to recover such costs pursuant to Section 21.5 of its tariff, and tendered its filing as a limited application pursuant to Section 4 of the National Gas Act.

National also states that its initial share of CNG's transition costs attributable to CNG's balance of Account Nos. 191 and 186, on September 30, 1993, is $4,743,796.00.

National further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before December 7, 1993. 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. 93–29678 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–59–000]

Transcontinental Gas Pipe Line Corporation; Proposed Changes in FERC Gas Tariff

November 30, 1993.

Take notice that on November 19, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to supplement TGPL's Account No. 858 Transportation By Others (TBO) filings of October 20, 1993 and November 1, 1993 in Docket Nos. RP94–27–000 and RP94–27–001, respectively. Specifically, TGPL is filing to revise the TBO unit rates included therein to reflect the following changes to TGPL's Estimated TBO Costs: (1) the removal of the costs of Leviathon Contract No. 0.3884; and (2) the proration of demand charges under Trunkline Contract No. 0.0191 and Columbia Gulf Contract No. 0.0382 in recognition that such charges will be incurred for only a portion of the TBO Annual Period. Included in Appendix B, attached to the filing, are schedules which support the derivation of the revised TBO unit rates proposed to be effective November 1, 1993.

TGPL states that also included therein are revised tariff sheets proposed to be effective December 1, 1993, which incorporate the revised TBO unit rates into the rates submitted in TGPL's Eminence Storage Expansion filing of November 1, 1993 in Docket No. RP94–46–000.

TGPL states that copies of the filing are being mailed to its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29679 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–29–001]

Transcontinental Gas Pipe Line Corporation; Proposed Changes in FERC Gas Tariff

November 30, 1993.

Take notice that on November 19, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to comply with the Commission's letter order dated November 12, 1993 (November 12 Order) in the referenced docket, which order accepted certain tariff sheets contained in TGPL's filing of October 13, 1993 subject to TGPL refiling such tariff sheets within 15 days to reflect the corrections discussed therein. The revisions required by the November 12 Order pertain to Rate Schedules FT–NT and S–2.

TGPL states that copies of the filing are being mailed to each of its FT–NT and S–2 customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29681 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM 94–5–29–000]

Transcontinental Gas Pipe Line Corporation; Proposed Changes in FERC Gas Tariff

November 30, 1993.

Take notice that on November 24, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Penn-York Energy Company (Penn-York) under its Rate Schedule SS–1, the costs of which are included in the rates and charges payable under TGPL's Rate Schedules LSS and SS–2. The tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule LSS, and Section 4 of TGPL's Rate Schedule SS–2.

TGPL states that included in Appendices B and C attached to the filing are the explanations of the rate changes and details regarding the computation of the revised LSS and SS–2 rates, respectively.

Also included in TGPL's filing are revised tariff sheets which incorporate the Rate Schedule LSS and SS–2 rate changes proposed therein into subsequent filings which have been approved or are currently pending Commission acceptance on the effective dates reflected thereon.

TGPL states that copies of the filing are being mailed to each of its LSS and

SS–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29682 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL93–14–000]

Western Resources, Inc.; Order Denying Waiver, Requiring Refunds and Establishing Revised Refund Policy

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Issued November 29, 1993.

Introduction

Western Resources, Inc. (Western), a public utility, recovered through its wholesale fuel adjustment clause, without prior permission from the Commission, payments the company made in the course of reducing its obligations under a coal supply contract—"buy-down payments." Had Western sought our prior approval, the utility would have received permission to recover the buy-down payments through its wholesale fuel adjustment clause.

Our fuel adjustment clause regulations, 18 CFR 35.14, do not specifically include buy-down costs as an item utilities may recover through that mechanism. This Commission, has, however, since Kentucky Utilities Company (KU), 45 FERC ¶ 61,409 (1988), allowed fuel adjustment clause recovery if the utility shows the customers will save money, i.e., if it satisfies the "ongoing benefits test," and if it obtains Commission approval prior to recovering such costs. Here, although Western did not obtain prior Commission approval, Western's customers substantially benefitted from the utility's actions.

If we follow our past precedent, we would order Western to refund in full, with interest, the buy-down costs it recovered from its customers, because the company failed to seek a waiver in advance of recovering the money through the fuel adjustment clause. Upon further consideration, we have balanced the violation of the fuel adjustment clause regulations with the substantial benefits Western's actions conferred on its customers, and conclude that a refund of the full amount is inappropriate. As discussed below, in light of three court cases—the most recent in the D.C. Circuit—we modify our refund policy, and apply the revised policy to Western.

The Facts of This Case

A. The Buy-Down

To use as fuel in a power plant it co-owns (Jeffrey Energy Center), Western bought coal from American Metal Climax, Inc. (AMAX) under a contract its predecessor executed. That contract contained a provision obligating Western to purchase a minimum volume through 2003. In 1991, the utility found a less expensive supplier, Antelope Coal Company (Antelope).

In order to purchase coal from Antelope, Western had to re-negotiate its minimum purchase requirement with AMAX. The negotiations proved successful, and Western paid $3.5 million to AMAX to reduce its contractual requirements for that year. Of that amount, it allocated $500,000 to wholesale customers. Those customers saved approximately $514,000 (after taking the $500,000 buy-down payment into account) as a result of Western substituting suppliers.

As noted above, our fuel clause regulations do not specifically allow utilities to recover buy-down costs through fuel adjustment clauses. Nevertheless, without obtaining a waiver of those regulations, Western recovered the entire wholesale portion of its buy-down payment through its fuel adjustment clause between April 1 and December 31, 1991.[1] The next year, the Commission's Office of Chief Accountant audited the company. The audit uncovered the fact that Western failed to seek a waiver of fuel adjustment clause regulations, as KU required.

[1] Since the new contract expired that year, Western, following the requirements of our fuel clause regulations, 18 CFR 35.14(a)(1), that it recoup "current" costs only, recovered its entire buy-down payment during that time.

B. The Request for Waiver, Notice and Responses

Because of the audit, Western now asks for a waiver to keep the $500,000 portion of the buy-down payment it allocated to wholesale customers. Notice of the Request for Waiver (Request) was published in the **Federal Register**, 58 FR 7138 (February 2, 1993), with comments, protests and interventions due on or before February 8, 1993. None were filed.

Discussion

A. The Waiver

Western argues, Request at 5–6, that "[under] proper circumstances," the Commission has waived its fuel adjustment clause regulations. The utility, *id.*, claims it presents one such circumstance. Citing to KU for the proposition that utilities meeting the "ongoing benefits test" may recover buy-down costs through the fuel adjustment clause, Western points, Request at 6, to the "immediate savings" customers realized as a result of the switch to Antelope.

We will deny the waiver, even though we agree that Western's customers enjoyed savings as a result of the buy-down. Western correctly states the "ongoing benefits" portion of the holding in KU. The Request for Waiver ignores the rest of that case. We specifically ruled, 45 FERC at 62,291, that before utilities may recover buy-down costs through the fuel adjustment clause, they must submit their plans in advance. KU articulated the ongoing benefits test for prospective waivers. If a utility seeks retroactive approval for recovering improper costs in its fuel adjustment clause, we regard any benefits that may have flowed from the utility's violation as irrelevant. Here, since Western had recovered all its buy-down costs by the time it requested a waiver, KU proves unavailing.

In fact, in addition to announcing the ongoing benefits test, KU also denied waiver for recovery of litigation cost. There we explicitly stated:

> Faced with the need to interpret nonspecific areas of the regulations, a utility has two management options. It can rely on its own interpretation or it can request an interpretation from the Commission. The utility decides which option to pursue.
>
> * * * * *
>
> There is no equity in requiring that [a company] suffer the consequences of its decision and no compelling reason to make [the utility whole for its error].

45 FERC at 62,293–294. The same holds true here. Western should have come to the Commission in advance.

The facts of this particular case point even more in favor of denying the waiver. By 1991, when Western recovered its buy-down costs, the Commission had already decided KU and promulgated the requirement that utilities seek prior waivers before recovering buy-down costs through their fuel adjustment clauses. Indeed, Western itself, Request at 5, acknowledges that it should not have acted in the manner it did. We cannot find good cause to grant the waiver. Accordingly, as we discuss in the next section, we will order Western to make refunds.

B. Refunds

The Commission orders in Gulf Power Company, 55 FERC ¶ 61,030, reh'g denied, 55 FERC ¶ 61,352 (1991), vacated and remanded, 983 F.2d 1095 (D.C. Cir. 1993), express the approach we have formerly followed in ordering refunds for improperly recovering costs in fuel adjustment clauses. In particular:

> The Commission consistently has limited waivers of its F[uel] A[djustment] C[lause] regulations to permit only the prospective recovery of * * * costs from the date of the utility's filing of requests for waiver.

55 FERC at 61,083. Costs the utility already improperly recouped must be refunded in full, with interest. 55 FERC at 61,083–84. Western has recovered all its costs. Under our former policy, therefore, we would order Western to refund the entire buy-down payment, with interest. As of the end of October, we estimate that would entail approximately a $600,000 disbursement: $100,000 interest, plus the $500,000 principal.[2]

On review, of the case law, as set out more fully in subsection 2 below, we have decided to change our policy. We will order Western to refund, with interest calculated according to our regulations, 18 CFR 35.19a, the time value of the $500,000 between April 1, 1991 and January 7, 1993, the date it filed its Request for Waiver.

1. The Court Cases

Three courts of appeals, the Eighth, the Seventh and the D.C. Circuits, have reviewed orders in which the Commission required utilities to refund in full expenses they incurred in the course of reducing fuel costs and saving money for customers. Each time, the court noted that it agreed with the need for the Commission strictly to enforce its fuel adjustment clause regulations. Nevertheless, each court vacated and remanded the Commission's decision.

The first, *Minnesota Power & Light Company* v. *FERC (Minnesota)*, 852 F.2d 1070 (8th Cir. 1988), involved the utility pursuing a law suit to reduce a railroad's rate for carrying coal. The litigation resulted in a refund. Rather than pass along the entire amount (since ratepayers paid for the transportation as part of the utility's fuel adjustment clause), the utility subtracted attorney's fees. The Commission ordered a full refund.

The court agreed that the Commission correctly rejected the company's interpretation but still vacated the refund order. The court held that even in the face of the "logical appeal" of the utility's argument, it must "accord great deference" to the Commission. 852 F.2d at 1072. The court also pointed out:

> The FERC has previously and consistently construed the "other expenses directly assignable" language in a restrictive manner. * * * * *
>
> As the Commission points out, * * * expenses, [even if] related to fuel [that] are not mentioned in Account 151, a[re] not properly assigned to [the fuel adjustment clause].

Id. (footnotes omitted).

Having upheld the Commission on the law, the court reversed on the equities. The court found that "the FERC's desire for strict compliance [with the fuel adjustment clause regulations] is a legitimate and necessary goal and * * * that waiver of the regulation[s] by the FERC in this case would have weakened the force of the agency opinion." 852 F.2d at 1073. Nevertheless, the court held that the fact that the utility incurred the litigation costs to bring savings to its ratepayers overrode the interest in enforcing the fuel adjustment clause.

As the Eighth Circuit explained:

> Indeed, [the utility] will be denied the ability to recover the fees and expenses incurred and which resulted in saving * * * ratepayers millions of dollars in fuel expenses. Thus, while the benefits of the litigation flow to the ratepayer, the costs are placed on the shareholders.

852 F.2d at 1073.

The court held that having affirmed the merits of the Commission's interpretation, it established the principle of compliance with the fuel adjustment clause. "Yet, the inequity remains of requiring the shareholders to bear the burden of expenses to obtain a refund benefitting the wholesale customers. * * *" *Id.* On remand, the Commission granted the waiver. *Minnesota Power & Light Company*, 45 FERC ¶ 61,369 (1988).

The second court case, *Central Illinois Public Service Company* v. *FERC*, 841 F.2d 622 (7th Cir. 1991), involved the utility distributing to its customers proceeds of a settlement of litigation over a coal contract. The utility had failed to seek Commission approval (it did obtain state agreement) of its scheme. The court reversed the Commission as to how to divide the proceeds to account for the costs the ratepayers initially bore and those the shareholders paid for. Aside from that, the court found improper the agency's refusal to allow the company to deduct litigation expenses from the ratepayers' portion.

The Seventh Circuit held:

> Although we agree that [the utility] should have obtained prior approval for its distribution, the desire to "punish" the utility for its neglect is not a sound basis for denying [the company] the opportunity to recover its legal expenses.

941 F.2d at 630. The Commission again yielded on remand. Central Illinois Public Service Company, 58 FERC ¶ 61,186 (1992).

The D.C. Circuit case, *Gulf Power Co.* v. *FERC (Gulf Power)*, 983 F.2d 1095 (D.C. Cir. 1993), bears the most relevance to Western's situation. The utility charged customers buy-out costs[3] without permission from the Commission. When the company sought a retroactive waiver, as Western does here, the Commission denied it and ordered Gulf Power to return the entire amount. The court of appeals found the Commission's goal laudable, but its action one-sided.

The D.C. Circuit held:

> We recognize FERC's strong interest in requiring utilities, *in all instances*, to seek advance approval for buyout-cost pass throughs. Utilities indeed should be discouraged from commencing pass throughs based on their own unchecked judgments about arrangements that will benefit customers. The Commission is properly concerned that a utility's projection of customer benefits may prove to be incorrect. FERC's advance review serves as a safeguard against situations in which customers must first pay an unjust rate and only later obtain redress in the form of a refund.

983 F.2d at 1099 (emphasis added).

In the next paragraph, however, the court of appeals added:

> Nevertheless, while a penalty for Gulf's lapse may have been appropriate, a grossly excessive one was not. FERC's decision to penalize Gulf $2.7 million ignored several important considerations. First, in denying the retroactive waiver, FERC failed to take into account the significant extent to which Gulf's customers benefitted from the buy-outs. Gulf chose to negotiate an end to unprofitable contracts * * *. [It] could have

[2] These values are only estimates. Western must, of course, use the actual values in calculating the refunds.

[3] A utility incurs buy-out costs when canceling a contract, KU, 45 FERC at 62,292; buy-down costs entail reducing minimum purchase requirements.

kept its contracts in force and continued to pass through their high cost to its customers through high rates * * *. Of equal importance, Gulf received no windfall profit * * *.

983 F.2d at 1099–1100.

Given the guidance of these court decisions, we have reevaluated the equities in this specific case. If we deny Western recovery of the entire buy-down payment, we will not have given sufficient consideration of the fact that the customers realized $514,000 in savings from the buy-down, a transaction that the company could easily have foregone. Moreover, as in Gulf Power, had Western done nothing the company would have recovered through its fuel adjustment clause $1.014 million in higher costs than the utility now seeks.[4]

As the D.C. Circuit in Gulf Power concluded:

In imposing th[e full refund] FERC failed to balance the equitable considerations the agency itself agrees are relevant to any F[uel] A[djustment] C[lause] decision. Moreover, FERC failed to examine possible alternative sanctions that would have produced a result more proportional to Gulf's violation.

983 F.2d at 1101.

In short, to insist that Western return $600,000 (the entire $500,000 payment to AMAX allocated to wholesale customers, plus $100,000 in interest), on top of the $514,000 additional savings customers enjoyed, "is clearly disproportionate to the error committed." *Id.* Accordingly, in this instance, we will apply a more measured remedy.

2. Our New Policy

Today we adopt a policy under which refunds in remedying violations of the fuel adjustment clause will be based on the facts of each case. In applying our policy, we will examine whether the Commission has: (1) Allowed, (2) rejected, or (3) not ruled on fuel adjustment clause recovery for the cost in question. We will also examine whether the customers: (1) enjoyed savings, or (2) suffered losses from the utility's unilateral action.

Here, Western Resources could have obtained approval to recover the buy-down costs through the fuel adjustment clause because it would have met the KU ongoing benefits test. The equities point strongly in favor of flexibility in this situation. Therefore, the remedy should cost Western Resources money but also allow the company to keep the principal amount. As the D.C. Circuit found in Gulf Power, pushing for a full refund would impose a disproportionate penalty in these circumstances. Accordingly, we will order Western Resources in these circumstances to refund the time value of the money, starting when it first recovered the funds from its customers until it filed for a waiver. We will require Western Resources to calculate the time value in the same manner as the regulations, 18 CFR 35.19a, require for interest.[5]

As with late-filed rates—where the utilities either provided service at just and reasonable rates, or the Commission established the correct rate—the time value approach for Western Resources' fuel adjustment clause violations strikes the proper balance. On the one hand, the courts have recognized the Commission's valid interest in deterring utilities from abusing the fuel adjustment clause. On the other hand, the courts have asked the Commission to recognize the heavy handed nature of blocking utilities from recovering any of the costs of contract reformation, when incurring them leads to rate reductions to customers. Allowing return of, but not on, wrongful collection of legitimate costs reaches a proper middle ground.

We realize that, as a result of our change in policy concerning the appropriate remedy to apply in cases involving violations of our fuel adjustment clause regulations, utilities may become more inclined to take unilateral action. We hope this will not be the case and encourage utilities to bring fuel adjustment clause issues to us in advance. Of course, we retain the discretion to order a different remedy when warranted by the facts of another case, up to and including full refund of the principal and the time value of the money. For example, in situations where a utility could not have obtained approval to recover costs through the fuel adjustment clause (e.g., litigation expenses), we will continue to require full refunds, with interest.

The Commission Orders:

(A) Western's Request for Waiver of the fuel adjustment clause regulations is hereby denied.

(B) Western shall, within 45 days of this order, refund to wholesale customers the time value of the buy-down payment from April 1, 1991, until January 7, 1993, with interest, as calculated pursuant to 18 CFR 35.19a. However, if a request for rehearing is filed, Western shall make the refunds within 15 days of the date the Commission disposes of the rehearing.

(C) Western shall, within 15 days of date it makes refunds, file a refund report with the Commission, showing how it computed the refund and the disbursements.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29676 Filed 12–3–93; 8:45 am]

BILLING CODE 6717–01–P

[4] Western could, of course, have been found imprudent for failing to buy-down the Amax contract. If imprudence had been demonstrated, we could have ordered refunds on that basis.

[5] This approach falls in line with our recent policy for late-filed rates, assuming we find the rates just and reasonable (or, if not, in addition to refunds of the overcharges). See Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139 at 61,979–80, order on rehearing, 65 FERC ¶ 61,081 (1993) (Prior Notice). Instead of ordering refunds of all costs above variable costs as the Commission initially required, the remedy for filing rates after service commences, if waiver is not granted, will entail the utility losing the time value of the money.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4810–4]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Research Triangle Institute (RTI) and its subcontractor EC/R, Inc., information which has been or will be submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). The RCRA of 1976, as amended, requires EPA to institute a national program to control hazardous wastes. The Environmental Protection Agency's Office of Solid Waste (OSW) is involved in various activities to support the development of hazardous waste regulations, including method development, quality assurance and control, and actions related to other aspects of 40 CFR parts 260 through 265. RTI and its subcontractor will provide support to the Office of Solid Waste in the areas of health and ecological exposure and risk assessments; toxic and pharmacokinetic studies; and analyzing regulatory options and impacts. Some of the information has a claim of business confidentiality.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than December 16, 1993.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401

M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–3410.

SUPPLEMENTARY INFORMATION:

1. Transfer of Data

The U.S. Environmental Protection Agency is required under the Resource Conservation and Recovery Act of 1976, as amended, to institute a national program to control hazardous waste. Under Contract 68–D2–0065, RTI and its subcontractor will provide support to the Characterization and Assessment Division of the Office of Solid Waste. The types of data that RTI will receive include: quantity and type of products made; processes used in making products; quantities of wastes generated; compounds known to be present and typical concentrations in the waste; chemical and physical properties of wastes; methods used for waste disposal; waste management capacity; cost of waste disposal; layout and characteristics of facilities where wastes are generated or handled; information on past contamination, monitoring programs, remediation efforts, and source reduction and recycling practices; and information gathered from site visits on potential routes of transmission through the environment.

In accordance with 40 CFR 2.305(h), EPA has determined that RTI and its subcontractor require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to this firm, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, RTI will return all such materials to EPA.

RTI and its subcontractor have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." EPA will approve the security plan of the contractor and approve it prior to RCRA CBI being transmitted to the contractor. RTI and its subcontractor will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: November 23, 1993.

Walter W. Kovalick, Jr.

Acting Assistant Administrator.

[FR Doc. 93–29718 Filed 12–3–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 29, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0178.

Title: Section 73.1560, Operating Power and Mode Tolerances.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 267 responses; 1 hour average burden per response; 267 hours total annual burden.

Needs and Uses: Section 73.1560(d) requires that licensees of AM, FM, or TV stations file a notification with the FCC in Washington, DC when operation at reduced power will exceed ten consecutive days and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30-day period, an informal written request must be made for any additional time as may be necessary to restore normal operations. The data is used by FCC staff to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

OMB Number: 3060–0188.

Title: Section 73.3550, Requests for new or modified call sign assignments.

Action: Extension of a currently approved collection.

Respondents: Non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 1,400 responses; .667 hours average burden per response; 934 hours total annual burden.

Needs and Uses: section 73.3550 requires that a licensee, permittee, assignee or transferee file a letter with the Commission when requesting a new or modified call sign. On 12/12/91, there was published in the **Federal Register** a revision to Section 73.3550(i). This revision included the addition of a reference to additional frequencies being used in the AM expanded band. This revision did not affect the burden associated with this rule section. The data are used by FCC staff to ensure that the call sign requested is not already in use by another station and that the proper prefix "K" or "W" designation is used in accordance with the station location (east or west of the Mississippi River).

OMB Number: 3060–0288.

Title: Section 78.33, Special Temporary Authority (Cable Television Relay Stations).

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 35 responses; 4 hours average burden per response; 140 hours total annual burden.

Needs and Uses: Section 78.33(a) permits Cable Television Relay Station (CARS) operators to file informal requests for special temporary authority to install and operate equipment in a manner different from that authorized in the station license. Section 78.33(b) permits equipment suppliers, cable operators or other eligible system operators (i.e., multipoint distribution service and multichannel multipoint distribution service) to file informal requests for special temporary authority to conduct equipment, program, service and path tests. The data are used by FCC staff to assure that grant of special temporary authority will not cause interference to established stations and meets Commission standards.

OMB Number: 3060–0339.

Title: Section 78.11, Permissible Service.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping and on occasion reporting requirements.

Estimated Annual Burden: 222 responses, .25 hours average burden per response, 56 hours total annual burden per response; 2,227 recordkeepers, .5 hours average burden per recordkeeper, 1,114 hours average total annual burden per recordkeeper; 1,170 hours total annual combined burden.

Needs and Uses: Section 78.11(d)(2) requires Cable Television Relay Service (CARS) licensees supplying program material to cable television systems, other eligible systems (i.e., multipoint distribution service and multichannel multipoint distribution service) or television translator stations to keep records showing the cost of the service and its non-profit, cost-sharing nature. Section 78.11(e) requires that a CARS pickup station providing temporary CARS studio-to-headend links or CARS circuits file a notification with the FCC, at least one day prior, if the transmitting antenna to be installed will increase the height of any natural formation or manmade structure more than 20 feet; when the transmitting equipment is to be operated for more than one day outside of the area to which a CARS station has been licensed; and when the transmitter equipment has been returned to its licensed area. The records are used by FCC staff in field investigations to ensure that contributions to capital and operating expenses are accepted only on a cost-sharing, non-profit basis. The notifications will be used by FCC staff to provide information regarding alleged interference.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–29643 Filed 12–3–93; 8:45 am]

BILLING CODE 6712–01–M

Licensee Order To Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Applicant	City/state	MM docket No.
Cavan Communications Corporation Licensee of WTMS(AM).	Presque Isle, ME	93–299

Regarding the silent status of Station WTMS(AM))

Pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Cavan Communications Corporation has been directed to show cause why the license for Station WTMS(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Cavan Communications Corporation has the capability and intent to expeditiously resume broadcast operations of WTMS(AM) consistent with the Commission's Rules.

2. To determine whether Cavan Communications Corporation has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether Cavan Communications Corporation is qualified to be and remain the licensee of Station WTMS(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–29642 Filed 12–3–93; 8:45 am]

BILLING CODE 6712–01–M

Renewal Application Designated for Hearing

1. The Chief, Audio Services Division, Mass Media Bureau has before him the following application for renewal of license:

Applicant, City and state	File No.	MM docket No.
David Lee Communications, Inc.; Flint, MI.	BR–890602UJ	93–298

(Seeking a renewal of the license of Station WTRX(AM))

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon whose issues are set forth below:

1. To determine whether David Lee Communications, Inc. has the capability and intent to expeditiously resume broadcast operations of WTRX(AM) consistent with the Commission's Rules.

2. To determine whether David Lee Communications, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject renewal of license application would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–29641 Filed 12–3–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1987]

Petitions for Reconsideration and Application for Review of Actions in Rulemaking Proceedings

November 23, 1993.

Petitions for reconsideration and application for review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions and

application must be filed by December 20, 1993.

See Section 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of part 97 of the Commission's Rules to Relax Restrictions on the Scope of Permissible Communications in the Amateur Service. (PR Docket No. 92–136, RM Nos. 7849, 7895 and 7896). Number of Petitions Filed: 2.

Application for Review

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations,. (Blanchard, Louisiana and Stephens, Arkansas) (MM Docket No. 93–13, RM Nos. 8156 and 8234). Number of Applications Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–29644 Filed 12–3–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Crisis Counseling Assistance and Training

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: FEMA gives notice that the extension period for the Florida regular crisis counseling program for disaster survivors of Hurricane Andrew is extended from the normal 90 days to 180 days. The severity of the emotional trauma resulting from Hurricane Andrew warrants an extension of 180 days.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Diana Paschke, Individual Assistance Division, Office of Disaster Assistance Programs, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4026.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is charged with coordinating Federal disaster assistance under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act) when the President has declared a major disaster. FEMA provided funding for a regular crisis counseling program to help those suffering the trauma resulting from the August 1993 Hurricane Andrew disaster.

FEMA received a request from the State of Florida to extend the otherwise applicable time limitations authorized by section 416 of the Act, so that the State can provide additional mental health services that are critically needed for citizens during the recovery operation. The extent of the damages wrought by the hurricane were of such magnitude that the residents of Florida suffered significant emotional trauma that warrants continuation of disaster mental health counseling beyond the normal crisis counseling time periods.

The Director, Center for Mental Health Services (CMHS), as the delegate to FEMA for the Secretary, Department of Health and Human Services, helps FEMA implement crisis counseling training and assistance. FEMA believes there was a well-established need for continuation of the regular crisis counseling program beyond a 90-day extension. Based upon the sound CMHS recommendation, FEMA has approved a 180-day extension to the time period for the Florida regular crisis counseling program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: November 29, 1993.

Richard W. Krimm,

Deputy Associate Director.

[FR Doc. 93–29663 Filed 12–3–93; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Petition of Evergreen America Corp. and Transax Data on Behalf of Named Carriers; Notice of Filing of Petitions

[Petition Nos. P100–93 and P101–93]

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from electronic tariff filing requirements of the Commission's ATFI System. To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than December 10, 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 as follows:

P100–93—Mr. Richard Huang, President, Evergreen America Corporation, One Evertrust Plaza, Jersey City, New Jersey 07302

P101–93—Mr. Steve Baker, Manager, Regulatory, Transax Data, 721 Route 202/206, Bridgewater, New Jersey 08807

Copies of the petitions are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–29665 Filed 12–3–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Parents' Fair Share Demonstration

AGENCY: Office of Policy and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of the availability of funds and request for applications to coordinate and provide research assistance for the Parents' Fair Share Demonstration.

SUMMARY: The Office of Policy and Evaluation of the Administration for Children and Families (ACF) announces the availability of Federal funding to coordinate and provide research assistance for the Parents' Fair Share Demonstration. Funding under this announcement is authorized by section 1110 of the Social Security Act governing Social Services Research and Demonstration activities (Catalog of Federal Domestic Assistance 93.647).

DATES: The closing date for submission of applications is February 4, 1994.

ADDRESSES: Application receipt point: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Mark Fucello, Administration for Children and Families, Office of Policy and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone (202) 401–4538.

SUPPLEMENTARY INFORMATION: The Office of Policy and Evaluation of the Administration for Children and Families announces that competing applications are being accepted for Federal financial assistance to coordinate and provide research assistance for the Parents' Fair Share (PFS) Demonstration. A single award

will be made under this announcement. The recipient will receive an initial financial award for 12 months and be eligible to apply annually on a non-competitive basis for four successive continuation awards, each of 12 months duration. The recipient will also be expected to enter into a cooperative agreement with ACF.

This program announcement consists of four parts. Part I provides background information about the PFS demonstration. Part II describes the activities supported by this announcement and application requirements. Part III describes the application review process. Part IV provides information and instructions for the development and submission of applications. The forms to be used for submitting an application follow Part IV.

Part I. Introduction

Section 482(d)(3) of the Social Security Act, as amended by the Family Support Act of 1988, directs the Department of Health and Human Services to allow up to five States to provide Job Opportunities and Basic Skills Training (JOBS) program services to unemployed noncustodial parents of AFDC children. In 1990 ACF entered into a partnership of public and private agencies and foundations to develop the PFS demonstration. With the support of the Pew Charitable Trusts, the Ford Foundation, and the AT&T Foundation, the Manpower Demonstration Research Corporation (MDRC) entered into a cooperative agreement with the Department of Health and Human Services and the Department of Labor to develop a demonstration of services including employment and training for unemployed noncustodial parents of AFDC children. MDRC provided background research and has coordinated site development activities.

On April 12, 1991 the Secretary of Health and Human Services and the Secretary of Labor sent a letter to the nation's governors announcing the PFS demonstration. In the spring of 1992 ACF awarded waivers to five states under authority of section 482(d)(3) of the Social Security Act and to four additional states under section 1115 of the Act to enable them to provide JOBS services to unemployed noncustodial parents and to participate in the demonstration. MDRC granted funds donated by the foundation partners to the participating States. In 1993 the McKnight Foundation and the Northwest Area Foundation joined the PFS consortium.

The following states are currently participating in the PFS demonstration. The counties listed are the actual demonstration sites:

(1) *Michigan* (Kent County)
(2) *Ohio* (Butler and Montgomery Counties)
(3) *New Jersey* (Mercer County)
(4) *Tennessee* (Shelby County)
(5) *Massachusetts* (Hampden County)
(6) *Alabama* (Mobile County)
(7) *Florida* (Duval County)
(8) *Minnesota* (Anoka and Dakota Counties)
(9) *Missouri* (Jackson County)

The central goals of the PFS programs are to reduce poverty among children receiving AFDC, to encourage and require their fathers to establish paternity and pay child support, and to increase the earnings of noncustodial parents who are unemployed and unable to adequately support their children.

Most individual PFS programs consist of both voluntary and mandatory-assignment client streams. While most concentrate on mandatory assignment, others include recruitment of volunteers as well. Mandatory assignment takes place through incorporation of PFS participation into individual child support orders. Designated PFS child support enforcement staff work with PFS case managers and the court systems to refer noncustodial parents to PFS at various points in the child support process (e.g., when orders are established or during determinations that non-payment of child support is due to unemployment).

Paternity establishment is required for PFS participation. The establishment process must begin within 90 days of PFS enrollment or before participation in high cost services, e.g., On-the-Job-Training (OJT) or skills training.

All PFS employment and training programs emphasize OJT and employment skills training with education services available for individuals who need them. All income from OJT assignments is subject to automatic wage withholding requirements. Peer support and parenting training is required for every PFS participant, and mediation services are available for anyone who requests them or for whom it is deemed necessary assistance.

Part II—Project Design

Purpose

The purpose of the demonstration project is to inform the public, including states, regarding the difference the PFS program makes to noncustodial parents and through them to the lives of custodial parents and children, through an impact and cost/benefit analysis. The primary measures to be used to assess program impact include, but are not limited to:

- Increased employment and earnings for noncustodial parents of AFDC children;
- Increased payment of child support;
- Increased income for custodial parents;
- Increased well-being for children.

The recipient will perform analyses that focus on process, noncustodial and custodial parent impacts, and costs and benefits of selected PFS demonstration programs to improve the knowledge base on how to serve noncustodial parents whose children receive public assistance. Net impacts at each site should be measured using a random assignment research design. The results of the demonstration project are intended to assist States in improving and enhancing their employment and social service delivery systems.

Eligible Applicants

Organizations eligible to apply for financial assistance under this announcement include States, for-profit organizations, and public or private nonprofit organizations. For nonprofit organization applicants, the only acceptable documentation of nonprofit status is either a copy of a current, valid IRS tax exemption certificate or a copy of the applicant's listing in the IRS's most recent list of tax exempt organizations described in section 501(c)(3) of the IRS code. This documentation must be included in the application. Applications from nonprofit organizations that do not include the documentation will be rejected and receive no further consideration.

ACF is interested in providing financial support to an organization with (1) experience in executing large scale social experiments, (2) experience in doing research involving waivers of federal AFDC, JOBS, and Child Support Enforcement policies, (3) an understanding of the demographics and experiences of economically disadvantaged noncustodial parents, (4) experience in working directly with state programs designed to assist disadvantaged noncustodial parents, (5) commitments of non-federal financial support to devote to the PFS demonstration.

Minimum Requirements for Project Design

In order to compete successfully in response to this announcement, the applicant should develop a plan which:

- Includes an outline of a report on the implementation and administrative

progress of the State PFS programs. The report should consider the coordination of child support and JOBS program services, the sites' ability to build to a scale which could allow for a rigorous study, and their capability to sustain a random assignment design during the study period.

• Includes an outline of a research design which takes into account specific features of the demonstration sites, the research objectives, and the components and services that comprise the "program" being studied. The outline should include an analysis of possible random assignment designs for the impact study and proposed hypotheses to be addressed.

• Describes how an impact analysis will determine the effects of the demonstration on participants, custodial parents, and their children. The information to be included in this analysis should include impacts on noncustodial parent employment and earnings, child support payments, custodial parent income and child well-being, as well as others to be suggested by the recipient.

• Describes how a cost/benefit analysis will compare the direct and indirect costs with the financial and non-financial benefits of the program from the point of view of the participants (noncustodial and custodial parents and their children); the government (Federal, State, and local); and the taxpayer.

• Includes descriptions of the two major reports (in addition to regular quarterly progress reports) to be issued during the project. The initial major report, due mid-way into the project, should discuss program implementation and participation and initial impacts on: noncustodial parent employment and earnings, child support payments, and AFDC receipt for the custodial parents and their children for the early cohort of the sample. The final report, due at the end of the project, should analyze the entire sample, cover the topics discussed above with longer follow-up, and present pooled and site-level impacts. The cost-benefit analysis should also be included in the final report. These reports are intended to inform State income maintenance and social service departments of the effectiveness of the PFS intervention and to further general knowledge about serving non-custodial parents.

• Includes the recipient's approach for providing assistance and training to State and county PFS staff, as needed, on the study and on random assignment. Site assistance plans should include, at a minimum, plans to (a) brief senior agency managers on the research design, data needs, and roles that their program staff will have in the study; (b) investigate the availability and quality of administrative records data (UI, child support payment records, IRS, AFDC benefits, etc.); (c) work with site staff to develop appropriate data collection instruments that serve both research and program management needs; and (e) develop procedures and responsibilities for determining control or experimental group assignment of each case.

• Includes financial support for PFS in addition to Federal funding to ensure both uninterrupted demonstration operation and research activities over the project period. Applicants should provide evidence of funding commitments from organizations such as private foundations.

Also, the recipient must be prepared to enter into a cooperative agreement with ACF which will outline the terms of ACF's involvement in the PFS demonstration as well as the responsibilities of the recipient. The cooperative agreement: (a) Will provide that ACF retain authority for review of the ongoing policy design decisions in the demonstration; (b) will provide that ACF approve the continuation of and waiver awards to any site in the demonstration after December 31, 1993, when the current PFS waivers expire; (c) will require ACF approval of the research design to be employed in determining the impacts of the demonstration; (d) will provide for ACF review of reports (other than quarterly progress reports) before publication.

Project Duration

The length of the project should not exceed five years (60 months). This announcement is soliciting applications for project periods up to five years. Awards, on a competitive basis, will be for an initial one-year budget period. An application for continued funding under this award beyond the one-year budget period but within the five-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the recipient, and a determination that continued funding would be in the best interest of the Government.

Federal Share of the Project

The maximum Federal share of the Project is not to exceed $4 million for the five-year project period, subject to the availability of funds. The maximum Federal share per each annual budget period will be $1,000,000.

Matching Requirement

Applicants must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $4 million in Federal funds over the five year project period must include a match of at least $1,334,000 (i.e., 25 percent of the sum of the Federal and the non-Federal cost of the project). The successful applicant's match must be met by the completion of the project period.

The recipient will be required to provide the agreed upon non-Federal share, even if it exceeds the required match stated above. Therefore, applicants should ensure that any amount proposed as matching funds is committed to the project prior to inclusion in its budget.

Anticipated Number of Projects to be Funded

One project will be funded under this announcement.

Part III—The Review Process

A. Review Process and Funding Decisions

Timely applications from eligible applicants will be reviewed and scored competitively. Reviewers will use the evaluation criteria listed below to review and score the application.

In addition ACF may refer applications to other Federal or non-Federal funding sources when it is determined to be in the best interest of the Federal Government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations and national organizations. These comments along with those of the reviewers will be considered by ACF in making the funding decision.

In making a funding decision, ACF may give preference to applications which reflect experience in working with the PFS sites since such experience on the part of a recipient has the potential to substantially improve the theory and practice of providing employment and social services to disadvantaged noncustodial parents.

ACF may also give preference to applicants who exhibit a favorable balance between Federal and non-Federal funds committed to the demonstration since a greater total financial investment than the minimum

required in this announcement has the potential of producing a high benefit in furthering knowledge about policies and practice of working with noncustodial parents for a low Federal investment.

B. Evaluation Criteria

Using the evaluation criteria below, reviewers will review and score each application. Applicants should insure that they address each minimum requirement listed above.

Reviewers will determine the strengths and weaknesses of each application in terms of the appropriate evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each criterion may be given in the review process.

Review Criteria

(1) *Organizational Experience* (15 points) The application should provide evidence of organizational experience in: (a) Coordinating large scale social experiments involving state AFDC programs, Child Support Enforcement policy, and employment and training program systems (include a list of published studies of these programs and policies); (b) working directly with State programs designed to assist disadvantaged noncustodial parents. Experience with these programs should include active involvement with the programs' data systems design and data collection procedures; and (c) coordinating multi-million dollar demonstration partnerships involving private foundations and Federal agencies. Evidence of this experience should include examples of large scale public/private partnerships coordinated by the applicant.

(2) *Staff Skills and Responsibilities* (15 points) The application should list each consultant or other key individuals who will work on the project along with a short description of the nature of their contribution. Summarize the background and experience of the project director and key project staff. Applicants are encouraged to discuss staff experience in working with disadvantaged noncustodial parents.

(3) *Knowledge of Noncustodial Parents* (15 points) The application should provide evidence of the applicant's understanding of the demographics and experiences of economically disadvantaged noncustodial parents. Evidence of this understanding should include (a) familiarity with how noncustodial parents interact with child support enforcement systems, employment and training programs, and social service agencies; and (b) knowledge of noncustodial parent participation rates in programs designed to improve their employability.

(4) *Approach and Project Design* (40 points) The application should include: (a) An outline of a report on the implementation and administrative progress of the State PFS programs including analyses of the sites' ability to build to a scale which could allow for a rigorous study and their capability to sustain a random assignment design during the study period; (b) an outline of a research design which takes into account specific features of the demonstration sites, the research objectives, and the components and services that comprise the "program" being studied including an analysis of possible random assignment designs for the impact study and proposed hypotheses to be addressed; (c) a description of how an impact analysis will determine the effects of the demonstration on participants, custodial parents, and their children; (d) a description of how a cost/benefit analysis will compare the direct and indirect costs with the financial and non-financial benefits of the program; and (e) the applicant's approach for providing assistance and training to State and county PFS staff on the research study.

(5) *Public-Private Partnerships* (10 points) In order to maximize the potential of using a limited Federal investment to further knowledge about the policies and practice of working with disadvantaged noncustodial parents, the application should provide evidence of commitments of non-Federal resources to the PFS demonstration. Provide evidence of financial support for PFS in addition to Federal funding, e.g., funding from private foundations, to ensure uninterrupted demonstration operation and research activities over the project period.

(6) *Budget Appropriateness* (5 points) The application should demonstrate that the project's costs are reasonable in view of the anticipated results and benefits. Applicants may refer to the budget information presented in the Standard Forms 424 and 424A and to the results or benefits expected according the analysis to be described under Criterion 4(d).

Part IV—Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided as part of this announcement along with a checklist for assembling an application package.

A. Required Notification of the State Single Point of Contact

This program announcement is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs), listed at the end of this announcement. Applicants from these seventeen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is found at the beginning of this announcement under the heading **DATES**. Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447, or

2. Sent on or before the deadline date and received by ACF in time to be considered during the competitive review process.

Applications must be postmarked no later than the date to be found at the beginning of the Program Announcement under the heading **DATES**. When mailing proposal packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. Also, applicants are cautioned that some post offices post date items.

Late Applications: Applications which do not meet the criteria under Deadline for Submittal of Applications are considered late applications. ACF shall notify each late applicant that its application will not be considered in the competition under this announcement.

Extension of Deadlines: ACF reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes, or earthquakes; or if there is widespread disruption of the mail. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Instructions for Preparing the Application

In order to assist applicants in completing the application, the Standard Forms 424 and 424A, required certifications, and a list of SPOCs have been included at the end of Part IV of this announcement. Please reproduce single-sided copies of these forms from the reprinted forms and type your information onto the copies. Do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Item 1. "Type of Submission"—Non-Construction.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given.

Item 6."Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—New.

Item 9. "Name of Federal Agency"—DHHS/ACF.

Item 10. "Catalog of Federal Domestic Assistance Number"—93.647.

Item 11. "Descriptive Title of Applicant's Project"—Parents' Fair Share Demonstration.

Item 12. "Areas Affected by Project"—Leave Blank.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located.

Items 15 "Estimated Funding Levels"—In completing 15a through 15f, the dollar amounts entered should reflect the total amount requested for the first 12-month budget period.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount available under this announcement for the first 12-month budget period.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or "matching funds."

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process?—Check "Yes" if your State participates in the E.O. 12372 process. Enter the date the application was made available to the State for review. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process?"—Check "No" if the program has not been selected by State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the

official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, sections A, B, C, and E are to be completed. Sections D and F do not need to be completed.

Section A—Budget Summary

Line 1:
Column (a): Enter "Parent's Fair Share Demonstration";
Column (b): Enter 93.647
Columns (c) and (d): Leave blank.
Columns (e), (f) and (g): Enter the appropriate amounts needed to support the project for the first budget period.

Section B—Budget Categories.

This budget should include the Federal as well as non-Federal funding for the proposed project for the first 12-month budget period. The budget should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification

Identify the project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits.

Justification

Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification

Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For grants governed by the administrative requirements of 45 CFR part 74, equipment means an article of nonexpendable tangible personal property having an acquisition cost of $500 or more per unit and a useful life of more than two years. For grants governed by the administrative requirements of 45 CFR part 92, equipment means an article of nonexpendable tangible personal property having an acquisition cost of $5,000 or more per unit and a useful life of more than one year.

Justification

Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification

Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification

Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification

Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." This line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment

charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

Justification

Enclose a copy of the indirect cost rate agreement, if applicable.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification

Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. On lines 8–11, list estimates for each projected budget period within the total project period (if an additional line is needed, use line 23 and label it appropriately). Enter total amounts on line 12.

In-kind contributions are defined in title 45 of the Code of Federal Regulations, part 74.51, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification

Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. On lines 16–19, list estimates for Federal assistance required for future budget periods within the total project period. List estimated total amounts on line 20.

Section F—Other Budget Information. Not applicable.

3. Program Narrative Statement

The Program Narrative Statement should be clear, concise, and address the specific requirements mentioned under Part II. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

(a) *Organizational Experience;*
(b) *Staff Skills and Responsibilities;*
(c) *Knowledge of Noncustodial Parents;*
(d) *Approach and Project Design;*
(e) *Public—Private Partnerships;*
(f) *Budget Appropriateness.*

The specific information to be included under each of these headings is described in section B of Part III—Evaluation Criteria.

The narrative should be typed double-spaced. All pages of the narrative (including charts, references, footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Organizational Experience." The length of the application, including the application forms and all attachments, should not exceed 125 pages.

4. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These certifications are self-explanatory. Copies of these assurances and certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications. A signature on the SF 424 indicates compliance with Drug-Free Workplace Requirements and Debarment and Other Responsibilities certifications.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original application, signed and dated, plus two copies.
—Complete application length should not exceed 125 pages.
—A complete application consists of the following items in this order:

- Application for Federal Assistance (SF 424);
- A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;
- Budget Information—Non-construction programs (SF 424A);
- Budget Justification for SF 424A section B—Budget Categories;
- Letter from the Internal Revenue Service to prove nonprofit status, if necessary;
- Copy of the applicant's approved indirect cost rate agreement, if appropriate;
- Program Narrative Statement (See part III, section C);
- Assurances—Non-construction programs (SF 424B); and
- Certification Regarding Lobbying.

E. Submitting the Application

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered. In order to facilitate handling, please do not use covers, binders, or tabs.

Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application.

Dated: November 23, 1993.

Howard Rolston,

Director, Office of Policy and Evaluation.

BILLING CODE 4184–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (*give city, county, state, and zip code*):

Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*):
_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use total and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the Senate intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4160-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

BILLING CODE 4180-01-C

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b).

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Educational Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

STATE SINGLE POINTS OF CONTACT

Arizona

Mrs. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Ms. Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Mr. Rodney T. Hallman, State Single Point of Contact, Office of Grants Mgmt and Development, 717 14th Street, N.W., Suite 500, Washington, D.C. 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., Room 534A, Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Mr. Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Ms. Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Mr. Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Ms. Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Mr. Richard S. Pastula, Director, Michigan Department of Commerce, Office of Federal Grants, P.O. Box 30225, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, Department of Finance and Administration, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 949–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: Mr. Ron Sparks, Clearinghouse Coordinator, Telephone (702) 687–4065

New Hampshire

Mr. Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Mr. Gregory W. Adkins, Acting Director, Division of Community Resources, New Jersey Department of Community Affairs.

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0814, Telephone (609) 292–9025

New Mexico

Mr. George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Mr. Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgees, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Ms. Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations Office, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Ms. Sheryl Jeffries, State Single Point of Contact, Herachler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose E. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Ms. Linda Clarke, Telephone (809) 774–0750.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

[FR Doc. 93–29704 Filed 12–3–93; 8:45 am]
BILLING CODE 4184–01–P

Centers for Disease Control and Prevention

[Announcement Number 412]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for the Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention. 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 HIV Infection. (To order a copy of Healthy People 2000 or CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992), see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301 (42 U.S.C. 241) and 310 (42 U.S.C. 242n) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private (e.g., community-based, national, and regional) organizations, State and local governments or their bona fide agents, federally-recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible for these cooperative agreements.

Availability of Funds

Approximately $300,000 is available in FY 1994 to fund approximately 10 to 15 awards. The awards will average $22,000 and will be funded with a 12-month budget and project period. The funding estimate may vary and is subject to change, based on availability of funds. Awards will initially be made on a contingency basis as described in the PURPOSE section.

The following are examples of the most frequently encountered costs that may or may not be charged to the cooperative agreement:

A. As approved, CDC funds may be used for direct cost expenditures: Salaries, speaker fees, rental of conference related equipment, registration fees, and transportation cost (not to exceed economy class fares) for non-Federal employees.

B. CDC funds may not be used for the purchase of equipment, payments of honoraria, organizational dues, entertainment or personal expenses, cost of travel and payment of a full-time Federal employee, nor per diem or expenses other than local mileage for local participants.

C. CDC funds may not be used for reimbursement of indirect costs.

D. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

E. CDC funds may be used for only those parts of the conference specifically supported by CDC as documented in the Notice of Cooperative Agreement (award document).

Purpose

The purpose of the HIV-related conference support cooperative agreement is to provide partial support for non-Federal conferences to stimulate efforts to prevent the transmission of HIV. CDC will collaborate on conferences that specifically focus on preventing HIV transmission. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. The CDC funds may not be expended for unsupported portions of conferences. Contingency awards will be made allowing usage of only 25% of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds for costs associated with preparation of the agenda. The

remainder of funds will be released only upon acceptance of the final full agenda. CDC reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

Program Requirements

CDC will provide support for conferences that are: (1) Directed to local, State, national, or international personnel contributing to HIV prevention efforts; and (2) focused on the application of research/evaluation findings to intervention efforts or the application of these prevention efforts to groups whose behaviors place them at increased risk for HIV infection.

Topics concerned with issues and areas other than HIV prevention should be directed to other public health agencies or in accordance with current **Federal Register** Notices (see **Federal Register** Notice 406 published on October 28, 1993, 58 FR 58008).

The activities related to the development of HIV prevention conferences require substantial CDC collaboration and involvement. In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities listed in section A, and CDC will be responsible for conducting activities listed in section B:

A. Recipient Activities

1. Manage all activities related to program content (e.g., objectives, topics, attendees, session design, workshops, special exhibits, speakers, fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC project personnel.

2. Provide draft copies of the agenda and proposed ancillary activities to CDC for acceptance. Submit copy of final agenda and proposed ancillary activities to CDC for acceptance.

3. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press). CDC must review and approve the use of any materials with reference to CDC involvement or support.

4. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures).

5. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

6. Develop and conduct education and training programs on HIV prevention.

7. Collaborate with CDC staff in reporting and disseminating results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, HIV/AIDS prevention and service organizations, and the general public.

B. CDC Activities

1. Provide technical assistance through telephone calls, correspondence, and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on risk factors for HIV infection, preventive measures, and program strategies for the prevention of HIV infection.

3. Accept draft agendas and the final agenda and proposed ancillary activities prior to release of restricted funds.

4. Assist in the reporting and dissemination of research results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, and HIV/AIDS prevention and service organizations, and the general public.

C. Letter of Intent

Potential applicants must submit a one-page, typewritten letter of intent (LOI) that briefly describes the title, location, and purpose of the meeting, its relationship to the CDC Funding Priorities (see the section FUNDING PRIORITIES), the date of the proposed conference, and the intended audience (number and description). This letter should also include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100%) being requested from CDC. LOI's will be reviewed by CDC program staff, and an invitation to submit a final application will be made based on the proposed conference's relationship to the CDC Funding Priorities and on availability of funds. An invitation to submit an application does not constitute a commitment by CDC to fund the applicant.

Note: To provide for adequate time to collaborate on the meeting agenda and content, applicants should allow a minimum of 3 months from the application due date to the scheduled date of the conference. (See the section LETTER OF INTENT AND APPLICATION SUBMISSION AND DEADLINE.)

Evaluation Criteria

LOI's will be reviewed by CDC program staff for consistency with CDC's HIV prevention goals and priorities and the purpose of this program. An invitation to submit a final application will be made on the basis of the proposed conference's relationship to the CDC topics of special interest, the timing of the meeting or conference that would allow for CDC input, and on the availability of funds.

Applications will be reviewed and evaluated according to the following criteria (TOTAL POINTS AVAILABLE IS 100):

A. Proposed Program and Technical Approach: (50 points)

Evaluation will be based on:

1. The applicant's description of the proposed conference as it relates to HIV prevention and education, including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices, and the extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with HIV prevention.

2. The applicant's description of conference objectives in terms of quality and specificity and the feasibility of the conference based on the operational plan, and the extent to which evaluation mechanisms for the conference will be able to adequately assess increased knowledge, attitudes, and behaviors of the target attendees.

3. The quality of the proposed agenda in addressing the chosen HIV prevention/education topic.

4. The degree to which conference activities proposed for CDC funding strictly adhere to the prevention of HIV transmission.

B. Applicant Capability (25 points)

Evaluation will be based on:

1. The adequacy and commitment of institutional resources to administer the program.

2. The adequacy of existing and proposed facilities and resources for conducting conference activities.

3. The degree to which the applicant has established and used critical linkages with health and education agencies with the mandate for HIV prevention (letters of support from such agencies should demonstrate the linkages specific to the conference).

C. Qualifications of Program Personnel: (25 points)

Evaluation will be based on:

1. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

2. The competence of associate staff persons, discussion leaders, and speakers to accomplish conference objectives.

3. The degree to which the application demonstrates an appropriate knowledge level of all key personnel about the transmission of HIV, as well as nationwide information and education efforts currently underway that may affect, and be affected by, the proposed conference.

D. Budget Justification and Adequacy of Facilities (not scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of cooperative agreement funds.

Funding Priorities

CDC is especially interested in supporting meetings and conferences on the following topics:

1. Community planning for HIV prevention, including the linkages between prevention and care services.

2. Prevention of HIV infection among: (1) Underserved populations, (2) high risk populations, including both in- and out-of-school youth or (3) populations in special settings (e.g., racial and ethnic minorities, out-of-school youth, incarcerated persons, men who have sex with men, migrant workers, and injecting drug users). Particular interest will be given to populations who may be affiliated with multiple groups (e.g., gay men of color).

3. HIV prevention in women of reproductive age and in children.

4. Management and prevention of coexisting medical conditions (e.g., tuberculosis, STDs, hemophilia, and mycobacterial infections) in persons with HIV and their families and partners.

5. Prevention of HIV infection in health-care settings.

6. Development of HIV prevention strategies with a broad range of community partners including those who have not traditionally been involved with public health programs (e.g., business, religious leaders).

7. Development of prevention marketing strategies, including various behavior modification messages related to sexual practices (e.g., abstinence, condom use, etc.).

Public comment regarding funding priorities is not being solicited due to time constraints.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance (CFDA)

The Catalog of Federal Domestic Assistance number is 93.118, *Acquired Immunodeficiency Syndrome (AIDS) activities.*

Other Requirements

HIV/AIDS Requirements

Award recipients must comply with the document entitled "Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (June 15, 1992)." A copy is included in the application kit. In complying with the Program Review Panel requirements contained in this document, recipients are encouraged to use an existing Program Review Panel such as the one created by the state health department's AIDS/HIV prevention program. If the recipient forms its own Program Review Panel, at least one member must also be an employee (or a designated representative) of an appropriate health or education agency, consistent with the revised Content Guidelines. The names of review panel members must be listed on the Assurance of Compliance form (CDC Form 0.1113) which is also included in the application kit. Prior to the conduct of the conference, the Program Review Panel must submit a report indicating that all materials, including the proposed agenda, have been reviewed and approved. A copy of the proposed agenda must be included with the report. The final agenda must be submitted to and approved by CDC officials.

Letter of Intent and Application Submission and Deadline

The original and two copies of the LOI must be postmarked by the following deadline date to be considered in the application cycles:

Cycle	Letter of intent due date	Application due date
1	January 13, 1994.	March 14, 1994.
2	April 18, 1994	June 20, 1994.

Following submission of a LOI, applications may be submitted only after CDC staff have reviewed the LOI and the applicant has received a written invitation to submit an application for funding. An invitation to submit an application does not constitute a commitment to fund the applicant.

The original and two copies of the application must be submitted on PHS Form 5161–1 and in accordance with the schedule below. The schedule also sets forth the earliest possible award date.

Cycle	Earliest possible award date	Earliest possible conference date
1	May 15, 1994	June 15, 1994.
2	August 15, 1994	September 1, 1994.

Applications must be postmarked on or before the deadline date to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 320, Atlanta, GA 30305.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Postmarked on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable 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 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 412. You will receive a complete program description, information on application procedures, a list of the relevant Healthy People 2000 HIV objectives, and an application package containing the addresses and phone numbers for the contact personnel.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Mr. Kevin Moore, Grants Management

Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 320, Atlanta, GA 30305, (404) 842–6550. Programmatic technical assistance may be obtained from Mr. Dave Brownell, Program Analyst, Office of the Associate Director for HIV AIDS, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E40, Atlanta, GA 30333, (404) 639–2918. Please refer to Announcement Number 412 when requesting information and when submitting your application in response to the announcement.

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.

Single copies of CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992) can be obtained by calling the CDC National AIDS Clearinghouse at 800–458–5231.

Dated: November 30, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–29697 Filed 12–3–93; 8:45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

[Docket No. 93M–0417]

Collagen Corporation: Premarket Approval of Contigen™ Bard® Collagen Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Collagen Corportion, Palo Alto, California, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Contigen™ Bard® Collagen Implant. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1993, of the approval of the application.

DATES: Petitions for administrative review by January 5, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rao Nimmagadda, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1220.

SUPPLEMENTARY INFORMATION: On April 27, 1990, Collagen Corp., Palo Alto, CA 94303, submitted to CDRH an application for premarket approval of the Contigen™ Bard® Collagen Implant. The device is an injectable collagen and is indicated for use in the treatment of urinary incontinence due to intrinsic sphincter deficiency (poor or non-functioning bladder outlet mechanism) that may be helped by a locally injected bulking agent. Contigen™ implant therapy is intended only for patients who have shown no improvement in their incontinence for at least 12 months.

On October 18, 1990, the Gastroenterology–Urology Devices Panel of the Medical Devices Advisory Committee, reviewed and recommended approval of the application. On September 30, 1993, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 5, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 19, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–29647 Filed 12–3–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Advisory Council on Historic Preservation; SES Performance Review Board

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Senior Executive Service (SES) Performance Review Board Appointments.

SUMMARY: This notice provides the names of those individuals who have been appointed by the Chairman of the Advisory Council on Historic Preservation to serve as members of the Advisory Council's SES Performance Review Board. Pursuant to the Memorandum of Understanding between the Advisory Council and the Department the Interior, the SES performance appraisal plan for the Department has been adopted for use by the Advisory Council. The Performance Review Board will review the appraisal,

award, and bonus recommendations for the SES members of the Advisory Council staff, and recommend final action to the Chairman. This notice is processed on behalf of the Advisory Council, as required by 5 U.S.C. 4314(c)(4).

DATE: These appointments are effective October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon D. Eller, Personnel Officer, Office of the Secretary (PSP), Department of the Interior, Washington, DC 20240, Telephone number: (202) 208–6702.

The names of the SES Performance Review Board members are:

Mr. Peter J. Basso (Career), Director, Office of Fiscal Services, Federal Highway Administration, Department of Transportation.

Mr. Charles B. Respass (Career), Deputy Assistant Secretary for Operations, Department of State.

Mr. Jerry L. Rogers (Career), Associate Director for Cultural Resources, National Park Service, Department of the Interior.

Dated: November 30, 1993.

Thomas C. Collier, Jr.,

Secretary's Representative to the Advisory Council on Historic Preservation.

[FR Doc. 93–29705 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[NV–050–92–4350–12]

Notice of Interim Closure of Public Lands in Portions of Piute Valley, Eldorado Valley, and Cottonwood Cove, Stateline Resource Area, Clark County, NV

SUMMARY: Notice is hereby given that certain Public Lands in Nevada are closed to vehicular access with the exception of certain designated routes of travel and for administrative purposes including the implementation of resource monitoring and research projects and maintenance of rights-of-way.

This closure covers Public Lands in portions of Piute Valley, Eldorado Valley, and Cottonwood Cove. The boundary is approximated by the Lake Mead National Recreation Area and the Eldorado Mountains on the east, State Highway 164 and the Newberry Mountains on the south, the Highland Range on the west, and the Eldorado Land Sale on the north.

The closure affects approximately 34 miles of Bureau of Land Management (BLM) administered roads and 27 miles of roads formally claimed by Clark County, Nevada under Revised Statute 2477. Roads claimed under Revised Statutes 2477 will be designated as open except those that have been formally relinquished by the Clark County Commissioners through resolution passed on October 19, 1993. An undetermined number of two-track trails will be affected.

ORDER: Notice is hereby given that effective on the date of publication of this notice in the **Federal Register**, the following use restrictions will be in effect on Public Lands in portions of the Piute Valley Tortoise Management Area (TMA), portions of the Eldorado Tortoise Management Area, and all of the Cottonwood Cove Tortoise Management Area, and will remain in effect until the Stateline Resource Management Plan is approved and implemented.

No person may use, drive or otherwise operate a motorized vehicle except on those routes of travel that are identified on the ground by open route signs.

Exemptions to this order are use of existing access routes to residences, active mining operations and communication sites, maintenance and inspection of existing rights-of-way, and the performance of resource monitoring and research projects by Bureau of Land Management, Nevada Department of Wildlife, and U.S. Fish and Wildlife Service personnel or their agents. All other exemptions to this order are by written authorization of the Las Vegas District Manager or Stateline Resource Area Manager only.

All mineral activities, including casual use, being conducted under 43 CFR 3809 within this closure must submit a Plan of Operations. The Plan of Operations must conform to the filing requirements of 43 CFR 3809.1–5. Notices filed under 43 CFR 3809.1–3 will be returned to the operator and a plan will be requested.

The legal land description for lands affected by this closure include all or portions of the following:

Piute and Eldorado Valleys

Mount Diablo Meridian

T. 26 S., R. 61 E., Secs. 1, 12, and 13.
T. 26 S., R. 62 E., Secs. 3–10 inclusive, 15–33 inclusive, 35, and 36.
T. 26 S., R. 63 E., Secs. 19, 20, and 28–33 inclusive.
T. 27 S., R. 62 E., Secs. 1, 12, 13, 24, 25, and 36.
T. 27 S., R. 63 E., Secs. 3–10 inclusive, 14–23 inclusive, and 27–35 inclusive.
T. 28 S., R. 62 E., Secs. 1, 2, 11–17 inclusive, and 22–25 inclusive.
T. 28 S., R. 63 E., Secs. 2–100 inclusive, 15–22 inclusive, 28–30 inclusive, and 33.

Cottonwood Cove

Mount Diablo Meridian

T. 26 S., R. 63 E., Secs. 22–29 inclusive, and 33–36 inclusive.
T. 26 S., R. 64 E., Sec. 19, and Secs. 29–32 inclusive.
T. 27 S., R. 63 E., Secs. 1–3 inclusive, 10–14 inclusive, 23–26 inclusive, and 35–36 inclusive.
T. 27 S., R. 64 E., Secs. 5–9 inclusive, 16–21 inclusive, and 26–36 inclusive.
T. 28 S., R. 63 E., Secs. 1, 2, and 10–15 inclusive.
T. 28 S., R. 64 E., Secs. 1–18 inclusive, 21–26 inclusive, and 34–36 inclusive.
T. 29 S., R. 64 E., Secs. 1–3 inclusive, 9–16 inclusive, and 21–24 inclusive.

Maps identifying these lands, restrictions, and exempted motorized vehicle routes are available at the Las Vegas District Office.

Authority for this interim closure and use restrictions is found in 43 CFR 8364.1 and 8342. Violation of these rules are punishable by a fine not to exceed $100,000 ($200,000 if the violator is an organization), imprisonment not to exceed 12 months, or both, as provided for under the Federal Land Policy Management Act (Pub. L. 94–579) as amended by 18 U.S.C. 3571(b)(5).

SUPPLEMENTARY INFORMATION: The purpose of this interim closure and use restrictions is to provide increased protection for desert tortoise populations and their habitat until final approval and implementation of the comprehensive Stateline Resource Management Plan. The desert tortoise is listed as a threatened species under the Federal Endangered Species Act and is afforded increased protection under terms of the Act.

On May 15, 1991 the Bureau of Land Management became a signatory to the Clark County Short-Term Desert Tortoise Habitat Conservation Plan. On August 12, 1991 the U.S. Fish and Wildlife Service approved the plan. Under this plan, the Bureau of Land Management agreed to take appropriate management actions, within certain areas established for conservation of desert tortoises and their habitat, through procedures outlined in the plan. Recommendations were made to the Bureau of Land Management by the Clark County Habitat Conservation Plan Implementation and Monitoring Committee that certain areas within Piute Valley, Eldorado Valley, and Cottonwood Cove should be closed to motorized vehicular traffic except for designated roads and trails. This action would afford increased protection of desert tortoises and their habitat. This

closure will provide the basis for effective enforcement of these protective measures. This closure is adjacent to and compliments a previous Interim Closure of Public Lands in Piute Valley issued by Federal Register Notice on Friday, December 4, 1992 (Vol. 57, No. 234).

EFFECTIVE DATE: This order is effective on the date of publication in this Federal Register, and will remain in effect until the Stateline Resource Management Plan is completed and implemented and this order is rescinded by the Las Vegas District Manager.

FOR FURTHER INFORMATION CONTACT: Gary Ryan, Acting District Manager, Las Vegas District, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126, or Dan Morgan, Area Manager, Stateline Resource Area, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126.

Dated: November 24, 1993.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 93-29655 Filed 12-3-93; 8:45 am]

BILLING CODE 4310-HC-M

[CA-060-00-4210-05; CACA 33573]

Realty Action, Classification of Public Lands for Recreation and Public Purposes, Serial Number CACA 33573, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CACA 33573, Lease/Conveyance of Lands for Recreation and Public Purposes. This action is a motion by the Bureau of Land Management and the County of San Bernardino, California to make available lands identified in the California Desert Conservation Area Plan, as amended, not needed for Federal purposes and having potential for disposal to support community expansion.

OBJECTIVES: (1) The Bureau of Land Management's ultimate objective is that subject landfills will be timely conveyed out of Federal ownership.

(2) Lease or conveyance of the lands will be subject to provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

(3) No portion of those lands that have been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement or release of any hazardous substance will be reconveyed to the United States.

(4) The subject classification comprises both continuance of landfill operations at those sites previously authorized under Recreation and Public Purpose lease and new operations at 2 sites not previously leased or developed.

SUMMARY: The following public lands in San Bernardino County have been examined and found suitable for classification for lease or conveyance to the County of San Bernardino, California under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

San Bernardino Meridian, California

T.2N., R.6E.
Sec. 20: lots 8, 9, 10, SE¼SE¼.
Sec. 21: lots 5, 6, S½SW¼.
Sec. 28: lots 1, 2, N½NW¼.
Sec. 29: lots 1, 2, N½NE¼NE¼, S½NE¼NE¼, SE¼NE¼.

Containing 657.92 acres, more or less. Landers landfill (CAS-5788 and CARI-05957).

T.8N., R.3E.
Sec. 10: S½SW¼SW¼.
Sec. 15: N½NW¼NW¼.

Containing 40 acres, more or less. Newberry landfill (CARI-06036).

T.9N., R.2E.
Sec. 30: S½SE¼SE¼NE¼.

Containing 5 acres, more or less. Proposed Newberry Transfer Station.

T.10N., R.2E.
Sec. 22: SW¼SW¼.

Containing 40 acres, more or less. Yermo landfill (CARI-03922).

T.3N., R.5W.
Sec. 13: SE¼NE¼, NE¼SE¼.

Containing 80 acres, more or less. Hesperia landfill (CARI-02794).

T.6N., R.4W.
Sec. 23: NE¼, SE¼NW¼, NE¼SW¼.

Containing 240 acres, more or less. Victorville landfill (CARI-06710) and proposed expansion area.

T.9N., R.1W.
Sec. 31: NE¼, N½SE¼.
Sec. 32: NW¼, N½SW¼.

Containing 480 acres, more or less. Barstow landfill (CAS-5787).

T.1S., R.10E.

That portion of the NW¼ of unsurveyed section 5 described as follows: Beginning at the SW¼ of section 32 T.1N., R.10E., SBBM; thence along the southerly prolongation of the West line of said section South 1,800 feet; thence East 1,700 feet; thence North 0 degrees, 0 minutes, 20 seconds West 1,824.54 feet to south line of said section 32; thence South 80 degrees, 10 minutes, 22 seconds West 1,700 feet to the point of beginning.

Containing 71 acres, more or less. 29 Palms landfill (CARI-115).

Mt. Diablo Meridian, California

T.25S., R.43E.
Sec. 18: N½ lot 4, lot 5.

Containing 48.02 acres, more or less. Trona-Argus landfill (CARI-06708).

Together, the areas described comprise 1661.94 acres, more or less, in San Bernardino County.

Classification of public lands as suitable for public purposes is recorded for existing landfill sites under the serial numbers listed above.

Under Realty Action CACA 33573 classification of public lands as suitable for lease or conveyance will serve to terminate and replace all classifications listed above.

Those public lands not previously applied for or classified as suitable for public purposes are described as:

San Bernardino Meridian, California

T.9N., R.2E.
Sec. 30: S½SE¼SE¼NE¼.

Containing 5 acres, more or less (proposed Newberry Springs Transfer Station).

T.6N., R.4W.
Sec. 23: NE¼.

Containing 160 acres, more or less Victorville expansion proposal).

The lands are not needed for Federal purposes. Lease or conveyance is consistent with the California Desert Conservation Area Plan, as amended, and would be in the public interest. The lands are situated near significant population centers and conveniently accessible by paved County roads. Prior to conveyance, an environmental assessment will be prepared. Each site will be evaluated to determine the specific acreage suitable for conveyance.

Conveyance of the lands for each site is subject to receipt of certification from the applicant that the contents of current landfills do not threaten human health and the environment.

The terms and conditions applicable to a lease or conveyance are:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. The United States will reserve all mineral deposits in the land together with the right to prospect, mine and remove such mineral deposits under applicable law.

B. Third Party Rights. Public lands at the Newberry Transfer Station site will be leased or conveyed subject to the following:

1. Those rights for construction, operation and maintenance of a 30 inch gas pipeline granted to the Southern California Gas Company, its successors or assigns, by right-of-way Serial No. CALA 0153666 under the Act of February 25, 1920, as amended (30 U.S.C. 185).

The subject land parcel at 29 Palms is described by a metes and bounds survey submitted by the applicant. The leased

parcel can only be conveyed on the approval of a cadastral survey description of the parcel.

Upon publication of this notice in the **Federal Register**, the public lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws and mineral leasing laws, except for lease or conveyance under the Recreation and Public Purposes Act and except for free use permit application CACA 33499 by San Bernardino County of 37.5 acres within the Victorville expansion proposal area under the Materials Act of 1947.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Area Manager, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, (619) 256–3591. Any adverse comments will be reviewed by the District Manager, California Desert District. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: November 22, 1993.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 93–29381 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–40–M

[UT–942–4210–; UTU–72581]

Notice, Exchange of Lands and Interest in Lands as Provided by Public Law 103–93

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Law 103–93, dated October 1, 1993, titled "Utah Schools and Lands Improvement Act of 1993," authorized the Federal Government to exchange lands and other interests in lands with the State of Utah in order to eliminate State land inholdings within the Navajo and Goshute Indian Reservations, and units of the National Forest and National Park Systems. This notice summarizes the major provisions of that Act and describes the segregation of certain Federal lands from operation of the public land laws, including the mining laws.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

SUPPLEMENTARY INFORMATION: The following described public lands have been determined to be suitable for exchange pursuant to Public Law 103–93:

Salt Lake Meridian

Blue Mountain Telecommunication Site

T. 5 S., R. 25 E.,
Sec. 30, all.

Beaver Mountain Ski Resort Site

Wasatch/Cache National Forest

T. 14 N., R. 3 E.,
Sec. 1, S½; (surface only)
Sec. 12, E½, N½NW¼; (surface only)
Sec. 13, N½NE¼. (surface only)
T. 14 N., R. 4 E.,
Sec. 5, SW¼;
Sec. 6, lots 6 and 7, E½SW¼, SE¼;
Sec. 7, lots 1–4, E½W½, E½;
Sec. 8, all;
Sec. 18, lot 1, N½N½NE¼, NE¼NW¼;
Sec. 25, lots 1–4, W½W½ (all, short section).

The areas identified aggregate 3,618.63 acres in Cache and Uintah Counties.

In accordance with Public Law 103–93, the lands described above are hereby segregated from entry under the public land laws, including the mining laws. The segregation of the above described lands shall terminate upon issuance of a patent or other document of conveyance to such lands, or upon publication of a notice in the **Federal Register** of a termination of the segregation.

Additional offers to the State of Utah include the following:

1. The unleased coal located in the Winter Quarters Tract, the Crandall Canyon Tract, the Cottonwood Tract, and the Solder Creek Tract. (Location and legal descriptions of these tracts are on file in the Utah State Office of the Bureau of Land Management at the address listed above.)

2. All royalties receivable by the United States with respect to coal leases in the Quitchupah (Convulsion Canyon) Tract.

3. A portion of the royalties receivable by the United States with respect to Federal geothermal, oil, gas, or other mineral interests in Utah which on December 31, 1992, were under lease and covered by an approved permit to drill or plan of development and plan of reclamation, were in production, and were not under administrative or judicial appeal. No offer shall be for royalties aggregating more than 50 per centum of the total appraised value of the State lands. No offer shall be made which would enable the State of Utah to receive royalties exceeding $50,000,000.

If the total value of lands and interest therein and royalties offered to the State is less than the total value of the State lands identified, the Secretary of the Interior shall offer to the State, lands which have been identified for disposal in Resource Management Plans, as of December 31, 1992.

In exchange for the lands and interests therein, and royalties, the State shall convey school and/or institutional trust lands located within the Navajo and Goshute Indian Reservations, and units within the National Forest and National Park Systems. Maps and legal descriptions of these lands are available at the Utah State Office of the Bureau of Land Management, 324 South State Street, Salt Lake City, Utah.

All Exchanges authorized under this Act shall be for equal value.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–29656 Filed 12–3–93; 8:45 am]

BILLING CODE 4210–DQ–M

[UT–933–04–4332–01]

Utah Bureau of Land Management: Maps for Identification of Boundaries for Implementation of the BLM's Interim Management Policy and Guidelines for Lands Under Wilderness Review

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of proposed Utah BLM Policy and Availability of Boundary Maps for Implementation of BLM's Interim Management Policy and Guidelines for Lands Under Wilderness Review (BLM Manual H–85501–1).

SUMMARY: The Utah BLM hereby announces the availability of a newly developed set of boundary maps for lands under wilderness review in Utah and establishes the policy of utilizing these maps as the standard for identification of boundaries for implementation of the BLM Interim Management Policy and Guidelines for Lands Under Wilderness Review. Copies of these maps are available for public review at the Utah State Office and all District and Area Offices. These maps clarify the location of study area boundaries and correct errors and resolve inconsistencies found in previous maps of Utah BLM lands under wilderness review.

DATES: Utah BLM proposes to implement this policy on February 4, 1994. Any comments on the maps or BLM's proposed policy should be submitted prior to that date.

ADDRESSES: Written comments should be sent to: State Director, Bureau of Land Management, Utah State Office,

P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Margaret Kelsey, Wilderness Program Leader, Utah State Office, (801) 539–4068.

SUPPLEMENTARY INFORMATION: The Utah BLM currently manages 3,265,240 acres in 96 areas under the BLM Interim Management Policy and Guidelines for Lands Under Wilderness Review (BLM Manual H–8550–1). These areas were established by decisions made in several wilderness inventories beginning in 1979 under authority of sections 202 and 603 of Federal Land Policy and Management Act of 1976. BLM's inventory decisions have been the subject to much controversy, and several versions of maps have been produced in response to identification of Instant Study Areas, accelerated inventories, initial and intensive inventories, and revisions of inventory decisions in response to appeals and court decisions. Following the inventories, BLM published maps of study areas in a Draft and Final Environmental Impact Statement and in a Wilderness Study Report.

The existence of several generations and versions of maps at different scales and levels of detail has led to confusion regarding the identification of study area boundaries for purposes of interim management and protection of wilderness values. As part of BLM's wilderness studies, the Utah State Office produced a set of maps for use in the legislative portion of the wilderness review. Any inconsistencies and errors found in previous maps were resolved and corrected as the legislative maps were produced. These maps have been copied and are available at BLM offices throughout the State.

The proposal made in this **Federal Register** announcement is to utilize the legislative maps as the official boundaries of study areas for interim management of wilderness values.

G. William Lamb,

Acting State Director.

[FR Doc. 93–29657 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Improve Water Management Capabilities at Arrowwood National Wildlife Refuge to Offset Impacts Caused by Flood Control Operation of Jamestown Reservoir, Stutsman County, ND

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) will prepare an environmental impact statement (EIS) on the proposed Federal action to improve water management strategies at Arrowwood National Wildlife Refuge (NWR) to offset impacts caused by flood control operation of Jamestown Reservoir, a component of the Garrison Diversion Unit (GDU), Stutsman County, North Dakota.

Arrowwood NWR is located on the James River in Stutsman and Foster Counties of North Dakota. The refuge is comprised of four pools: Arrowwood Lake, Mud Lake, Jim Lake, and Depuy Marsh. The refuge lies within the flood pool of Jamestown Reservoir and is adversely affected by flood control operations. Because Jamestown Reservoir operations have affected the refuge, mitigation is required under the Garrison Diversion Unit Reformulation Act in accordance with the Fish and Wildlife Coordination Act, the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 688dd), and the Federal Aid to Wildlife Act (16 U.S.C. 699i), their respective regulations (50 CFR parts 29 and 80), and other legislative mandates. Reclamation, in coordination with the Fish and Wildlife Service (Service), is evaluating the use of drawdown channels with associated control structures and reregulation of the normal summer target elevation (joint-use pool) and normal winter target elevation (conservation pool) at Jamestown Reservoir to achieve refuge compatibility for existing conditions. The purpose of the project is to mitigate for impacts caused by operation of Jamestown Reservoir, an existing feature of the GDU. The goal of the proposed project is to ultimately allow the refuge to improve management abilities for migratory waterfowl and resident species and improve habitat during normal and dry years to offset adverse impacts due to flood storage in high runoff years.

DATES AND LOCATIONS: Scoping meetings will be held to obtain ideas and information from the public on formulation of alternatives and/or concerns with any proposed mitigation measures. Scoping meetings are scheduled as follows:

- 7 p.m., January 5, 1994, at the Law Enforcement Center, 205 6th St. NE., Jamestown, North Dakota.
- 7 p.m., January 6, 1994, at the North Dakota Game and Fish Auditorium, 100 North Bismarck Expressway, Bismarck, North Dakota.

FOR FURTHER INFORMATION CONTACT: Project Manager, Bureau of Reclamation, Attention: MS–100, PO Box 1017, Bismarck, ND 58502; telephone: (701) 250–4242.

SUPPLEMENTARY INFORMATION: Since 1990, representatives from Reclamation, the Service, and other concerned agencies have been meeting as an interagency study team to review and develop potential measures for mitigating impacts to the Arrowwood NWR from Jamestown Reservoir operations. All measures, past and future, have been or will be designed to improve water management capabilities and improve wildlife habitat on the refuge. To date, the 2.8-mile Jim Lake drawdown channel (Final Finding of No Significant Impact and Environmental Assessment Document No. MS–150–91–09, August 1991) is the only mitigation measure that has been constructed. The proposed EIS will evaluate, among other reasonable alternatives, four additional drawdown channels, their associated control structures, and reregulation of the joint-use and conservation pools at Jamestown Reservoir.

Reclamation's earlier efforts at rectifying refuge water management problems using drawdown channels led to a public perception that the channels were a means to continue construction of the GDU supply works. Authorized plans for GDU involve moving Missouri River water to the James River.

Reclamation wishes to proceed with the development and implementation of a mitigation plan at Arrowwood Refuge to offset impacts caused by operation of Jamestown Reservoir. Reclamation acknowledges that the channels under consideration could also be used at some future date to bypass Missouri River water around the refuge pools; however, before such channels could be used for this purpose, a comprehensive NEPA compliance document for GDU would be necessary. The channel capacity will be sized no larger than is actually needed to convey flows needed to offset impacts caused by the operation of Jamestown Reservoir.

Furthermore, the administration does not support funding for completion of the principal supply works or a non-Indian irrigation component. Therefore, it is Reclamation's position that further construction of the GDU supply works is not a reasonably foreseeable future action in the context of this proposed action or of the related NEPA compliance and would not be evaluated in this EIS.

Alternatives to be evaluated in the EIS will be developed to assure refuge compatibility under the Refuge Administration Act. The preferred option is to mitigate onsite to the extent practicable.

At minimum, the following measures (physical features) or various combinations thereof will be addressed in the EIS:

• Jim Lake Drawdown Channel Extension: A 3.1-mile extension of the Jim Lake drawdown channel could be constructed, removing high spots in the James River channel below Arrowwood NWR, thereby improving autumn water drawdown capabilities of the refuge. A crossing could be constructed across Jamestown Reservoir flood pool to maintain present access for adjacent landowners. This crossing could also provide a potential location for a fish barrier to prevent rough fish from moving into the refuge from Jamestown Reservoir.

• Arrowwood Lake Drawdown Channel: A channel could be constructed between the south end of Arrowwood Lake and the north end of Jim Lake. The channel would be located entirely within the refuge along the east side of Mud Lake. This channel would facilitate drawdown of Arrowwood Lake and would allow the refuge to manage water levels in Mud Lake independently of Arrowwood Lake levels under low and normal flow conditions.

• Upper Jim Lake Channel: A channel could be constructed from the upper end of Jim Lake to the Jim Lake drawdown channel. The channel would be located entirely within the refuge. This would allow the refuge to manage Jim Lake water levels independently of the levels in upstream pools under low and normal flows.

• Upper Arrowwood Channel: A channel could be constructed from the James River just north of Arrowwood Lake to the south end of Arrowwood Lake. The channel would be located entirely within the refuge. This channel would allow the refuge to manage water levels in Arrowwood Lake independently of James River inflows under low and normal flow conditions.

• Reregulation of Joint-Use and Conservation Pools at Jamestown Reservoir: The normal summer target level could be lowered from 1432.7 mean sea level (m.s.l.) to approximately 1431.0 m.s.l. The normal winter target could be lowered from 1429.8 m.s.l. to approximately 1428.0 m.s.l. This would result in a small increase in available flood storage. Since this is about 1.7 feet lower for both winter and summer, flows downstream would not be affected except when flood inflows exceed these targets, resulting in a slight increase in the duration of releases from Jamestown Reservoir.

• Structures: Spillway structures at Arrowwood and Jim Lakes could be replaced. Additional low level control structures could be constructed at Arrowwood and Jim Lakes and Depuy Marsh.

• Offsite Mitigation: If additional mitigation would be required after all reasonable onsite measures are implemented, consideration would be given to mitigation measures outside Arrowwood NWR. Possible options for off-refuge mitigation include, but are not limited to: land acquisition and development, wetland creation/enhancement, and/or island construction.

The draft EIS is expected to be completed and available for review and comment by the autumn or winter of 1994.

For more information concerning the EIS or to offer suggestions as to significant environmental issues or additional alternatives, you should contact the Project Manager at the above address.

Dated: November 30, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 93–29698 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–94–M

Environmental Impact Statement Related of New Rules and Regulations for Implementing the Reclamation Reform Act of 1982

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Bureau of Reclamation (Reclamation) intends to propose new rules and regulations for implementing the Reclamation Reform Act of 1982 (RRA), as amended, 43 U.S.C. 390aa, *et seq.*, and to prepare an environmental impact statement (EIS), pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4332. The EIS will address the effects of various alternatives considered in developing proposed new rules and regulations. These regulations will apply to Reclamation projects in the 17 Western States: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

A separate notice of intent to propose rulemaking will be published in the "proposed rule" section of the **Federal Register.**

DATES AND ADDRESSES: Reclamation is scheduling scoping meetings throughout the Western States to provide the public with the opportunity to identify the issues and regulatory alternatives, which it believes should be considered in the EIS. These scoping meetings are scheduled for:

• Billings, Montana; January 11, 1994, Sheraton Hotel, 27 North 27th Street, 1 p.m. to 3 p.m.

• Fresno, California; January 12, 1994, Holiday Inn Center Plaza—Saloon B, 2233 Ventura, 7 p.m. to 9 p.m.

• Salt Lake City, Utah; January 18, 1994, Salt Lake Hilton, 150 West 500 South, 7 p.m. to 9 p.m.

• Phoenix, Arizona; January 19, 1994, Pointe Hilton South Mountain, 7777 South Point Parkway, 7 p.m. to 9 p.m.

• Spokane, Washington; January 25, 1994, BPA Office, Conference Room ABC, 707 West Main, Suite 500, 1 p.m. to 3 p.m.

• Portland, Oregon; January 26, 1994, Red Lion—Lloyd Center, 1000 Northeast Multonomah, 7 p.m. to 9 p.m.

• Denver, Colorado; January 27, 1994, Sheraton Hotel, 360 Union Boulevard, Lakewood, 1 p.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Rusty Schuster, Attention: D–5604, Bureau of Reclamation, PO Box 25007, Denver CO 80225. To be placed on a mailing list for any subsequent information, either write Mr. Rusty Schuster or telephone (303) 236–1061, extension 237.

SUPPLEMENTARY INFORMATION: Among other things, the RRA modified the ownership limitations for receiving Reclamation irrigation water, established limitations on the amount of leased land that is eligible to receive Reclamation irrigation water at a non-full-cost rate, and required the development of water conservation plans. On April 13, 1987, rules and regulations were promulgated to modify the original Acreage Limitation Rules and Regulations (dated December 6, 1983) 43 C.F.R. part 426. The 1987 rules and regulations were challenged in the United States District Court, Eastern District of California, by the Natural Resources Defense Council (NRDC) for failing to comply with the NEPA in the promulgation of rules. As the result of a "Settlement Contract" entered into in September 1993, among the Department of the Interior (Interior), the Department of Justice, and the NRDC, acting on behalf of itself and others, which contract pertains to the litigation styled

NRDC, et al. v. *Beard*, 9th Cir. Nos. 92–15640 and 92–15643, Reclamation is required, in part, to:

1. Consider proposing new regulations implementing the RRA in the 17 Western States.

2. Prepare an EIS, in compliance with the NEPA, addressing the impact of the various alternatives considered in the development of proposed new rules and regulations. The "Settlement Contract" provides that among the alternatives considered, Reclamation shall include tiered pricing, water conservation rules, alternatives designed to achieve the greatest degree of water conservation and environmental restoration possible under the RRA, alternatives that require Reclamation to collect all data necessary for the enforcement of RRA, and alternatives that require making water conserved through RRA available for fish and wildlife and other beneficial purposes.

3. Consider the impacts to water quality and fisheries of reduced irrigation, resulting from different pricing requirements, stronger conservation requirements, and stricter acreage limitation enforcement.

4. Use all relevant compiled data currently in Interior's possession. Additional data need be collected only as required by NEPA and its implementing regulations.

5. Hold hearings to receive comments on the draft EIS and proposed rules.

6. Complete the proposed rules and draft EIS by December 1, 1994, and the final rules and EIS by August 1, 1995.

Dated: November 30, 1993.

J. William McDonald,

Assistant Commissioner, Resources Management.

[FR Doc. 93–29700 Filed 12–3–93; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Preliminary)]

Certain Paper Clips From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China (China) of certain paper clips, provided for in subheading 8305.90.30, and reported under statistical reporting number 8305.90.3010, of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[2]

Background

On October 13, 1993, a petition was filed with the Commission and the Department of Commerce by ACCO USA, Inc., Wheeling, IL, and Noesting, Inc., Bronx, NY, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain paper clips from China. Accordingly, effective October 13, 1993, the Commission instituted antidumping investigation No. 731–TA–663 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 20, 1993 (58 F.R. 54169). The conference was held in Washington, DC, on November 3, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 29, 1993. The views of the Commission are contained in USITC Publication 2707 (November 1993), entitled "Certain Paper Clips from the People's Republic of China: Investigation No. 731–TA–663 (Preliminary)."

By order of the Commission.

Issued: November 29, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29670 Filed 12–3–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported paper clips covered by this investigation include paper clips made wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (e.g., copper), with a wire diameter between 0.64 and 1.91 millimeters, regardless of physical configuration, except as specifically excluded. The covered products may have a rectangular or ring-like shape and include, but are not limited to, clips commercially referred to as "No. 1" clips, "No. 3" clips, "Jumbo" or "Giant" clips, "Gem" clips, "Frictioned" clips, "Perfect Gems," "Marcel Gems," "Universal" clips, "Nifty" clips, "Peerless" clips, "Ring" clips, and "Glide-on" clips.

United States-Canada Free-Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Immediate Elimination of U.S. Tariffs on Certain Articles From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on November 5, 1993, of a request from the U.S. Trade Representative (USTR) pursuant to authority delegated by the President, the Commission instituted investigation No. 332–348 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to advise the President, with respect to each dutiable article listed in the USTR's notice published in the **Federal Register** of November 9, 1993 (58 FR 59498), of its judgment as to the probable economic effect of the immediate elimination of the U.S. tariff, under the United States-Canada Free-Trade Agreement, on domestic industries producing like or directly competitive articles, and on consumers. USTR asked that the Commission provide its advice not later than 90 days after the Commission received the request, or in this case by February 3, 1994.

EFFECTIVE DATE: November 5, 1993.

FOR FURTHER INFORMATION CONTACT: The project leader, Ms. Gail Burns (202–205–2501), Minerals, Metals, and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091). The media should contact Peg O'Laughlin, Director, Office of Public Affairs (202–205–1819). Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202–205–1810).

Background

Pursuant to the provisions of the United States-Canada Free Trade Agreement, on June 30, 1993, the Governments of the United States and Canada entered into an agreement concluding the third round of consultations on accelerated elimination of import duties on certain articles under the agreement. In the course of the consultations, it was discovered that certain products that had been the subject of petitions for duty removal, and for which public notice had been given for consideration in the consultations, were not classified by the U.S. Customs Service in the tariff provision indicated for the product in

the public notice. The Governments of the United States and Canada agreed that upon conclusion of the third round of consultations, the United States would correct the procedural deficiencies in order to conclude the consultations on these remaining products. More specifically, the USTR requested that the Commission provide advice with respect to the following articles—

1005.90.40 Popping corn prepared and packaged for use in microwave ovens.
6002.43.00 Knitted fabric, 24 gauge, composed of high strength, nonmelting, aromatic polyamide staple yarn, produced on simplex apparatus, certified by the importer as intended for use in the manufacture of high temperature resistant gloves.
8538.90.00 Parts for protectors of subheading 8536.20.00, certified by the importer as intended for use in electric motors.
9031.80.00 Checking gauges (crimp calipers).
9503.90.50 Balloons of metallized film of plastic.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on December 17, 1993. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: November 30, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29672 Filed 12–3–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30186 (Sub No. 2)]

Tongue River Railroad Co.—Construction and Operation of Additional Rail Line From Ashland to Decker, in Rosebud and Big Horn Counties, Montana

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to prepare a supplemental draft environmental impact statement.

SUMMARY: The Section of Energy and Environment (SEE) hereby notifies all interested parties in this proceeding that SEE will prepare a Supplemental Draft Environmental Impact Statement (SDEIS). In the Draft Environmental Impact Statement (DEIS), served July 17, 1992, SEE preliminarily concluded that the Four Mile Creek Alternative was the environmentally preferable route. However, based on comments to the DEIS and further investigation (including site visits), it appears that applicant's preferred route, rather than the Four Mile Creek Alternative, is the environmentally preferable route. The SDEIS will address this issue and will be served on all the parties and made available to the public. There will be a 45-day comment period from the date the SDEIS is served to allow the public opportunity to comment. After assessing all the comments to the SDEIS, SEE will then issue a Final Environmental Impact Statement which will include SEE's final recommendations to the Commission.

FOR FURTHER INFORMATION CONTACT: Dana White (202) 927–6214 or Elaine Kaiser, Chief, Section of Energy and Environment (202) 927–5449. TDD for hearing impaired: (202) 927–5721.

Decided: December 1, 1993.

By the Commission, Elaine K. Kaiser, Chief, Section of Energy and Environment, Office of Economics.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29761 Filed 12–3–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on August 25, 1993, OMB Pharmaceutical Partners, HC–02 Box 19250, Gurabo, Puerto Rico 00778–9250, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

Dated: November 24, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–29660 Filed 12–3–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 27, 1993, Upjohn Company, 7171 Portage Road, M.L. 7011–126–5, Kalamazoo, Michigan 49001, made applications to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 2,5-Dimethoxyamphetamine (7396).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register

Representative (CCR), and must be filed no later than (30 days from publication).

Dated: November 24, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–29659 Filed 12–3–93; 8:45 am]

BILLING CODE 4410–09–M

Lodging of Consent Decree Pursuant to the Clean Air Act, 42 U.S.C. 7522(a)(3)(B)

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Beany's Mufflerland, Inc.*, Civil Action No. C–2–92–469, was lodged on November 19, 1993 with the United States District Court for the Southern District of Ohio.

The Consent Decree is in settlement of claims alleged in connection with the auto-tampering provisions of the Clean Air Act (sections 205 and 203(a)(3)(B)) ("the Act"), 42 U.S.C. 7524 and 7522(a)(3)(B) (1989). The Consent Decree requires Beany's to pay the United States $15,000 and to take steps to remedy 38 past catalytic converter violations, and prevent future violations of the Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Beany's Mufflerland, Inc.*, DOJ Ref. #90–5–2–1–1657.

The proposed consent decree may be examined at the Office of the United States Attorney, 2 Nationwide Plaza, 4th Floor, 280 No. High Street, Columbus, Ohio 43215; the Field Operation and Support Division, United States Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–29653 Filed 12–3–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Petro Power Insulation, Inc., et al.*, Civil Action No. C–91–1490 MHP, was lodged on November 19, 1993 with the United States District Court for the Northern District of California. The complaint alleged that Petro Power Insulation, Inc., Tosco Corporation, Chevron USA, Inc., and Gaylord Container Corporation violated the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M. Under the terms of the proposed partial consent decree, Petro Power Insulation, Inc., Tosco Corporation, and Chevron USA agree to pay a civil penalty of $210,000, to comply with certain injunctive provisions and to pay stipulated penalties for violation of the partial consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Petro Power Insulation, Inc., et al.*, DOJ Ref. #90–5–2–1–1562.

The proposed consent decree may be examined at the office of the United States Attorney, 450 Golden Gate Avenue, P.O. Box 36055, San Francisco, California 94102; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105–3901; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–29652 Filed 12–3–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of the December meeting is canceled. Commissioners need time to prepare for negotiation.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES: December 9–10, 1993.

ADDRESSES: Holiday Inn Old Town, 480 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, suite 110, Alexandria, VA 22314 (703) 603–0440.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 93–29759 Filed 12–3–93; 8:45 am]

BILLING CODE 6820–EA–M

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES:

January 5, 1994, 8:30 a.m.–5 p.m., General Session

January 6, 1994, 8:30 a.m.–5 p.m., General Session

January 7, 1994, 8:30 a.m.–3 p.m., General Session

ADDRESSES: Holiday Inn Old Town, 480 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, suite 110, Alexandria, VA 22314 (703) 603–0440.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 93–29760 Filed 12–3–93; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by January 5, 1994.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Request for Advance or Reimbursement (Long Form).

Frequency of Collection: One-time.

Respondents: Seasonal and/or ongoing organizational endowment grantees.

Use: Endowment organizational grantees with seasonal support are required to use this form to report on a grant's progress before the final release of grant funds.

Estimated Number of Respondents: 1,400.

Average Burden Hours per Response: 1.

Total Estimated Burden: 1,400.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 93–29702 Filed 12–3–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL LABOR RELATIONS BOARD

Order Delegating Authority to the General Counsel

Before Chairman James M. Stephens, Members Dennis M. Devaney and John N. Raudabaugh.

Issued: November 22, 1993.

The Board anticipates that it may lack a quorum for the transaction of business for a temporary period in the near future.[1] At the same time, the Board recognizes that it has a continuing responsibility to fulfill its statutory obligations in the most effective and efficient manner possible. Parties subject to the Board's jurisdiction will continue to file unfair labor practice cases, some of which may require injunctive relief under section 10(j) of the Act. While it might reasonably be argued that the remaining Members of the Board could, even in the absence of a quorum, authorize 10(j) litigation, the Board has decided that it should avoid litigation over the validity of such authorization by temporarily delegating the authority to seek section 10(j) relief to the General Counsel.

Accordingly, in order to assure that the Agency will be able to meet its obligations to the public in cases where section 10(j) relief is warranted, the Board has decided on this delegation during the period in which the Board is at less than three Members.

This delegation is made under the authority granted to the Board under sections 3, 4, 6 and 10 of the National Labor Relations Act. Accordingly, the Board delegates to the General Counsel and Acting General Counsel full and final authority and responsibility on behalf of the Board, for initiating and prosecuting injunction proceedings as provided for in section 10(j) of the NLRA provided that upon the appointment of a new Board Member said delegation shall thereby be revoked.

This delegation relates to the internal management of the National Labor Relations Board and is therefore, pursuant to 5 U.S.C. 553, exempt from the notice and comment requirements of the Administrative Procedure Act. Further, public notice and comment is impractical because of the immediate need for Board action. The public interest requires that this delegation take effect immediately.

All existing delegations of authority to the General Counsel and to staff in effect prior to the date of this order remain in full force and effect. For the reasons given above, the Board finds good cause to make this order effective immediately in accordance with 5 U.S.C. 553(d).

By direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 93–29661 Filed 12–3–93; 8:45 am]

BILLING CODE 7545–01–M

[1] The five Member Board is currently at three Members, one of whom, Member Raudabaugh, is in recess appointment which will expire at the *sine die* adjournment of the current session of Congress.

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 15, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Antarctic Waste Management permit, was issued to J.L. Bengtson on November 30, 1993.

Guy G. Guthridge,

Acting Permit Officer, Office of Polar Programs.

[FR Doc. 93–29692 Filed 12–3–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 03016055; Byproduct Materials License No. 34–19089–01]

Receipt of Petition for Director's Decision Under 10 CFR 2.206; Advanced Medical Systems, Inc.

Notice is hereby given that the Nuclear Regulatory Commission Staff has received a Petition dated August 2, 1993, filed by William B. Schatz on behalf of the Northeast Ohio Regional Sewer District ("Petitioner" or "District"). The Petition requests, pursuant to 10 CFR 2.206, that the NRC institute a proceeding to modify the license of Advanced Medical Systems, Inc. ("AMS") to require, *inter alia*, that AMS provide adequate financial assurance to cover public liability pursuant to section 170 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2210. The District alleges the following bases for this request: (1) There is a large volume of evidence indicating prior discharge of cobalt-60 to the sanitary sewer, and (2) hundreds of curies of loose cobalt-60 remain in AMS's London Road facility.

This portion of Petitioner's request is being treated as a separate matter from the District's Petition pursuant to 10 CFR 2.206 of March 3, 1993, receipt of which was published in the Federal Register on April 13, 1993 (58 FR 19282). The NRC will take appropriate action on the Petition within a reasonable time.

The August 2, 1993, Petition raises another issue that is separate from its request for action against AMS, regarding advance notification to the District from NRC licensees in its service area before release of radioactivity into the sanitary sewer. In view of the similarity of this issue to the subject of a rulemaking petition already filed by the District, also dated August 2, 1993, the NRC staff is consolidating this request for advance notice of sewer disposal of radioactive material with that rulemaking petition.

A copy of the Petition is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 24th day of November 1993.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–29730 Filed 12–3–93; 8:45 am]

BILLING CODE 7590–01–M

Cameo Diagnostic Centre, Inc., Springfield, Massachusetts; Order Imposing a Civil Monetary Penalty

[Docket No. 030–29567 and License No. 20–27908–01 and EA 93–005]

I

Cameo Diagnostic Centre, Inc. (Licensee), Springfield, Massachusetts, is the holder of Byproduct/Source Material License No. 20–27908–01 (License), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on January 30, 1987. The License authorizes the Licensee to perform diagnostic procedures with radioactive byproduct material and to store Promethium-147, in accordance with the conditions specified therein.

II

On December 29, 1992, the NRC performed an inspection of licensed activities at the Licensee's facility. During the inspection, nine violations of NRC requirements were identified. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 16, 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 penalty proposed for the violations.

The Licensee responded to the Notice on June 11 and July 23, 1993. In its response, the Licensee objects to the characterization of Violations I.A and I.B as "willful", and to the classification of these violations at Severity Level III; protests the civil penalty assessed for Violations I.A and I.B; and requests remission of that penalty.

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 the violations occurred as stated in the Notice, the Severity Level classification is appropriate, and the penalty proposed for Violations I.A and I.B 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 a civil penalty in the amount of $1,750 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 I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

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 violation of the Commission's requirements as set forth in Violations I.A and I.B of the Notice referenced in Section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Rockville, Maryland, this 24th day of November 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusion

On April 16, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for nine violations identified during an NRC inspection. A civil penalty was proposed for Violations I.A and I.B. The

licensee responded to the Notice in two letters, dated June 11 and July 23, 1993, and objects to the characterization of Violations I.A and I.B as "willful", objects to the classification of Violations I.A and I.B at Severity Level III, protests the civil penalty assessed for Violations I.A and I.B, and requests remission of that penalty. The NRC's evaluations and conclusions regarding the licensee's request are as follows:

1. Restatement of Violations Assessed a Civil Penalty

I.A. 10 CFR 35.13(e) requires that a licensee apply for and must receive a license amendment before it adds to or changes the areas of use or address or addresses of use identified in the application or on the license.

Contrary to the above, as of November 3, 1992, the licensee changed the address and location at which byproduct material was used from 110 Maple Street, Springfield, Massachusetts to 155 Maple Street, Springfield, Massachusetts, and the licensee did not receive an amendment to authorize the change of location until January 12, 1993.

I.B. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, the licensee did not provide to the Commission, information that was complete and accurate in all material respects. Specifically, the licensee did not inform the Commission that it had begun using licensed material at its new location (155 Maple Street, Springfield, Massachusetts), even though the licensee was reminded, in telephone conversations with the NRC on November 12, 19, and 25, 1992, and in a letter dated November 13, 1992, that licensed materials could not be used at the new location until a license amendment was obtained. This information was material because, had the correct information been known, it would have resulted in action by the NRC to prohibit licensed activity at the new address until a license amendment had been granted.

These violations represent a Severity Level III problem (Supplements VI and VII).

Civil Penalty—$1,750.

2. Summary of Licensee Response Contesting the Severity Level III Classification of the Violations in Section I

The licensee, in its response, argues that Violations I.A and I.B do not fit the Severity Level III classification, and that the violations were not willful. In support of its contention that the two violations were not willful, the licensee states that it informed the NRC staff on October 21, 1992, that the licensee was moving the facility to a new address, and again on November 10, 1992, after the move was completed. The licensee contends that since the NRC did not issue an immediate "cease and desist order", the change in location of licensed activities did not have any radiological significance, and therefore does not match an example of a Severity Level III violation given in Supplement VI.C.10 of the NRC Enforcement Policy (Enforcement Policy). In pertinent part, that example states: "* * * a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance."

3. NRC Evaluation of Licensee Response

Some medical imaging activities conducted by Cameo Diagnostic Centre require an NRC license while others do not. The issue is not whether the licensee informed NRC that it was moving (or had moved), but rather whether the licensee willfully conducted NRC-licensed activities at the new address before it received a license amendment that authorized it to do so.

During the time period when the licensee informed the NRC staff that it was moving (and that it had moved), the NRC staff communicated with the licensee repeatedly to ensure that the licensee was not conducting NRC-licensed activities at the new address. These communications occurred during a face-to-face meeting with Mr. Paul Rosenbaum, the licensee's President on October 21, 1992, and, after the move, during telephone conversations with Mr. Rosenbaum on November 12, 19, and 25, 1992, and in a letter dated November 13, 1992. Despite these communications, Mr. Rosenbaum continued to conduct NRC-licensed activities at the new address, which was not an authorized location of use on the NRC license (Violation I.A), and failed to inform the NRC staff that he was doing so (Violation I.B).

When the NRC staff did learn that NRC-licensed material was being used at the new address in violation of the NRC license, the NRC staff put an immediate stop to this unauthorized use by notifying the licensee's daily suppliers of NRC-licensed material that License No. 20–27908–01 did not authorize receipt or use of NRC-licensed material at the new address. Thus, there was no need to issue an Order.

The NRC staff did not rely on Supplement VI.C.10 of the Enforcement Policy to classify Violations I.A and I.B at Severity Level III. These violations were classified at Severity Level III because they were willful. The Enforcement Policy, Section IV.C, Willful Violations, states: "[T]he Severity Level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications or willfulness." In the meeting, the numerous telephone communications, and the letter documented above, Mr. Rosenbaum was informed by the NRC staff that NRC-licensed material could not be used at a new location without a license amendment. Nonetheless, Mr. Rosenbaum continued the use of licensed material at the unauthorized new location, and did not inform the NRC that such use was occurring. This unauthorized use of material, and the failure to report such use to the NRC, notwithstanding the multiple notifications from the NRC, demonstrates, at a minimum, a careless disregard for NRC requirements, if not a deliberate attempt to circumvent the regulations by Mr. Paul Rosenbaum, the licensee's President. Therefore, the violations were clearly willful, as that term is used in the Enforcement Policy.

4. Summary of Licensee Response Requesting Mitigation of the Civil Penalty

The licensee protests the civil penalty and requests remission on the basis that the violations in Section I of the Notice were not willful, and did not represent a Severity Level III problem. The licensee also states that the $1,750 civil penalty, being a 250% increase over the $500 base penalty, was entirely unjustified, and was based on personal animus.

5. NRC Evaluation of Licensee Response

The reasoning that the NRC staff used in determining that the two violations were willful, and increasing the severity level classification to Severity Level III based on the willfulness, is explained in Section 3 above.

The Enforcement Policy, Section VI.B, states that civil penalties are proposed (absent mitigating circumstances) for Severity Level III violations and may be proposed for any willful violation. As explained in the NRC's April 16, 1993 letter, in assessing the civil penalty amount, the base civil penalty was escalated by 250% because: (1) NRC identified the violations (50%); (2) the licensee had extensive prior opportunity to correct the violations because of the

notice provided by the meeting, telephone communications, and letter documented above (100%); and (3) the duration of the violations continued from November 3, 1993, through December 11, 1993, and the NRC staff had to intervene to put a stop to them [1] (100%). These escalating factors were applied in accordance with the Enforcement Policy, Section VI.B.2. While the licensee asserted that the enforcement action was based on "personal animus", the licensee did not address the application of the escalation/mitigation factors in the Enforcement Policy.

With respect to the licensee's contention that this enforcement action was based on "personal animus", escalated enforcement actions, such as the one involved here, are arrived at after a multi-disciplinary and multi-level management review, which includes legal and technical personnel at both the NRC Regional and Headquarters level. This review ensures that a proposed enforcement action is taken in accordance with the guidance in the Enforcement Policy; and that the action is fair, objective and commensurate with the severity of the violations.

6. NRC Conclusion

The NRC concludes that the licensee has not provided an adequate basis for changing the characterization of Violations I.A or I.B as willful, changing the classification of these violations at Severity Level III, or mitigating the civil penalty. Accordingly, the NRC has determined that a monetary civil penalty in the amount of $1,750 should be imposed.

Evaluation of Violations Not Assessed a Civil Penalty

Of the violations not assessed a civil penalty, the licensee admitted Violations II.A, II.B, II.E, and II.F, and denied Violations II.C, II.D, and II.G.

Restatement of Violation II.C

10 CFR 35.92(a) permits a licensee to dispose of byproduct material with a physical half-life of less than 65 days in ordinary trash, provided, in part, that the licensee first holds such byproduct material for decay a minimum of ten half-lives.

Contrary to the above, on May 31, 1988, July 5, 1988, August 29, 1988, December 20, 1990, June 28, 1991, December 6, 1991, and May 29, 1992, the licensee disposed of technetium-99m in ordinary trash without first holding some of this material for decay a minimum of ten half-lives. Specifically, licensee personnel informed the inspectors during the inspection that for all of these dates when the waste material was disposed, some of the waste material had been generated during scans performed during the 60 hours prior to the disposal, and therefore that material was not held for a minimum of 10 half-lives (60 hours for technetium-99m) prior to disposal.

This is a Severity Level V violation (Supplement VI).

Summary of Licensee Response Denying Violation II.C

The licensee denies that it violated the requirement to hold byproduct material with a physical half-life of less than 65 days for decay a minimum of ten half-lives before disposal in ordinary trash. The licensee indicated that NRC inspectors made an assumption that waste discarded on days other than a Monday had less than 60 hours (ten times the half life of technetium-99m, commonly used by the licensee) old byproduct material waste.

NRC Evaluation of Licensee Response to Violation II.C

During the inspection, Mr. Rosenbaum indicated to the inspectors that he did not ensure that technetium-99m waste had decayed for ten half-lives prior to disposing of it. Specifically, Mr. Rosenbaum stated that, if he disposed of waste at the end of the day and a patient procedure had been performed that day, then the waste from the procedure was in the waste that he disposed. Mr. Rosenbaum stated that, so long as a survey of the bag containing the waste indicated background levels, the bag was disposed as ordinary waste. The inspectors determined from a review of the licensee's records that disposals had been made on certain dates and that a technetium-99m patient procedure had been performed without 60 hours prior to those disposals. Thus the violation is based on Mr. Rosenbaum's statements and the inspectors' review of the licensee's records, and not mere "assumption" as the licensee argues. Accordingly, the NRC staff maintains that the violation did occur.

Restatement of Violation II.D

10 CFR 35.51(a) (1) and (3) require, in part, that a licensee calibrate the survey instruments used to show compliance with 10 CFR part 35 on all scales with readings up to 1000 millirem per hour with a radiation source, and that the licensee conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration.

Contrary to the above, as of December 29, 1992, four CDV–700 Geiger-Mueller survey instruments used by the licensee to show compliance with 10 CFR part 35, had not been calibrated on the lowest scale, which has a maximum reading of 0.5 millirem per hour, and that is the scale most commonly used at the licensee's facility. Furthermore, the apparent exposure rate from a dedicated check source as determined at the time of calibration was not conspicuously noted on the instrument from April 1, 1987 through December 29, 1992.

This is a Severity Level IV violation (Supplement VI).

Summary of Licensee Response Denying Violation II.D

The licensee denied the violation involving survey instruments not calibrated on the lowest scale (with a maximum reading of 0.5 mr/hr) that is most commonly used at the facility. The licensee admits that the lowest scale was not calibrated, but denies that it was the most commonly used scale.

NRC Evaluation of Licensee Response to Violation II.D

10 CFR 35.51(a)(1) requires that the licensee calibrate all scales of survey instruments which measure radiation levels up to 1000 millirem per hour in the manner described. From March 1989 to the time of the inspection, the licensee did not have the lowest scale of its four CDV–700 Geiger-Mueller survey instruments calibrated. Furthermore, when, during the inspection, the technologists demonstrated their method of performing the various routine surveys, they indicated specifically that they use the most sensitive scale of these survey instruments which is the lowest scale. Therefore, the NRC concludes that failure to calibrate the lowest scale of survey instruments constitutes a violation of 10 CFR 35.51(a)(1).

Restatement of Violation II.G

Condition 14 of Amendment 3 of License No. 20–27908–01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated

[1] As documented in a Demand for Information issued to the licensee on December 17, 1992 (EA 92–246), the NRC staff learned of the violations on December 11, 1992, and asked Mr. Rosenbaum to voluntarily agree to stop using NRC-licensed materials at the unauthorized location; however, Mr. Rosenbaum refused. The NRC staff then had to put a stop to the violations by notifying the licensee's daily suppliers that the license did not authorize receipt or use of NRC-licensed material at the new address.

October 8, 1986, and a letter dated November 20, 1986. Item 7 of the letter dated November 20, 1986, requires that area surveys be performed after each procedure. Item 17 of the application dated October 8, 1986, requires that area surveys include dispensing, preparation, injection, and imaging areas.

Contrary to the above, as of December 29, 1992, the licensee did not perform an area survey of dispensing, preparation, and imaging areas after each procedure. Specifically, the licensee performed surveys of only the injection area after each procedure.

This is a Severity Level IV violation (Supplement VI).

Summary of Licensee Response Denying Violation II.G

The licensee denied the violation involving its failure to perform area surveys of the dispensing, preparation, and imaging area after each procedure involving use of licensed material. The licensee contends that the term "each procedure" and the violation as written are too vague and without substantive meaning.

NRC Evaluation of Licensee Response to Violation II.G

The licensee's letter dated November 20, 1986 stated that "area surveys will be performed after each procedure". The licensee's application, dated October 8, 1986, in Item 17, requires that area surveys include dispensing, preparation, injection, and imaging areas. In the context of this licensee submittal, the NRC understands the term "procedure" to refer to a patient imaging procedure. As documented in the inspection report, during the inspection, the licensee's technologist reported to the NRC inspectors that only the injection area was surveyed after each patient imaging procedure. The licensee did not meet the requirement because the dispensing, preparation, and imaging areas where NRC-licensed material was used for the patient imaging procedure were not surveyed at the conclusion of the patient procedure.

The violation uses the same words as the licensee did in its submittal. Hence, the licensee's questioning of the meaning of the term "each procedure" and the argument that the violation is vague are without merit. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

NRC Conclusion

The licensee has not provided an adequate basis for withdrawal of Violations II.C, II.D or II.G. Therefore, the NRC staff concludes that these violations occurred as stated.

[FR Doc. 93–29727 Filed 12–3–93; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–250, 50–251, 50–335 and 50–389]

Florida Power and Light Co., Turkey Point Nuclear Generating Units 3 and 4, St. Lucie Plant Units 1 and 2; Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41, which authorize operation of the Turkey Point Nuclear Generating Units 3 and 4, and DPR–67 and NPF–16, which authorize operation of the St. Lucie Plant Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water reactors at each of the licensee's two sites, Turkey Point Units 3 and 4 located in Dade County, Florida, and St. Lucie Plant Units 1 and 2 located in St. Lucie County, Florida.

II

Title 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letters dated October 13, and November 2, 1993, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, unescorted access into protected areas of the St. Lucie units is controlled through the use of a photograph on a badge and a separate keycard. At the Turkey Point units, unescorted access into protected areas is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badge). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel, who have been granted unescorted access, are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted entry into protected areas

would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control computer system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template in the access control computer system to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site and thus eliminate the process to issue, retrieve and store badges at the entrance stations to the plants. Badges do not carry any information other than a unique identification number. All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access, i.e. visitors.

Based on a Sandia report entitled, "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276 UC—906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee demonstrated that the false-accept rate for the hand geometry system will be better than is achieved by the current system. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for both sites will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and verification of hand geometry. A numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process and potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Florida Power and Light Company an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (58 FR 62685, November 29, 1993).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 29th day of November 1993.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29729 Filed 12–3–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket 030–12319, License 35–17178–01 EA 93–172]

Tulsa Gamma Ray, Inc., Tulsa, Oklahoma; Order Imposing Civil Monetary Penalty

I

Tulsa Gamma Ray, Inc. (Licensee or TGR) is the holder of NRC Materials License No. 35–17178–01 issued by the Nuclear Regulatory Commission (NRC or Commission). The license authorizes the Licensee to possess and use sealed radioactive sources to perform industrial radiography in accordance with the conditions of the license.

II

An inspection of the Licensee's activities was conducted June 17, 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 Penalty (Notice) was served upon the Licensee by letter dated July 28, 1993. The Notice described the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated September 7, 1993. In its response, the Licensee admitted the violations which resulted in the proposed civil penalty, but requested mitigation for reasons that are summarized in the Appendix to this Order.

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 the violations occurred as stated and that the penalty 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 the civil penalty in the amount of $5,000 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, Attn: 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 IV, 611 Ryan Plaza Drive, suite 400, Arlington, Texas 76011.

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 issue to be considered at such hearing shall be:

Whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 24th day of November 1993.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusions

On July 28, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Tulsa Gamma Ray, Inc. responded to the Notice on September 7, 1993. The Licensee admitted the violations that resulted in the proposed civil penalty, but requested mitigation. The NRC's evaluation and conclusions regarding the Licensee's request follow:

Restatement of Violations

A. 10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under constant surveillance and immediate control of the licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, on April 7, 1993, licensed material consisting of 34 curies of iridium-192 in a radiography exposure device was not secured against unauthorized removal and was not under constant surveillance and immediate control of the licensee while in an unrestricted area. Specifically, a radiography exposure device fell from a licensee vehicle onto a public highway, an unrestricted area, and was recovered by a member of the public.

B. 10 CFR 71.5(a) requires that each licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170–189.

49 CFR 177.842 requires, in part, that radioactive material packages be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on April 7, 1993, the licensee's representatives transported an Amersham Model 660 B exposure device, containing an iridium-192 sealed source, outside the confines of its facility and the exposure device was not blocked and braced such that it could not change position during conditions normally incident to transportation. Specifically, the exposure device was not sufficiently blocked and braced within the vehicle's darkroom where it is routinely placed for transport and the package fell out of the vehicle onto a public highway.

These violations represent a Severity Level III problem (Supplement IV).

Civil Penalty—$5,000.

Summary of Licensee's Request for Mitigation

In its September 7, 1993, letter, the Licensee admitted the violations but requested mitigation of the penalty, citing the following reasons:

1. The NRC did not completely consider the Licensee's comments at the enforcement conference regarding corrective action and past inspection history.

2. The NRC requirement to maintain constant surveillance during a radiographic operation is almost impossible to comply with at all times and a $5,000 penalty is unrealistic.

3. To assess a $5,000 civil penalty for failing to block and brace a radiographic camera is excessive because the violation was caused by human error that cannot be completely eliminated by training or corrective action, and no hazard to the public, no release of radiation, and no damage from radiation occurred.

4. It is not fair to assess a $5,000 penalty on TGR when the NRC makes no effort to enforce DOT requirements on common carriers to block and brace a Type B shipping container.

5. If the NRC still considers a $5,000 penalty appropriate, the $2,700 inspection fee already paid by TGR should be applied to the $5,000 penalty.

NRC Evaluation of Licensee's Request for Mitigation

The NRC's evaluation of the Licensee's arguments follows:

1. The Licensee's corrective action consisted of counseling and fining the radiographer responsible for the incident, and discussing the incident with other TGR radiography personnel. TGR took no apparent action to assess the adequacy of its existing procedures to prevent a recurrence of this type of incident. For example, when asked at the enforcement conference whether TGR had considered revising its existing procedures to require drivers to perform a final check of the vehicle to assure that everything was in order, the Licensee said no. The Licensee's general reaction to this incident was that "accidents" of this nature will happen and, therefore, corrective actions would be of limited utility. While the actions taken by the Licensee may be adequate in the short term, when this incident is fresh, we do not consider the Licensee's actions worthy of mitigation of the penalty because we are not convinced the Licensee has taken sufficient steps to prevent a recurrence in the long term.

With regard to past inspection history, we do not dispute the basic contention that TGR has transported radiographic devices for years without a mishap of this type. However, one of the violations in this case, a failure to comply with 10 CFR 20.207(a), is identical to a violation involved in a recent enforcement action involving this Licensee (EA 92–261). Although the citation in case number EA 92–261 was not issued until May 1993, subsequent to the April 7, 1993, incident, the violation occurred in September 1992 and had been the subject of an enforcement conference with the Licensee on January 26, 1993. While we do not consider the violations associated with the April 7, 1993 incident an indication of poor or declining performance, the combination of the September 1992 and April 1993 incidents causes us to question the adequacy of the Licensee's actions to emphasize the importance of maintaining control of radioactive material. We do not consider the Licensee's past performance to be either good or poor, thus it is not a basis for mitigating the civil penalty.

2. The Licensee's statement regarding surveillance during radiographic operations may be relevant to violations of 10 CFR 20.207(a) that occur while a camera is being used to perform radiography provided that the violations do not result in the loss of a radioactive source or unnecessary radiation exposure to members of the general

public. For example, in the case cited above, EA 92–162, the violation was classified at Severity Level IV based on the radiographer not exercising sufficient controls for a relatively brief period of time. However, this case does not involve a failure to maintain surveillance during radiographic operations, but in transporting licensed materials, and the NRC does not accept the argument that it is not always possible to comply with 10 CFR 10.207(a). When a failure to maintain surveillance results in the loss of radioactive material or unnecessary radiation exposure to a member of the general public, we believe such violations are appropriately classified at Severity Level III and that civil penalties should be assessed, if appropriate, after applying the civil penalty adjustment factors. The action taken by the NRC in this case is consistent with the Enforcement Policy and past practice.

3. A failure to block and brace that does not result in the loss of a radioactive source or in unnecessary radiation exposure to a member of the general public may be classified at a severity level lower than Severity Level III, and a civil penalty not considered. In this case, however, the failure to block and brace the radiography camera contributed to its falling from the Licensee's vehicle onto a public highway and being recovered by a member of the general public. The violations constitute a significant failure to control licensed material which posed a realistic potential for significant exposures to members of the public. Such violations are appropriately classified at Severity Level III in accordance with the Enforcement Policy. The action taken by the NRC in this case is consistent with the Enforcement Policy and past practice.

4. While the NRC does not regulate common carriers, the NRC does require its licensees to comply with United States Department of Transportation (DOT) regulations in order to ensure adequate control of licensed materials. DOT regulations require blocking and bracing for certain materials in order to ensure the material is properly secured to prevent its loss during transport. Failure to block and brace constitutes a violation of 10 CFR 71.5(a). The overlap in NRC and DOT authorities does not affect the validity of this citation, which is consistent with NRC requirements. The NRC routinely cites licensees for violations of DOT regulations concerning transportation of radioactive materials.

5. The payment of the inspection fee is a separate issue and has no bearing on the size of a civil penalty assessed for violations of NRC requirements. However, in this case, it appears that the inspection fee was assessed in error and will be refunded to the Licensee.

NRC Conclusion

The licensee has not provided any information that would give the NRC a basis for considering a reduction in the size of the proposed civil penalty. Consequently, the proposed civil penalty in the amount of $5,000 should be imposed by order.

[FR Doc. 93–29728 Filed 12–3–93; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

National Partnership Council (NPC); Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces two meetings of the National Partnership Council (NPC). Notice of these meetings is required under the Federal Advisory Committee Act.

Time and Place: The first meeting will be held on December 17, 1993, and the second will be held on January 14, 1994. Both will meet at 2 p.m., in the auditorium at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The auditorium is located on the ground level.

Type of Meeting: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

Point of Contact: Douglas K. Walker, Office of Communications, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., room 5F12, Washington, DC 20415–0001, (202) 606–1800.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to develop proposals to the President on legislative changes to the Federal Labor-Management Relations Statute that are necessary to achieve the partnership objectives outlined in the National Performance Review report. The NPC will also make proposals concerning legislation consistent with the NPR's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system and the performance management system.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments on the principles and features that should be embodied in any of these legislative proposals. We are especially interested in suggestions and ideas to ensure that the proposed legislation carries out the intent of the National Performance Review (NPR), as discussed in the NPR report. Comments should be received by December 13 in order to be considered at the December 17 meeting, and by January 10 in order to be considered at the January 14 meeting. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 93–29802 Filed 12–2–93; 11:10 am]
BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, December 14–15, 1993, at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will convene at 9 a.m. on each day in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 93–29550 Filed 12–3–93; 8:45 am]
BILLING CODE 6820–W–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33255; International Series Release No. 618; File No. SR–Amex–93–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc.; Relating to the Listing and Trading of Stock Upside Note Securities ("SUNS") Based On the Lehman Brothers Global Emerging Telecommunications Basket

November 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with

the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list for trading under Section 107 of the Amex *Company Guide* Stock Upside Note Securities ("SUNS") based on the Lehman Brothers Holdings, Inc. ("Lehman Brothers") Global Emerging Telecommunications Basket ("Global Telecommunications Basket").[1]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Section 107 of the Amex Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants. The Amex is proposing to list for trading under section 107 of the Company Guide Global Telecommunications Basket SUNS.[2]

These securities will conform to the listing guidelines under Section 107 of the Company Guide which provide that such issues have: (1) a public distribution of one million trading units; (2) 400 holders (or 100 holders if traded in $1,000 denominations); and (3) a market value of $20 million. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the earnings criteria stated in section 101 of the Company Guide, the Exchange will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million, or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.[3]

SUNS will be non-callable senior hybrid debt securities of Lehman Brothers. SUNS will have a term of not less than four and no more than seven years and will pay an annual coupon based on the year to year appreciation in the Global Telecommunications Basket. At maturity, holders of SUNS also will receive from the issuer the principal amount of the note. Accordingly, the proposed Global Telecommunications Basket SUNS will provide principal protection with the opportunity to participate in any year to year appreciate in the Basket. Global Telecommunications Basket SUNS will be cash-settled. That is, SUNS will not give holders any right to receive any Basket security or any other ownership right or interest in such security even though the return on the investment is based on the value of the Basket.

The market capitalization of the securities in the proposed Global Telecommunications Basket range from a high of approximately $77.5 billion (American Telephone & Telegraph ("AT&T")) to a low of $600 million (Champion Technology). The securities include the common stock of five U.S. telecommunications companies,[4] the common stock of three foreign issuers (which stocks are listed and traded on, or traded over the facilities of, U.S. securities markets),[5] DRs of nine foreign issuers,[6] and the ordinary shares of seven foreign issuers.[7] The average daily trading volume for the components of the Global Telecommunications Basket as of October 1993, ranged from 2.6 billion ordinary shares for Telecommunicacoes Brasileiras to 546,000 for Tadiran.

At the outset, each of the securities in the Global Telecommunications Basket will have equal representation. Specifically, each security included in the Basket will be assigned a multiplier so that the security represents an equal percentage of the value of the entire Basket on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price, to be included in the calculation of the Basket. Accordingly, each of the 24 companies included in the Global Telecommunications Basket will represent 4.166% of the total Basket at the time of issuance.

The multiplier for each security of the Global Telecommunications Basket will

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[1] "Stock Upside Note Securities," "SUNS," and "Global Emerging Telecommunications Basket" are registered service marks of Lehman Brothers Holdings, Inc.

[2] The Global Telecommunications Basket is a static portfolio consisting of 24 equity securities. Seventeen of the securities in the Basket are traded in the United States as common shares or American Depository Receipts ("ADRs") (ADRs together with Global Depository Receipts ("GDRs") are hereinafter collectively Depository Receipts or "DRs"). Seven of the Basket securities are traded as ordinary shares either in the issuer's home market or on the London Stock Exchange ("LSE"). All of the companies whose securities are included in the Basket provide information services, basic telecommunications services, and specialized services within the telecommunications industry. The securities which comprise the Global Telecommunications Basket are securities issued by corporations formed under the laws of the United States, United Kingdom, Canada, the Philippines, Chile, New Zealand, Hong Kong, Israel, Spain, Mexico, Brazil, Argentina, Sweden, France, Thailand, Italy, and Malaysia.

[3] According to the Exchange, the proposed SUNS are similar to Market Index Target-Term Securities ("MITTS") recently approved by the Commission. *See* Securities Exchange Act Release No. 32840 (September 2, 1993), 58 FR 47485.

[4] The U.S. companies include: ALLTEL, AT&T, Bell Atlantic Corporation, GTE Corporation, and MCI Corporation. The common stock of these companies is listed and traded on either the New York Stock Exchange, Inc. ("NYSE") or the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system's National Market System ("NMS").

[5] The foreign common stock issuers include: Newbridge Networks (Canada), Philippine Long Distance Telephone (Philippines), and Tadiran (Israel). Newbridge Networks is traded through NASDAQ/NMS, Philippine Long Distance Telephone is traded on the Amex, and Tadiran is traded on the NYSE.

[6] The DRs of the foreign issuers include: Alcatel Alsthsom Compagnie Generale d'Electricite (France), Compania de Telefonos de Chile (Chile), L.M. Ericsson Telephone Company (Sweden), Hong Kong Telecommunications (Hong Kong), Telecom Corporation of New Zealand Limited (New Zealand), Telefonica de Espana (Spain), Telefonos de Mexico, S.A. de C.V. (Mexico), Vodaphone Group (United Kingdom), Cable & Wireless (United Kingdom). All of the DRs in the Basket either are listed and traded by a U.S. securities exchange or are quoted through the NASDAQ system.

[7] The Basket includes the ordinary shares of Advanced Info Services, Telekom Malaysia, Telecom Argentina, Champion Technology, Telecommunicacoes Brasileiras, STET Societa Finanziarra Telefonica PA (Italy), and Telefonica de Argentina. In addition to the home market, the common stock of the seven issuers also trades in DR or ordinary share form in the following markets: Advanced Info Services trades as a DR in the U.S. OTC market; Telecom Argentina trades as a DR and an ordinary share in the U.S. OTC market, and as a DR on the LSE; Champion Technology and Telecommunicacoes Brasileiras trade as DRs through the NASD's Bulletin Board and as ordinary shares on the LSE; Telefonica de Argentina trades as an ordinary share on the NASD's Bulletin Board, and as a DR on the LSE and in the U.S. OTC market. The Amex has information sharing agreements with the home markets for all the ordinary shares included in the Basket except for STET (Italy) and Advanced Info Services (Thailand).

generally remain unchanged except for limited adjustments that may be necessary as a result of stock splits or stock dividends.[8] There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a Basket security. In addition, no adjustments of any multiplier of a Basket security will be done unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a security included in the Global Telecommunications Basket were to no longer exist, whether by reason of a merger, acquisition or similar type of corporate transaction, Lehman Brothers will assign to that security a value equal to the security's final value for the purposes of calculating Basket values. For example, if a company included in the Basket were acquired by another company, Lehman Brothers would assign a value to the shares of the company's listed securities equal to the value per share at which time the acquisition occurred. If the issuer of a Basket security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Global Telecommunications Basket so long as a market price for such security is available. If a market price is no longer available for a Basket security due to circumstances including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the Basket security will be assigned a value of zero in connection with calculating the Global Telecommunications Basket value for so long as no market price exists for that security.[9]

The value of the Global Telecommunications Basket will be calculated once a day either by an affiliate of Lehman Brothers or by an independent calculation agent. These values will be disseminated to investors once a day. Lehman Brothers will undertake to implement certain surveillance with compliance procedures with respect to the dissemination of the Basket value, requiring that the Basket value be announced only through public dissemination and restricting the access of the Lehman Brothers trading desk to the Basket value determined by the calculation agent until after public dissemination of that value.

Global Telecommunications SUNS will be denominated in U.S. dollars and will entitle holders to receive annual coupon payments based upon the percentage change in the value of the Global Emerging Telecommunications Basket from the beginning to the end of the year.[10] Global Telecommunications SUNS may not get redeemed prior to maturity and will not be callable by the issuer. Thus, holders will be able to liquidate their investment prior to maturity only by selling the security in the secondary market on the Amex. The Exchange anticipates that the trading value of the security in the secondary market will depend in large part on the value of the securities comprising the Global Telecommunications Basket and such other factors as the level of interest rates, the volatility of the value of the Global Telecommunications Basket, the time to maturity, dividend rates, and the credit of the issuer.

Because SUNS are linked to a basket of equity securities, the Exchange's equity floor trading rules will apply to the trading of SUNS. In addition, members and member firms will have an obligation pursuant to Amex Rule 411 to learn the essential facts relating to every customer prior to trading SUNS. The Exchange also will require pursuant to Rule 411 that a member or member firm specifically approve a customer's account for trading SUNS prior to, or promptly after, the completion of the transaction.

SUNS will be subject to the equity margin rules of the Exchange. The Amex will also distribute a circular to the membership prior to trading SUNS providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in SUNS and highlighting the special risks and characteristics of SUNS.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 69(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[8] Lehman Brothers will adjust the multiplier of any Basket security if the security is subject to a stock split or reverse split or similar adjustment in the case of a DR, to equal the product of the number of shares issued with respect to one share of the Basket security, or the number of receipts issued with respect to a DR, and the prior multiplier. In the case of a stock dividend, the multiplier will be adjusted so that the new multiplier will equal the former multiplier plus the product of the number of shares of such Basket security issued with respect to one share of the Basket security and the prior multiplier. In the case of a listing of DRs on a national securities exchange in the United States or on NASDAQ/NMS, the multiplier will be adjusted so that the new multiplier will equal the conversion of ordinary shares to DRs. The listed DRs then will be used to calculate the value of the Basket.

[9] Lehman Brothers will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

[10] The formula for determining the coupon rate will be as follows:

The coupon rate will equal the greater of: (i) [Tf–(Ti × Strike level])/Ti] × Participation Rate, or (ii) zero

Where: Ti = The level of the Telecommunications Basket at the beginning of the coupon period;

Tf = The level of the Telecommunications Basket at the end of the coupon period.

("Strike Level" and "Participation Rate" are specified percentages. Lehman Brothers anticipates that they will be set at 105%.)

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29667 Filed 12–3–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new Privacy Act system of records.

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of a proposed new system of records entitled FTS2000 On-Line Certification of Usage System (FOCUS)—Treasury/IRS 24.100 which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

DATES: Comments must be received no later than January 5, 1994. This new system of records will be effective January 14, 1994, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Disclosure, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Phyllis De Piazza, Supervisory Tax Law Specialist, Internal Revenue Service, Office of Disclosure, EX:D:F, 1111 Constitution Avenue NW., Washington, DC 20224. Telephone number: 202–622–6240.

SUPPLEMENTARY INFORMATION: FTS2000 On-Line Certification of Usage System is established in conjunction with the FTS2000 Service to consolidate information pertaining to FTS2000 telephone usage. This system will contain information relating to FTS2000 Service including voice, data, and videoconference usage; Foncard numbers assigned to employees; and any charges billed to FTS2000 telephones to determine responsibility for the placement of specific long distance calls, if waste or abuse patterns are detected.

The Internal Revenue Service will maintain these records to further the Government's fiscal responsibility and accountability provisions. Since part of the system of records is retrieved by individual identifier, the Privacy Act of 1974, as amended, 5 U.S.C. 552a, requires the Internal Revenue Service to give general notice and seek public comments.

Dated: November 24, 1993.

Deborah M. Witchey,

Deputy Assistant Secretary (Administration).

Treasury/IRS 24.100

SYSTEM NAME:

FTS2000 On-Line Certification of Usage System (FOCUS).

SYSTEM LOCATION:

Detroit Computing Center, 1300 John C. Lodge Drive, Detroit, MI 48226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally IRS employees or contractor personnel) who make long distance telephone calls and who receive telephone calls placed from or charged to IRS telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

The FTS2000 On-Line Certification of Usage System will contain records relating to the use of FTS2000 Service including voice, data, videoconference usage; Foncard numbers assigned to employees; and any charges billed to FTS2000 telephones to determine responsibility for placement of specific long distance calls, if waste or abuse patterns are detected. Telephone calls made to the IRS's Office of Inspector General Hotline numbers are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., appendix 3, section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 41 CFR 201–38.00.

PURPOSE(S):

In accordance with 41 CFR 201–38.00, Management of Telecommunications Resources, the IRS has established a call detail report program called the FTS2000 On-Line Certification of Usage System. This program will enable the IRS to analyze call detail information for verifying call usage and detecting possible abuse of the Government-provided long distance network which is called FTS2000. This network shall be used only to conduct official business, emergency calls, and calls the agency considers necessary in the interest of the Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records and information contained in these records may be disclosed, as is necessary, to: (1) Officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation; (2) A telecommunications company providing telecommunications support to permit servicing the account; (3) Provide information to a congressional office in response to an inquiry made at the request of an individual to whom the record pertains; (4) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (5) Disclose information in a proceeding before a court, adjudicative body, or other administrative body, before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to the litigation or has an interest in such litigation, and the use of such records by the agency is deemed relevant and necessary to the litigation or administrative proceeding and not otherwise privileged; (6) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (7) Provide information to Federal agencies to effect inter-agency salary offset; and to a debt collection agency for debt collection services.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against

[11] 17 CFR 200.30–3(a)(12) (1992).

an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and magnetic media.

RETRIEVABILITY:

Records are retrieved by Regional Office, District Office, Service Center, National Office, Detroit Computing Center, and Martinsburg Computing Center. Retrieval can also be accomplished by originating or terminating telephone numbers, by Foncard number or by time of day.

SAFEGUARDS:

Access to controls will not be less than those provided for by the Manager's Security Handbook, IRM 1(16)12 and the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with General Records Schedule 12, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner, Information Systems Development (ISD), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Office maintaining the system—Director, Detroit Computing Center (DCC), 1300 John C. Lodge Drive, Detroit, MI 48226.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager(s) in the office(s) where records to be searched are located.

CONTESTING RECORD PROCEDURES:

See "Record Access Procedures" above.

RECORD SOURCE CATEGORIES:

Telephone assignment records and Call Detail Reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–29668 Filed 12–3–93; 8:45 am]

BILLING CODE 4830–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–91]

Determination To Extend the Investigation of the Intellectual Property Laws and Practices of the Government of Brazil

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination under section 304(a)(3)(B) of the Trade Act of 1974, as amended (Trade Act), 19 U.S.C. 2414(a)(3)(B), to extend the investigation of the acts, policies and practices of the Government of Brazil on the protection and enforcement of intellectual property rights.

SUMMARY: Pursuant to section 304(a)(3)(B) of the Trade Act, the United States Trade Representative (USTR) has determined to extend the investigation initiated under section 302(b)(2)(A) of the Trade Act of certain acts, policies and practices of the Government of Brazil that deny adequate and effective protection of intellectual property rights.

DATES: The USTR made this determination on November 26, 1993.

FOR FURTHER INFORMATION CONTACT: John Huenemann, Deputy Assistant U.S. Trade Representative (Brazil), (202) 395–5190 or Thomas Robertson, Assistant General Counsel (202) 395–6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On May 28, 1993, the USTR initiated an investigation of deficiencies in the acts, policies and practices of the Government of Brazil (Brazil) related to the denial of adequate and effective protection of intellectual property rights in Brazil. See 58 FR 31788 (June 4, 1993).

Numerous bilateral discussions have been held on these issues since the initiation of this investigation. Brazil has indicated it will undertake a number of actions to upgrade protection for intellectual property and provide greater market access for products relying on the protection of intellectual property. These include progress in the areas of protection for trademarks, semiconductor mask works (layout designs), and computer programs; market access for computer programs; and improvements in the enforcement of intellectual property rights, including efforts regarding the importation of pirated and counterfeit goods and the penalties for infringement of intellectual property rights. The two governments, however, have not yet been able to resolve the remaining complex and complicated issues involved.

In light of the need for further time for discussions to resolve these remaining issues, the USTR has determined pursuant to section 304(a)(3)(B)(i) of the Trade Act, that "complex or complicated issues are involved in the investigation that require additional time." Thus, USTR's determination under section 304(a)(1) on whether the actions, policies, or practices under investigation are actionable under section 301, and what action, if any, should be taken in response, must be made no later than February 28, 1994.

Irving Williamson,

Chairman, Section 301 Committee.

[FR Doc. 93–29712 Filed 12–3–93; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 232
Monday, December 6, 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 8, 1993, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

1. November 18, 1993 (Open)
2. November 18, 1993 (Closed)

B. Reports

1. Chief Examiner's Quarterly Report

C. New Business

1. Regulations

a. Disclosure to Investors in Systemwide Debt Obligations and Consolidated Bank Debt Obligations of the Farm Credit System (Proposed).

b. Review of Collateral Evaluation Regulation.

2. Other

a. Review of FCA Orders.

b. Amendment to the Charter of the FCB of Louisville and the Charter of the FCB of Columbia to Transfer the Affiliation of the 4 ACAs from the FCB of Louisville to the FCB of Columbia.

c. Consolidation of the Farm Credit Banks of Omaha and Spokane to form AgAmerica, FCB.

Closed Session*

A. New Business

1. Enforcement Actions.

Dated: December 2, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–29840 Filed 12–2–93; 2:15 pm]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8), (9) and (10).

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, December 9, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Thursday, December 9

10:00 a.m.
Discussion of Interagency Issues (Closed—Ex. 9)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing by Northeast Utilities (Public Meeting) (Contact: Jose Calvo, 301–504–1404)

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: December 2, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–29806 Filed 12–2–93; 11:44 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 58, No. 232
Monday, December 6, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings; Amendment

Correction

In rule document 93-29133 appearing on page 62495 in the issue of Monday, November 29, 1993, make the following correction:

§ 1.219 [Corrected]

On page 29133, in the second column, in § 1.219(a), in the fifth line, "retirement" should read "requirement".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Golden Valley Electric Association, Inc., Finding of No Significant Impact

Correction

In notice document 93-26236 appearing on page 57582 in the issue of Tuesday, October 26, 1993, in the third column, before the FR Doc. line, insert the following:

James B. Huff, Sr.

Administrator.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 232

Defense Federal Acquisition Regulation Supplement; Reduction in Progress Payment Rates

Correction

In rule document 93-28815 beginning on page 62045 in the issue of Wednesday, November 24, 1993, make the following correction:

232.502–1–71 [Corrected]

On page 62046, in section 232.502–1–71, in the table, in the second column, the heading "Uniform rate" should read "Uniform rate percentage".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 820

[Docket No. 90N–0172]

Medical Devices; Current Good Manufacturing Practice (CGMP) Regulations; Proposed Revisions; Request for Comments

Correction

In proposed rule document 93-28554 beginning on page 61952 in the issue of Tuesday, November 23, 1993, make the following corrections:

1. On page 61952, in the first column, in **DATES:**, in the second line, "February 22, 1994." should read "March 23, 1994."

2. On page 61977, in the third column, under the heading **X. Request for Comments**, in the first paragraph, in the second line, "February 22, 1993," should read "March 23, 1994,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-04-4210-04; IDI-28748]

Issuance of Land Exchange Conveyance Document; Idaho

Correction

In notice document 93-27178 appearing on page 59059 in the issue of Friday, November 5, 1993, in the second column, in land description T. 48 N., R. 1 E., Sec. 21 should read "W½SE¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-343-7122-10-D063; CACA 28709]

Cancellation of Proposed Withdrawal; California

Correction

In notice document 93-26559 beginning on page 58015 in the issue of Thursday, October 28, 1993, make the following corrections:

1. On page 58016, in the second column, in land description T. 12 N., R. 4 E., in Sec. 25, "N¼" should read "N½".

2. On the same page, in the same column, in land description T. 12 N., R. 5 E., "Secs. 29 and 20;" should read "Secs. 19 and 20;".

3. On the same page, in the third column, in land description T. 11 N., R. 2 W., Sec. 11 should read "E½, NW¼, N½SW¼, and N½S½SW¼;".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-19658, File No. S7-26-92]

RIN 3235-AF01

Investment Company General Partners Not Deemed Interested Persons; Investment Company Limited Partners Not Deemed Affiliated Persons

Correction

In rule document 93-21109 beginning on page 45834 in the issue of Tuesday, August 31, 1993, make the following correction:

§ 270.2a19-2 [Corrected]

1. On page 45838, in the second column, in § 270.2a19-2(a)(3), in the sixth line, "Agreement that transferee shall all" should read "Agreement, the transferee shall have all".

BILLING CODE 1505-01-D

federal register

Monday
December 6, 1993

Part II

Department of Education

Knowledge Dissemination and Utilization Program; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Funding

AGENCY: Department of Education.

ACTION: Notice of final funding priority for fiscal years 1994–1995 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary announces a funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3424, Washington, DC 20202–2601. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains one priority under the D&U program and additional selection criteria for this priority. The priority would develop and test new informational and instructional materials related to the communication requirements of the Americans with Disabilities Act (ADA).

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(5) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations.

This final priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priority in this notice is consistent with the long-range planning process.

On September 2, 1993 the Secretary published a notice of proposed priority in the **Federal Register** at 58 FR 46710. The Department of Education received three letters commenting on the proposed priority. Modifications were made to the priority as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet this following priority. The Secretary will fund under this program only applications that meet this absolute priority:

Priority—Materials Development to Facilitate Accessibility in Communications

Background

Public Law 101–336, the Americans with Disabilities Act (ADA), that was enacted on July 26, 1990, prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. This announcement focuses on access for people with communication disabilities.

Although there are no existing data on the prevalence of communication impairments on a national level, the population is significant ("A Report of the Task Force on the National Strategic Research Plan," National Institute on Deafness and other Communication Disorders (NIDCD), 1989). For example, at least 28 million citizens have some degree of hearing loss, while over 2 million are profoundly deaf. Another 1.75 million have severe speech impairment (NIDCD, 1989). Individuals with vision impairments, cognitive impairments, and motor impairments are also impeded in their abilities to use a full range of existing methods of communications, such as public transportation signs and announcements, automated teller machines, and telephones.

In appropriating funds for NIDRR for fiscal year 1991, Congress instructed NIDRR to initiate a program of technical assistance to facilitate the implementation of the ADA. NIDRR established this initiative by funding ten Regional Disability and Business Technical Assistance Centers (RDBTACs), two national peer training projects, and three projects for materials development—two focused on employment and one focused on public accommodations. NIDRR attempted to establish a materials development project to focus on the accessible communications requirements of the Act, but did not receive acceptable applications for that project. However, NIDRR's subsequent experience with the ADA has reinforced the need for materials and technical assistance and training activities to make those with responsibilities and those with rights under the ADA aware of their rights and duties, and aware of the nature of communications barriers and of potential solutions.

Successful implementation of the ADA for persons with communication disabilities will depend, in part, on the extent to which obstacles to community integration caused by communication barriers can be identified and solutions developed and disseminated. These include not only technical solutions, but also non-technical aids for individuals who require basic terminology, short sentences, pictograms, repetition, and other techniques, to facilitate better integration into the community. The identification of significant barriers and of acceptable solutions must involve individuals with a range of communication disabilities. The target audiences for the materials developed by this project will be the RDBTACs funded by NIDRR, individuals with communication disabilities, employers, public and private operators of public accommodations, State and local governments, public and private service providers, communications industries, and regulators of communications industries.

An applicant for an award under this priority must demonstrate how the activities will address the needs of individuals with disabilities who are from minority backgrounds. This is expected to include issues of language and preferred communications media, and is expected to be reflected in the technical assistance and training, the target populations for dissemination, and the accessibility of the formats of the materials.

Priority

A materials development project to facilitate accessibility in communications shall—

- Identify useful newly available technology and develop consumer-run

orientation programs to inform consumers about new technology;

• Identify needs based on the requirements of the ADA for information about technology and services, and develop materials to educate employers, mass transit service providers, public and private operators of public accommodations, State and local government officials, public and private service providers, and the communication industries;

• Develop materials that explain the impact of the ADA on individuals with communication disabilities and on entities with responsibilities under the ADA, and disseminate these materials in accessible formats to the RDBTACs and to other relevant parties;

• Develop practical information, including methods to produce documents in accessible formats, on appropriate technologies and services that can be used in different settings where compliance with the ADA is required;

• Develop innovative methods of information exchange and new materials that illustrate solutions to problems experienced by people with various types of communication disabilities, and make these available to RDBTACs and other relevant parties;

• Develop, test, and evaluate training modules that demonstrate the appropriate use of the latest technology in telecommunication and other communication methods for people with communication disabilities and make these modules, along with technical assistance, available to the RDBTACs and other relevant parties;

• Coordinate with the Federal Communications Commission, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation and the Architectural and Transportation Barriers Compliance Board in the development and dissemination of materials;

• Establish and maintain liaison with researchers and providers concerned with communication devices and services, in order to disseminate consumer perspectives and to encourage the introduction of new and responsive technology; and

• Develop its materials, including brochures, publications and instructional materials, in formats that will adequately accommodate various individual communication modes.

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR part 355, apply to this priority. However, because of the specialized nature of these activities and the potential importance of this project to the successful implementation of the ADA, NIDRR has added several factors to the selection criteria in 34 CFR 350.34 by which applications under this priority will be evaluated. NIDRR has added 60 points to the selection criteria for these projects, so that the maximum possible score for an application in § 350.33(e) is increased to 160 points. NIDRR has distributed the additional points as follows:

(a) The applicant proposes an effective approach to the timely development and production of materials and instructional content in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities. (Weight: 4; Total Points: 20)

(b) The applicant presents an effective plan to pilot test, and evaluate and modify as needed, materials and training programs on appropriate target audiences, including individuals who have various types of disabilities and parents of individuals with disabilities, employers with various sized work forces, and appropriate representatives of service providers, business, labor, State and local governments, and the general public. (Weight: 4; Total Points: 20)

(c) The applicant involves individuals with disabilities, parents or other family members of individuals with disabilities, as well as representatives of the covered entities and other target populations, in the design and delivery of the informational and instructional content and format. (Weight: 4; Total Points: 20) (Approved by the Office of Management and Budget under Control Number 1820–0027.)

Applicable Program Regulations

34 CFR Parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

Dated: November 29, 1993.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Appendix—Analysis of Comments and Changes

The Department received three letters in response to the proposed priorities. This Appendix contains an analysis of the comments contained in the letters and the changes in the priority since the publication of the notice of proposed priority. Technical and other minor changes—and suggestions the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comment: One commenter suggested adding the transportation industry to the list of covered entities that will be the target audience for the technical assistance materials developed by the grantee.

Discussion: The Secretary believes that providers of mass transit are the appropriate element of the transportation industry that would be an important audience for the communication materials.

Changes: Providers of mass transit have been added to the list of covered entities in the second activity of the priority.

Comment: One commenter suggested requiring applicants to demonstrate how their project could be "implemented on a continuing education basis."

Discussion: The Secretary points out that the materials development project is intended to serve as a source of information and technical assistance materials. The ADA Regional Disability and Business Technical Assistance Centers are primarily responsible for ensuring that the communications materials developed by the grantee will be disseminated and utilized to the maximum extent.

Changes: None.

Comment: One commenter suggested adding an activity to develop materials on methods of producing documents in accessible formats.

Discussion: The Secretary believes that there is a need to develop materials that will assist covered entities to produce documents in accessible formats.

Changes: The fourth activity of the proposed priority has been revised to include information on methods to produce documents in accessible formats.

[FR Doc. 93–29757 Filed 12–3–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
December 6, 1993

Part III

The President

Federal Register
Vol. 58, No. 232
Monday, December 6, 1993

Presidential Documents

Title 3—

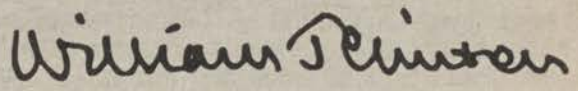
The President

Notice of December 2, 1993

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order No. 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order No. 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986.

Because the Government of Libya has refused to comply with United Nations Security Council Resolution No. 748, calling upon it to renounce through concrete action its support for international terrorism, and has continued its actions and policies in support of such terrorism, the national emergency declared on January 7, 1986, and the measures adopted on January 7 and January 8, 1986, to deal with that emergency, must continue in effect beyond January 7, 1994. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
December 2, 1993.

[FR Doc. 93–29927
Filed 12–3–93; 12:22 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6633 of December 3, 1993

National Drunk and Drugged Driving Prevention Month, 1993

By the President of the United States

A Proclamation

The 1993 holiday season is an ideal time to ask ourselves what more can be done to prevent drunk and drugged driving—one of our Nation's most serious public health and safety problems. Each year, thousands of Americans are killed or seriously injured because of drunk and drugged drivers. During this National Drunk and Drugged Driving Prevention Month, I ask each citizen to work actively to help improve the safety of our roads and highways by pledging not to drink and drive. In addition, we must be alert to the risks of the road and make a special effort to ensure that others do the same.

As in past years, citizens across the country are participating in programs and activities to focus public attention on the prevention of driving under the influence of mind-altering substances. Public officials at all levels are sponsoring anti-drunk and anti-drugged driving legislation, appointing special task forces, and issuing proclamations; law enforcement agencies are increasing enforcement efforts; public and private organizations are holding safety campaigns, including candlelight vigils in memory of those killed due to driving catastrophes caused by drunk and drugged drivers. Just as important, citizens are sponsoring volunteer programs to provide rides home from holiday parties. These are just some of the things that each of us can do to help in the fight against drunk and drugged driving.

Despite some encouraging results in recent years from many community-based efforts to curtail drunk and drugged driving, 45 percent of all fatal motor vehicle accidents in 1992 were alcohol-related, and about 80 percent of these involved a legally intoxicated driver or pedestrian. For 1992, that meant that alcohol was a factor in approximately 17,700 traffic deaths. Drunk driving remains our number one highway safety problem, requiring comprehensive State and local actions to reduce and prevent these unnecessary tragedies. Reductions in alcohol-related accidents will also be powerful medicine in the Nation's attempts to lower health care costs. Just reducing the percentage of alcohol-related fatalities from 45 to 43 percent of total annual traffic fatalities—and related injuries by a proportionate amount—would save 1,200 lives.

Each of us can help prevent drunk and drugged drivers from exacting their terrible toll in lives, suffering, and related health care costs by refusing to tolerate drunk and drugged driving in our community, by insisting that local police aggressively enforce anti-drunk and anti-drugged driving laws, and by encouraging other citizens to become involved in these activities.

We also need to realize that the combination of legal or illegal drugs and alcohol is especially hazardous and contributes to loss of control, loss of judgment, and certainly, loss of the ability to safely navigate a vehicle.

In order to promote more citizen involvement in prevention efforts and in order to increase awareness of the seriousness of the threat to our lives and safety, the Congress, by Senate Joint Resolution 122, has designated the month of December 1993 as "National Drunk and Drugged Driving Prevention Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 1993 as National Drunk and Drugged Driving Prevention Month. I ask all Americans to reaffirm their commitment to make drunk and drugged driving unacceptable and to take steps to intervene when necessary to stop anyone impaired by alcohol or drugs from getting behind the wheel. I also call upon public officials at all levels and interested citizens and groups to observe this month with appropriate ceremonies, programs, and activities as an expression of their commitment to educate and stop would-be drunk and drugged drivers in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of December, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-29928
Filed 12-3-93; 12:21 pm]
Billing code 3195-01-P

Reader Aids

Federal Register

Vol. 58, No. 232

Monday, December 6, 1993

INFORMATION AND ASSISTANCE

ELECTRONIC BULLETIN BOARD

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

FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

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.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2650/P.L. 103–162

To designate portions of the Maurice River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers Systems. (Dec. 1, 1993; 107 Stat. 1968; 5 pages)

Last List December 3, 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.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $775.00 domestic, $193.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 783–3238 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2233.

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:			
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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:			
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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:			
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800–End	(869–019–00049–6)	19.00	Jan. 1, 1993
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150–999	(869–019–00051–8)	17.00	Jan. 1, 1993
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20 Parts:			
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400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–019–00065–8)	30.00	Apr. 1, 1993
21 Parts:			
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170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–019–00069–1)	6.00	Apr. 1, 1993
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
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§§ 1.301–1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
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125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
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18-End	(869-019-00138-7)	30.00	July 1, 1993
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100-149	(869-017-00144-9)	34.00	July 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.

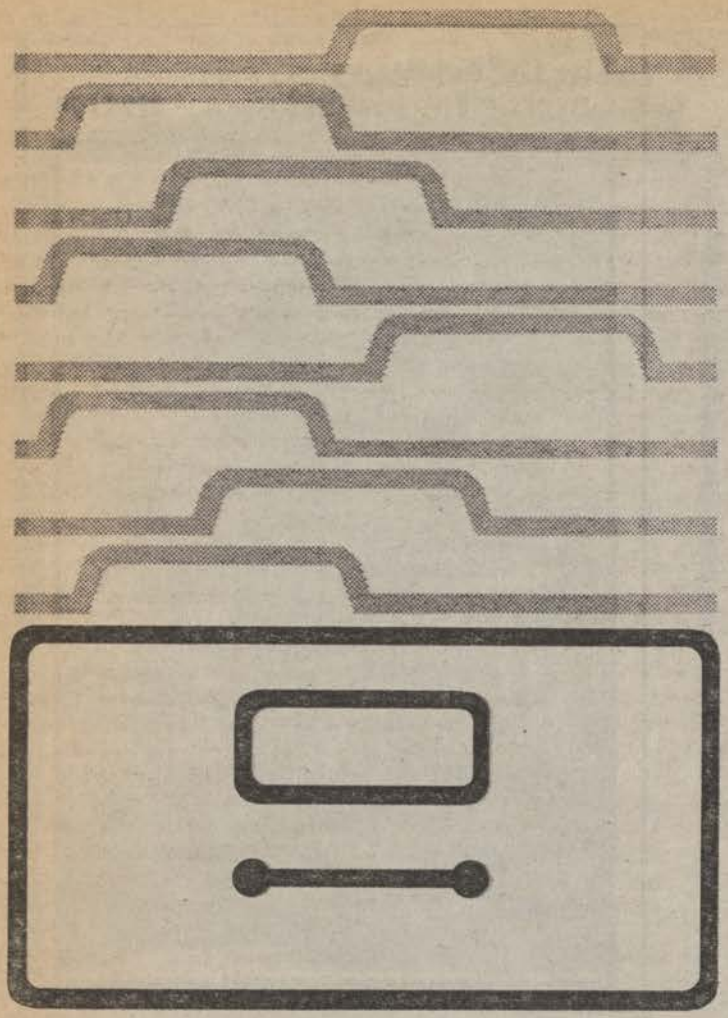
[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[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, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] 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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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

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