3–4–94
Vol. 59 No. 43

federal register

Friday
March 4, 1994

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

3–4–94
Vol. 59 No. 43
Pages 10265–10568

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: March 16 at 9:00 am

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

OAKLAND, CA

WHEN: March 30 at 9:00 am

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

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

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Proclamation 6652 of March 2, 1994

Save Your Vision Week, 1994

By the President of the United States of America

A Proclamation

Vision is a gift to be treasured. We often take our sight for granted and must be reminded that our eyes require adequate care and attention. At a time when new technologies are revolutionizing medicine, eye care continues to make dramatic progress. Many diseases or accidents that would have caused permanent blindness just a few decades ago can now be treated, with excellent prospects for full recovery. Eye care professionals learn more about proper eye care every year, discovering new ways to prevent disease and to minimize potential damage to our precious eyesight.

Despite our ever-increasing medical knowledge, however, thousands of Americans still suffer preventable vision loss each year. Proper eye care can significantly reduce the incidence of such needless tragedies, and I encourage all Americans to learn ways to minimize the risks of disease and injury to their eyes.

Having periodic eye examinations is an excellent way to invest in one's long-term health. Preventive eye care is always more efficient, more effective, and less expensive than dealing with an existing disease. A comprehensive eye examination allows an eye care professional the ability to identify a disease in its earliest stages and prescribe the treatment with the best chances for success.

Glaucoma, one of the leading causes of blindness in the United States, if diagnosed early, can be treated quite successfully. Though there are often no early warning symptoms of the disease, an eye care professional can detect the affliction during a regular examination and prescribe eye drops or other simple treatments to control the disease and save the patient's sight. I urge all people at high risk for glaucoma—African Americans over the age of 40 and everyone over the age of 60—to receive an eye examination through dilated pupils at least every two years.

People with diabetes are also at particularly high risk for preventable eye disorders. Such eye disease as diabetic retinopathy, which still blinds many people with diabetes in our Nation, can be stopped if it is diagnosed in time. By receiving an eye examination at least once a year, diabetics can do much to protect their vision.

Children, of course, should receive periodic eye examinations, starting when they are very young. Regular eye care at a tender age can identify otherwise hidden disorders, thus sparing the child a lifetime of visual impairment.

I encourage all Americans to take precautions to safeguard their vision throughout their lives. We must teach our children proper eye safety by example—wearing masks or goggles when we play in contact sports and using safety glasses when working with volatile chemicals or dangerous machinery.

To encourage everyone to make a concerted effort to protect the cherished gift of sight, the Congress, by a joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 169a), has authorized and requested the President to issue a proclamation designating the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 6, 1994, as Save Your Vision Week. I urge all Americans to participate in this observance by making eye care and eye safety a priority in their lives. I invite eye care professionals, members of the media, and all public and private organizations committed to the important goal of sight protection to join in activities that will make Americans more aware of the steps they can take to protect their vision.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–5163
Filed 3–2–94; 3:35 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 837

RIN 3206–AF31

Recomputation of Congressional Annuities After Reemployment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to establish the method used to add cost-of-living adjustments (COLA's) to recomputed annuities of former Members of Congress who perform additional service after retirement as Members and the method for determining that cap on COLA's as it affects these former Members and under the Civil Service Retirement System. These regulations interpret section 8340 of title 5, United States Code, as it affects these computations.

EFFECTIVE DATE: April 4, 1994. These regulations apply to benefits based on reemployment that begins on or after the effective date.

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

SUPPLEMENTARY INFORMATION: On November 10, 1993, we published (at 58 FR 59658) proposed regulations to establish the method used to add cost-of-living adjustments (COLA's) to recomputed annuities of former Members of Congress who perform additional service after retirement as Members and the method for determining the cap on COLA's as it affects these former Members under the Civil Service Retirement System. We received no comments on the proposed regulations.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect former Members of Congress who are reemployed by the Government and their survivors.

List of Subjects in 5 CFR Part 837

Administrative practice and procedure, Claims, Disability benefits, Government employees, Intergovernmental relations, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM amends 5 CFR part 837 as follows:

PART 837—REEMPLOYMENT OF ANNUITANTS

1. The authority citation for part 837 continues to read as follows:

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468.

Subpart E—Retirement Benefits on Separation

2. Section 837.505 is added to read as follows:

§ 837.505 Cost-of-living adjustments on Member annuities.

(a) *Applying cost-of-living adjustments to recomputed Member annuities under CSRS.* A member annuity benefit that is recomputed under section 8344(d)(1) of title 5, United States Code, which applies to certain former Members who become employed in an appointive position subject to CSRS, will include the cost-of-living adjustments under section 8340 of title 5, United States Code, that are effective after the commencing date of the benefit computed under section 8344(d)(1).

(b) *Limitations on cost-of-living adjustments on recomputed Member annuities under CSRS.* For purposes of determining limitations on cost-of-living adjusfments under section 8340(g) of title 5, United States Code, the final (or average) salary of a Member whose benefit has been recomputed under section 8344(d)(1) of title 5, United States Code, which applies to certain former Members who become employed in an appointive position subject to CSRS, will be increased by adjustments in the rates of the General Schedule under subpart I of chapter 53 of title 5, United States Code, that are effective after the commencing date of the benefit computed under section 8344(d)(1)

[FR Doc. 94–4921 Filed 3–3–94; 8:45 am]
BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE46

Notification of Spent Fuel Management and Funding Plans by Licensees of Prematurely Shut Down Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down before the expected end of their operating lives. The final rule requires that a licensee submit such notification either within 2 years after permanently ceasing operation of its licensed power reactor or no later than 5 years before the reactor operating license expires, whichever event occurs first. Licensees of nuclear power reactors that have already permanently ceased operation by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1255.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1993, the NRC published in the **Federal Register** a notice of proposed rulemaking to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down prematurely (58 FR 34947).

1. Comments Received

The NRC received four comments on the proposed rule. Three of the four comments came from licensees or their representatives and supported the rule as proposed. These commenters agreed with the NRC assessment that the proposed rule is administrative in nature and would produce consistency with the decommissioning rule. However, each of the three recommended that the rule amendments should apply only prospectively; that is, the rule should not apply to licensees whose power reactors have already permanently ceased operating. The commenters requested that the NRC allow licensees of these plants to submit spent fuel management funding plans on a case-by-case schedule. One commenter recommended that the NRC add a statement to this effect to the final rule.

A fourth commenter supported the concept of requiring the submittal of spent fuel management and funding plans soon after permanent shutdown, but recommended that licensees be required to submit these plans within 60 days after permanent shutdown.

The three commenters representing licensees also supported the NRC intent to initiate rulemaking on including spent fuel costs as part of decommissioning costs only after careful consideration of the database that the NRC is developing in this area. In a related area, one of these commenters noted that the NRC currently has regulations in place in 10 CFR part 72 to ensure a licensee's financial qualifications for the safe construction, operation, and decommissioning of an independent spent fuel storage installation (ISFSI). The fourth commenter supported rulemaking on funding assurance for spent fuel storage costs that would be similar to, but separate from, decommissioning costs.

2. NRC Response to Comments

The NRC responds as follows to the issues raised by the commenters:

(1) *The rule should only apply prospectively.*

NRC response: The NRC disagrees that this rule should not apply to licensees of plants that have already permanently ceased operating. This rule should be consistent with the provisions of 10 CFR 50.82(a), which requires all power plant licensees to submit decommissioning plans no later than 2 years after permanently ceasing operations regardless of how long the plant operated. The NRC recently amended 10 CFR 50.82(a) to allow the collection period of any shortfall of decommissioning funds to be determined on a case-by-case basis for plants that had been shut down prematurely (57 FR 30383, July 9, 1992). However, even licensees of these plants must submit their decommissioning plans within the 2-year time frame, notwithstanding the collection period ultimately adopted.

To maintain consistency, the NRC believes that the 2-year limit should be applied to plants already shut down. However, to assure that the NRC does not impose unnecessary burdens on these licensees, the final rule has been modified to allow these licensees 2 years from the effective date of the rule to submit their spent fuel management and funding plans.[1]

(2) *Submittal of spent fuel management and funding plans should be required within 60 days of permanent shutdown of the facility, rather than within 2 years.*

NRC Response: The NRC disagrees with this comment. Sixty days is too short a period in which to develop a meaningful spent fuel management and funding plan. Because licensees will normally develop these plans in conjunction with their decommissioning plans, the NRC should maintain consistency by requiring the same 2-year limit for both spent fuel management and funding plans and the overall decommissioning plan, which includes decommissioning funding.

(3) *Costs associated with the construction, operation, and decommissioning of ISFSIs are already assured by provisions in 10 CFR Part 72.*

NRC Response: The NRC agrees that part 72 contains provisions to ensure that licensees have adequate funds to construct, operate, and decommission ISFSIs. Spent fuel management and funding plans submitted in compliance with the amended § 50.54(bb) need not cover spent fuel while it is being stored in an ISFSI in compliance with part 72. The NRC will consider whether these provisions are adequate when it evaluates whether it is necessary to include spent fuel management and funding as part of decommissioning costs.

Finding of No Significant Environmental Impact: Availability

This final rule clarifies the timing of the submittal of plans for managing and providing funding for managing all irradiated fuel for those licensees whose power reactors are shut down prematurely. This action is required to coordinate the submittal of spent fuel management and funding plans with the submittal of decommissioning plans for prematurely shut down reactors. Because management and funding of spent fuel can have a significant impact on the method and timing of decommissioning, licensees should submit their plans for spent fuel management and funding to be consistent with the timing provisions for decommissioning plans in § 50.82(a) (i.e., no later than 2 years after permanent shutdown).

Neither this action nor the alternative of maintaining the existing rule would significantly affect the environment. Changes in the timing of the submittal of spent fuel management and funding for prematurely shut down power reactors would not alter the effect on the environment of the licensed activities considered in either the final spent fuel disposition rule (49 FR 34689; August 31, 1984) or the final decommissioning rule (53 FR 24018; June 27, 1988) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988). The alternative to this action would not significantly affect the environment. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. No other agencies or persons were contacted for this action, and no other documents related to the environmental impact of this action exist. The foregoing constitutes the environmental

[1] In practice, licensees of most of the nuclear power plants that have already permanently shut down have developed plans for the management and funding of the disposition of spent fuel at their sites. For example, Fort St. Vrain has either shipped spent fuel offsite to DOE or moved it to an ISFSI onsite. Shoreham is shipping its fuel to Limerick. Yankee-Rowe and Rancho Seco have developed plans for onsite storage facilities. Humboldt Bay and LaCrosse are maintaining fuel in their spent fuel pools. Dresden 1, San Onofre 1, and Indian Point 1 are maintaining fuel in their spent fuel pools or in pools of other units still operating at the site. Peach Bottom 1 has no fuel onsite.

assessment and finding of no significant impact for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number [3150–0011].

Regulatory Analysis

On August 31, 1984, the NRC published a final rule, "Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licensees." (49 FR 34689). As part of this rule, the NRC required power reactor licensees to submit for NRC review and approval, no later than 5 years before expiration of the reactor operating license, their plans for managing spent fuel at their site until title to the spent fuel is transferred to the Department of Energy (DOE). These plans are to include plans for funding of spent fuel management before transfer to DOE.

On June 27, 1988, the Commission promulgated its final decommissioning rule (53 FR 24019). Section 50.82 of this rule provides that licensees of all power reactors that permanently cease operation after July 27, 1988, including those that shut down prematurely, must apply to the NRC to decommission their facilities within 2 years following permanent cessation of operations. Section 50.82(b)(1)(iii) further provides that the proposed decommissioning plan submitted by the licensee should consider such factors as the "unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning safely * * *." The Commission requires licensees to submit decommissioning plans in a timely manner after they permanently cease operations at their facilities. The NRC's regulations recognize that a licensee's ability to plan properly and safely for decommissioning depends on a licensee's ability to manage and dispose of its spent fuel. Thus, the timing of requirements for submittal of plans for spent fuel management and storage should be consistent with the timing for submittal of decommissioning plans, including those for power reactors that have been shut down prematurely. Therefore, the NRC is amending 10 CFR 50.54(bb) to require each power reactor licensee to notify the NRC of its program to manage and provide funding for management of the irradiated fuel at its reactor either within 2 years after the licensee permanently ceases operation of its reactor or no later than 5 years before its reactor operating license expires, whichever occurs first. Licensees of nuclear power reactors that have already permanently ceased operations by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

Although the timing of preparation and submittal of plans for management and funding of spent fuel would be formally advanced for licensees that shut down their power reactors prematurely, these licensees typically would have already evaluated spent fuel management and funding issues before submitting decommissioning plans required under 10 CFR 50.82. This rule merely makes 10 CFR 50.54(bb) submittal schedular requirements consistent with 10 CFR 50.82. Thus, there should be no substantive impact on power reactor licensees.

This final rule would not create substantial costs for other licensees. This final rule also will not significantly affect State and local governments and geographical regions, or the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect approximately 115 nuclear power reactor operating licenses. Nuclear power plant licensees do not fall within the definition of small businesses as defined in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administrator (13 CFR part 121), or the Commission's Size Standards (56 FR 56671, November 6, 1991).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this final rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons given 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 amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242 as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54 (dd), and 50.103 also issued under sec. 108, 68 Stat. 939 as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.54 is amended by revising paragraph (bb) to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(bb) For nuclear power reactors licensed by the NRC, the licensee shall, within 2 years following permanent cessation of operation of the reactor or 5 years before expiration of the reactor operating license, whichever occurs first, submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository. Licensees of nuclear power

reactors that have permanently ceased operation by April 4, 1994 are required to submit such written notification by April 4, 1996. Final Commission review will be undertaken as part of any proceeding for continued licensing under part 50 or part 72 of this chapter. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions requires NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been or will be made to NRC and shall identify them. A copy of the notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC of any significant changes in the proposed waste management program as described in the initial notification.

* * * * *

Dated at Rockville, Maryland this 18th day of February, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–4956 Filed 3–3–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–09–AD; Amendment 39–8845; AD 94–05–07]

Airworthiness Directives; Boeing Model 747 Series Airplanes, Excluding Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive visual inspections of wire bundles to detect damage due to chafing, and repair of damaged wires. This amendment revises the inspection and repair procedures, and provides a terminating action, which, if accomplished, will eliminate the need for the currently required inspections. This amendment is prompted by data that substantiates the need for new inspection and repair procedures. The actions specified by this AD are intended to prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane.

DATES: Effective April 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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 Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2793; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–27–12, Amendment 39–8447 (57 FR 61255, December 24, 1992), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on June 3, 1993 (58 FR 31481). The action proposed to supersede AD 92–27–12 to require revised repetitive visual inspections of wire bundles to detect damage due to chafing, and repair or replacement of damaged wires; and to clarify the location of the affected wire bundles above the P6 panel. That action also would provide an optional terminating action for the repetitive visual inspections.

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 one of its members, requests an extension of the compliance time for the proposed initial repetitive inspection of 120 days to 4,000 flight hours for Model 747–100 series airplanes, since its airplanes were not manufactured with BMS 13–51 type wire (Kapton insulated). The member points out that the description of the wire bundle failure which prompted issuance of AD 92–27–12 is typical for aromatic polyimid (Kapton insulated) type wire bundles. The member notes the similarity between that incident and the incident involving a Lockheed Model L–1011 series airplane that prompted the FAA to issue AD 84–04–01, Amendment 39–4815 (49 FR 6705, February 23, 1984). The member asserts that neither AD 92–27–12 nor this proposal compare the different failure modes and effects of aromatic polyimide (Kapton insulated) type wiring with other types of wire insulation. Finally, the member notes that the service history of Boeing Model 747–100 series airplanes indicates that there have been no reported wire bundle chafing problems in the area of concern.

The FAA does not concur on the basis of the following reasons:

The proposed AD addresses a potentially hazardous condition involving the manner in which certain wire bundles were installed in the affected airplanes. The type of insulation used on the wires is not directly relevant to the hazardous condition. It is the position of the FAA that the short circuit hazard will eventually occur on any Model 747–100, –200, or –300 series airplane with improperly installed wire bundles, regardless of the type of wire insulation. The intent of the proposed AD is to prevent the occurrence of a short circuit, not to alter the failure mode and/or effects of such a failure. The relevance of the type of wire insulation is limited to the amount of time required for the short circuit to occur, once chafing has begun. Types of wire utilizing harder, more abrasion resistant insulation will endure chafing for longer periods of time before occurrence of a short circuit. In this respect, Polyimide insulated wire could possibly be superior to softer types of wire insulation, such as Polytetrafluoroethylene (PTFE) insulated types of wire.

Further, the FAA points out that the Model L–1011 incident that prompted the issuance of AD 84–04–01 was not the direct result of the use of polyimide insulated wire. That incident was apparently due to "* * * mechanical damage to wire insulation due to continuing chafing * * *" This information was published with that AD in the **Federal Register** (49 FR 6705, February 23, 1984).

Additionally, the FAA has determined that the 120-day compliance time for the proposed initial repetitive inspection is justified when an additional hazard is considered, which was not present in the Model L–1011 incident. The Model L–1011 incident resulted in a smoke and fire hazard, due to an electrical fault of a window heat wire bundle. The loss of the window

heat function will not, in itself, result in an immediate safety of flight hazard. In the case of the Model 747 incident that prompted issuance of AD 92–27–12, the electrical fault resulted in the loss of numerous essential cockpit instruments necessary for continued safe flight and landing, in addition to the smoke and fire hazard.

Finally, the FAA disagrees that service experience should be used to justify a reduction of the frequency of the repetitive inspection intervals for Model 747–100 series airplanes. While the FAA does not dispute the commenter's claim regarding lack of in-service chafing incidents on the Model 747–100, the FAA points out that the wire bundles above the P6 panel are installed on all Model 747–100, –200, and –300 series airplanes in accordance with the same type design data. As a result, the FAA cannot establish that the wire bundle installation on Model 747–100 series airplanes has specific design features that preclude these airplanes from the potential hazardous condition. The FAA does recognize, however, that some of the airplanes affected by the proposed AD may not exhibit the wire bundle chafing problem. For this reason, paragraph (b)(2)(i) of the proposed AD provides for termination of the repetitive inspections on airplanes that successfully pass a wire bundle clearance inspection and measurement procedure.

ATA, on behalf of one of its members, requests that proposed paragraph (c) only cite the original issue of Boeing Service Bulletin 747–24A2186, dated January 14, 1993, since Revision 1, dated May 20, 1993, contains several typographical errors. The FAA partially concurs. The FAA clarifies that Revision 1 erroneously refers to military specification MIL–I–42852 and MIL–I–46853 insulating tapes in several paragraphs. MIL–I–46852 tape is the correct military specification number and should be inserted wherever MIL–I–42852 or MIL–I–46853 is identified. The FAA points out that Revision 1 of the service bulletin contains descriptive information not found in the original release of the service bulletin, which may assist operators in performing the optional wire bundle modification. The FAA has included a statement in paragraph (c) of this AD to clarify that MIL–I–46852 tape shall be utilized wherever MIL–I–42852 tape or MIL–I–46853 tape is specified, for those operators that incorporate Revision 1 of the service bulletin. Therefore, with this information included in the AD, the FAA considers that the service bulletin references are appropriate in paragraph (c) of this AD.

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 change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 700 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 184 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 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 $15,180, or $83 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, the number of work hours required to accomplish it would be approximately 1 per airplane, and the cost of required parts would be approximately $32 per airplane.

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 removing amendment 39–8447 (57 FR 61255, December 24, 1992), and by adding a new airworthiness directive (AD), amendment 39–8845, to read as follows:

94–05–07 Boeing: Amendment 39–8845. Docket 93–NM–09–AD. Supersedes AD 92–27–12, Amendment 39–8447.

Applicability: Model 747 series airplanes, excluding Model 747–400 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraph (a) of this AD restates the requirement for repetitive inspections contained in paragraphs (a) and (b) of AD 92–27–12. The first inspection required by this AD must be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraphs (a) and (b) of AD 92–27–12.

To prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane, accomplish the following:

(a) Within 15 days after January 8, 1993 (the effective date of AD 92–27–12, amendment 39–8447): Perform a visual inspection to detect damage due to chafing of the wire bundles that extend between the P6 and P7 panels at station 400, water line 385, right buttock line 15, at Stringer 2 on the right-hand side, 6 inches aft of the P6 panel. Pay particular attention to wire bundles W418, W718, W998, and other bundles that cross over these bundles. Repeat the inspection thereafter at intervals not to exceed 120 days until the inspection required by paragraph (b) of this AD is accomplished. If any damaged wire is found, prior to further flight, repair the wire in accordance with Boeing Standard Wiring Practices Document, D6–54446.

(b) Within the next 4,000 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Boeing Alert Service Bulletin 747–24A2186, dated January 14, 1993; or Revision 1, dated May 20, 1993.

(1) Perform a visual inspection to detect damage due to chafing of the wire bundles above the P6 panel around station 400, water line 385, right buttock line 25 in accordance

with the service bulletin. Pay particular attention to wire bundles W418, W718, W998, W1100, and W1362, and other bundles that cross over these bundles. Accomplishment of this inspection terminates the repetitive inspection requirements of paragraph (a) of this AD. If any damaged wire is found, prior to further flight, repair or replace the wire in accordance with Boeing Standard Wiring Practices Document, D6–54446.

(2) Measure the clearance between the wire bundles in accordance with the service bulletin.

(i) If the measured clearance between the wire bundles is 0.25 inch or greater: No further action is required by this AD.

(ii) If the measured clearance between the wire bundles is less than 0.25 inch: Repeat the inspection required by paragraph (b)(1) of this AD thereafter at intervals not to exceed 120 days.

(c) Installation of the wire modification in accordance with Boeing Alert Service Bulletin 747–24A2186, dated January 14, 1993, or Revision 1, dated May 20, 1993, terminates the repetitive inspections required by paragraphs (a) and (b) of this AD. Operators that incorporate Boeing Alert Service Bulletin 747–24A2186, Revision 1, dated May 20, 1993, shall utilize MIL–I–46852 tape wherever MIL–I–42852 tape or MIL–I–46853 tape is specified in that service bulletin.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(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.

(f) The inspections, measurement, and modification shall be done in accordance with Boeing Alert Service Bulletin 747–24A2186, dated January 14, 1993; or Boeing Service Bulletin 747–24A2186, Revision 1, dated May 20, 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

(g) This amendment becomes effective on April 4, 1994.

Issued in Renton, Washington, on February 22, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4448 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–135–AD; Amendment 39–8820, AD 94–04–02]

Airworthiness Directives; Canadair Model Turboprop CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL–215–6B11 series airplanes, that requires inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary; and the eventual replacement of all struts with new struts. This amendment is prompted by reports of failures of these rear engine mount struts due to cracking that was caused by rosette welds on the shank of the struts not achieving full weld penetration during manufacture. The actions specified by this AD are intended to prevent failure of the rear engine mount struts, which could subsequently result in reduced structural integrity of the nacelle and engine support structure.

DATES: Effective April 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087 Station A, Montreal, Quebec H3C 3G9, Canada. 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, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeff Casale, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Canadair Model CL–215–6B11 series airplanes was published in the **Federal Register** on October 13, 1993 (58 FR 52931). That action proposed to require repetitive visual inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary. That action also proposed to require the eventual replacement of all struts with new struts; such replacement would constitute terminating action for the visual inspections.

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.

Currently, there are no Canadair Model CL–215–6B11 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD will be $550 per airplane.

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:

94–04–02 Canadair: Amendment 39–8820. Docket 93–NM–135–AD.

Applicability: Model CL–215–6B11 series airplanes, serial numbers 1057, 1061, 1080, 1113 through 1115 inclusive, 1121, 1122, 1124, and 1125; turboprop versions only; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rear engine mount struts, which could subsequently result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracking in the rear engine mount struts, part number (P/N) 87110016–003, in accordance with Canadair Alert Service Bulletin 215–A3040, dated September 2, 1992.

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 50 hours time-in-service, until the requirements of paragraph (b) of this AD are accomplished.

(2) If any cracking is detected, prior to further flight, replace the engine rear mount strut with a new strut, P/N 87110016–009 or -011, in accordance with the service bulletin.

(b) Within 2 years after the effective date of this AD, replace all engine rear mount struts, with new struts, P/N 87110016–009 or -011, in accordance with Canadair Alert Service Bulletin 215–A3040, dated September 2, 1992. Such replacement constitutes terminating action for the inspections required by this AD.

(c) As of the effective date of this AD, no person shall install a rear engine mount strut, P/N 87110016–003, on any airplane.

(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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

(f) The inspections and replacement shall be done in accordance with Canadair Alert Service Bulletin 215–A3040 dated September 2, 1992. 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087 Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 4, 1994.

Issued in Renton, Washington, on February 4, 1994.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3104 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–86–AD; Amendment 39–8844; AD 94–05–06]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires modification or replacement of designated passenger cabin floor panels. This amendment is prompted by a report that, during manufacture, the inserts that attach the floor panels to the seat tracks and floor beams were installed using sealant rather than required adhesive. The actions specified by this AD are intended to prevent loss of the passenger cabin floor capability to support the airplane interior inertia loads under emergency landing conditions.

DATES: Effective April 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. 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, 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: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5324; 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 MD–11 series airplanes was published in the **Federal Register** on August 19, 1993 (58 FR 44150). That action proposed to require modification or replacement of designated passenger cabin floor panels.

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

Two commenters support the proposed rule.

The Air Transport Association (ATA) of America, on behalf of several of its members, requests that the FAA withdraw the proposed rule. The commenter states that all U.S. operators and all but one non-U.S. operator have accomplished the modification or replacement specified in McDonnell Douglas MD–11 Service Bulletin 53–31, which is cited in the proposed rule, thereby ensuring that 9g crash

certification requirements are satisfied. The commenter adds that McDonnell Douglas MD–11 Service Bulletins 53–32 and 53–33, which are also cited in the proposal, were only included in the manufacturer's service program to ensure commonality between operators, but were not included in that program to return the aircraft to its original design intent. The commenter concludes that, since all U.S. operators have accomplished the actions described in McDonnell Douglas MD–11 Service Bulletin 53–31, there is no need for an AD. Further, the commenter believes that issuance of the AD would contradict the principles of Presidential Executive Order 12866 (Regulatory Planning and Review), and would cause an unjustifiable expense to operators.

The FAA does not concur with the commenter's request to withdraw the proposed rule. As explained in the preamble to the proposal, the FAA has determined that accomplishment of the modification or replacement described in McDonnell Douglas MD–11 Service Bulletin 53–31 is necessary to correct an unsafe condition described as loss of the passenger cabin floor capability to support the airplane interior inertia loads under emergency landing conditions. Under existing bilateral airworthiness agreements, the FAA is obligated, through the AD process, to advise foreign airworthiness authorities of unsafe conditions relating to products produced in the United States, and to provide instructions determined necessary to correct the unsafe condition addressed. The appropriate vehicle for mandating such action to correct an unsafe condition is the airworthiness directive.

However, upon consideration of data submitted by the manufacturer since issuance of the proposal, the FAA has determined that accomplishment of the modification or replacement specified in McDonnell Douglas MD–11 Service Bulletin 53–31 adequately addresses the unsafe condition, and that the actions described in McDonnell Douglas MD–11 Service Bulletins 53–32 and 53–33 are not necessary to address that unsafe condition. The FAA's original concern was that interchanging the floor panels could result in an unsafe condition under emergency landing conditions. However, based on the data received from the manufacturer, the FAA finds that its concern regarding floor panel interchangeability is addressed by part number controls; original panels are not interchangeable with reworked panels or new panels. In light of this, the FAA has removed paragraphs (b) and (c) from the final rule. In addition, references to McDonnell Douglas MD–11 Service Bulletins 53–32 and 53–33 have been removed from the applicability of the AD. The FAA also has revised the economic impact paragraph, below, to reflect the fact that all U.S. airplanes have accomplished the requirements of this AD.

One commenter requests that paragraph (a) of the proposed rule be revised to clarify that each individual panel may be reworked in accordance with Option I of McDonnell Douglas MD–11 Service Bulletin 53–31, or replaced in accordance with Option II of that service bulletin, rather than implying that all panels must be either reworked or replaced. The commenter also requests that the proposal be revised to indicate that installation of operator-manufactured panels with properly installed inserts are acceptable in lieu of production panels.

The FAA concurs. Paragraph (a) of this AD has been revised to indicate that the requirements of that paragraph may be accomplished by either reworking an individual panel in accordance with Option I of the service bulletin, or replacing an individual panel in accordance with Option II of the service bulletin. Paragraph (a) of the final rule also has been revised to specify that new panels that meet the original type design or FAA-approved equivalent panels are considered acceptable replacement panels.

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 32 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD. The FAA has been advised that the requirements of this AD have been accomplished on all 20 airplanes of U.S. registry.

However, should an affected airplane be imported and placed on the U.S. Register in the future, the FAA has been advised that the manufacturer plans to provide required parts and to accomplish the required modification at no expense to operators. Therefore, there is no future economic cost impact of this rule on U.S. operators.

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:

94–05–06 McDonnell Douglas: Amendment 39–8844. Docket 93–NM–68–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Service Bulletin 53–31, dated January 29, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the passenger cabin floor capability to support the airplane interior inertia loads under emergency landing conditions, accomplish the following:

(a) Within one year after the effective date of this AD, modify or replace the passenger cabin floor panels designated in McDonnell Douglas MD–11 Service Bulletin 53–31, dated January 29, 1993, in accordance with that service bulletin. The requirements of this paragraph may be accomplished by either reworking an individual panel in accordance

with Option I of the service bulletin, or replacing an individual panel in accordance with Option II of the service bulletin. New panels that meet the original type design or FAA-approved equivalent panels are considered to be acceptable replacement panels.

(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, 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.

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

(d) The modification or replacement shall be done in accordance with McDonnell Douglas MD–11 Service Bulletin 53–31, dated January 29, 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, 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.

(e) This amendment becomes effective on April 4, 1994.

Issued in Renton, Washington, on February 22, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4447 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–106–AD; Amendment 39–8839; AD 94–05–01]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Lockheed Model L–1011 series airplanes, that currently requires certain structural modifications and inspections. This amendment revises certain inspections required by the existing AD, and requires additional inspections and structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This action also reflects the FAA's determination that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Effective April 4, 1994.

The incorporation by reference of Lockheed Service Bulletin 093–51–035, Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035, R1–CN1, dated October 27, 1992, as listed in the regulations, is approved by the Director of the Federal Register as of April 4, 1994.

The incorporation by reference of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 22, 1991 (56 FR 6556, February 19, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. 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, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–05–05, Amendment 39–6878 (56 FR 6556, February 19, 1991), which is applicable to certain Lockheed Model L–1011–385 series airplanes, was published in the **Federal Register** on December 4, 1992 (57 FR 57392). The action proposed to require certain structural modifications and inspections.

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.

One commenter suggests that any new requirements or changes to AD's that address "collector" service bulletins (CSB) should be issued as new AD's, rather than supersedures of "old" AD's. The commenter suggests further that a "collector" AD should be issued annually to address any changes or additions to CSB's. The commenter believes that this proposed procedure would ease administrative and financial burdens to operators, particularly in the case of AD's that address CSB's, such as the proposed rule.

The FAA does not concur. The FAA's normal policy is to supersede an "old" AD by removing it from the system and adding a new AD in a case where substantive requirements must be added to the "old" AD. The FAA has determined that the changes made to the original issue of the CSB addressed in this AD are substantive, since changes have been made to certain accomplishment procedures and some new requirements have been added. The FAA finds that issuance of a supersedure is appropriate in this case to include those new or revised requirements.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the FAA conduct a thorough review of AD 91–05–05 and this proposed rule to eliminate any references to service bulletins that are addressed in other existing AD's. The commenter contends that there is no justification for requiring operators to perform duplicate inspections and that such requirements are confusing to operators.

The FAA does not concur with the commenter's request to eliminate references to service bulletins addressed in this AD that are also addressed in other existing AD's. The FAA recognizes that certain service bulletins addressed in this AD have also been the subject of other existing AD's. However, the FAA has included references to such service bulletins in this AD only to require that operators accomplish those actions that will terminate the repetitive inspections required by other existing AD's. The FAA has also been informed by Lockheed of the necessity to revise Lockheed Service Bulletin 093–51–035

(referred to in this AD as the Collector Service Bulletin (CSB)) to fully address the required terminating actions for all affected airplanes. Subsequently, the FAA may consider further rulemaking to require that action be taken in accordance with that revised CSB; any duplicate requirements would then be eliminated by rescinding any existing AD's that address those duplicate requirements.

Two commenters suggest that the contents of the second "NOTE" in paragraph (d) of the proposal should appear in the final rule as two separate paragraphs, one to exclude the first three service bulletins cited and a second to exclude the fourth service bulletin. One of the commenters asks if a "NOTE" has legal status in an AD. Another commenter states that the actions described in the first three service bulletins should have been excluded from this AD, since such an exclusion appeared in AD 91–05–05.

The FAA concurs with the commenters' request to exclude the actions described in the service bulletins specified in the second "NOTE" in paragraph (d) of the proposal, since this was the intent of that "NOTE." The FAA clarifies that the material that appears in a "NOTE" is simply explanatory or informational. The FAA has removed the "NOTE" from the final rule and has revised paragraphs (a) and (d) to provide an exclusion of the actions described in the first three service bulletins referenced from the requirements of this AD. In addition, the actions specified in the fourth service bulletin referenced in the "NOTE" are addressed in another existing AD; this information has been specified in paragraph (d) of the final rule.

Two commenters request that paragraphs (a) and (b) of the proposal be revised to reference Table II of Lockheed Service Bulletin 093–51–035, in addition to Table I, since Table II contains interim inspection requirements. The FAA concurs, as its intent was to include these interim inspection requirements in the AD. Paragraphs (a) and (b) of the final rule have been revised accordingly.

Two commenters request that the proposed rule be revised to permit repairs to be accomplished "in accordance with FAA-approved repair procedures" and that paragraph (g) of the proposal be revised to explain the Designated Engineering Representative's (DER) authority, including any limitations, to approve minor changes to repairs done in accordance with the proposal. One commenter states that obtaining approval from the FAA often requires extended down time and unnecessary interruptions of scheduled service. The commenter believes that operators with in-house resources for obtaining FAA approval of repairs (i.e., DER's or organizations that hold a Special Federal Aviation Regulation (SFAR) 36 authorization) should be allowed to use those sources of FAA approval to return aircraft to service in an expeditious manner, particularly when repetitive inspections are being accomplished. The second commenter indicates that the CSB references approval of deviations to repairs and modifications by normal non-AD approval procedures.

The FAA does not concur. While DER's and SFAR 36-authorized organizations are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized currently to make the discretionary determination as to what the applicable requirement is. Further, where repair data do not exist, it is essential that the FAA have feedback as to the type of repairs being made. The FAA has determined that the Manager of the Atlanta Aircraft Certification Office should approve any such deviations to the AD's requirements. Given that possible new relevant issues might be revealed during this process, it is imperative that the FAA, at this level, have such feedback. Only by reviewing deviation approvals can the FAA be assured of this feedback and of the adequacy of the repair methods. However, the FAA is currently conducting a review of this policy and may consider revising it based upon the results of that review.

One commenter requests that the FAA revise paragraph (b) of the proposal to allow inspections to continue in accordance with the service bulletin revision levels specified in the original issue of the CSB, except for those inspections for which the procedures have been revised substantively in Revision 1 of the CSB. The commenter suggests that the excepted inspections should be addressed in a separate paragraph of the proposal and should be phased in over a period of time, rather than required as of the effective date of this AD. The commenter adds that any new inspection procedures required by this AD should have been discussed with the Airworthiness Assurance Working Group (AAWG) for these airplanes.

The FAA concurs partially. The intent of paragraph (b) is to require that, after the effective date of this AD, inspections be accomplished in accordance with the service bulletin revision levels listed in Revision 1 of the CSB. The AAWG endorsed that revision of the CSB at a conference held in November 1991. However, upon reconsideration, the FAA has determined that an acceptable level of safety can be maintained if operators are allowed a "phase-in" period to change over from accomplishing inspection procedures in accordance with the original issue of the CSB to accomplishing the updated inspection procedures specified in Revision 1 of the CSB. Therefore, the FAA has revised paragraph (b) of the final rule to allow a phase-in period of 12 months for operators with airplanes that are being inspected as of the effective date of this AD to make this change.

One commenter requests that the modification requirement specified in Lockheed Service Bulletin 093–53–237 be specifically excluded from the requirements of this AD, as recommended by the AAWG. The FAA concurs. Paragraphs (b) and (d) of the final rule have been revised to reference L–1011 Service Bulletin Change Notification 093–51–035, R1–CN1, dated October 27, 1992, which eliminates the modification specified in Lockheed Service Bulletin 093–53–237

Two commenters request that the proposal be revised to allow credit for modifications accomplished previously in accordance with the original issue of the CSB. One of the commenters points out that the only revised listing that appears in Table II of Revision 1 of the CSB is Lockheed Service Bulletin 093–53–233, which describes additional inspections to be conducted after accomplishing the modification specified in the service bulletin. This commenter states further that it was not the intent of the AAWG to mandate that modifications be accomplished in accordance with the latest issues of the service bulletins.

The FAA concurs. After accomplishing the modification described in Lockheed Service Bulletin 093–53–233, certain inspections are required. Those inspections are described in Lockheed Service Bulletin 093–53–238, which is listed in Table II of the revised CSB and required by paragraph (c)(1) of the final rule. The scope of the required inspections is dependent upon which version of Lockheed Service Bulletin 093–53–233 an operator accomplished; this issue is addressed under Lockheed Service Bulletin 093–53–233 in the "Remarks" section of Table II of the revised CSB.

The FAA finds that accomplishment of modifications in accordance with Table II of the original issue of the CSB may continue. Accordingly, paragraph

(e) of the proposal, which would have required certain structural modifications in accordance with the service bulletins listed in Table II of the CSB, has been removed from the final rule. The contents of the first sentence of the second "NOTE" that appeared in paragraph (e) of the proposal, which indicated that Lockheed Service Bulletins 093–57–184, Revision 6; 093–57–196, Revision 5; and 093–57–203, Revision 3; are addressed in paragraph (f) of the proposal, are specified in "NOTE 3" under paragraph (d) of the final rule.

In addition, paragraph (d) of the final rule has been revised to specify that modifications accomplished in accordance with Table II of either the original issue or Revision 1 of the CSB are acceptable for compliance with the requirements of that paragraph. Further, paragraphs (b)(2) and (c) of the final rule have been revised to specify that modification in accordance with paragraph (d) or (e) of this AD or in accordance with the applicable service bulletin listed within the inspection portion of either the original issue or Revision 1 of the CSB constitutes terminating action for the individual inspection requirements of the applicable service bulletin.

One commenter asks that the number of Model L–1011 series airplanes of the affected airplanes in the worldwide fleet be revised, since the actual number is larger than that reflected in the economic impact information specified in the proposal. The FAA concurs. The FAA has verified that the correct number of affected airplanes in the worldwide fleet is 241 and has revised the economic impact information, below, 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 241 Model L–1011 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 112 airplanes of U.S. registry will be affected by this AD. The actions required previously by AD 91–05–05 necessitate 1,200 work hours per airplane to accomplish, at an average labor rate of $40 per work hour. The cost for parts required by that AD is $52,000 per airplane. Based on these figures, the total cost of AD 91–05–05 to affected U.S. operators over an initial 5-year time period was estimated to be approximately $11,200,000, or $100,000 per airplane.

The actions required by this AD will require an additional 549 work hours per airplane to accomplish at an average labor rate of $55 per work hour. (Note that, in order to account for various inflationary costs in the airline industry, the FAA has increased the labor rate used in calculating the economic impact of this AD activity from $40 per work hour to $55 per work hour.) Required parts will cost approximately $21,000 per airplane. Based on these figures, the additional costs to U.S. operators with regard to the actions required by this AD is estimated to be $5,733,840, or $51,195 per airplane.

Based on the figures discussed above, the total cost impact of this AD action on U.S. operators is estimated to be $16,933,840, or $151,195 per airplane. The total cost impact figure(s) discussed above is based on assumptions that no operator has yet accomplished any of the requirements of either this new AD action or the previous AD, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

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 removing amendment 39–6878 (56 FR 6556, February 19, 1991), and by adding a new airworthiness directive (AD), amendment 39–8839, to read as follows:

94–05–01 Lockheed Aeronautical Systems Company: Amendment 39–8839. Docket 92–NM–106–AD. Supersedes AD 91–05–05, Amendment 39–6878.

Applicability: Model L–1011–385 series airplanes; as listed in Lockheed Collector Service Bulletin 093–51–035, Revision 1, dated December 16, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (d) of this AD restate the requirements of AD 91–05–05, Amendment 39–6878, paragraphs (a) and (b). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91–05–05 have been accomplished previously, paragraphs (a) and (d) of this AD do not require those inspections and modifications to be repeated.

To prevent degradation of the structural capabilities of the affected airplanes, accomplish the following:

(a) Within the threshold for inspections specified in the service bulletins listed in Tables I and II of Lockheed Service Bulletin 093–51–035, dated June 28, 1990 ("Structures—Aging Aircraft Structural Modifications and Inspections—Collector Service Bulletin"), or within one repetitive inspection period specified in those service bulletins after March 22, 1991 (the effective date of AD 91–05–05, Amendment 39–6878), whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at intervals specified in the service bulletins listed in Lockheed Service Bulletin 093–51–035, dated June 28, 1990. The inspections specified in Lockheed Service Bulletins 093–57–184, Revision 4, dated May 16, 1990; 093–57–196, Revision 3, dated March 7, 1990; and 093–57–203, Revision 1, dated August 11, 1989; as listed in Lockheed Service Bulletin 093–51–035, dated June 28, 1990, are excluded from the requirements of this AD.

(1) If cracks are found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with the FAA-approved repair procedures in the applicable service bulletin or in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate.

(2) Modification in accordance with paragraph (d) of this AD or in accordance with the applicable service bulletin listed within the inspection portion of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, constitutes terminating action for the individual inspection requirements of the applicable service bulletin.

(b) Except as provided by paragraph (c) of this AD, the initial and repetitive inspections required by paragraph (a) of this AD that are performed after 12 months after the effective date of this AD must be done in accordance with the service bulletins listed in Tables I and II of Lockheed Service Bulletin 093–51–035, Revision 1, dated December 16, 1991 ("Structures—Aging Aircraft Structural Modifications and Inspections—Collector Service Bulletin;" hereinafter referred to as the "Collector Service Bulletin"), as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992, at the thresholds and intervals specified in those service bulletins.

(1) If cracks are found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with the FAA-approved repair procedures in the applicable service bulletin or in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate.

(2) Modification in accordance with paragraph (d) or (e) of this AD or in accordance with the applicable service bulletin listed within the inspection portion of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, or Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992, constitutes terminating action for the individual inspection requirements of the applicable service bulletin.

(c) Within the threshold for inspections specified in the service bulletins listed in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, or within one repetitive inspection interval after the effective date of this AD, whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins. If cracks are found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with the FAA-approved repair procedures in the applicable service bulletin or in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate. Modification in accordance with paragraph (d) or (e) of this AD, or in accordance with the applicable service bulletin listed within the inspection portion of the Collector Service Bulletin, constitutes terminating action for the individual inspection requirements of the applicable service bulletin.

(1) For Model L–1011–385 series airplanes, serial numbers 1013 through 1250, inclusive: Lockheed Service Bulletin 093–53–238, Revision 5, dated October 7, 1991.

(2) For Model L–1011–385 series airplanes, serial numbers 1002 through 1188, inclusive: Lockheed Service Bulletin 093–57–207, Revision 3, dated November 22, 1991.

(3) For Model L–1011–385 series airplanes, serial numbers 1131 through 1250, inclusive: Lockheed Service Bulletin 093–57–050, Revision 3, dated July 12, 1991.

(d) Structural modifications must be accomplished in accordance with the service bulletins listed in Table II of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, or Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992, within the time limits specified in paragraph (d)(1) or (d)(2) of this AD, whichever occurs later. The actions specified in Lockheed Service Bulletins 093–57–184, Revision 4, dated May 16, 1990; 093–57–196, Revision 3, dated March 7, 1990; and 093–57–203, Revision 1, dated August 11, 1989; as listed in Lockheed Service Bulletin 093–51–035, dated June 28, 1990, are excluded from the requirements of this AD. Lockheed Service Bulletin 093–52–155, Revision 1, dated October 23, 1989, is not addressed in this AD action.

(1) Prior to reaching the thresholds for modifications specified in Lockheed Service Bulletin 093–51–035, dated June 28, 1990, or Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992. Or

(2) Within 5 years or 5,000 flight cycles after March 22, 1991 (the effective date of AD 91–05–05, Amendment 39–6878), whichever occurs first.

Note 2: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

Note 3: Lockheed Service Bulletins 093–57–184, Revision 6; 093–57–196, Revision 5; and 093–57–203, Revision 3; all dated October 28, 1991, are addressed in paragraph (e) of this AD.

(e) Accomplish structural modifications in accordance with paragraph (e)(2) of this AD at the time specified in paragraph (e)(1) of this AD.

(1) Accomplish the structural modifications at the later of the following times:

(i) Prior to reaching the thresholds for modifications specified in Table II of the Collector Service Bulletin. Or

(ii) Within 5 years or 5,000 flight cycles after the effective date of this AD, whichever occurs first.

(2) Accomplish the structural modifications in accordance with the following service bulletins:

(i) For Model L–1011–385–1, serial numbers 1002 through 1051, inclusive: Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991.

(ii) For Model L–1011–385–1 series airplanes, serial numbers 1052 through 1245, inclusive: Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991.

(iii) For Model L–1011–385–3 series airplanes, serial numbers 1157 through 1250, inclusive: Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991. (Only the structural modification portion of the service bulletin is mandated by this action; the inspection portion of the service bulletin is not addressed in this AD action.)

(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, 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(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 actions shall be done in accordance with Lockheed Service Bulletin 093–51–035,

dated June 28, 1990; and Lockheed Service Bulletin 093–51–035, Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992. The incorporation by reference of Lockheed Service Bulletin 093–51–035, Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 22, 1991 (56 FR 6556, February 19, 1991). Copies may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on April 4, 1994.

Issued in Renton, Washington, on February 17, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4129 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–48–AD; Amendment 39–8593; AD 93–11–01]

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10 series airplanes. Among other things, the existing AD currently requires a modification of the wing leading edge bleed air anti-ice system so that it can operate on the ground to prevent ice reformation after deicing procedures have been accomplished, and a related revision to the Airplane Flight Manual (AFM). The actions specified in that AD are intended to prevent degradation of lift due to ice accumulation on the wing leading edge. This amendment corrects the instructional language in the required AFM revision related to operation of the system on the ground. This action is prompted by apparent confusion that this language has created among affected operators in attempting to comply with the rule.

DATES: Effective July 22, 1993. The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of July 22, 1993 (58 FR 33898, June 22, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, Mail Code 2–98. 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, 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–130L, 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: On May 26, 1993, the FAA issued AD 93–11–01, Amendment 39–8593 (58 FR 33898, June 22, 1993), that is applicable to certain McDonnell Douglas Model DC–9–10 series airplanes. That AD superseded an existing AD that had required a revision to the FAA-approved Airplane Flight Manual (AFM) to specify that takeoff must not be initiated unless the flight crew verifies that a visual and physical check of the leading edge and upper wing surfaces have been accomplished and that the wing is clear of all ice, frost, and snow accumulation. AD 93–11–01 added a requirement to modify the wing leading edge bleed air anti-ice system so that it can operate on the ground to prevent ice from reforming after deicing procedures have been accomplished. The actions specified in that AD are intended to prevent degradation of lift due to ice accumulation on the wing leading edge.

Recently, the FAA has become aware of the fact that certain language contained in the required AFM limitation, relative to operation of the wing leading edge bleed air anti-ice system, has created confusion among affected operators when attempting to comply with the rule.

Specifically, paragraph (d)(2) of AD 93–11–01 requires that the Limitations Section of the AFM be revised to require that "the bleed air anti-ice system must be on whenever conditions exist or are anticipated, including on-ground operation." This phrase apparently has been interpreted to mean that operators must have the system on during the brief period during takeoff from aircraft rotation to about 100 feet above ground level where the extraction of engine bleed air for the anti-ice system penalizes second-segment climb performance. Such a performance penalty could be as much as 4,000 pounds, which is roughly equivalent to off-loading 20 passengers. One operator contends that a penalty of this magnitude cannot be absorbed by operators and makes operation of Model DC–9–10/–15 aircraft "economically not viable."

The purpose of the required AFM limitation was meant to ensure that the anti-ice system modification is used to provide the on-ground protection for which it is intended; the manner in which the system is normally operated during flight was not meant to be changed. The FAA acknowledges that the language of the AFM limitation as it appears currently in the AD could be interpreted to apply to both the ground and flight phases of airplane operation. Since this clearly was not the FAA's intent, the FAA has determined that it is appropriate to take action to correct the wording of the AFM limitation in AD 93–11–01 to specify that the bleed air anti-ice system must be on whenever icing conditions exist or are apparent, when on the ground, until immediately prior to commencement of takeoff roll.

This corrected wording will clearly indicate that the limitation applies only to operation of the system while the airplane is on the ground until prior to takeoff. The selection of the anti-ice system during takeoff has always been the pilot's decision, and the FAA intends that it continue to be so.

Additionally, another item that appeared in the preamble to AD 93–11–01 has apparently created some confusion. In that preamble, the FAA stated the following in its description of the unsafe condition:

> "The FAA notes that the description of the addressed unsafe condition, as discussed in the proposal, implied that the condition is a result of icing effects on both the wing upper surface and the wing leading edge. That language was inaccurate; the unsafe condition is likely to occur as the result of icing effects on the wing leading edge, not the wing upper surface."

The FAA has reconsidered this statement and finds that, while the modification of the wing leading edge bleed air anti-ice system required by AD 93–11–01 is effective only on ice forming on the wing leading edge, it would be misleading to state the unsafe condition addressed by that AD results only from that phenomenon. The unsafe condition addressed is that which is caused by ice contamination on the wing leading edge and upper surface; this condition can result in the degradation of wing lift, and can result in the airplane stalling at lower than normal angles-of-attack during takeoff. Therefore, the FAA hereby clarifies this point by replacing the previously used language with the following:

"The modification to the wing leading edge bleed air de-icing system, which is required by this AD, prevents ice/frost/snow from reforming on the wing leading edge only, after the airplane has been deiced. The wing leading edge area is the most critical from a loss of lift standpoint. However, because contamination on the upper surface of the wing can also impact lift and stall speeds, assurance that ice/frost/snow is not present on the wing leading edge and upper surface requires operation in accordance with the comprehensive requirements of Section 121.629(c) (Amendment 121–231) of the Federal Aviation Regulations (FAR), or the accomplishment of visual and physical (hands-on) inspections of both the leading edge and the wing upper surface as required by this AD."

Additionally, the address for obtaining copies of the referenced service material from the McDonnell Douglas Corporation has been corrected.

Action is taken herein to correct these errors and to correctly add the AD as an amendment to § 39.13 of the FAR (14 CFR part 39). The effective date of the rule remains July 22, 1993.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only corrects wording in an existing rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Correction.

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 correctly adding the following airworthiness directive (AD):

93–11–01 McDonnell Douglas: Amendment 39–8593. Docket 92–NM–48–AD. Supersedes AD 92–03–01, Amendment 39–8155.

Applicability: Model DC–9–11, –12, –13, –14, –15, and –15F series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of lift due to ice accumulation on the wing leading edge, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, within 10 days after January 17, 1992 (the effective date of AD 92–03–01, Amendment 39–8155), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Wing De-icing Prior to Takeoff

Caution

The Model DC–9–10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause a significant reduction in the stall angle-of-attack. This can increase the stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

[End of Cautionary Note]

The leading edge and upper wing surfaces must be physically checked for ice/frost when the airplane has been exposed to conditions conducive to ice/frost formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces have been accomplished, and that the wing is clear of ice/frost/snow accumulation. Icing/frost/snow conditions exist when the Outside Air Temperature (OAT) is below 6 degrees C (42 degrees F); and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present.

Note

This limitation does not relieve the requirement that aircraft surfaces are free of ice, frost, and snow accumulation as required by Federal Aviation Regulations Sections 91.527 and 121.629.

[End of Note]"

(b) Paragraph (a) of this AD does not apply to any airplane that is both operated in accordance with Federal Aviation Regulation (FAR) 121.629(c), Amendment 121–231, and modified in accordance with either paragraph (c)(1) or (c)(2) of this AD.

(c) Within 9 months after the effective date of this amendment, accomplish the procedures specified in either paragraph (c)(1) or (c)(2) of this AD:

(1) Modify the bleed air anti-ice system so that it can operate on the ground to prevent ice reformation on the wing leading edges after ground equipment has been utilized to properly deice the airplane, and to minimize the effect of undetected ice/frost/snow contamination. Accomplish the modification in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Or

(2) Install a supplemental on-ground wing leading edge ice protection system in accordance with McDonnell Douglas DC–9 Service Bulletin 30–65, dated October 8, 1992.

(d) Upon the accomplishment of the modification required by paragraph (c) of this AD, revise the AFM in accordance with either paragraph (d)(1) or (d)(2) of this AD:

(1) Revise the Limitations section to include appropriate operating procedures relative to operation of the modification required by paragraph (c) of this AD. These operating procedures must be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Or

(2) Revise the Limitations section to include the following operating procedures relative to the operation of the modification required by paragraph (c) of this AD. This may be accomplished by inserting a copy of this AD in the AFM.

"Use of Bleed Air Anti-Ice System

Caution

The Model DC–9–10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause a significant reduction in the stall angle-of-attack. This can increase the stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

[End Of Cautionary Note]

The bleed air anti-ice system must be on whenever icing conditions exist or are anticipated, when on the ground, until immediately prior to commencement of takeoff roll."

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(f) 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.

(g) The installation of a supplemental on-ground wing leading edge ice protection system shall be done in accordance with McDonnell Douglas DC-9 Service Bulletin 30-65, dated October 8, 1992. 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, as of July 22, 1993 (58 FR 33898, June 22, 1993). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, Mail Code 2-98. 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 (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-4952 Filed 3-3-94; 8:45 am]

BILLING CODE 4910-13-U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the 3-month Canadian Bankers' Acceptance Futures Contract traded on the Montreal Exchange to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1993), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on July 20, 1988, 53 FR 28840 (July 29, 1988), authorizing certain option products traded on the Montreal Exchange to be offered or sold in the United States.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under Commission Rule 30.3(a) Permitting Option Contracts on the 3-month Canadian Bankers' Acceptance Futures Contract Traded on the Montreal Exchange to be Offered or Sold in the United States Thirty Days after Publication of this Notice in the **Federal Register**.

By Order issued on July 20, 1988 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the Montreal Exchange to be offered or sold in the United States. 53 FR 28840 (July 29, 1988). Among other conditions, the Initial Order specified that:

> Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any Montreal Exchange option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order.

By letter dated February 9, 1994 the Montreal Exchange represented that it would be introducing an option contract based on the 3-month Canadian Bankers' Acceptance Futures Contract. The Montreal Exchange has requested that the Commission supplement its Initial Order and subsequent Order[2] authorizing Options on the Government of Canada Bond Futures by also authorizing the Montreal Exchange's Option Contract on the 3-month Canadian Bankers' Acceptance Futures Contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, the Commission believes that the request for authorization to offer or sell an option contract on the 3-month Canadian Bankers' Acceptance Futures Contract should be granted.

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on July 20, 1988, and subject to the terms and conditions specified therein, the Commission hereby authorizes the Montreal Exchange's Option Contract on the 3-month Canadian Bankers' Acceptance Futures Contract to be offered or sold to persons located in the United States thirty days after publication of this Order in the **Federal Register**.

Contract Specifications

Options on 3-Month Canadian Bankers' Acceptance Futures

Underlying Interest

One (1) 3-month Canadian Bankers' Acceptance Futures (BAX) contract representing C$1,000,000 principal of 3-month Canadian Bankers' Acceptances.

Description

A buyer of one option on 3-month Bankers' Acceptance Futures may exercise the option to assume a position in one 3-month Bankers' Acceptance Futures (BAX) contract (long position if the option is a call and short position if the option is a put) of a specified contract month at a specified strike price.

The seller of one option on 3-month Bankers' Acceptance Futures has the obligation of assuming, if the option is exercised by the buyer, a position in one 3-month Bankers' Acceptance Futures (BAX) contract (short position if the option is a call and long position if the option is a put) of a specified contract month at a specified strike price.

Price Quotation

Quoted in points where each .01 of a point (1 basis point) represents C$25. For example, a quote of 0.46 represents a total option premium of C$1,150 (i.e. 46 basis points×C$25).

Minimum Price Increment (Tick Size and Value)

0.01 point (also known as one tick)=C$25 per contract (same as for underlying futures).

Strike Prices

Strike prices are set at maximum 0.50 point intervals.* Two (2) in-the-money and two (2) out-of-the-money strike prices will generally be available (for example, if a specific BAX futures settlement price is 90, option strike prices may be set at 89, 89.50, 90, 90.50, 91).

* Strike prices of the nearest contract month may be set at .25 point interval.

Contract Months

Options available on the four nearest months in the BAX futures quarterly

[1] Commission rule 30.3(a), 17 CFR 30.3(a) (1993), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[2] See 56 FR 3207 (January 29, 1991).

cycle, i.e. March, June, September and December.

Trading Hours

8:20 a.m. to 3 p.m. (EST/EDT)

Last Trading Day

Options trading shall terminate at the same date and time as the underlying futures contract, i.e. at 10:00 a.m. (EST/EDT) on the second London (U.K.) business day prior to the third Wednesday of the contract month.

Exercise

American style, i.e. buyers of futures options may exercise their options on any business day up to and including the expiration date (prior to the daily cut-off time). The Clearing Corporation assigns exercise notices to sellers of options according to a random selection process. In-the-money options are automatically exercised by the Clearing Corporation at expiry (unless otherwise instructed). The final settlement price of the underlying futures contract will be used as a reference to determine which options may be exercised automatically at expiry.

Expiration

The last trading day.

Minimum Margin Requirements

The minimum margin is subject to periodic changes.

Buyers of Options

- Premium must be paid in full when the option is bought.

Uncovered Writers of Options

- Market value of the option plus the margin required for the underlying futures contract less half of the amount that the option is out-of-the-money. Minimum: market value of the option plus 50% of the margin required on the underlying futures contract (futures speculator or hedger rate, as the case may be).

Options-Futures Spread

- Short Call-Long Futures or Short Put-Short Futures.
- The underlying market value of the option plus the margin required for the underlying futures contract less half of the amount that the option is in-the-money. Minimum: market value of the option plus 50% of the margin required on the underlying futures contact (futures speculator or hedger rate, as the case may be).
- Long Call-Short Futures or Long Put-Long Futures.
- The margin required is the greater of the market value of the option or the margin required on the futures contract.

Other Combinations

- Special rules apply to calculate margin requirements for other combinations.

Position Limits

The maximum number of options and underlying futures contract net on the same side of the market in all contract month combined which a person may own or control shall be as follows:

(a) For speculators: 5,000 futures equivalent contracts.

(b) For hedgers: The greater of 7,000 futures equivalent contracts or of such a limit to be established and published on a monthly basis by the Exchange based on 20% of the average daily open interest for all Canadian Bankers' Acceptance futures contract during the preceding three calendar months or such other position limits as may be determined by the Exchange.

For the purpose of calculating these limits, positions in the options contracts are aggregated with positions in the underlying futures contract. For aggregation purposes, the futures-equivalent of one in-the-money options contract is one futures contract and the futures-equivalent of one at-the-money option or out-of-the-money contract is half a futures contract.

Reporting Levels

300 options or 300 futures equivalent contracts for positions involving the option and the underlying futures contract.

Ticker Symbol

OBX.

Clearing Corporation

Trans Canada Options Inc.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

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

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

Appendix B to Part 30 [Amended]

2. Appendix B to part 30 is amended by adding the following entry after the existing entries for the "Montreal Exchange" to read as follows:

Appendix B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
. .	. . .	. .
Montreal Exchange	Options on the 3-month Canadian Bankers' Acceptance Futures Contract.	1994; _____ FR _____
. .	. . .	. .

Issued in Washington, DC, on March 1, 1994.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 94–5044 Filed 3–3–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 123

[T.D. 93–96]

RIN 1515–AB31

Reporting Requirements for Vessels, Vehicles, and Individuals; Correction

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects certain editorial errors that appeared in a final rule document published in the **Federal Register** on December 21, 1993, regarding reporting requirements for vessels, vehicles, and individuals.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch, (202) 482–6930.

SUPPLEMENTARY INFORMATION: On December 21, 1993, Customs published a document in the **Federal Register** (T.D. 93–96, 58 FR 67312), that amended the Customs Regulations to implement certain provisions of the Customs Enforcement Act of 1986, a part of the Anti-Drug Abuse Act of 1986, designed to strengthen Federal efforts to improve the enforcement of Federal drug laws and enhance the interdiction of illegal drug shipments. The regulatory changes pertained to the arrival, entry, and departure reporting requirements applicable to vessels, vehicles, and individuals, and informed the public regarding applicable penalty, seizure and forfeiture provisions for violation of the provisions.

The document removed considerable footnote material in part 4 of the Customs Regulations (19 CFR part 4). However, although the footnote material at the bottom of pages was removed, the superscript footnote-referencing designation in the regulatory text was not. This document corrects that error. This document also removes two other footnotes in Part 4—footnotes 92 and 118—that should have been removed, along with their superscript footnote-referencing designations, because the material they reference has been changed or deleted.

Further, one of the amendments in this document was to part 123, which required a revision to the then last sentence of § 123.0. Before T.D. 93–96 was published, however, another document, pertaining to the user fees Customs collects for certain services, was published on October 21, 1993 (T.D. 93–85, 58 FR 54271) that also amended part 123 by adding a new sentence at the end of § 123.0. This circumstance of another document (T.D. 93–85) adding a new last sentence to the same section being revised by T.D. 93–96, requires that the instruction in T.D. 93–96 be corrected to read that the next to the last sentence in § 123.0 be revised to read as indicated.

Correction of Publication

Accordingly, the publication on December 31, 1993 of the final regulations (T.D. 93–96), which were the subject of FR Doc 93–30908, is corrected as follows:

1. On page 67315, in the second column, the second instruction is corrected to read:

"Part 4 is amended by removing and reserving footnotes 4, 5, 7, 8, 8a, 9, 10, 11, 13, 14, 15, 16a, 16b, 19, 20, 23, 65, 72, 79, 91, 92, 95, 98, and 118; and removing the superscript footnote-referencing designations 4, 5, 7, 8, 8a, 9, 10, 11, 13, 14, 15, 16a, 16b, 19, 20, 23, 65, 72, 79, 91, 92, 95, 98, and 118 from the text."

2. On page 67317, in the second column, in § 123.0, the second instruction is corrected to read "Section 123.0 is amended by revising the next to the last sentence to read as follows:".

Dated: March 1, 1994.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 94–5024 Filed 3–3–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 91N–0291]

Medical Devices; Reclassification and Codification of the Daily Wear Soft and Daily Wear Nonhydrophilic Plastic Contact Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is codifying the reclassification of daily wear soft and daily wear nonhydrophilic plastic contact lenses from class III (premarket approval) into class II (special controls). Elsewhere in this issue of the **Federal Register** FDA has issued an order of reclassification as required by the Safe Medical Devices Act of 1990 (the SMDA). This reclassification only applies to daily wear soft and daily wear nonhydrophilic contact lenses. Lenses intended for extended wear will remain in class III, as will contact lens accessories. The SMDA also requires FDA to put into place any regulatory safeguards that are necessary to provide reasonable assurance of the safety and effectiveness of the reclassified lenses. Thus, elsewhere in this issue of the **Federal Register**, in conjunction with the order reclassifying the devices, FDA is announcing the availability of a guidance document describing those safeguards in the form of evidence needed to demonstrate the substantial equivalence of new daily wear soft and daily wear nonhydrophilic contact lenses to lenses already marketed.

DATES: This codification becomes effective April 4, 1994. The reclassification action published elsewhere in this issue of the **Federal Register** is effective March 4, 1994.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2205.

SUPPLEMENTARY INFORMATION: Under the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress classified all transitional devices (i.e., those devices previously regulated as drugs), including daily wear soft and daily wear nonhydrophilic plastic contact lenses, into class III (premarket approval). The SMDA (Pub. L. 101–629), reflecting congressional concern that many transitional devices were being over regulated in class III, directed FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices and review the classifications of those still remaining in class III to determine if the devices could be down classified into class II (special controls) or class I (general controls). The SMDA made further provision with respect to the reclassification of daily wear soft and daily wear nonhydrophilic plastic contact lenses. Section 4(b)(3)(A) of the SMDA provided that, notwithstanding the provisions for reclassification of other transitional devices, daily wear soft and daily wear nonhydrophilic plastic contact lenses would not be retained in class III unless FDA determined that the devices meet the

statutory criteria for a class III device. Further, if FDA did not determine that these contact lenses must remain in class III and publish such determination by November 28, 1993, in the **Federal Register**, then, under section 4(b)(3)(D) of the SMDA, FDA "shall issue an order placing the lenses in class II."

Both the language and legislative history of the SMDA make it clear that the reclassification of daily wear soft and daily wear nonhydrophilic contact lenses would occur as a matter of law unless FDA published a finding that the devices should remain in class III. FDA has not made such a finding: FDA believes that the safety and effectiveness of daily wear soft and daily wear nonhydrophilic plastic contact lenses can be ensured through specified special controls as authorized by the SMDA. As required by section 4(b)(3)(D) of the SMDA, therefore, FDA has issued an order reclassifying the devices from class III (premarket approval) into class II (special controls). This order appears elsewhere in this issue of the **Federal Register**. In conjunction with the order, FDA is also issuing a guidance document for premarket notifications for the reclassified contact lenses, entitled "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses."

Pending original and supplemental applications for premarket approval for daily wear soft or daily wear nonhydrophilic plastic contact lenses currently filed with the agency must be examined to identify: (1) Those that are no longer subject to premarket approval review and can be converted to 510(k)'s or withdrawn and resubmitted to FDA by the applicant to be evaluated through the 510(k) process; and (2) those which can be withdrawn by the applicant and are not required to be resubmitted and evaluated as a 510(k) prior to implementing the request. FDA review of affected premarket approval applications (PMA's) will be suspended until the respective sponsor amends its application, setting forth the status of the devices and the administrative actions requested to be taken regarding its application. Sponsors of PMA's affected by the reclassification should refer to the order published elsewhere in this issue of the **Federal Register** for information on actions necessary regarding any pending applications affected by the automatic reclassification.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action 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.

Economic Impact

FDA has carefully examined the costs and benefits of this action in accordance with the requirements of Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency concludes that the rule is not a significant rule as defined in Executive Order 12866. Further, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. The reclassification will reduce the regulatory costs to manufacturers of these lenses because the cost of complying with premarket notification requirements is substantially less than the cost of complying with premarket approval requirements.

Accordingly, the regulations at §§ 886.5916 and 886.5925 (21 CFR 886.5916 and 886.5925) are amended as set forth below.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

1. The authority section for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 886.5916 is amended by revising paragraphs (b) and (c) to read as follows:

§ 886.5916 Rigid gas permeable contact lens.

* * * * *

(b) *Classification.* (1) Class II if the device is intended for daily wear only.

(2) Class III if the device is intended for extended wear.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before a device described in paragraph (b)(2) of this section may be commercially distributed. See § 886.3.

3. Section 886.5925 is amended by revising paragraphs (b) and (c) to read as follows:

§ 886.5925 Soft (hydrophilic) contact lens.

* * * * *

(b) *Classification.* (1) Class II if the device is intended for daily wear only.

(2) Class III if the device is intended for extended wear.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before a device described in paragraph (b)(2) of this section may be commercially distributed. See § 886.3.

Dated: February 24, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4696 Filed 3–3–94; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT14–1–5669; FRL–4843–9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for the State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: The EPA is approving the State Implementation Plan revision submitted by the Governor of Montana on October 19, 1992 for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to satisfy the Federal mandate of the Clean Air Act to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Act. Since this is a voluntary program that does not impose any new regulatory burdens on small businesses, the EPA is proceeding with a direct final approval of this SIP revision. The rationale for this approval follows.

EFFECTIVE DATE: This rule will become effective on April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Laura Farris, Mail Code 8ART-AP, EPA Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background of Revision

Implementation of the provisions of the Clean Air Act (Act), as amended in 1990, will require regulation of many

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

The State of Montana has submitted a SIP revision to the EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Summary of Submittal

The State of Montana has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. House Bill (HB) 318 signed into law on April 23, 1993, provides authority for the Montana Department of Health and Environmental Sciences to establish a PROGRAM. The Montana Board of Health and Environmental Sciences held a public hearing on September 25, 1992 to consider and approve the PROGRAM, which will amend the Montana SIP to add Chapter 10 of Volume I. The Montana PROGRAM was submitted to the EPA by the Governor of Montana on October 19, 1992 as an addition to the Montana SIP. It was initially reviewed for administrative and technical completeness, and was deemed complete on April 19, 1993. The submittal was then reviewed for approveability by EPA Region VIII and EPA headquarters. One of the EPA headquarters reviewers, the Office of the Small Business and Asbestos Ombudsman (OSBO) did not concur on the Montana PROGRAM for the following reasons: (1) Insufficient designation of Small Business Ombudsman position in the Montana Department of Commerce (DOC) to make an effective decision; (2) No designated role for the SBAP to act as secretariat to the CAP and Ombudsman; (3) Manpower resources appear inadequate to support the SBAP, and there are no quantitative or qualitative or other support for the SBAP from the DOC or others; and (4) It is advantageous for the Ombudsman and the SBAP to both have a toll-free hotline to serve the public. The State addressed these issues in a letter dated January 3, 1994, and subsequently received the concurrence of the OSBO.

A. Small Business Assistance Program

The State has met the first PROGRAM element, the establishment of a SBAP to provide technical and compliance assistance to small businesses, by committing in its SIP revision Chapter 10.2.3 to establish a SBAP in the Montana Department of Health and Environmental Sciences, Air Quality Bureau. It will be administered by an environmental specialist. Chapter 10.2.3 describes the details of the SBAP, which meet the six requirements set forth in section 507(a), including such activities as: (1) "Provide information to small business stationary sources on compliance methods and technologies;" (2) "Provide information to small business stationary sources on ... pollution prevention and accidental release detection and prevention;" (3) "Assist small business stationary sources in determining applicable requirements under this chapter and in receiving permits in a timely and efficient manner;" (4) "Provide small business stationary sources timely notice of both their rights and obligations under this chapter;" (5) "Provide information ... regarding the availability of audits services which are useful for determining compliance status with the requirements of this chapter;" and (6) Consider " ... requests from small business stationary sources for modifications of work practices or technological methods of compliance."

B. Ombudsman

The State has met the second PROGRAM element, the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process, by locating the office of the Ombudsman in the Montana DOC as stated in Chapter 10.2.2 of its SIP revision.

C. Compliance Advisory Panel

The third PROGRAM element is the creation of a CAP to determine and report on the overall effectiveness of the SBAP. The CAP must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The Act also delineates four responsibilities of the Panel:

(1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions;

(2) To periodically report to the EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act[1];

(3) To review and assure that information for small businesses is easily understandable; and

(4) To develop and disseminate the reports and advisory opinions made through the SBAP.

The State has met these requirements by committing in Chapter 10.2.4 of its SIP revision to appoint the members of the CAP as stated above, and to designate to the CAP the four responsibilities listed in the Act.

D. Eligibility

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

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

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

(C) Is not a major stationary source;

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

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

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

The State of Montana has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the Act. This mechanism is contained in the State's Title V enabling legislation, HB 318, Section 1, which is Chapter 10.2.1 of the State's SIP revision.

The State of Montana has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the Act but do not emit more than 100 tpy of all pollutants. This provision is contained in Chapter 10.2.1 of the State's SIP revision.

The State of Montana has provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the Act. This provision in contained in Chapter 10.2.1 of the State's SIP revision.

III. Final Action

In this action, the EPA is approving the SIP revision submitted by the State of Montana. This SIP revision implements each of the PROGRAM elements required by section 507 of the Act. Chapter 10.3 of the revision contains a schedule for implementation of the PROGRAM by November 15, 1994. The EPA is therefore approving this submittal.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The 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 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.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

List of Subject in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program.

Dated: February 16, 1994.

Robert L. Duprey,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1389 is added to subpart BB to read as follows:

§ 52.1389 Small business stationary source technical and environmental compliance assistance program.

The Governor of Montana submitted on October 19, 1992 a plan to develop and implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to meet the requirements of section 507 of the Clean Air Act by November 15, 1994. The plan commits to provide technical and compliance assistance to small businesses, hire an Ombudsman to serve as an independent advocate for small businesses, and establish a Compliance Advisory Panel to advise the program and report to the EPA on the program's effectiveness.

[FR Doc. 94–4991 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300313A; FRL–4747–8]

RIN 2070–AB78

Definitions and Interpretations; Sorghum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends 40 CFR 180.1(h) by adding definitions of the commodity terms "sorghum grain" and "sorghum fodder and forage." The amendment to 40 CFR 180.1(h) is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective March 4, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station #1, 6th Floor, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: Section 180.1(h) (40 CFR 180.1(h)) provides a listing of general commodity terms and listing of EPA's interpretation of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a. General commodities are listed in column A of 40 CFR 180.1(h), and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B. As noted in the proposal published in the Federal Register of November 24, 1993 (58 FR 62074), the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, requested that 40 CFR 180.1(h) be amended as follows: (1) To add the commodity term "sorghum (grain)" to the general category of commodities in column A and to add the corresponding specific commodities "*Sorghum* spp. [sorghum (grain),

sundangrass (seed crop), and hybrids of these grown for its seed]" to column B; and (2) to add the commodity term "sorghum (fodder, forage)" to the general category of commodities in column A and to add the corresponding specific commodities "*Sorghum* spp. [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage]" to column B.

There were no comments received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that it is appropriate to add definitions for the commodity terms "sorghum grain" and "sorghum fodder and forage" in 40 CFR 180.1(h). Therefore, the added definitions are established as set forth below.

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

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

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

Dated: February 22, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1(h) is amended in the table therein by adding and alphabetically inserting the following commodities listings, to read as follows.

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * * * *	
Sorghum (grain)	*Sorghum spp.* [(sorghum (grain), sudangrass (seed crop), and hybrids of these grown for its seed].
Sorghum (fodder, forage)	*Sorghum spp.* [(sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage)].
* * * * * * *	

* * * * *

[FR Doc. 94-4987 Filed 3-3-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 3E4192/R2037; FRL-4756-3]

RIN 2070-AB78

Pesticide Tolerance for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] in or on the raw agricultural commodity sugarcane. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective March 4, 1994.

ADDRESSES: Written objections and request for a hearing, identified by the document control number, [PP 3E4192/R2037], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 22, 1993 (58 FR 67759), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 3E4192 to EPA on behalf of the Agricultural Experiment Stations of Florida and Hawaii. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of chlorpyrifos in or on the raw agricultural commodity sugarcane at 0.01 part per million (ppm).

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

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in

the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

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

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: February 22, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[Amended]

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

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

2. By amending § 180.342(c) by adding and alphabetically inserting the raw agricultural commodity sugarcane and by revising paragraph (d) introductory text to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Sugarcane	0.01
* * * * *	

(d) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate) in or on the following commodities:

* * * * *

[FR Doc. 94-4986 Filed 3-3-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300308A; FRL-4756-2]

RIN 2070-AB78

Polyethylene Glycol-Polyisobutenyl Anhydride-Tall Oil Fatty Acid Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer when used as an inert ingredient (surfactant, dispersing agent, suspending agent, or related adjuvant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This regulation was requested by ICI Americas, Inc.

EFFECTIVE DATE: This regulation becomes effective March 4, 1994.

ADDRESSES: Written objections or requests for a hearing, identified by the document control number, [OPP-300308A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Bldg. North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 29, 1993 (58 FR 68827), EPA issued a proposed rule to exempt from the requirement of a tolerance residues of polyethylene-glycol-polyisobutenyl anhydride-tall oil

fatty acid copolymer when used as an inert ingredient (surfactant, dispersing agent, suspending agent, or related adjuvant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyetheylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

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

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

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

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: February 9, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer (minimum number-average molecular weight 5,000)..	.....	Surfactant, dispersing agent, suspending agent, or related adjuvant.
* * * * * * *		

* * * * *

[FR Doc. 94–4988 Filed 3–3–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 424

[BPD–610–F]

RIN 0938–AE06

Medicare Program; Diagnosis Codes on Physician Bills

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

ACTION: Final rule.

SUMMARY: This final rule implements certain provisions of section 1842(p) of the Social Security Act regarding diagnosis codes on physician bills. Under this final rule, each bill or request for payment for a service furnished by a physician under Medicare Part B must include appropriate diagnostic coding for the diagnosis or the symptoms of the illness or injury for which the Medicare beneficiary received care.

DATES: Effective date: This final rule is effective April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Pat Brooks, R.R.A. (410) 966–5318.

SUPPLEMENTARY INFORMATION:

I. Background

Medical services are furnished to Medicare beneficiaries by providers, suppliers, physicians, and other specified practitioners. Title XVIII of the Social Security Act (the Act) defines the term physician. Under section 1861(r) of the Act, the term physician, subject to limitations concerning the scope of practice by each State and other provisions of title XVIII of the Act, means a doctor of—(1) Medicine or osteopathy; (2) Dental surgery or dental medicine; (3) Podiatry; (4) Optometry; or (5) Chiropractic.

Under provisions of section 1848(g)(4) of the Act, as added by section 6102(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 100–239), effective for services furnished on or after September 1, 1990, each physician must submit a standard claim form (HCFA–1500) directly to the Medicare carrier on behalf of the beneficiary, regardless of whether the physician provided the services on an assignment-related basis. (Under Medicare Part B, a physician may bill the patient directly for the physician's services, thus requiring the beneficiary to seek reimbursement from Medicare. Alternatively, under section 1842(b)(3)(B) of the Act, when a physician furnishes services on an assignment-related basis, the physician bills Medicare directly in exchange for the physician's agreement to accept the Medicare approved amount as payment in full. (Rules concerning assignment of claims are found at §§ 424.55, 424.56 and 424.70 *et seq.*) The HCFA–1500, which is also used by most third-party payers, including Medicaid and other Federal government health insurance programs, is, in effect, an itemized bill.

Before September 1, 1990, if a physician was not paid directly by Medicare for physician services, the physician either billed the Medicare beneficiary directly or billed another third-party payer. The beneficiary then sought payment from Medicare for expenses incurred in obtaining covered physician's services by submitting a Patient's Request for Medicare Payment (HCFA–1490 S) to the carrier. This form directs the beneficiary to attach itemized bills from his or her physician to the form. In limited cases, as provided under section 1842(b)(6)(B) of the Act and 42 CFR part 424 when a third party made payment to the physician, the third party sought reimbursement from Medicare for this payment by submitting a Request for Medicare Payment by Organizations which Qualify to Receive Payment for Paid Bills (HCFA–1490 U). We required the physician to fill out Part II of this form, which was similar to an itemized bill.

Previously, each bill or request for payment for physician services furnished to a Medicare beneficiary had to include, among other information, a narrative description of the diagnosis or the nature of the illness or injury for which the beneficiary received care. Although prior to April 1, 1989 there was no requirement for diagnostic coding (that is, a description of the diagnosis or the nature of the illness or injury in a numeric code), many physicians routinely provided this information. In addition, all physicians provided a narrative description of procedures, medical services, and supplies that were furnished to a beneficiary.

II. Legislation Requiring Diagnostic Coding

Section 202(g) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360), enacted July 1, 1988, added paragraph (p) to section 1842 of the Act. Under the provisions of section 1842(p)(1) of the Act, each bill or request for payment for physician services under Medicare Part B must include the appropriate diagnostic code "as established by the Secretary" for each item or service for which the Medicare beneficiary received treatment.

The conference report that accompanied Public Law 100–360 explained clearly the purpose of the requirement for physician diagnostic coding. After rejecting a Senate provision that would have required the use of diagnosis codes on all prescriptions, because they felt that the requirement would have been "unduly burdensome," the conferees agreed to require diagnostic coding for physician services under Part B. They explained their reasons for this requirement as follows: "This information would be available for immediate use for utilization review of physician services and could be used in the future to facilitate drug utilization review by merging Part B with drug claims data." H.R. Conf. Rep. No. 661, 100th Cong., 2nd Sess. 191 (1988).

Section 1842(p)(2) of the Act authorizes a denial of payment for a bill submitted by a physician on an assignment-related basis if it does not include the appropriate diagnostic coding.

Section 1842(p)(3) of the Act directs the Secretary to impose penalties if a physician who is not paid on an assignment-related basis fails to provide the appropriate diagnostic coding on the bill to the Medicare beneficiary. That is, section 1842(p)(3)(A) of the Act provides for a civil money penalty not to exceed $2,000 if the physician knowingly and willfully fails to provide the appropriate diagnostic coding. Section 1842(p)(3)(B) of the Act provides for a sanction under 1842(j)(2)(A) of the Act if the physician "knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection," to furnish appropriate diagnostic coding. Section 1842(p)(3) of the Act does not prohibit the payment of an unassigned claim solely because the physician did not provide diagnosis codes. As explained in section I of the preamble, effective for services furnished on or after September 1, 1990, regardless of whether they provide services on an assignment related basis, physicians submit claim forms directly to the Medicare carrier. The provisions of section 1848 of the Act, as added by 6102(a) of Public Law 101–239, do not affect the penalties set forth in this rule for failure to include diagnostic coding on physician bills. This final rule

implements the provisions of section 1842 (p)(1) and (p)(2) of the Act.

III. Provisions of the Proposed Rule

On July 21, 1989 we published a proposed rule (54 FR 30558) to implement the provisions of section 1842(p)(1) of the Act. We proposed that each bill or request for payment for physician services under Part B would have to include appropriate diagnostic coding "as established by the Secretary," relating to the nature of the illness or injury for which the Medicare beneficiary received care.

As noted above, generally, physician services furnished directly to a beneficiary are paid under Medicare Part B. In addition, under the regulations set forth at subpart D of 42 CFR part 405, we make payments to hospitals under Part A for physician services related to the supervision and teaching of interns and residents who participate in the care of hospital inpatients. Also, the proposed rule did not apply to suppliers or other providers whose services are covered under Part B.

We proposed that a physician would be required to furnish diagnosis codes instead of the narrative description that was previously required. We proposed to deny payment for a bill or request for payment for physician services furnished on an assignment-related basis if the bill or request for payment does not contain the appropriate diagnostic coding. This would not be true for a claim for physician services not furnished on an assignment-related basis. In other words, if the beneficiary seeks Medicare reimbursement for payment for physician services, we proposed not to deny payment solely because the claim does not contain diagnosis codes. If enough information were provided to enable a carrier to process the claim, it would be processed without the diagnosis codes. As explained in section II of the preamble, section 1842(p)(3)(B) of the Act provides for a sanction under section 1842(j)(2)(A) of the Act if the physician "knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection," to furnish appropriate diagnostic coding.

We proposed to use the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) as the most appropriate diagnostic coding system.

The ICD is a classification system developed by the World Health Organization (WHO) for recording morbidity and mortality information for statistical purposes, for indexing hospital records by diseases, and for storing and retrieving data. Effective with the Twentieth World Assembly of WHO, nomenclature regulations were adopted on May 22, 1967. Article 21(b)(2) of these regulations specifies that "members compiling mortality and morbidity statistics shall do so in accordance with the current revision of the International Statistical Classification of Diseases, Injuries and Causes of Death as adapted from time to time by the World Health Assembly. This Classification may be cited as the 'International Classification of Diseases'." The United States is signatory to the WHO's agreements, which include the above nomenclature regulations binding the United States to the use of the ICD system for official government health statistical purposes. The nomenclature regulations became effective on January 1, 1968.

The clinical modification of the ninth revision to ICD (that is, ICD–9–CM) is a coding system for reporting diagnostic information and procedures performed on patients in hospitals or other types of health care delivery systems.

ICD–9–CM was developed under the guidance of the National Center for Health Statistics (NCHS) to adapt the ninth revision of the ICD classification system to the needs of hospitals in the United States. The modifications were intended to provide a mechanism to present a clinical picture of the patient. Thus, ICD–9–CM codes are more precise than those included in ICD–9 since greater detail is needed to describe the clinical picture of a patient than for statistical groupings and trend analysis.

Effective January 1979, after nearly two years of development by numerous national experts on clinical technical matters, the ICD–9–CM became the single classification system intended for use by hospitals in the United States. This system replaced several earlier related but somewhat dissimilar classification systems. Once the ICD–9–CM classification system was in place, several errors and omissions were noted. Consequently, in September 1980 a second edition of ICD–9–CM was published. The preface to the second edition noted that the continuous maintenance of ICD–9–CM is the responsibility of the Federal government. The preface also stated that no future modifications to ICD–9–CM would be made by the Federal government without considering the opinions of representatives of major users of the classification system.

In September 1985, the ICD–9–CM Coordination and Maintenance Committee (the Committee) was formed. This is a Federal interdepartmental committee that maintains and updates the ICD–9–CM. This includes approving new coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by NCHS and HCFA. NCHS has primary responsibility for the ICD–9–CM diagnosis codes included in Volume 1—Diseases: Tabular List, and Volume 2—Diseases: Alphabetic Index. HCFA has primary responsibility for the ICD–9–CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the development of diagnosis and procedure codes by health-related organizations, organizations in the coding field, and other members of the public. During each Federal fiscal year (FY), the Committee holds three public meetings during which coding changes are discussed. Taking into account the public comments made at each meeting and the public correspondence received after each meeting, the Committee formulates recommendations, which must be approved by the co-chair agency heads, the Administrator of HCFA and the Director of NCHS, before adoption for general use. Coding changes approved by the Committee and agency heads are published annually in the **Federal Register**.

Only official volumes and addenda of ICD–9–CM are to be considered in the assignment of diagnosis codes for Medicare patients. HCFA is not responsible for mistakes made by businesses in the replication of these official volumes and addenda, which are then sold to the public. Official addenda have become effective on May 1, 1986, and subsequently on October 1 of each year from 1986 through the present. Another addendum, containing the Human Immunodeficiency Virus (HIV) Infection Codes, became effective for Medicare patients discharged on or after July 1, 1988.

Before publication of the proposed rule on July 21, 1989, the GPO exhausted its supply of previously published addenda and announced that it had no plans to reprint more copies. However, the private sector continues to publish changes to the ICD–9–CM coding system annually by October 1st.

The GPO also announced that it would no longer provide addenda except to subscription purchasers of the third edition. ICD–9–CM, third edition, was published in March 1989; automatic addenda updates expired in 1991. The third edition incorporates all addenda that were previously published. We stated in the July 21, 1989 proposed rule that if a physician had not yet obtained ICD–9–CM, second edition, and had not updated the set with the addenda, he or she should obtain the recently updated Volumes 1 and 2 (that include all the addenda) (54 FR 30560). The American Health Information Management Association (AHIMA), previously known as the American Medical Records Association (AMRA), the national professional association of medical records practitioners, and the American Hospital Association (AHA) have indicated that they intend to reprint these future addenda and make them available for sale.

The price for Volumes 1 and 2 of ICD–9–CM, fourth edition, is $65.00 for delivery within the United States and $81.25 for delivery outside of the United States. A purchaser must furnish an address other than a post office box because the volumes will be delivered only to a place of business or a residence. When ordering, the purchaser should enclose a check, money order, or Visa or Mastercard account name, number, and expiration date. Checks should be made out to the Superintendent of Documents.

Updated volumes 1 and 2 may be purchased by writing to the following address: ICD–9–CM, Fourth Edition, Volumes 1 and 2, P.O. Box 371954, Pittsburgh, PA 15250–7954. (Telephone orders may be placed through the GPO order desk at (202) 783–3238.)

Section 424.32 sets forth the basic requirements for all claims. (The term "claim" is used when referring to the regulatory language instead of the term "bill or request for payment".) In § 424.32(a), all claims (including those filed directly with Medicare by physicians, beneficiaries or other persons or entities for physician services furnished to Medicare beneficiaries) must be filed in accordance with HCFA instructions. Section 424.34 provides additional requirements for claims filed with Medicare by beneficiaries. Under § 424.34(b)(4), the itemized bill must include a listing of services in sufficient detail to permit determination of reasonable charges. We proposed to make the following changes to the regulations text:

- Revise § 424.32(a) to state specifically that a claim for physician services must include appropriate diagnostic coding using ICD–9–CM.
- Revise § 424.34(b)(4) to state specifically that an itemized bill furnished by a physician to a beneficiary for physician services must include appropriate diagnostic coding using ICD–9–CM.
- Add to § 424.3 the definition of ICD–9–CM, which means the International Classification of Diseases, Ninth Revision, Clinical Modification.

Coding and reporting requirements and instructions for diagnostic coding were developed in order to take into account circumstances unique to care furnished by physicians. These coding and reporting requirements and instructions for completing bills and requests for payment were developed before publication of the proposed rule and were distributed to the carriers on March 3, 1989. The carriers then mailed this information, in the form of a Medicare Bulletin, to the physicians whom they service. During preparation of these procedures and instructions, we consulted with the American Medical Association (AMA) and provided the AMA an opportunity to comment on the material.

In the proposed rule, we proposed a limited grace period during which payments would not be denied and sanctions would not be imposed for failure to use diagnosis codes. We provided for a 6-month grace period until October 1, 1989 to allow physicians and their office staff to obtain training and purchase books. On August 8, 1989, we notified carriers of the extension of the grace period through a memorandum from the HCFA Bureau of Program Operations. For the convenience of the reader, we published the coding and reporting requirements as an appendix to the proposed rule.

AHIMA offered nationwide training classes and training materials for physician office staff for ICD–9–CM diagnostic coding, as did the AMA.

Suggestions concerning modification of the ICD–9–CM codes, or additions to the existing codes, may be submitted in writing to the following address: National Center for Health Statistics, 6525 Belcrest Road,room 9–58, Hyattsville, MD 20782.

In this final rule, we are adopting the requirements as stated in the proposed rule without modification.

IV. Discussion of Public Comments

In response to the proposed rule, we received 35 timely items of correspondence. Comments were received from physicians, professional health-related organizations, universities and colleges, medical facilities, state governments, laboratories, durable medical equipment suppliers and pharmaceutical companies.

Although the majority of commenters were not opposed to the diagnostic coding requirement in general, they were concerned with certain aspects of the proposed rule.

A. Coding Issues

Comment: One commenter inquired about the possibility of an indefinite delay of the ICD–9–CM diagnostic coding requirement. Another commenter asserted that the diagnostic coding requirement should not be implemented until final regulations are published, which should allow for a training period of 60 days before any adverse actions.

Response: The original implementation date of April 1, 1989 was extended by a 60-day grace period to allow physicians and their office staffs to purchase coding books and to obtain coding training. This grace period was further extended until October 1, 1989, at which time we required all physicians to use ICD–9–CM codes on bills or requests for payment. On August 8, 1989, we notified carriers of the extension through a memorandum from the HCFA Bureau of Program Operations. In total, we allowed a 6-month grace period. We believe we provided a reasonable time period for physicians and their staffs to prepare for the new coding requirements.

Comment: The American Psychiatric Association disagreed with HCFA that the ICD–9–CM is the only classification system acceptable for Medicare claims. They urged HCFA to allow the use of the Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised (DSM–III–R) coding system for mental disorders. The American Medical Association also supports the DSM–III–R coding system for use by psychiatrists.

Response: DSM–III–R was designed to be compatible with ICD–9–CM, but the two systems are not identical. Systems such as DSM–III–R address only certain types of diagnoses, and cannot be used universally by all types of practitioners to code all types of diagnoses on claims submitted to Medicare. In fact, ICD–9–CM provides for greater specificity in coding mental disorders that DSM–III–R. Within the "mental disorders" range (codes 290–319) there are an additional 218 specific codes available in ICD 9–CM that are not in DSM–III–R. Thus, we continue to believe that the ICD–9–CM system is the only comprehensive

diagnostic coding system that is suitable for Medicare claims.

Comment: The College of American Pathologists stated that the ICD–9–CM coding system is limited in its description of disease states. The commenter asserted that the Systematized Nomenclature of Medicine (SNOMED), which it publishes, is more specific.

Response: The SNOMED is an excellent coding system. However, as stated above, the Department of Health and Human Services is signatory to the WHO's nomenclature regulations binding the United States to use of the ICD for official government purposes. Even though ICD–9–CM has recognized limitations, it can be updated as the need arises via the ICD–9–CM Coordination and Maintenance Committee.

Comment: One laboratory recommended that the burden of furnishing the proper diagnosis codes be placed on the physician ordering a test rather than the supplier of the service. The commenter expressed a concern that the laboratory performing the test should not be held responsible for performing a test that Medicare later determines to be not medically necessary.

Response: The proposed rule and this final rule address the requirement for diagnostic coding of only physicians' bills. This new coding requirement does not apply to bills from laboratories (except for physician laboratory services—see § 405.556).

Comment: One commenter suggested that referring physicians provide a reason for the biopsy or referral. It requested that this practice be encouraged and emphasized through carrier communication with the physicians.

Response: We have always encouraged that the referring physician communicate the reason for the referral or specimen so the proper medical interpretation is made or test is performed. We will continue to encourage carrier to convey this message to the physician community.

Comment: Three commenters were concerned that providing for only four diagnostic codes on the form HCFA–1500 is insufficient in many cases to adequately describe a patient's condition.

Response: Since the implementation of the diagnostic coding requirement, we have received few complaints concerning the form HCFA–1500. Thus, we believe that four diagnosis codes are sufficient in most instances. We note that this regulation is not intended to change the structure of the form HCFA–1500. Moreover, our contractors' claims processing systems, as currently constructed, would not be able to accommodate more than four diagnosis codes on a single claim.

The use of codes instead of a narrative description should enhance the physician's ability to describe the patient's condition with greater precision. If there are cases where the use of four codes is not sufficient, we suspect that they would arise when more than one procedure has been performed (for example, psychological counseling provided to a trauma patient). In such cases, the physician could submit one claim for the procedure that relates to four or fewer diagnoses, and submit another claim for the other procedures with their attendant diagnoses.

Comment: The American Ambulance Association requested that the final rule specify that the coding requirements do not apply to ambulance services.

Response: This final rule provides only that each bill or request for payment for physician services must include diagnostic coding. These provisions do not apply to ambulance services.

Comment: One commenter interpreted the proposed rule to imply that physicians must now submit claims for services that they would not have normally billed under the previous guidelines. The commenter requested that HCFA clarify this point in the final rule.

Response: Although the ICD–9–CM coding system permits classification of many services for which specific codes could be used, the mere presence of an ICD–9–CM code does not, of itself, mean that a bill or request for payment must include the code for that service. If a physician generally would not have submitted a bill or request for payment for a particular service prior to the physician diagnostic coding requirement, the physician may not be required to submit a bill for that service under the new rules. For instance, HCFA did not mean to imply, under an example in the guidelines published in the proposed rule (54 FR 30564), that a bill should be submitted for a service for X.3, attention to surgical dressings and sutures, if this service is included in the surgeon's global charge. However, if this service is performed by another physician, unrelated to the surgeon, it might be appropriate for the second surgeon to use this code to describe the reason for the encounter.

Comment: One commenter suggested that HCFA clarify in the final rule whether the new regulations supersede or supplement individual carrier coding policies since there are conflicts between the new and old coding practices.

Response: The requirements in this final rule supersede any individual carrier coding policies. Those carrier coding policies have been changed to comply with the requirements of this final rule.

Comment: Both the AMA and the American Society of Internal Medicine stated that supplying codes for signs and symptoms without also supplying codes indicating diagnoses that the physician has ruled out will not accurately describe the patient's conditions and explain the reasons for the care provided. Another commenter recommended that we allow the use of "suspected" and "rule out" codes.

Response: The coding guidelines state that each visit must be coded to describe the specific reason that the patient sought care or treatment. The guidelines also state: "Do not code diagnosis documented as "suspected," "rule out," "probable," or "questionable" as if they are established. Rather, code the condition to the highest degree of certainty for that encounter/visit to reflect symptoms, signs, abnormal test results, or other reasons for the visit." To require coding of "probable," "suspected," "questionable," or "rule out" conditions as if the conditions existed would lead to significant overcounting of conditions. This inaccurate recording would distort data and would artificially distort disease statistics. Therefore, physicians should report diagnosis codes for symptoms and signs but should exclude codes for diagnoses that the physician either suspects or rules out.

Comment: Several commenters asked how they should code for situations in which a patient presents disabling symptoms but no diagnosis exists for the patient. They recommended that the diagnosis codes include codes for symptoms.

Response: Diagnosis codes should reflect the diagnosis, condition, problem, or other reason for the encounter or visit shown in the medical record to be chiefly responsible for the services provided. However, the carrier will also accept codes for symptoms when no other more definite code can be given to describe the reason for the visit of the patient. This is explained further in guideline number four of the Appendix—Claims Review and Adjudication Procedures, published with the proposed rule (54 FR 30564, July 21, 1989).

Comment: Two commenters suggested that correlating the ICD–9–CM diagnosis codes and the CPT–4 procedures codes

is a redundant effort since a procedure may be performed as the result of several conditions. They urged that the requirement be deleted.

Response: Correlating the narrative diagnosis and the CPT–4 procedure code is a requirement of the Medicare carrier, and has been a standard requirement for years. It has only been modified by the new physician diagnostic coding requirements. Physicians must now correlate the ICD–9–CM code, instead of the narrative, to the CPT–4 code.

Comment: One commenter stated that suppliers cannot be required to include diagnostic coding on Part B bills even though they often provide the diagnostic codes identified by the physician on bills for equipment and supplies.

Response: We have never required suppliers to include diagnostic coding on their Part B bills. Section 1842(p)(1) of the Act requires physicians, as defined in section 1861(r) of the Act, and subject to limitations concerning the scope of practice by each State and other provisions of title XVIII of the Act, to furnish diagnostic coding. That is, only doctors of medicine or osteopathy, dental surgery or dental medicine, podiatry, optometry, or chiropractic must furnish diagnostic coding. Durable medical equipment suppliers are not included in this requirement.

Comment: One commenter inquired why his or her carrier included messages in the explanation of the Medicare benefit worksheet regarding both diagnostic coding requirements (ICD–9–CM) and procedural coding requirements (CPT–4) since the proposed rule (54 FR 30559, July 21, 1989) stated that there is no current requirement for diagnostic coding.

Response: The statement on page 54 FR 30559 referred to the policy before implementation of section 1842(p)(1) of the Act that requires physician diagnostic coding instead of the written narrative that was previously required. We are now conforming the regulations to the previously issued administrative instructions.

The CPT–4 coding (part of the HCFA Common Procedural Coding System) describes physician services and supplies, not diagnoses. If either fields 23 or 24c on the form HCFA–1500 are blank, the carrier will communicate with the physician via the explanation of the Medicare benefit worksheet requesting completion of this information.

Comment: A commenter asserted that as an incentive all bills or requests for payment without ICD–9–CM codes should be rejected and that properly coded bills and requests for payment should be expedited.

Response: The Act specifically provides for denial of payment for a bill submitted by a physician on an assignment-related basis if it does not include the appropriate diagnostic code. For a claim for an item or service not submitted on an assignment-related basis, the Act authorizes the Secretary to impose a civil money penalty, not to exceed $2,000, against a physician seeking payment who knowingly and willfully fails to promptly provide the appropriate diagnostic coding on the bill to the Medicare beneficiary upon the request of the Secretary or a carrier. If the physician knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the statutorily prescribed obligations, to include the requisite diagnostic codes, the physician may also be subject to administrative sanctions. However, the payment of an unassigned claim may not be prohibited solely because the physician has not furnished the diagnosis codes.

We considered, but rejected, the idea of expediting properly coded bills and requests for payment since we do not handle properly coded bills for Part A services in a special manner. Properly coding bills is a standard requirement to receive payment for services. However, payment would occur more quickly for properly coded bills because there would be no need for resubmission because of errors in coding.

Comment: A clinical laboratory stated that bills and requests for payment with diagnostic coding can be processed electronically at a much lower cost to Medicare than we projected in the proposed rule.

Response: The cost projections in the proposed rule for electronically processed claims are the expected costs for physicians to comply with the requirement for diagnostic coding on all bills and requests for payment rather than the costs of the carriers in processing the bills and requests for payment.

Comment: One association asked the implied meaning of the statement "* * * (diagnostic coding) could be used for prepayment screens" (54 FR 30559, July 21, 1989). The commenter asked where the ICD–9–CM and CPT–4 information is being collected and what future plans are being implemented for the use of the information. The association was informed by its carrier that the carrier does not believe the ICD–9–CM and CPT–4 codes will eventually be used for a prospective payment system for physicians.

Response: Billing information is compiled by each carrier and then electronically transmitted to HCFA's Bureau of Data Management and Strategy in Baltimore, Maryland. This Bureau is largely responsible for performing HCFA's mathematical and statistical programming and for managing HCFA's statistical data bases to support program decisions by various HCFA components. Current and possible applications for the ICD–9–CM and CPT–4 coding information include answering research queries from private sources, development of quality assurance monitoring mechanisms, assessment of the impact of proposals that affect health care financing programs, or special research and evaluation studies. The Bureau uses diagnostic coding information to design and develop periodic statistical tabulations to assess the characteristics of beneficiaries and the utilization and cost of program benefits. The CPT–4 codes also are now used for payment purposes under the fee schedule for physician services.

Comment: One commenter was concerned about the increased costs for manpower and the reformatting of her billing system associated with implementation of the diagnostic coding requirement.

Response: We cannot predict the increased costs or manpower that an individual office would incur as a result of the diagnostic coding requirement. However, in the impact analysis to this final rule, we discuss our estimate of the aggregate costs associated with coding training and ICD–9–CM coding books. Also, as discussed in the impact analysis, we now estimate that about 90 percent of physicians included diagnostic coding on bills before it was required by section 1842(p) of the Act. These physicians may not have experienced as significant an increase in costs as physicians who did not code before the requirement was established.

Comment: One commenter stated that since general practitioners care for the whole patient, it is sometimes difficult to find an applicable diagnosis even after looking through 2,000 pages of codes. The physician recommended that we allow three digit codes to be used for procedures for which physicians routinely charge less than $200.

Response: We are aware that general practitioners are responsible for coding a wide range of diagnoses. To determine the correct code, Volume 2, Index, must be consulted first. After the correct code has been determined, Volume 1 is then referenced to determine if there are other coding conventions that apply, such as "Includes" or "Excludes" notes.

We cannot accept the recommendation to allow the use of three digit codes in any circumstance where an applicable four or five digit code exists. Codes must be used to their highest level of specificity; this may include some three digit codes. If diagnoses are coded to the highest level, using the same data base for all bills and requests for payment will permit meaningful trend analysis and data comparisons.

Comment: Several commenters stated that the estimate of 1 minute to code a bill or request for payment is too short. The estimate does not consider the time a physician spends with office staff to select the correct diagnosis code.

Response: The estimate of 1 minute to code a bill or request for payment was made by AHIMA based on their professional coding experience and expertise. We believe that this is a realistic figure for several reasons. First, there are many physicians who are specialists, and who will use only a small portion of the coding manuals during their normal course of business. We anticipate that these physicians and their office staffs will quickly identify those parts of the coding books that apply to their practice. Additionally, many offices have developed reference lists pertaining to the codes frequently used in their particular practices. Once this list has been developed, very little physician involvement is required for the coding process.

The amount of time necessary for the physician to work with his or her clerical staff in the selection of the correct diagnosis code(s) was not factored into the estimate of 1 minute. That estimate reflected the use of the code book or reference list and the documentation process, whether manual or key entry. We anticipate that the diagnosis code(s) will become as familiar to the office staffs as the recording of the narrative diagnostic language, and that completion of the billing form will proceed as smoothly as it did prior to the implementation of this diagnostic coding requirement.

B. Patient Information and Confidentiality

Comment: The American Psychiatric Association (APA) stated that there may be instances when the diagnosis information provided to the patient (particularly in non-assigned claims) could have an adverse impact on the patient and course of treatment. The APA suggests that HCFA have an exceptions process that allows the physician to determine whether diagnosis information should be directly provided to the patient.

Response: We agree, and note that there is already an established procedure for such situations. The physician should file the form HCFA–1500 on behalf of the beneficiary as required by section 1848(g)(4) of the Act. The form should include the appropriate diagnostic codes and should be forwarded to the Medicare carrier. If a physician determines that diagnostic information should not be released directly to a patient, the physician may furnish bills to the patient without diagnostic information. In addition to psychiatric diagnoses, physicians also may choose to use this procedure for terminal illnesses or other conditions of a sensitive nature.

Comment: The APA expressed a concern that HCFA should have a mechanism in place to assure that diagnostic information is kept confidential and not released to third parties except when permitted by law. It recommended that the regulations be amended to include privacy protection.

Response: We share the APA's concerns about the confidentiality of patient information. To assure that the beneficiary is protected, when we release medical data, the data do not include any patient-specific identifiers. Patient-specific medical data in the custody of HCFA and its intermediaries and carriers are fully protected by the Privacy Act (5 U.S.C. 552a).

C. Utilization Review

Comment: A pharmaceutical company is concerned that utilization review of physician services and future drug utilization review may be less effective because of the limitation of four diagnostic codes on the bill or request for payment.

Response: Utilization review of physician services will be enhanced by the diagnostic coding requirement since the information can be categorized by code and made available for immediate use. At this time, we have no plans to implement a drug utilization review program using the diagnostic coding information on the form HCFA–1500. We will consider the effect of the four diagnostic code limitations if we propose a drug utilization review program.

Comment: One commenter questioned the possibility of the physician diagnostic coding requirement eventually becoming a tool to standardize physician practice patterns nationwide without physician input.

Response: The information obtained from the ICD–9–CM codes will be used for compiling statistical information. Any new requirements or procedures would not be implemented without physician input and, if appropriate, a notice of proposed rulemaking.

Comment: One commenter asserted that the ICD–9–CM coding system is a bulky, unreliable system for gathering data.

Response: The ICD–9–CM coding system was developed under the guidance of the National Center for Health Statistics for greater specificity in reporting illnesses and injuries in the United States. The ICD–9–CM coding system is the best system available for recording the diagnoses of Medicare beneficiaries. The system is not considered unreliable by most users; however, errors do occur as a result of physicians' incorrect application of the codes.

To help make the coding system meet the needs of all users, we welcome input from interested physicians, organizations and the public through the ICD–9–CM Coordination and Maintenance Committee meetings.

Comment: One commenter asked for the name of an agency that can give advice and answer questions concerning coding issues.

Response: The AHA is the official clearinghouse for questions concerning the ICD–9–CM system. They accept written questions and will provide a written reply. The AMA is also providing ICD–9–CM coding advice to its members through their CPT Clearing House Hotline (312) 464–4737. In addition, each carrier has designated a contact person to answer the concerns raised by the physicians they service. We encourage close communication between a physician and the carrier to avoid coding problems.

Comment: Several commenters expressed concern that requiring coding to the fifth digit is burdensome and will require a more skilled person to properly code the diagnoses. One commenter stated that prior to the new physician diagnostic coding requirement, coding by physicians was generally limited to three digits.

Response: We did not anticipate a significant burden upon physicians as a result of coding to the fifth digit level when the proposed rule was published, and have not had complaints from the physician community since that time. We continue to believe that most physicians or their office staff create reference lists of diagnoses encountered most often. Since 1979, the ICD–9–CM coding system has been in use and has contained five digit codes. Thus, we do not agree that coding by physicians previously was limited to three digits.

Comment: One commenter asserted that it would be advantageous if the format requirements for submitting bills

or requests for payment are published with the proposed rule.

Response: The Medicare Carriers Manual explains how to fill out bills and requests for payment. Basically, the only format requirement for the diagnostic coding is to put each appropriate code in the space that is provided for those codes under the heading "Nature of Illness or Injury."

The form HCFA–1500 and accompanying sections of the Carriers Manual are already subject to public comment, pursuant to the Paperwork Reduction Act of 1980. In accordance with that Act, OMB reviews the form HCFA–1500 and its instructions at least once every 3 years. The Department publishes a notice in the Federal Register that informs the public of OMB's review and solicits comments for OMB's consideration in the course of its review.

Comment: The AMA stated that pathologists have expressed a concern that failure to list a second diagnosis after V72.6, Laboratory examination, may lead to medical necessity review problems. The AMA requested that we inform the carriers that V72.6 code meets the Medicare coding requirements.

Response: We agree that in many instances one code (V72.6) will explain the reason for the patient's encounter. Carriers should identify a way of determining the proper coverage policy issue through the use of a screen. We recommend that all laboratory claims begin with the code V72.6, Laboratory examination. However, by supplying a second code to describe the reason for the referral, the bill or request for payment can clearly be identified as referrals to evaluate symptoms, signs, or diagnoses, instead of being part of a routine physical examination that is not covered by Medicare.

Comment: One commenter inquired about how the "V" codes should be sequenced for diagnostic services on the bill or request for payment.

Response: Ancillary diagnostic services, which are coded beginning with a "V," are provided in laboratories and radiology offices if the patient's main reason for the visit is to get an x-ray, (V72.5, Radiological examination, not elsewhere classified), or to have a test conducted (V72.6, Laboratory examination.) The condition for which the patient sought treatment will be reflected in the additional diagnoses. In coding ancillary diagnostic services, it may be helpful to question the reason for the encounter. The reason for the encounter is that the patient visited the laboratory or radiology office to have either an analysis performed or an x-ray taken.

D. Training

Comment: One commenter stated that HCFA's estimate that 70 percent of physicians and office staff will need ICD–9–CM coding training is a gross underestimate.

Response: We do not believe that our estimate of 70 percent of physicians and office staff in need of coding training was too low. In fact, we believe that most physicians and office staff did not require coding training. Immediately after implementation of the diagnostic coding requirement, medical review at the intermediary level did not reveal significant coding problems. Since that time, the majority of physician bills using ICD–9–CM coding have passed intermediary edits for accuracy. In addition, many physicians did not need training since they submitted ICD–9–CM codes prior to April 1989 due to the requirements of third party payers for non-Medicare patients. We believe that the lack of coding problems indicates that, if anything, we may have overestimated the proportion of physicians and office staff that needed training.

Comment: One commenter suggested that HCFA require the Medicare carriers to provide ICD–9–CM training and technical assistance to physicians and providers.

Response: The Medicare carriers were required by HCFA to provide initial ICD–9–CM coding training prior to the April 1, 1989 implementation date. A National Carriers Training program was held in February 1989 in preparation for the training done in each State by each carrier. The National Carriers Training was conducted by AHIMA, with input on the program from the AMA. Subsequently, each carrier was responsible for conducting its own training program on a state-by-state basis. In many cases, carriers worked with the State medical societies in conducting the training. Diagnostic coding training for physicians and physician office staffs has been ongoing since the implementation of this requirement, especially through courses and sessions sponsored by the private sector. For further information concerning coding training, physicians can contact their State medical society, the AMA, AHIMA, their State component of the medical record or medical health information association, or their carrier.

E. Sanctions Process and Civil Money Penalties

Comment: One commenter indicated that the sanction provisions for noncompliance with the coding requirements are illogical since coding bills or requesting payment with ICD–9–CM codes is essentially a clerical function. The civil monetary penalties and sanction actions by the Office of Inspector General are perceived as excessive since clerical errors of omission and inaccurately coded diagnoses will be inevitable. Another commenter recommended that the sanctions process should not apply to the ICD–9–CM coding requirement.

Response: Coding is a task routinely delegated by physicians to billing clerks or staff. However, this delegation does not relieve the physician of the responsibility to submit bills or requests for payment that meet the requirements of the law.

Comment: One medical association questioned whether the carrier considers the remarks on the explanation of the Medicare benefit (EOMB) form an advisement of a violation (for not including diagnostic coding on a bill or request for payment) that will be referred to the OIG for investigation and possible sanctions. The commenter asked why the carrier includes a remark in the EOMB stating that they will process this claim but will not process future claims. The association suggests that the message on the EOMB should contain a more complete and accurate statement.

Response: Messages that appear on the EOMB have been revised and are more clear and explanatory. It is not our intent to put the beneficiary at risk by not paying a bill or request for payment lacking an ICD–9–CM code. For claims submitted by physicians who do not accept assignment, the carrier will process the bill or request for payment as usual, substituting a "dummy" code for the ICD–9–CM coding.

The carrier will collect physician-specific information about the quantity of the dummy codes generated per physician. When a threshold of ten bills or requests for payment is reached, the carrier is instructed to contact the physician in order to explain the necessity of providing diagnostic coding and to help with training. If the physician subsequently knowingly, willfully, and in repeated cases fails to supply the requested codes, the Office of the Inspector General may invoke a civil money penalty.

F. Availability of the ICD–9–CM

Comment: Two commenters expressed concern that the Government

Printing Office (GPO) does not stock a sufficient supply of the ICD–9–CM coding books, which results in a 4-to-8 week delay in receiving the books.

Response: ICD–9–CM books are in stock at the special address mentioned elsewhere in this preamble. We are aware of the potential demand and have an adequate supply. All orders are sent by priority mail.

V. Impact Analysis

Unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) . For purposes of the RFA, all physicians are considered to be small entities.

The statutory requirement that physicians use diagnostic coding has been in effect since April, 1989, and we believe that the vast majority of physicians were already using ICD–9–CM coding even before that time. Thus, the economic impact of this final rule on the physician community should be minimal.

In the proposed rule, we prepared a voluntary impact analysis and voluntary regulatory flexibility analysis because of our inability to quantify with any degree of precision the estimated costs of these provisions and the large number of physicians who were affected by the provisions of section 1842(p) of the Act. These provisions require that each bill or request for payment for a service furnished by a physician include appropriate diagnostic coding related to the illness or injury for which the Medicare beneficiary received treatment. Under section 1842(p) of the Act, a physician who is to be paid on an assignment-related basis will not be paid if he or she fails to include appropriate diagnostic coding on the bill. In this final rule we have revised the impact analysis based on public comment.

With one exception, any effects of this final rule will be a direct result of the legislative provisions in section 1842(p) of the Act. The exception is a result of the discretion that section 1842(p)(1) of the Act provides the Secretary in the choice of which system to use to code diagnoses. We chose to use ICD–9–CM because it is the only comprehensive coding system that includes all possible diagnoses for Medicare beneficiaries. For that reason, it is already widely used by physicians. Furthermore, we are already using ICD–9–CM in the Medicare program for classifying DRGs for payment under the inpatient hospital prospective payment system. Therefore, we believe that it is the easiest coding system for physician use.

Before April 1, 1989, physicians were not required to provide ICD–9–CM or any other type of diagnostic codes on their Medicare bills or requests for payment. Therefore, we believe that physicians who were not coding before the provisions of section 1842(p) of the Act were affected through increased paperwork, the cost of training themselves and their staff, and the probable need to purchase Volumes 1 and 2 of the ICD–9–CM, fourth edition.

As of December 31, 1986, there were 569,160 physicians practicing in the United States (Physician Characteristics and Distribution in the U.S., 1986. Department of Data Release Services, Division of Survey and Data Resources, American Medical Association, 1987). In the proposed rule, we estimated that at least 30 percent of physicians used ICD–9–CM codes before the requirements of section 1842(p) were established, presumably because of requirements of other third party payers that ICD–9–CM diagnosis or procedure codes be used on their claims. Thus, we estimated that up to 70 percent of practicing physicians did not report codes before the requirement was established (that is, approximately 398,000 physicians).

In this final rule, we have revised our estimate of the number of physicians who reported ICD–9–CM codes before the requirements of section 1842(p) of the Act were established. As stated in section III of this preamble, we provided for a 6-month grace period following the statutory implementation date of April 1, 1989, during which no claims would be denied for lack of coding. The grace period ended on October 1, 1989. It has been our experience that, when grace periods are established, providers usually do not comply with the required provisions until the end of the grace period, presumably because of lack of training or need for a preparation period. In this case, however, approximately 90 percent of the claims were coded using ICD–9–CM during the first month of the grace period, and the compliance rate remained at approximately 90 percent for the duration of the grace period. Moreover, intermediary review of these claims revealed no significant coding problems. Since the number of physicians that complied with the coding requirement remained stable throughout the grace period, we believe that the number of physicians who reported codes during the grace period is indicative of the number of physicians who were reporting codes before the requirement was established. Therefore, we now estimate that approximately 90 percent of physicians reported ICD–9–CM codes before April, 1989 (that is, approximately, 512,000 physicians). The discussion below reflects this revised estimate.

If all the physicians who did not report ICD–9–CM codes before April 1989 needed new coding books, ICD–9–CM Volumes 1 and 2 at a cost of $65.00 per set, the total cost would have been approximately $3,700,000. In practice, however, we believe that not all of these physicians needed to purchase new coding books. For example, some physicians belonged to group practices, some worked for hospitals and do not have their own patients, and some already owned coding books. For purposes of this impact analysis, however, we assume that all physicians who did not code before April, 1989 purchased new coding books.

In the proposed rule, in calculating costs of training and coding for physicians who did not code before April 1989, we estimated the average wages of a physician's office staff person at $4.50 an hour. In response to the July 21, 1989 proposed rule, we received several comments stating that we had underestimated the average hourly wages for a physician's office staff member. We agree that our estimate of $4.50 per hour was too low. In this final rule, we are revising our estimate of the hourly rate based on comments received on the proposed rule and our examination of the hourly wages of physicians' office staff in the monthly publication "Employment and Earnings" (U.S. Department of Labor Bureau of Labor Statistics, "Employment and Earnings" Vol. 37, No. 4, April 1990, p. 131 (Washington, DC)). Our revised estimate of the typical wage for a staff person at the time the requirement was established is $9.65 per hour.

Based on claims data, we believe there were approximately 320.1 million physician claims processed for the period from April 1, 1989 to March 31, 1990. We estimated that the clerical cost of coding each claim was $0.16 for a total of $51,216,000 for the first year that the requirement was in effect. We arrived at the $0.16 figure by assuming an hourly rate of the typical physician's office staff person to be $9.65 per hour, as explained above. We believe that it takes 1 minute to code a claim, therefore $9.65 divided by 60 minutes results in a $0.16 cost per claim. However, we believe that 90 percent of the claims were being coded prior to April 1, 1989. Thus, 10 percent of the cost of coding claims (approximately $5,120,000) can

be attributed to the provision of section 1842(p) of the Act.

We anticipated that each physician that did not report ICD–9–CM codes before April 1, 1989 would either send one or more persons for training, or may have determined that formal training was not needed. Some of those physicians may not have sent any staff since they are in a group practice, (in which case, one staff member may represent several physicians), or because they work for hospitals (in which case they would not submit Part B claims.)

Below, in two examples, we are providing the extremes of estimated training costs using the same methodology as set forth in the impact analysis of the proposed rule. In the first example, we assume that all physicians who did not code prior to April 1989 sent, on average, one of their office staff to attend a half-day session sponsored by a national firm. We anticipated that the cost of such a training session could have been as high as $100.00. Thus, for this estimate, we are assuming a cost of $100.00. Furthermore, we assume the physicians paid an hourly rate of $9.65 per hour to their employees while they attended the coding session. Given these assumptions, we estimated training costs as follows:

(All estimates are rounded to the nearest $10,000.)

Half-day (4 hours) at $9.65 per hour=$38.60; $38.60×57,000 employees	$2,200,000
Session cost $100.00×57,000 employees	5,700,000
Total training costs	$7,900,000

In the second example, we assume that physicians who did not code before the requirement was established in April 1989 sent, on average, one of their office staff to coding sessions sponsored by carriers or insurance companies at no cost. Assuming that the office employee was paid $9.65 an hour, we estimated the total training costs as follows:

Half-day (4 hours) at $9.65 per hour=$38.60; $38.60×57,000 employees	$2,200,000
Session costs	0
Total training costs	$2,200,000

Below, we show the total estimated first year costs for the two examples.

- For the first example, the total estimated first year costs consisted of:

Coding costs	$5,120,000
Training	7,300,000
Books	3,700,000
Total	$16,720,000

- For the second example, the total estimated first year costs consisted of:

Coding costs	$5,120,000
Training	2,200,000
Books	3,700,000
Total	$11,020,000

Therefore, we estimate that first year training costs were between $11 million and $16 million. The cost of updated books will be an ongoing expense. Training costs will be recurring to the extent that staff turnover will occur. Coding costs will be ongoing. However, we believe that coding time and costs will probably be reduced with experience.

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

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final rule will not have an impact on a significant number of small rural hospitals.

This final rule was reviewed by the Office of Management and Budget.

V. Paperwork Reduction Act

Regulations at § 424.32(a) and § 424.34(b) contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511). These regulations and the information collection and record keeping requirements apply to the requirement that a physician provide appropriate diagnostic coding on each bill or request for payment for a physician service furnished under Medicare Part B. Public reporting burden for this collection of information is estimated to average one minute per submitted Part B claim. This includes time spent reviewing instructions, searching existing data sources, gathering and maintaining needed data, and completing and reviewing the collection of information. The information and record keeping requirements associated with this final rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (approval number 0938–0008).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

I. 42 CFR part 405, subpart E is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED Subpart E—Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians

A. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834 (a) and (b), 1842 (b) and (h), 1848, 1861(b), (v), and (aa) 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m (a) and (b), 1395u (b) and (h), 1395 w-4, 1395x(b), (v), and (aa), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

B. In § 405.512 paragraph (c) introductory text is republished and paragraph (c)(8) is revised to read as follows:

§ 405.512 Carriers' procedural terminology and coding systems.

* * * * *

(c) *Guidelines.* The following considerations and guidelines are taken into account in evaluating a carrier's proposal to change its system of procedural terminology and coding:

* * * * * *

(8) Compatibility of the proposed system with the carriers methods for determining payment under the fee schedule for physicians' services for services which are identified by a single element of terminology but which may vary in content.

* * * * *

II. 42 CFR part 424 is amended as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

A. The authority citation for part 424 is revised to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842 (b) and (p), 1861, 1866(d), 1870 (e) and (f), 1871, and 1872 of the Social Security Act (42 U.S.C. 416(j),

1302, 1395f, 1395g(c), 1395n, 1395u (b) and (p), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh, and 1395ii)

Subpart A—General Provisions

B. In § 424.3, the introductory text is republished and a definition for "ICD–9–CM" is added in alphabetical order to read as follows:

§ 424.3 Definitions.

As used in this part, unless the context indicates otherwise—

ICD–9–CM means International Classification of Diseases, Ninth Revision, Clinical Modification.

* * * * *

Subpart C—Claims for Payment

C. In § 424.32, paragraph (a) is revised to read as follows:

§ 424.32 Basic Requirements for all claims.

(a) A claim must meet the following requirements:

(1) A claim must be filed with the appropriate intermediary or carrier on a form prescribed by HCFA in accordance with HCFA instructions.

(2) A claim for physician services must include appropriate diagnostic coding using ICD–9–CM.

(3) A claim must be signed by the beneficiary or the beneficiary's representative (in accordance with § 424.36(b)).

(4) A claim must be filed within the time limits specified in § 424.44.

* * * * *

D. In § 424.34, the introductory text of paragraph (b) is republished and paragraph (b)(4) is revised to read as follows:

§ 424.34 Additional requirements: Beneficiary's claim for direct payment.

* * * * *

(b) *Itemized bill from the hospital or supplier.* The itemized bill for the services, which may be receipted or unpaid, must include all the following information:

* * * * *

(4) A listing of the services in sufficient detail to permit determination of payment under the fee schedule for physicians' services; for itemized bills from physicians, appropriate diagnostic coding using ICD–9–CM must be used. (For example, a bill for ambulance service must specify the pick-up and delivery points.)

* * * * *

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

Dated: November 22, 1993

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 24, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–4900 Filed 3–3–94; 8:45 am]

BILLING CODE 4120–01–P

Administration for Children and Families

45 CFR Part 233

Aid to Families With Dependent Children Increase in Stepparent Income Disregard

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

ACTION: Final rule.

SUMMARY: This final rule implements the change in the stepparent earned income disregards for the Aid to Families with Dependent Children (AFDC) program as provided under section 13742 of the Omnibus Budget Reconciliation Act (OBRA) of 1993. This provision increases the stepparent earned income disregard from $75 to $90.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Administration for Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9289.

SUPPLEMENTARY INFORMATION:

Discussion of Rule Provision

Pursuant to section 402(a)(31) of the Social Security Act (the Act) the income of an AFDC dependent child's stepparent who lives in the same home as the child is counted in the monthly determination of eligibility and the amount of assistance. This provision is applied in States that do not have laws of general applicability holding a stepparent legally responsible to the same extent as a natural or adoptive parent. Section 402(a)(31) also provides for the disregard of certain portions of the stepparent's income in determining the amount to be counted, including the first $75 of the stepparent's monthly earned income.

Effective October 1, 1989, Public Law 100–485 amended section 402(a)(8)(ii) of the Act by increasing the standard work expense disregard for AFDC applicants and recipients from $75 to $90. However, it did not increase the comparable $75 earned income disregard for stepparents.

Thus, to be consistent, section 13742 of Public Law 103–66, the Omnibus Budget Reconciliation Act (OBRA) of 1993, amended section 402(a)(31)(A) of the Act by increasing the earned income disregard for stepparents from $75 to $90 per month. We have amended § 233.20(a)(3)(xiv)(A) to reflect this statutory change.

Regulatory Procedures

Justification for Dispensing With Notice of Proposed Rulemaking

The amendment to this regulation is being published as a final rule. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department for good cause finds the Notice of Proposed Rulemaking is unnecessary, impractical or contrary to the public interest, it may dispense with such notice if it incorporates a brief statement of the reasons for doing so in the rules issued.

The Department finds that there is good cause to dispense with a Notice of Proposed Rulemaking with respect to this change. Publication of this rule in proposed form would be unnecessary as the change simply implements the statutory provision and does not involve administrative discretion.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule has no costs and merely conforms the codified regulation to the statute.

Paperwork Reduction Act

This rule does not require any information collection activities and therefore no approval is necessary under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal Government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of this final rule is on State governments and individuals. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities because it affects benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

List of Subjects in 45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs,

Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance)

Dated: November 20, 1993.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: February 7, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 233 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

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

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

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

2. Section 233.20 is amended by revising paragraph (a)(3)(xiv)(A) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(xiv) * * *

(A) The first $90 of the gross earned income of the stepparent;

* * * * *

[FR Doc. 94–4899 Filed 3–3–94; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket No. 91–213, FCC 94–9]

Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order modifies certain features of the price cap regulatory system applicable to local exchange carriers (LECs) to complement the FCC's recent restructure of the LECs' local transport rates. Specifically, the order moves transport services, including all the transmission-related elements, the tandem switching charge, and the interconnection charge, out of the price cap basket for traffic sensitive services, and places them into a combined "trunking" basket containing transport and special access services. The order realigns the service categories and subcategories within the trunking basket, and adapts the pricing bands applicable to these categories and subcategories, to reflect the similarities between certain special access and flat-rated transport services, and to accommodate the new density zone pricing system that the Commission adopted for both special access and transport. These rule changes encourage the LECs to align their transport rates to reflect more closely how costs are incurred, thus promoting more efficient usage and deployment of the country's telecommunications networks, advancing competition in both the long-distance and local access markets, and ultimately reducing access charges and long-distance rates and stimulating the economy by increasing demand for these services.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Sieradzki, Common Carrier Bureau, Policy & Program Planning Division, 202–632–1304.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order in CC Docket No. 91–213, adopted on January 19, 1994 and released on January 31, 1994. The complete text of this Second Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St. NW., room 230, Washington, DC 20554.

Synopsis of Second Report and Order

1. The Commission adopts its proposal to remove the transport service categories from the traffic sensitive basket and place them into a combined basket that also contains special access services. The Commission renames this merged basket the "trunking basket." The Commission is placing the tandem switching charge in the newly formed trunking basket, and keeping it in the same service category as tandem-switched transport. The Commission is placing the interconnection charge service category in the trunking basket.

2. The Commission is adopting a modified version of its proposal in the Further Notice in this proceeding, 57 FR 54205 (Nov. 17, 1992), on the arrangement of service categories within the newly formed trunking basket. The Commission concludes that flat-rated transport (entrance facilities, direct-trunked transport, and dedicated signalling transport) should be incorporated into the corresponding special access service categories. Thus, demand for voice grade flat-rated transport will be assigned to the existing voice grade-WATS-metallic-telegraph service category in the current special access basket for the purposes of computing the service band index (SBI) and pricing bands for that category. Demand for DS1 and DS3 flat-rated transport will be assigned, respectively, to the DS1 and DS3 subcategories of the high capacity-DDS service category in the current special access basket for purposes of computing the SBIs and bands for those subcategories. Tandem-switched transport (including the tandem switching element) and the interconnection charge will be separate service categories in the trunking basket.

3. The Commission concludes that the density pricing zone subcategories within the flat-rated transport service category should be incorporated into the existing zone subcategories within the existing DS3 and DS1 special access subcategories, with one exception. In some cases, a LEC might implement density zone pricing for transport in a different tariff year than it implemented density zone pricing for special access. In such circumstances, the Commission will require LECs to retain separate zone bands for special access and flat-rated transport services until the end of the tariff year following the tariff year in which density pricing was implemented for the later service. After that time, the zone bands for special access and transport can be consolidated.

4. The Commission is not modifying the pricing bands applicable to the transport or special access service categories at this time. The service category bands constrain the LECs' ability to offset rate reductions in some categories with rate increases in other categories.

5. The Commission is setting forth the details of establishing the indexes and banding limits for the new trunking basket and the realigned service categories within that basket. First, the 2% upper and 5% lower bands for tandem-switched transport and the 0% upper band for the interconnection charge apply to changes from the initial rates for these services as of the transport rate restructure, regardless of whether the LECs raised or lowered their local transport rates prior to the rate restructure. ("Initial rates" refers to the rates that became effective as a result of the September 1, 1993 initial restructured transport tariff filing, or rates that subsequently go into effect as the result of the mid-course correction.) Thus, the LECs should set their initial bands and SBIs for the tandem-switched transport and interconnection charge service categories using the baseline of the initial restructured rate levels.

6. Because 47 CFR part 61 does not explicitly address the manner in which service categories are to be merged, the Commission adopts transition rules

governing how the initial banding limits and indexes should be set for the new trunking basket and the realigned service categories within that basket. The initial degree of pricing flexibility for the trunking basket will be set by taking into account both the pricing flexibility currently available in the special access basket and the pricing flexibility available in the traffic sensitive basket (which currently includes transport). Thus, while the pre-existing actual price index (API) for the special access basket will be used as the initial API for the trunking basket, the PCI for the trunking basket should be set as follows. LECs should calculate the ratio between the pre-existing PCI for the special access basket and the API for that basket, and the ratio between the pre-existing PCI for the traffic sensitive basket and the API for that basket. A weighted average of these ratios should be derived using the base period revenue weights of the special access and transport services included in the trunking basket, respectively. This weighted average should be multiplied by the pre-existing API for the special access basket to derive the PCI for the trunking basket. (Base period demand for flat-rated transport elements (i.e., demand for the 1992 base year) should correspond with the historical demand used in computing the initial interconnection charge. The rates used in this formula should be the rates effective on the date that the transport rate restructure became effective, or rates that subsequently go into effect as the result of the mid-course correction.)

7. Similarly, adjustments to the upper and lower pricing bands applicable to the existing voice grade and high capacity/DDS service categories and the DS1 and DS3 subcategories are necessary to reflect the incorporation of comparable flat-rated transport rate elements. While the SBIs for these categories are to remain the same, the upper and lower bands should reflect a weighted average of the pre-existing upper and lower bands for the special access services and the 5% upper and lower bands for the flat-rated transport services. This weighted average should be calculated using the base period revenue weights of the special access and transport services included in each service category and subcategory. A comparable procedure will be used to incorporate transport services into a density pricing zone category that has already been established for special access services (or vice versa).

8. The changes adopted in the order necessitate adjustments to the price cap indexes. Accordingly, the Commission directs all LECs subject to the price cap rules to recalculate their price cap indexes pursuant to the decisions in the order. The LECs should file such recalculated indexes with the Commission in a special filing not accompanied by rate changes. The Commission delegates authority to the Chief, Common Carrier Bureau, to specify the format and timing of this filing. In addition, such recalculated indexes should be used as the basis of any price cap filing that changes rates of services in the trunking or traffic sensitive baskets.

9. Finally, the Commission clarifies some miscellaneous implementation matters. First, the Commission clarifies that its decision in the Second Reconsideration Order, 58 FR 45266 (Aug. 27, 1993) (requiring use of historical demand for all components of the formula for computing the interconnection charge) applies only to price cap LECs. Rate-of-return LECs continue to be subject to 47 CFR 61.38 and 61.39, and should continue to use projected demand to set transport rates. Consistent with the First Reconsideration Order, 58 FR 41184 (Aug. 3, 1993), however, these projections should only forecast demand growth, and should *not* attempt to forecast IXCs' reconfigurations in response to the transport rate restructure. Second, due to the difficulty of applying non-premium charges to flat-rate transport elements, the Commission modifies its rules to clarify that non-premium charges must be established only for the interconnection charge, and not for the facility-based transport elements. Third, the Commission modifies the rules to clarify that the LECs must waive certain non-recurring charges for a six-month period following the effective date of their restructured transport tariffs. Finally, the Commission is making limited technical changes to 47 CFR part 69.

10. In the Further Notice in this proceeding, 57 FR 54205 (Nov. 17, 1992), the Commission certified that the proposed rule changes would not have a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. Neither the Chief Counsel for Advocacy of the Small Business Administration nor any commenting party disagreed with that analysis. The Secretary shall send a copy of this Report and Order, 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, Public Law No. 69–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ordering Clauses

11. Accordingly, *it is ordered* that pursuant to authority contained in sections 1, 4(i) and (j), 201–205, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201–205, 220, and 403, parts 61 and 69 of the Commission's rules are Amended as set forth below.

12. *It is further ordered* that the policies and rules adopted herein *shall be effective* upon publication in the **Federal Register**. Because the initial restructured transport rates went into effect on December 30, 1993, thus allowing LECs subject to price cap regulation to propose rate changes that do not comply with the policies adopted herein in the absence of these rule changes, good cause exists to make these rules effective less than 30 days from publication in the **Federal Register**.

13. *It is further ordered* that the Chief, Common Carrier Bureau is delegated the authority specified herein.

List of Subjects in 47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements. Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

47 CFR parts 61 and 69 are amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.3 is amended by redesignating paragraphs (jj) and (kk) as paragraphs (kk) and (ll), respectively, and adding a new paragraph (jj), to read as follows:

§ 61.3 Definitions.

* * * * *

(jj) *Tariff year.* The period from the day in a calendar year on which a carrier's annual access tariff filing is scheduled to become effective through the preceding day of the subsequent calendar year.

* * * * *

3. Section 61.42 is amended by removing paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(v); redesignating paragraphs (e)(1)(vi) and (e)(1)(vii) as paragraphs (e)(1)(iii) and (e)(1)(iv), respectively; revising paragraph (d)(3),

redesignated paragraph (e)(1)(iii), the introductory text of paragraph (e)(2), paragraph (e)(2)(i), paragraph (e)(2)(iii), and paragraph (e)(2)(iv); and adding paragraphs (e)(2)(v) and (e)(2)(vi), to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(3) A basket for trunking services as described in §§ 69.110, 69.111, 69.112, 69.114, 69.124, and 69.125 of this chapter;

* * * * *

(e)(1) * * *

(iii) Data base access services; and

* * * * *

(2) The trunking basket shall contain such transport and special access services as the Commission shall permit or require, including the following service categories and subcategories:

(i) Voice grade entrance facilities, voice grade direct-trunked transport, voice grade dedicated signalling transport, voice grade special access, WATS special access, metallic special access, and telegraph special access services;

* * * * *

(iii) High capacity flat-rated transport, high capacity special access, and DDS services, including the following service subcategories:

(A) DS1 entrance facilities, DS1 direct-trunked transport, DS1 dedicated signalling transport, and DS1 special access services; and

(B) DS3 entrance facilities, DS3 direct-trunked transport, DS3 dedicated signalling transport, and DS3 special access services;

(iv) Wideband data and wideband analog services;

(v) Tandem-switched transport, as described in § 69.111 of this chapter; and

(vi) Interconnection charge, as described in § 69.124 of this chapter.

* * * * *

4. Section 61.47 is amended as follows:

a. Paragraphs (f) and (g) are redesignated as paragraphs (f)(1) and (f)(2).

b. Paragraph (h)(1) is redesignated as paragraph (g)(1).

(c) Paragraph (i) is redesignated as paragraph (g)(4).

d. Paragraphs (e)(2) and (e)(3) are redesignated as paragraphs (g)(2) and (g)(3) and are revised.

e. Paragraph (h) is revised.

f. Headings are added to paragraphs (f) and (g).

g. The designation (1) in paragraph (e) is removed and paragraph (e) is revised.

(h) Add the words "or subcategories" after the words "service categories" in paragraphs (a) and (b).

i. Add the words "or subcategory" after the words "service category" in paragraphs (a) and (c).

j. Remove the words "Notwithstanding paragraphs (e) and (f) of this section" from redesignated paragraph (f)(2) and add in their place "Notwithstanding paragraph (f)(1) of this section".

k. Remove the words "Notwithstanding paragraph (e) of this section," from redesignated paragraphs (g)(1) and (g)(4) and capitalizing the word "the" in each sentence when the phrase is removed.

As amended above, § 61.47 reads as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Except as provided in paragraphs (f), (g), and (h) of this section, each band shall limit the pricing flexibility of the service category or subcategory, as reflected in its SBI, to an annual increase or decrease of five percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year.

(f) *Dominant interexchange carriers.*

* * * * *

(g) *Local exchange carriers—Service categories and subcategories.*

* * * * *

(2) The upper pricing band for the tandem-switched transport service category shall limit the annual upward pricing flexibility for this service category, as reflected in its SBI, to two percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year. The lower pricing band for the tandem-switched transport service category shall limit the annual downward pricing flexibility for this service category, as reflected in its SBI, to five percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year.

(3) The upper pricing band for the interconnection charge service category shall limit the annual upward pricing flexibility for this service category, as reflected in its SBI, to zero percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for the interconnection charge.

* * * * *

(h) *Local exchange carriers—Density pricing zones.*

(1) In addition to the requirements of paragraphs (g)(1) and (g)(2) of this section, those local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate separate subindexes in each zone for each of the following groups of services:

(i) DS1 entrance facilities, DS1 direct-trunked transport, DS1 dedicated signalling transport, and DS1 special access services;

(ii) DS3 entrance facilities, DS3 direct-trunked transport, DS3 dedicated signalling transport, and DS3 special access services;

(iii) Voice grade entrance facilities, voice grade direct-trunked transport, and voice grade dedicated signalling transport, and (if the Commission, by order, designates such services as subject to competition) voice grade special access;

(iv) Tandem-switched transport; and

(v) Such other special access services that the Commission may designate by order.

(2) The annual pricing flexibility for each of the subindexes specified in paragraph (h)(1) of this section shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year.

5. Section 61.48 is amended by revising paragraphs (g) and (h) and adding paragraph (i), to read as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(g) *Local Transport Restructure—Initial Rates.* Local exchange carriers subject to price cap regulation shall set initial transport rates, as defined in § 69.2(tt) of this chapter, according to the requirements set forth in §§ 69.108, 69.110, 69.111, 69.112, 69.124, and 69.125 of this chapter.

(h) *Local Transport Restructure—Price Cap Transition Rules*—(1) *Definitions.* The following definitions apply for purposes of paragraph (h) of this section:

Effective date is March 4, 1994.

Initial restructured rates are rates that are (or should have been) effective on the transport restructure date;

Revenue weight of a given group of services included in a basket, service category, or subcategory is the ratio of base period demand for the given service rate elements included in the basket, service category, or subcategory priced at initial restructured rates, to the base period demand for the entire group of rate elements comprising the basket, service category, or subcategory priced at initial restructured rates; and

Transport restructure date is the date on which local exchange carriers' initial transport rates, as defined in § 69.2(tt) of this chapter, became effective.

(2) *Trunking Basket PCI and API.* (i) On the effective date, the PCI value for the trunking basket, as defined in § 61.42(d)(3), shall be computed by multiplying the API value for the special access basket on the day preceding the transport restructure date, by a weighted average of the following:

(A) The ratio of the PCI value that applied to the special access basket on the day preceding the transport restructure date, to the API value that applied to the special access basket on the day preceding the transport restructure date, weighted by the revenue weight of the special access services included in the trunking basket; and

(B) The ratio of the PCI value that applied to the traffic sensitive basket on the day preceding the transport restructure date, to the API value that applied to the traffic sensitive basket on the day preceding the transport restructure date, weighted by the revenue weight of the transport services included in the trunking basket.

(ii) On the effective date, the API value for the trunking basket referred to in § 61.42(e)(2) shall be equal to the API value for the special access basket on the day preceding the transport restructure date.

(3) *Service Category and Subcategory Pricing Bands for Flat-Rated Transport and Special Access.* From the effective date through the end of the tariff year, the following shall govern instead of §§ 61.47(e) and 61.47(g)(1). The pricing bands established for the voice grade and high capacity service categories referred to in §§ 61.42(e)(2)(i) and 61.42(e)(2)(iii) and the DS1 and DS3 service subcategories referred to in §§ 61.42(e)(2)(iii)(A) and 61.42(e)(2)(iii)(B), shall limit the pricing flexibility of the service category or subcategory, as reflected in its SBI, as follows:

(i) The upper pricing band shall be a weighted average of the following:

(A) The upper pricing band that applied to the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the special access services included in the category or subcategory; and

(B) 1.05 times the SBI value for the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the transport services included in the category or subcategory.

(ii) The lower pricing band shall be a weighted average of the following:

(A) The lower pricing band that applied to the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the special access services included in the category or subcategory; and

(B) 0.95 times the SBI value for the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the transport services included in the category or subcategory.

(iii) On the effective date, the SBI value for the category or subcategory shall be equal to the SBI value for the corresponding special access category or subcategory on the day preceding the effective date.

(4) *Tandem-Switched Transport and Interconnection Charge SBIs.* On the effective date, the SBIs for the tandem-switched transport and interconnection charge service categories defined in § 61.42(e)(2) (v) and (vi) shall be assigned an initial value prior to adjustment of 100, corresponding to the initial restructured rates in those categories.

(5) *Tandem-Switched Transport and Interconnection Charge Service Category Pricing Bands.* From the effective date through the end of the tariff year, the following shall govern instead of § 61.47 (g)(2) and (g)(3):

(i) The upper pricing band for the tandem-switched transport service category shall limit the upward pricing flexibility for this service category, as reflected in its SBI, to two percent, measured from the initial restructured rates for tandem-switched transport. The lower pricing band for the tandem-switched transport service category shall limit the downward pricing flexibility for this service category, as reflected in its SBI, to five percent, measured from the initial restructured rates for tandem-switched transport.

(ii) The upper pricing band for the interconnection charge service category shall limit the upward pricing flexibility for this service category, as reflected in its SBI, to zero percent, measured from the initial restructured rate for the interconnection charge.

(i) *Transport and Special Access Density Pricing Zone Transition Rules*—(1) *Definitions.* The following definitions apply for purposes of paragraph (i) of this section:

Earlier date is the earlier of the special access zone date and the transport zone date.

Earlier service is special access if the special access zone date precedes the transport zone date, and is transport if the transport zone date precedes the special access zone date.

Later date is the later of the special access zone date and the transport zone date.

Later service is transport if the special access zone date precedes the transport zone date, and is special access if the transport zone date precedes the special access zone date.

Revenue weight of a given group of services included in a zone category is the ratio of base period demand for the given service rate elements included in the category priced at existing rates, to the base period demand for the entire group of rate elements comprising the category priced at existing rates.

Special access zone date is the date on which a local exchange carrier tariff establishing divergent special access rates in different zones, as described in § 69.123(c) of this chapter, becomes effective.

Transport zone date is the date on which a local exchange carrier tariff establishing divergent switched transport rates in different zones, as described in § 69.123(d) of this chapter, becomes effective.

(2) *Simultaneous Introduction of Special Access and Transport Zones.* Local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on the same date, shall initially establish density pricing zone SBIs and bands pursuant to the methodology in § 61.47(h).

(3) *Sequential Introduction of Zones in the Same Tariff Year.* Notwithstanding § 61.47(h), local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on different dates during the same tariff year, shall, on the earlier date, establish

density pricing zone SBIs and pricing bands using the methodology described in § 61.47(h), but applicable to the earlier service only. On the later date, such carriers shall recalculate the SBIs and pricing bands to limit the pricing flexibility of the services included in each density pricing zone category, as reflected in its SBI, as follows:

(i) The upper pricing band shall be a weighted average of the following:

(A) The upper pricing band that applied to the earlier services included in the zone category on the day preceding the later date, weighted by the revenue weight of the earlier services included in the zone category; and

(B) 1.05 times the SBI value for the services included in the zone category on the day preceding the later date, weighted by the revenue weight of the later services included in the zone category.

(ii) The lower pricing band shall be a weighted average of the following:

(A) The lower pricing band that applied to the earlier services included in the zone category on the day preceding the later date, weighted by the revenue weight of the earlier services included in the zone category; and

(B) 0.90 times the SBI value for the services included in the zone category on the day preceding the later date, weighted by the revenue weight of the later services included in the zone category.

(iii) On the later date, the SBI value for the zone category shall be equal to the SBI value for the category on the day preceding the later date.

(4) *Introduction of Zones in Different Tariff Years.* Notwithstanding § 61.47(h), those local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date do not occur within the same tariff year, shall, on the earlier date, establish density pricing zone SBIs and pricing bands using the methodology described in § 61.47(h), but applicable to the earlier service only.

(i) On the later date, such carriers shall use the methodology set forth in paragraphs (a) through (d) of § 61.47 to calculate separate SBIs in each zone for each of the following groups of services:

(A) DS1 special access services;

(B) DS3 special access services;

(C) DS1 entrance facilities, DS1 direct-trunked transport, and DS1 dedicated signalling transport;

(D) DS3 entrance facilities, DS3 direct-trunked transport, and DS3 dedicated signalling transport;

(E) Voice grade entrance facilities, voice grade direct-trunked transport, and voice grade dedicated signalling transport;

(F) Tandem-switched transport; and

(G) Such other special access services as the Commission may designate by order.

(ii) From the later date through the end of the following tariff year, the annual pricing flexibility for each of the subindexes specified in paragraph (i)(4)(i) of this section shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the tariff year preceding the tariff year in which the later date occurs.

(iii) On the first day of the second tariff year following the tariff year during which the later date occurs, the local exchange carriers to which this paragraph applies shall establish the separate subindexes provided in § 61.47(h)(1), and shall set the initial SBIs for those density pricing zone categories that are combined (specified in paragraphs (i)(4)(i)(A) and (i)(4)(i)(C), (i)(4)(i)(B) and (i)(4)(i)(D), and (i)(4)(i)(E) and (i)(4)(i)(G) of this section) by computing the weighted averages of the SBIs that applied to the formerly separate zone categories, weighted by the revenue weights of the respective services included in the zone categories.

§ 61.49 [Amended]

6. Section 61.49(c) is amended by removing the cite "§§ 61.47(e) and (f)" and adding, in their place, the cite "§ 61.47(e), (f)(1), (g), and (h)"; and by removing the cite "§ 61.47(g)" and adding in their place, the cite "§ 61.47(f)(2)".

7. Section 61.49(d) is amended by removing the cite "§ 61.47(e)" and adding, in their place, the cite "§ 61.47(e), (g), and (h)".

§ 61.58 [Amended]

8. Section 61.58(c)(3) is amended by removing the cite "§§ 61.47(e) and (f)" and adding, in their place, the cite "§ 61.47(e), (f)(1), (g), and (h)"; and by removing the cite "§ 61.47(g)" and adding in their place, the cite "§ 61.47(f)(2)".

9. Section 61.58(c)(4) is amended by removing the cite "§ 61.47(e)" and adding, in their place, the cite "§ 61.47(e), (g), and (h)".

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

§ 69.110 [Amended]

2. Sections 69.110(c)(1) and 69.110(c)(2) are amended by removing the words "to recover the costs" and adding, in their place, the words "for use".

§ 69.113 [Amended]

3. Section 69.113(a) is amended by removing the words "69.110, 69.111, 69.112".

4. Section 69.113(d) is amended by removing the words "Transport element or elements" and adding, in their place, the words "interconnection charge element".

5. Section 69.113(e) is amended by removing the words "transport or".

§ 69.126 [Amended]

Section 69.126 is amended by removing the words "May 1, 1994" and adding, in their place, the words "six months after the effective date of the tariffs introducing initial transport rates".

[FR Doc. 94–4672 Filed 3–3–94; 8:45 am]
BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. 218]

Filing of Tariff Adoption Publications

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a regulation which establishes a 60-day deadline for the filing of adoption publications. The regulation is intended to remove any possible ambiguity with regard to the existing regulation, which requires that such publications be filed "promptly".

EFFECTIVE DATE: This regulation is effective April 3, 1994.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 927–5597 or Charles E. Langyher, III (202) 927–5160. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: By decision served December 8, 1993 (58 FR 64717, December 9, 1993), the

Commission requested public comments on the desirability of amending § 1312.20(h) (49 CFR 1312.20(h)) to require that adoption publications be filed not more than 60 days after consummation of the event giving rise to their filing. The existing regulation specifies that adoption publications should be filed prior to consummation, if possible; and that, if for some reason filing cannot be accomplished prior to consummation, they should be filed as soon as possible thereafter, *i.e.* "promptly". The new regulation will replace "promptly" with the more specific requirement that adoption publications be filed no later than 60 days after consummation of the transaction.

The regulation is not controversial. The National Bus Traffic Association, Inc. filed the only response to our notice of proposed rulemaking, and it supported the regulation.

Timely filing of adoption publications is important. Absent a new carrier's filing of its own tariffs or adoption of the former carrier's tariffs, any operations conducted by the new carrier violate 49 U.S.C. 10761(a), which prohibits service by a carrier unless "the rate for transportation or service is contained in a tariff that is in effect * * *". Thus, the failure to timely file either new tariffs or adoption publications can result in a violation of the statute. Additionally, users and potential users of transportation services have no way of determining from the tariff system the rates for the new carrier's services unless adoption publications or new tariffs have been filed. We will adopt the regulation as proposed.

As indicated in the notice of proposed rulemaking, the 60-day deadline is intended only as the maximum allowable time; it should not be viewed as an opportunity to delay filings beyond the consummation date. As stated in both the old and new regulations, adoption publications should be filed prior to the consummation date whenever possible.

Environmental and Energy Considerations

This rule revision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analyses

Pursuant to 5 U.S.C. 605(b), we conclude that this action will not have a significant economic impact on a substantial number of small entities. The action merely clarifies the timing of a one-time filing requirement already required by the Commission's regulations. Thus, no new substantive requirements are being imposed.

List of Subjects in 49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines, Tariffs.

Decided: February 18, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1312 of the Code of Federal Regulations is amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for part 1312 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10762 and 10767.

2. In § 1312.20, paragraph (h)(1) is revised to read as follows:

§ 1312.20 Transfer of operations—change in name and control.

* * * * *

(h) * * *

(1) The effective date of adoption publications is the date of consummation of the transaction for which such publications are required. Adoption publications shall be filed promptly and, if possible, prior to their effective date, but in no case later than 60 days thereafter.

* * * * *

[FR Doc. 94-4982 Filed 3-3-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB89

Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for 21 Plants From the Island of Hawaii, State of Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 20 plants: *Clermontia lindseyana* ('oha wai), *Clermontia peleana* ('oha wai), *Clermontia pyrularia* ('oha wai), *Colubrina oppositifolia* (kauila), *Cyanea copelandii* ssp. *copelandii* (haha), *Cyanea hamatiflora* ssp. *carlsonii* (haha), *Cyanea shipmanii* (haha), *Cyanea stictophylla* (haha), *Cyrtandra giffardii* (ha'iwale), *Cyrtandra tintinnabula* (ha'iwale), *Ischaemum byrone* (Hilo ischaemum), *Isodendrion pyrifolium* (wahine noho kula), *Mariscus fauriei* (no common name (NCN)), *Nothocestrum breviflorum* ('aiea), *Ochrosia kilaueaensis* (holei), *Plantago hawaiensis* (laukahi kuahiwi), *Portulaca sclerocarpa* (po'e), *Pritchardia affinis* (loulu), *Tetramolopium arenarium* (NCN), and *Zanthoxylum hawaiiense* (a'e). The Service also determines threatened status for one plant, *Silene hawaiiensis* (NCN). All but eight of the taxa are endemic to the island of Hawaii, Hawaiian Islands; the exceptions were from the islands of Niihau, Kauai, Oahu, Molokai, Lanai, and/or Maui as well as Hawaii. The 21 plant taxa and their habitats have been variously affected or are currently threatened by competition, predation or habitat degradation from introduced species, habitat loss from development and other human activities, natural disasters and stochastic events. This rule implements the Federal protection provisions provided by the Act for these plants. One taxon, *Hesperocnide sandwicensis*, which had been proposed for listing with the above species, has been withdrawn from consideration as a result of additional information received indicating the species is more abundant than previously believed. A notice withdrawing the proposal is published in the **Federal Register** concurrently with this final rule.

EFFECTIVE DATE: This rule takes effect on April 4, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541-2749).

SUPPLEMENTARY INFORMATION:

Background

Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia Cyanea copelandii ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii, Cyanea stictophylla,*

Cyrtandra giffardii, Cyrtandra tintinnabula, Hesperocnide sandwicensis, Ischaemum byrone, Isodendrion pyrifolium, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Plantago hawaiensis, Portulaca sclerocarpa, Pritchardia affinis, Silene hawaiiensis, Tetramolopium arenarium, and *Zanthoxylum hawaiiense* are endemic to or have the majority of their populations on the island of Hawaii, Hawaiian islands. Thirteen of these taxa are endemic to the Island of Hawaii; four additional taxa are now found only on Hawaii. One of these taxa is now or was previously also known from Niihau, one from Kauai, two from Oahu, four from Molokai, four from Lanai, and six from Maui.

The island of Hawaii is the southernmost, farthest east, and the youngest of the eight major Hawaiian Islands. This largest island of the Hawaiian archipelago comprises 4,038 square miles (mi) (10,458 square kilometers (km)), or two-thirds of the land area of the State of Hawaii, giving rise to its common name, the "Big Island." The Hawaiian Islands are volcanic islands formed over a "hot spot," a fixed area of pressurized molten rock deep within the Earth. As the Pacific Plate, a section of the Earth's surface many miles thick, has moved to the northwest, the islands of the chain have separated. Currently, this hot spot is centered under the southeast part of the island of Hawaii, which is one of the most active volcanic areas on Earth. Five large shield volcanoes make up the island of Hawaii: Mauna Kea at 13,796 feet (ft) (4,205 meters (m)) and Kohala at 5,480 ft (1,670 m), both extinct; Hualalai, at 8,271 ft (2,521 m), which is dormant and will probably erupt again; and Mauna Loa, at 13,677 ft (4,169 m) and Kilauea, at 4,093 ft (1,248 m), both of which are currently active and adding land area to the island. Compared to Kauai, which is the oldest of the main islands and was formed about 5.6 million years ago, Hawaii is very young, with fresh lava and land up to 0.5 million years old (Cuddihy and Stone 1990, Culliney 1988, Department of Geography 1983, Macdonald *et al.* 1983).

Because of the large size and range of elevation of the island, Hawaii has a great diversity of climates. Windward (northeastern) slopes of Mauna Loa have rainfall up to 300 inches (in) (118 centimeters (cm)) per year in some areas. The leeward coast, shielded by the mountains from rain brought by trade winds, has areas classified as desert and receiving as little as 7.9 in (20 cm) of rain annually. The summits of Mauna Loa and Mauna Kea experience snowfall each year, and Mauna Kea was glaciated during the last Ice Age (Culliney 1988, Department of Geography 1983, Macdonald *et al.* 1983, Wagner *et al.* 1990).

Plant communities on Hawaii include those in various stages of primary succession on the slopes of active and dormant volcanoes, some in stages of secondary succession following disturbance, and relatively stable climax communities. On Hawaii, vegetation is found in all classifications: Coastal, dryland, montane, subalpine, and alpine; dry, mesic, and wet; and herblands, grasslands, shrublands, forests, and mixed communities. The vegetation and land of the island of Hawaii have undergone much change through the island's history. Since it is an area of frequent volcanic activity, vegetated areas are periodically replaced with bare lava. Polynesian immigrants, first settling on Hawaii by 750 A.D., made extensive alterations in lowland areas for agriculture and habitation. European contact with Hawaii brought intentional and inadvertent introductions of alien plant and animal species. By 1960, 65 percent of the total land area of the island of Hawaii was used for grazing, and much land has also been converted to modern cropland (Cuddihy and Stone 1990, Gagne and Cuddihy 1990).

The 21 taxa included in this rule occur between sea level and 8,600 ft (0 and 2,260 m) in elevation in various portions of the island of Hawaii. A number of the taxa are also found in central Kauai (one taxon), in the Waianae Mountains of Oahu (one taxon), on eastern Molokai (three taxa), in central and southern Lanai (two taxa), and on east Maui (three taxa). Most of the species in this rule exist as remnant plants persisting in grazed areas or in higher elevations which have only recently been heavily invaded by alien plant and animal species. The taxa in this rule grow in a variety of vegetation communities (herbland, shrublands, and forests), elevational zones (coastal, lowland, montane, and subalpine), and moisture regimes (dry, mesic, and wet). One taxon is found in each of two coastal habitats: Dry shrubland and mesic forest. In lowland habitats, five taxa are found in dry forest, four in mesic forest, and two in wet forest. In montane habitats, one taxon is found in wet herbland, three taxa in dry shrubland, three in dry forest, four in mesic forest, and five in wet forest. In the subalpine area, one taxon is found in dry shrubland and two taxa in dry forest.

The land on which these 21 plant taxa are found is owned by various private parties, the State of Hawaii (including conservation district lands, forest reserves, natural area reserves, State parks, and the State seabird sanctuary), or is owned or managed by the Federal government (including a U.S. Fish and Wildlife Service refuge, a U.S. Army military reservation and a military training area, a National Park, and a U.S. Coast Guard lighthouse area).

Discussion of the 21 Taxa Included in This Rule and the One Taxon Withdrawn From Consideration for Listing

Rock (1957) named *Clermontia hawaiiensis* var. *grandis* on the basis of sterile specimens collected on the island of Hawaii in the 1950s. Later, after examining fertile material, he named the taxon *C. lindseyana* and also described a variety, var. *livida* (Rock 1962). The specific epithet commemorates Thomas Lindsey, a naturalist who brought the species to Rock's attention. St. John (1987a) described two other species, *C. albimontis* and *C. viridis*, but the author of the current treatment of the genus (Lammers 1990, 1991) considers St. John's species to fall within the range of *C. lindseyana* and recognizes no subspecific taxa.

Clermontia lindseyana of the bellflower family (Campanulaceae) is a terrestrial or epiphytic (not rooted in the soil) branched shrub or tree 8.2 to 20 ft (2.5 to 6 m) tall. The alternate, stalked, toothed leaves are 5 to 9 in (13 to 24 cm) long and 1.5 to 2.6 in (3.8 to 6.5 cm) wide. Two flowers, each with a stalk 0.4 to 1 in (1 to 2.5 cm) long, are positioned at the end of a main flower stalk 1 to 1.6 in (2.5 to 4 cm) long. The calyx (fused sepals) and corolla (fused petals) are similar in size and appearance, and each forms a slightly curved, five-lobed tube 2.2 to 2.6 in (5.5 to 6.5 cm) long and 0.4 to 0.7 in (0.9 to 1.8 cm) wide which is greenish white or purplish on the outside and white or cream-colored on the inside. The berries are orange and 1 to 1.6 in (2.5 to 4 cm) in diameter. This species is distinguished from others in this endemic Hawaiian genus by larger leaves and flowers, similar sepals and petals, and spreading floral lobes (Cuddihy et al. 1983, Lammers 1990, 1991).

Historically, *Clermontia lindseyana* was known from the island of Maui on the southern slope of Haleakala and from the island of Hawaii on the eastern slope of Mauna Kea and the eastern, southeastern, and southwestern slopes of Mauna Loa. One population of the species is known to be extant on State-owned land on Maui. This population

extends from Wailaulau Gulch to Manawainui Gulch and contains between 100 and 150 plants (Robert Hobdy, Department of Land and Natural Resources, *in litt.*, 1993). The 14 known populations on the island of Hawaii extend over a distance of about 53 by 13 mi (85 by 21 km). Populations are found near Laupahoehoe, in Piha, in Makahanaloa, near Puaakala, near Puu Oo, near Kulani Correctional Facility, near Kapapala, in Waiea Tract, near Kaapuna Lava Flow, and near Kahuku on privately and State-owned land. Approximately 125 to 175 individuals exist (Hawaii Heritage Program (HHP) 1991a1 to 1991a13). This species typically grows in *Acacia koa* (koa)- and *Metrosideros polymorpha* ('ohi'a)-dominated Montane Mesic Forests, often epiphytically, at elevations between 4,000 and 7,050 ft (1,220 and 2,150 m) (Gagne and Cuddihy 1990, HHP 1991a1 to 1991a13, Hawaii Plant Conservation Center (HPCC) 1991a, Lammers 1990, 1991). Associated species include *Coprosma* sp. (pilo), *Ilex anomala* (kawa'u), and *Myrsine* sp. (kolea) (HHP 1991a2, 1991a5, HPCC 1991a; Fern Duvall, Olinda Endangered Species Propagation Facility, pers. comm., 1992). The major threats to *Clermontia lindseyana* are competition from alien plant species such as *Passiflora mollissima* (banana poka) and *Pennisetum clandestinum* (Kikuyu grass), grazing and trampling by cattle (*Bos taurus*) and goats (*Capra hircus*), and habitat disturbance by feral pigs (*Sus scrofa*) (Cuddihy *et al.* 1983, HPCC 1991a, Pratt and Cuddihy 1991; F. Duvall and Arthur Medeiros, Haleakala National Park, pers. comms., 1992).

Clermontia peleana was first collected by John Lydgate at Hamakua, island of Hawaii, and listed as an unnamed variety of *C. gaudichaudii* by Hillebrand (1888). Rock later collected a specimen of the taxon near Kilauea, the volcano home of the Hawaiian goddess Pele, after whom he named the species (Rock 1913). Other names by which the species has been known include: *Clermontia gaudichaudii* var. *singuliflora* (Rock 1919b), *C. singuliflora* (Rock 1919b), *C. gaudichaudii* var. *barbata* (Rock 1919b), *C. clermontioides* var. *singuliflora* (Hochreutiner 1934); *C. clermontioides* var. *mauiensis*, a superfluous name (Hochreutiner 1934); and *C. clermontioides* var. *barbata* (St. John 1973). In the most recent treatment of the species (Lammers 1991), two subspecies of *C. peleana*, ssp. *singuliflora* and ssp. *peleana*, are recognized.

Clermontia peleana of the bellflower family is an epiphytic shrub or tree 5 to 20 ft (1.5 to 6 m) tall which grows on 'ohi'a, koa, *Cheirodendron trigynum* ('olapa), and *Sadleria* spp. (ama'u). The alternate, stalked, oblong or oval, toothed leaves reach a length of 3 to 8 in (8 to 20 cm) and a width of 1.2 to 2 in (3 to 5 cm). Flowers are single or paired, each on a stalk 1.2 to 1.8 in (3 to 4.5 cm) long with a main stalk 0.3 to 0.7 in (0.8 to 1.7 cm) long. Five small green calyx lobes top the hypanthium (basal portion of the flower). The blackish-purple (ssp. *peleana*) or greenish-white (ssp. *singuliflora*) petals, 2 to 2.8 in (5 to 7 cm) long and 0.3 to 0.5 in (0.8 to 1.3 cm) wide, are fused into a one-lipped, arching tube with five down-curved lobes. Berries of ssp. *peleana* are orange and 1 to 1.2 in (2.5 to 3 cm) in diameter; berries of ssp. *singuliflora* are unknown. This species is distinguished from others of the genus by its epiphytic growth habit; its small green calyx lobes; and its one-lipped, blackish-purple or greenish-white corolla (Lammers 1990, 1991).

Historically, *Clermontia peleana* ssp. *peleana* has been found only on the island of Hawaii on the eastern slope of Mauna Loa and the northeastern and southeastern slopes of Mauna Kea. Today, the taxon is found near Waiakaumalo Stream, by the Wailuku River, near Saddle Road, and between the towns of Glenwood and Volcano. The six known populations, which extend over a distance of about 12 by 5 mi (19 by 8 km), are located on State- and federally-owned land and contain a total of approximately eight known individuals (HHP 1991b1 to 1991b7). *Clermontia peleana* ssp. *singuliflora* was formerly found on the island of Hawaii on the northern slope of Mauna Kea and on East Maui on the northwestern slope of Haleakala, but the taxon has not been seen in either place since early in the century and is believed to be extinct (HHP 1991c1 to 1991c3, Wagner *et al.* 1990). This species typically grows epiphytically in Montane Wet Forests dominated by koa, 'ohi'a, and *Cibotium* spp. and/or *Sadleria* spp. (tree ferns) at elevations between 1,740 and 3,800 ft (530 and 1,160 m) (HHP 1991b1 to 1991b4, 1991b6, 1991b7, Lammers 1990, 1991). Associated species include 'olapa, *Melicope clusiifolia* (kolokolo mokihana), and *Scaevola chamissoniana* (naupaka kuahiwi) (HHP 1991b1; Warren L. Wagner, Smithsonian Institution, pers. comm., 1992). The major threats to *Clermontia peleana* are habitat disturbance caused by feral pigs and illegal cultivation of *Cannabis sativa* (marijuana), roof or black rat (*Rattus rattus*) damage, flooding, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (Bruegmann 1990, Center for Plant Conservation (CPC) 1990).

A sterile specimen of *Clermontia pyrularia* was first collected on Mauna Kea, island of Hawaii, during the United States Exploring Expedition of 1840 and 1841 and was named *Delissea obtusa* var. *mollis* by Gray (1861b). Later, Hillebrand (1888) collected fertile specimens of the taxon and named it *C. pyrularia*, referring in the specific epithet to the fruits, which are sometimes shaped like those of *Pyrus* (pear).

Clermontia pyrularia of the bellflower family, a terrestrial tree 10 to 13 ft (3 to 4 m) tall, has alternate toothed leaves 5.9 to 11 in (15 to 28 cm) long and 1 to 2 in (2.5 to 5 cm) wide with winged petioles. A cluster of two, three, or sometimes up to five flowers has a main stalk 1.1 to 2.4 in (2.8 to 6 cm) long; each flower has a stalk 0.3 to 0.8 in (0.8 to 2 cm) long. Five small green calyx lobes top the hypanthium. The white or greenish-white petals are covered with fine hairs, measure 1.6 to 1.8 in (4 to 4.5 cm) long, and are fused into a curved two-lipped tube 0.2 to 0.3 in (5 to 8 mm) wide with five spreading lobes. The orange berry is inversely ovoid or inversely pear-shaped. This species is distinguished from others of the genus by its winged petioles; its small, green calyx lobes; its two-lipped flowers with white or greenish-white petals; and the shape of its berry (Lammers 1990, 1991).

Historically, *Clermontia pyrularia* has been found only on the island of Hawaii on the northeastern slope of Mauna Kea, the western slope of Mauna Loa, and the saddle area between the two mountains. Today, the species is found near the Humuula-Laupahoehoe boundary, near Hakalau Gulch, near Kealakekua, and near Kaawaloa. The five extant populations, which extend over a distance of about 47 by 6 mi (76 by 10 km), are located on privately, State and federally owned land. Although the exact number of individuals is not known, it is likely that not more than five individuals exist (HHP 1991d1 to 1991d6). This species typically grows in koa- and/or 'ohi'a-dominated Montane Wet Forests and Subalpine Dry Forests at elevations between 3,000 and 7,000 ft (910 and 2,130 m) (HHP 1991d2 to 1991d5, Lammers 1990, 1991). Associated species include pilo, *Lythrum maritimum* (pukamole), and *Rubus hawaiensis* ('akala) (HHP 1991d2, 1991y). The major threat to *Clermontia pyrularia* is competition from alien grasses and shrubs in the forest understory and banana poka as well as stochastic extinction and/or reduced

reproductive vigor due to the small number of existing populations and individuals (HHP 1991d2).

Colubrina oppositifolia was first collected by Remy in the 1850s and was named in 1867 by Adolphe Theodore Brongniart (Mann 1867). The specific epithet describes the plant's opposite leaf arrangement. St. John (1979) called Oahu plants *C. oppositifolia* var. *obatae*, but no subspecific taxa are recognized in the current treatment of the genus (Wagner *et al.* 1990).

Colubrina oppositifolia of the buckthorn family (Rhamnaceae), a tree 16 to 43 ft (5 to 13 m) tall, has opposite, stalked, oval, thin, pinnately veined, toothless leaves with glands on the lower surface. Leaves measure 2.4 to 4.7 in (6 to 12 cm) long and 1.2 to 2.8 in (3 to 7 cm) wide in mature plants and are larger in seedlings. Ten to 12 bisexual flowers are clustered at the end of a main stalk 0.1 to 0.3 in (3 to 8 millimeters (mm)) long; each flower has a stalk about 0.07 to 0.1 in (2 to 3 mm) long which elongates in fruit. The five triangular sepals measure about 0.06 to 0.08 in (1.5 to 2 mm) long, and the five greenish-yellow or white petals are about 0.06 in (1.5 mm) long. The somewhat spherical fruit, 0.3 to 0.4 in (8 to 11 mm) long, is similar to a capsule and opens explosively when mature. This species can be distinguished from the one other species of the genus in Hawaii by its growth habit and the arrangement, texture, venation, and margins of its leaves (Wagner *et al.* 1990).

Historically, *Colubrina oppositifolia* was found on the island of Oahu in the central and southern Waianae Mountains and on the island of Hawaii in the following areas: The Kohala Mountains; the northern slope of Hualalai; and the western, southwestern, and southern slopes of Mauna Loa. Today, the species is known on Oahu in eastern Makaleha Valley, Mokuleia Forest Reserve, and Makua Valley; on Mt. Kaala; and near Honouliuli Contour Trail on privately and State-owned and federally managed land. The 6 extant populations on Oahu, which extend over a distance of about 9 by 4 mi (14 by 6 km), contain approximately 94 known individuals (HHP 1991e1, 1991e2, 1991e5, 1991e9 to 1991e12). On the island of Hawaii, there are 7 extant populations which extend over a distance of about 16 by 4 mi (26 by 6 km), are located on privately and State-owned land, and contain about 185 to 205 known individuals. The species occurs along the Mamalahoa Highway on the northern slope of Hualalai as well as in Kapua and Puueo in the southernmost portion of the island (HHP 1991e3, 1991e4, 1991e6 to 1991e8, 1991e13 to 1991e16). This species typically grows in *Diospyros sandwicensis* (lama)-dominated Lowland Dry and Mesic Forests, often on aa lava, at elevations between 800 and 3,000 ft (240 and 910 m). Associated species include *Canthium odoratum* (alahe'e) and *Reynoldsia sandwicensis* ('ohe) (HHP 1991e3, 1991e8, 1991e9, 1991e15, 1991e16, HPCC 1991b). The major threats to *Colubrina oppositifolia* are competition from alien plant species such as *Lantana camara* (lantana), *Pennisetum setaceum* (fountain grass), and *Schinus terebinthifolius* (Christmas berry); habitat disturbance by feral pigs; plant damage and death from black twig borer (*Xylosandrus compactus*); fire; damage and disturbance from military exercises; and limited regeneration (HHP 1991e4, 1991e8, 1991e9, 1991e15, 1991e16; Joel Q. Lau, The Nature Conservancy of Hawaii, pers. comm., 1992).

Rock (1917) named *Cyanea copelandii* to honor his collecting companion, M.L. Copeland, with whom he first collected the species in 1914 on the island of Hawaii (Rock 1917). St. John (1987b, St. John and Takeuchi 1987), believing there to be no generic distinction between *Cyanea* and *Delissea*, transferred the species to the genus *Delissea*, the older of the two generic names, creating *D. copelandii*. The current treatment of the family (Lammers 1990), however, maintains the separation of the two genera, and plants found on the island of Hawaii are considered to be *C. copelandii* ssp. *copelandii*. Subspecies *haleakalaensis*, found on Maui, is not as rare.

Cyanea copelandii ssp. *copelandii* of the bellflower family is a shrub with a habit similar to that of a woody vine. The alternate, stalked, toothed leaves are 7.9 to 10.6 in (20 to 27 cm) long and 1.4 to 3.3 in (3.5 to 8.5 cm) wide and have fine hairs on the lower surface. Five to 12 flowers are clustered on the end of a main stalk 0.8 to 1.8 in (2 to 4.5 cm) long; each flower has a stalk 0.2 to 0.6 in (0.4 to 1.6 cm) long. The slightly hairy hypanthium is topped by five small, triangular calyx lobes. Petals, which are yellowish but appear rose-colored because of a covering of dark red hairs, are fused into a curved tube with five spreading lobes; the corolla is 1.5 to 1.7 in (3.7 to 4.2 cm) long and about 0.2 in (4 to 5 mm) wide. Berries are dark orange and measure 0.3 to 0.6 in (0.7 to 1.5 cm) long. This subspecies is distinguished from ssp. *haleakalaensis*, the only other subspecies of *Cyanea copelandii*, by its narrower leaves. The species differs from others in this endemic Hawaiian genus by its growth habit and the size, shape, and dark red pubescence of its corolla (Lammers 1990).

Cyanea copelandii ssp. *copelandii*, which has been collected only twice on the southeastern slope of Mauna Loa near Glenwood, was last seen in 1957. It is difficult to adequately survey the area because of vegetation density and the terrain. This population, located on State-owned land, was sighted recently enough that it is still considered extant and contains an unknown number of individuals (HHP 1991f; Thomas Lammers, Field Museum, pers. comm., 1992). This taxon often grows epiphytically and is typically found in Montane Wet Forests at elevations between 2,200 and 2,900 ft (660 and 880 m) (Lammers 1990). Associated species include tree ferns (HHP 1991f). The major known threat to *Cyanea copelandii* ssp. *copelandii* is stochastic extinction and/or reduced reproductive vigor due to the single known population.

Using sterile type material, Rock (1957) named *Cyanea carlsonii* to honor Norman K. Carlson, who first saw the taxon (Degener *et al.* 1969). Carlson cultivated a plant of the taxon in his garden, from which Rock later described the flowers and fruit (Rock 1962). Recently, St. John (1987b, St. John and Takeuchi 1987) placed the genus *Cyanea* in synonymy with *Delissea*, resulting in the new combination *Delissea carlsonii*, but Lammers (1990) retains both genera in the currently accepted treatment of the family. He also considers the taxon to be a subspecies of another species, resulting in the name *C. hamatiflora* ssp. *carlsonii* (Lammers 1988).

Cyanea hamatiflora ssp. *carlsonii* of the bellflower family, a palm-like tree, grows 9.8 to 26 ft (3 to 8 m) tall and has alternate stalkless leaves 20 to 31 in (50 to 80 cm) long and 3 to 5.5 in (8 to 14 cm) wide. Clusters of 5 to 10 flowers have a main stalk 0.6 to 1.2 in (1.5 to 3 cm) long; each flower has a stalk 0.2 to 0.5 in (0.5 to 1.2 cm) long. The hypanthium is topped with five small narrow calyx lobes. The magenta petals are fused into a one-lipped tube 2.3 to 3.1 in (6 to 8 cm) long and 0.2 to 0.4 in (0.6 to 1.1 cm) wide with five down-curved lobes. The purplish-red berries are topped by the persistent calyx lobes. This subspecies is distinguished from ssp. *hamatiflora*, the only other subspecies, by its long flower stalks and larger calyx lobes. The species differs from others in the genus by its growth habit, its stalkless leaves, the number of flowers in each cluster, and the size and

shape of the corolla and calyx (Lammers 1990).

Cyanea hamatiflora ssp. *carlsonii* is only known to have occurred at two sites on the island of Hawaii, on the western slope of Hualalai and the southwestern slope of Mauna Loa. These two extant populations, located on privately and State-owned land at Honuaulu Forest Reserve and Keokea, are about 28 mi (45 km) apart and contain approximately 19 individuals (HHP 1991g1, 1991g2, HPCC 1991c1 to 1991c3). This taxon typically grows in 'ohi'a-dominated Montane Wet Forests at elevations between 4,000 and 5,700 ft (1,220 and 1,740 m) (HHP 1991g1, 1991g2, Lammers 1990). Associated species include kawa'u, pilo, and *Myoporum sandwicense* (naio) (HHP 1991g1). The major threats to *Cyanea hamatiflora* ssp. *carlsonii* are competition from alien plant species such as banana poka, grazing and trampling by cattle, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991g2; Carolyn Corn, Hawaii Department of Land and Natural Resources (Hawaii DLNR), *in litt.*, 1991).

Based on sterile specimens collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841, Gray (1861b) noted *Cyanea grimesiana* var. ? *citrullifolia*. Rock collected the plant in 1955 in the company of Herbert Shipman, after whom he named it as a species, resulting in *Cyanea shipmanii* (Rock 1957). St. John (1987b, St. John and Takeuchi 1987) placed the genus *Cyanea* in synonomy with *Delissea*, resulting in *Delissea shipmanii*, but Lammers (1990) retains the species in the genus *Cyanea*.

Cyanea shipmanii of the bellflower family is an unbranched or few-branched shrub 8 to 13 ft (2.5 to 4 m) tall with small sharp projections, especially in young plants. The alternate, stalked leaves are 6.7 to 12 in (17 to 30 cm) long, 2.8 to 5.5 in (7 to 14 cm) wide, and deeply cut into 20 to 30 lobes per leaf. Flowers are covered with fine hairs and are clustered in groups of 10 to 15, the main stalk 0.4 to 1.2 in (1 to 3 cm) long and each flower stalk 0.4 to 0.6 in (1 to 1.5 cm) long. The hypanthium is topped with five small calyx lobes. The pale greenish-white petals, 1.2 to 1.4 in (3 to 3.6 cm) long, are fused into a curved five-lobed tube 0.1 to 0.2 in (3 to 4 mm) wide. The fruit is an ellipsoid berry. This species differs from others in the genus by its slender stems; stalked, pinnately lobed leaves; and smaller flowers (Lammers 1990).

Cyanea shipmanii has been known from only one population, located on the island of Hawaii on the eastern slope of Mauna Kea on privately owned land. When originally discovered, only 1 mature plant was found, with a total population size of fewer than 50 individuals (HHP 1991h). This species typically grows in koa- and 'ohi'a-dominated Montane Mesic Forests at elevations between 5,400 and 6,200 ft (1,650 and 1,900 m) (HHP 1991h, Lammers 1990). Associated species include kawa'u and kolea (HHP 1991h). The major threat to *Cyanea shipmanii* is stochastic extinction and/or reduced reproductive vigor due to the single existing population and the small number of known individuals.

Based on a specimen he collected in 1912 on Mauna Loa, island of Hawaii, Rock (1913) described *Cyanea stictophylla*, choosing the specific epithet to refer to the long and narrow leaves. Other names by which the taxon has been known include: *Cyanea palakea* (Forbes 1916), *C. quercifolia* var. *atropurpurea* (Wimmer 1953), *C. stictophylla* var. *inermis* (Rock 1957), and *C. nelsonii* (St. John 1976). St. John (St. John and Takeuchi 1987), believing there to be no generic distinction between *Cyanea* and *Delissea*, transferred the species to the genus *Delissea*, the older of the two generic names, creating *D. nelsonii*, *D. palakea*, *D. quercifolia* var. *atropurpurea*, *D. stictophylla*, and *D. stictophylla* var. *inermis* (St. John 1987b). The separation of the two genera is maintained in the current treatment of the family (Lammers 1990), and all the above listed taxa are considered to fall within the range of variation of *C. stictophylla*.

Cyanea stictophylla of the bellflower family is a shrub or tree 2 to 20 ft (0.6 to 6 m) tall, sometimes covered with small, sharp projections. The alternate, stalked, oblong, shallowly lobed, toothed leaves are 7.8 to 15 in (20 to 38 cm) long and 1.6 to 3.1 in (4 to 8 cm) wide. Clusters of five or six flowers have main flowering stalks 0.4 to 1.6 in (1 to 4 cm) long; each flower has a stalk 0.3 to 0.9 in (0.7 to 2.2 cm) long. The hypanthium is topped with five calyx lobes 0.1 to 0.2 in (2 to 4 mm) long and 0.04 to 0.1 in (1 to 2 mm) wide. The yellowish-white or purple petals, 1.4 to 2 in (3.5 to 5 cm) long, are fused into an arched, five-lobed tube about 0.2 in (5 to 6 mm) wide. The spherical berries are orange. This species differs from others in the genus by its lobed, toothed leaves and its larger flowers with small calyx lobes and deeply lobed corollas (Lammers 1990).

Historically, *Cyanea stictophylla* was known only from the island of Hawaii on the western, southern, southeastern, and eastern slopes of Mauna Loa. Today, the species is known to be extant near Keauhou and in South Kona on privately owned land. The 3 known populations, which extend over a distance of about 38 by 10 mi (61 by 16 km), contain a total of approximately 15 individuals (HHP 1991i1 to 1991i3). This species, sometimes growing epiphytically, is found in koaand 'ohi'a-dominated Lowland Mesic and Wet Forests at elevations between 3,500 and 6,400 ft (1,070 and 1,950 m) (HHP 1991i1 to 1991i3, Lammers 1990). Associated species include tree ferns, *Melicope volcanica* (alani), and *Urera glabra* (opuhe) (HHP 1991i1 to 1991i3). The major threat to *Cyanea stictophylla* is grazing and trampling by feral cattle as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (F. Duvall, pers. comm., 1992).

Cyrtandra giffardii was first collected in 1911 on the island of Hawaii by Rock, who named the species to honor Walter M. Giffard, who collected a flowering specimen in 1918 (Rock 1919a).

Cyrtandra giffardii of the African violet family (Gesneriaceae) is a shrubby tree usually 10 to 20 ft (3 to 6 m) tall. The opposite, stalked, papery-textured, toothed leaves are usually 2.4 to 4.7 in (6 to 12 cm) long and 1 to 1.8 in (2.5 to 4.6 cm) wide and have a few tiny, coarse hairs on the upper surface. Clusters of three to five flowers have a moderate amount of short brown hairs throughout the cluster, a main stalk 1 to 1.4 in (2.5 to 3.5 cm) long, two linear bracts about 0.25 in (6 to 7 mm) long, and individual flower stalks 0.6 to 1.2 in (1.5 to 3 cm) long. The calyx, 0.1 to 0.4 in (3 to 9 mm) long, has an outer covering of short, soft brown hairs and is divided into five narrowly triangular lobes. The corolla consists of five fused white petals about 0.5 in (12 mm) long, with lobes about 0.08 to 0.1 in (2 to 3 mm) long. Only immature berries have been observed, and they were white and about 0.4 in (1 cm) long. Both this species and *Cyrtandra tintinnabula* are distinguished from others of the genus and others on the island of Hawaii by a combination of the following characteristics: The opposite, more or less elliptic, papery leaves; the presence of some hairs on the leaves and more on the inflorescences; the presence of three to six flowers per inflorescence; and the size and shape of the flowers and flower parts (Wagner *et al.* 1990).

Historically, *Cyrtandra giffardii* was found on the island of Hawaii on the northeastern slope of Mauna Kea near Kilau Stream and south to the eastern

slope of Mauna Loa near Kilauea Crater. The 3 extant populations on State-owned land are located near Kilau Stream, Stainback Highway, and Puu Makaala, extending over a distance of approximately 31 by 3 mi (50 by 5 km) and containing a total of about 14 to 20 plants (HHP 1991j1 to 1991j5; W. Wagner, pers. comm., 1992). This species typically grows in shady koa-, 'ohi'a-, and tree fern-dominated Montane Wet Forests at elevations between 2,400 and 4,900 ft (720 and 1,500 m) (HHP 1991j1 to 1991j3, HPCC 1991d1, 1991d2, Wagner *et al.* 1990). Associated species include other taxa of *Cyrtandra* (ha'iwale), *Hedyotis* spp., and *Perrottetia sandwicensis* (olomea) (HHP 1991j1 to 1991j3, HPCC 1991d1; W. Wagner, pers. comm., 1992). The major threats to *Cyrtandra giffardii* are habitat disturbance and plant damage by feral pigs as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations (Stone 1985; W. Wagner, pers. comm., 1992).

Based on a plant he collected in 1909 on Mauna Kea, island of Hawaii, Rock named *Cyrtandra tintinnabula*. The specific epithet describes the bell-shaped calyx of the plant (Rock 1919a).

Cyrtandra tintinnabula of the African violet family is a shrub 3.3 to 6.6 ft (1 to 2 m) tall with opposite, stalked, elliptical or oval, papery-textured leaves 5 to 10 in (13 to 26 cm) long and 2 to 4.8 in (5 to 12.3 cm) wide. Leaves, especially the lower surfaces, have yellowish-brown hairs. Flower clusters, densely covered with long soft hairs, comprise three to six flowers, a main stalk 0.4 to 0.7 in (1 to 1.8 cm) long, individual flower stalks 0.2 to 0.6 in (0.5 to 1.5 cm) long, and leaflike bracts. The green bell-shaped calyx is about 0.4 in (9 to 10 mm) long and has triangular lobes. The hairy white corolla, about 0.5 in (12 mm) long and about 0.2 in (5 mm) in diameter, is divided into five lobes, each about 0.1 in (3 mm) long. Fruit and seeds have not been observed. This species differs from *Cyrtandra giffardii* by its habit, its larger leaves, and its shorter flower stalks (Wagner *et al.* 1990).

Historically, *Cyrtandra tintinnabula* was found only on the island of Hawaii on the northern to the eastern slopes of Mauna Kea. Today, 3 populations of the species are known to occur on State-owned land extending over approximately 6 by 1 mi (10 by 3 km) from Kilau Stream to Honohina Gulch and containing approximately 18 known individuals (HHP 1991k1 to 1991k6). This species typically grows in dense koa-, 'ohi'a-, and tree fern-dominated Lowland Wet Forests at elevations between 2,100 and 3,400 ft (650 and 1,040 m) (HHP 1991k3, 1991k4, 1991k6, Wagner *et al.* 1990). Associated species include other kinds of ha'iwale and *Hedyotis* sp. The major threats to *Cyrtandra tintinnabula* are habitat disturbance and plant damage by feral pigs and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals.

Based on a specimen collected on Mauna Loa by James Macrae in 1825, Weddell (1856 to 1857) described *Urtica sandwicensis*, choosing the specific epithet to refer to the Sandwich Islands, an older name for the Hawaiian Islands. Later (1869), he transferred the species to another genus, resulting in *Hesperocnide sandwicensis*.

Hesperocnide sandwicensis of the nettle family (Urticaceae) is an erect annual herb 8 to 24 in (20 to 60 cm) tall covered with coarse stinging hairs as well as shorter non-stinging hairs. The opposite, stalked, thin, toothed leaves are 0.6 to 3 in (1.5 to 7 cm) long and 0.4 to 1 in (0.9 to 2.5 cm) wide. Most of the small petalless flowers are male, but they are mixed with some female flowers in clusters 0.08 to 0.2 in (2 to 5 mm) long which originate in the leaf axils. Sepals of male flowers are fused into a four-lobed calyx about 0.02 in (0.5 mm) long which encloses four stamens. The calyx of the female flower, about 0.04 in (1 mm) long and enclosing an unstalked stigma, swells slightly in fruit and encloses a flattened achene (dry, one-celled, unopened fruit) about 0.04 in (1.1 mm) long. The only Hawaiian member of the genus, *Hesperocnid sandwicensis* is distinguished from other native Hawaiian genera of its family by its annual herbaceous habit and its stinging hairs. It is distinguished from the alien, naturalized species *Urtica urens* (dwarf nettle) by the lack of calyx lobes (Wagner *et al.* 1990).

Historically, *Hesperocnide sandwicensis* occurred on the island of Hawaii on the eastern and western slopes of Mauna Kea, the northern to western slopes of Mauna Loa, the Humuula Saddle between Mauna Kea and Mauna Loa, and the southeastern slope of Hualalai. Twelve extant localities are known, extending over a distance of approximately 38 by 15 mi (61 by 24 km) in much of the historic range of the species. It has not been seen on Hualalai for some time and is presumed extirpated there. Known populations now occur on or near the following areas: Puu Kanakaleonui, Puu Laau, Ahumoa Cone, Pohakuloa Training Area (PTA), and Sulphur Cone. Because the species is an annual plant, the total number of individuals varies with the time of year and amount of rainfall. At the time the proposed rule was written, several hundred to a thousand individuals were known from PTA, a State- and federally owned area of land which is managed by the U.S. Army. Other, smaller populations totalling approximately 80 to 130 plants were located on privately and State-owned land (HHP 1991l1 to 1991l7, HPCC 1991e; Robert Shaw, Colorado State University, pers. comm., 1992). Extensive surveys in 1992 and 1993 indicate the presence of tens of thousands of *Hesperocnide sandwicensis* in many populations on and near PTA (R. Shaw, *in litt.*, 1993). This species is clearly much more abundant than previously thought. This species typically grows in open *Sophora chrysophylla* (mamane)- and naio-dominated Subalpine Dry Forests at elevations between 5,840 and 8,600 ft (1,780 and 2,620 m) (Gagne and Cuddihy 1990, HHP 1991l1 to 1991l3, 1991l6, HPCC 1991e, Wagner *et al.* 1990). Associated species include *Asplenium fragile, Santalum paniculatum* ('iliahi), and the naturalized *Urtica urens* (HHP 1991l1, 1991l6; R. Shaw, pers. comm., 1992). Individual *Hesperocnide sandwicensis* plants and populations of plants are threatened by competition from alien grasses such as *Anthoxanthum odoratum* (sweet vernalgrass) and *Holcus lanatus* (common velvet grass); grazing by feral pigs, goats, and sheep (*Ovis aries*); habitat disturbance and damage to plants as a result of military exercises; and fire (HHP 1991l6, HPCC 1991e; Ken Nagata, U.S. Department of Agriculture, pers. comm., 1992). However, *Hesperocnide sandwicensis* is maintaining large, reproductive populations throughout PTA in areas that are relatively secure from these threats. The thousands of plants found in and along lava flows are particularly unlikely to be threatened by feral herbivores, military activities, or competition from alien grasses (Loyal A. Mehrhoff, U.S. Fish and Wildlife Service, pers. observation, 1993). It is also unlikely that either natural or man-caused fires could destroy a significant percentage of the total populations. *Hesperocnide sandwicensis* fails to meet the definition of either an endangered or threatened species. Therefore, the Service has withdrawn *Hesperocnide sandwicensis* from consideration for endangered or threatened status (see notice of withdrawal of proposed rule published concurrently with this final rule).

Ischaemum byrone was first collected by James Macrae during the expedition

of the *Blonde* in 1825 and named *Spodiopogon byronis* by Trinius in 1832. The specific epithet refers to Byron's Bay, now called Hilo Bay, where this specimen was collected. Steudel (1855) transferred the species to the genus *Andropogon*, and in 1889, Hackel redescribed the species, naming it *Ischaemum lutescens*, a superfluous name. In 1922, Hitchcock published *Ischaemum byrone*, the currently accepted name (O'Connor 1990).

Ischaemum byrone of the grass family (Poaceae) is a perennial plant with creeping stems and erect stems 16 to 31 in (40 to 80 cm) tall. The uppermost sheaths (portions of leaves surrounding the stems) are often inflated and sometimes partially enclose the yellow to yellowish-brown racemes (flowering clusters). The hairless leaf blade (the flat extended part of the leaf) is 2.8 to 7.9 in (7 to 20 cm) long and 1.2 to 2 in (3 to 5 cm) wide; the uppermost blades are much smaller in size. Flowers, arranged in two or sometimes three digitate (originating from one point), elongate racemes 1.6 to 3.9 in (4 to 10 cm) long, consist of two types of two-flowered awned (having bristles) spikelets (subclusters of flowers). The fruit is a caryopsis (grain) about 0.1 in (3 mm) long. The only species of the genus found in Hawaii, *Ischaemum byrone* differs from other grasses in the State by its C_4 photosynthetic pathway; its digitate racemes; and its two-flowered, awned spikelets (O'Connor 1990).

Historically, *Ischaemum byrone* was found on Oahu at an unspecified location, on the northeastern coasts of Molokai and east Maui, and along the central portion of the eastern coast of the island of Hawaii. Extant populations still occur on Molokai, Maui, and Hawaii. Two populations on east Molokai are located about 2 mi (3 km) apart at the head of Wailau Valley and on Kikipua Point on privately owned land. Six populations on east Maui are found along approximately 16 mi (26 km) of coast on privately, State-, and federally owned land on Pauwalu Point, on Kalahu Point, near Hana, on Kauiki Head, and on the following offshore islets: Keopuka Islet, Mokuhuki Islet, and Puukii Islet. On Hawaii, the species is still found in two populations at Auwae and Kamoamoa on privately and federally owned land. The total distribution of the species includes 10 populations on 3 islands with approximately 1,200 to 2,200 individuals (HHP 1991m1 to 1991m10, 1991m12 to 1991m14), though the total number may be in the range of 5,000 individuals (R. Hobdy, *in litt.*, 1993). Because this species occupies lowland habitat, it is at high risk from development, alien weeds, and in the past, from alien ungulates. This species typically grows in Coastal Dry Shrublands among rocks or on basalt cliffs at elevations between sea level and 250 ft (0 and 75 m) (Gagne and Cuddihy 1990, O'Connor 1990). Associated species include *Bidens* spp. (ko'oko'olau), *Fimbristylis cymosa*, and *Scaevola sericea* (naupaka kahakai) (HHP 1991m5, 1991m7, 1991m9, 1991m11, HPCC 1991f). The major threats to *Ischaemum byrone* are competition from alien species such as *Digitaria ciliaris* (Henry's crabgrass) and habitat change from volcanic activity (HHP 1991m3, HPCC 1991f; Charles H. Lamoureux, Lyon Arboretum, pers. comm., 1992).

Isodendrion pyrifolium was first collected on Oahu during the United States Exploring Expedition in 1841 and was named by Gray in 1852. The specific epithet refers to the resemblance of the leaves of this species to those of *Pyrus* (pear). In his monograph of the genus, St. John (1952) named the following species, all of which are considered in the current treatment of the genus (Wagner *et al.* 1990) to be synonymous with *I. pyrifolium*: *I. hawaiiense*, *I. hillebrandii*, *I. lanaiense*, *I. molokaiense*, and *I. remyi*.

Isodendrion pyrifolium of the violet family (Violaceae), a shrub about 2.6 to 6.6 ft (0.8 to 2 m) tall, has persistent stipules (leaflike appendages on leaves) and alternate, stalked, elliptic or sometimes lance-shaped, papery leaves which measure 1 to 2.6 in (2.5 to 6.5 cm) long and 0.3 to 1.3 in (0.8 to 3.2 cm) wide. The solitary, bilaterally symmetrical, fragrant flowers have five lance-shaped sepals 0.1 to 0.2 in (3.5 to 5 mm) long with membranous edges fringed with white hairs and three types of clawed (with a narrow petiole-like base) greenish-yellow petals 0.4 to 0.6 in (10 to 15 mm) long with lobes about 0.2 in (4 to 5 mm) long. The three-lobed, 0.5 in (12 mm) long capsule opens to release olive-green seeds about 0.1 in (3 mm) long and about 0.08 in (2 mm) in diameter. This species differs from others in this endemic Hawaiian genus by its slightly smaller, greenish-yellow flowers and by the presence of hairs on the stipule midribs and leaf veins (Wagner *et al.* 1990).

Historically, *Isodendrion pyrifolium* was found at unspecified localities on Niihau, Molokai, and Lanai, as well as on Oahu in the central portion of the Waianae Mountains, on Maui in the northeastern to southwestern regions of the West Maui mountains, and on the island of Hawaii at the western base of Hualalai (HHP 1991n1 to 1991n5, Wagner *et al.* 1990). The species had not been collected since 1870 and was presumed extinct. However, in 1991, four plants were found on Hawaii at Kealakehe near Kona on State-owned land being developed for residential housing and a golf course (C. Corn, *in litt.* 1991; Francis Blanco, Hawaii Housing and Finance Development Corporation, and K. Nagata, pers. comms., 1992). In late 1992 and early 1993, 50 to 60 additional plants were found at this site (Evangeline Funk, Botanical Consultants, pers. comm., 1993). This species typically grows on dry sites in Lowland Dry to Mesic Forests at low elevations (Gagne and Cuddihy 1990, Wagner *et al.* 1990). Associated species include 'iliahi, mamane, and *Waltheria indica* ('uhaloa) (Paul Weissich, Weissich and Associates, pers. comm., 1992). The major threats to *Isodendrion pyrifolium* are habitat conversion associated with residential and recreation development, competition from alien species such as fountain grass, fire, and stochastic extinction and/or reduced reproductive vigor due to the single known population and the small number of existing individuals (C. Corn, K. Nagata, and P. Weissich, pers. comms., 1992).

In 1920, Kuekenthal described *Cyperus fauriei* based on a specimen collected by Faurie on Molokai in 1910 (Wagner *et al.* 1989). Koyama (1990), in the current treatment of the genus, transferred the species to *Mariscus*, resulting in *M. fauriei*.

Mariscus fauriei of the sedge family (Cyperaceae), a perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 4 to 20 in (10 to 50 cm) tall, has leaves shorter than or the same length as the stems and 0.04 to 0.1 in (1 to 3.5 mm) wide. Three to 5 bracts, the lowest one 2.4 to 7.9 in (6 to 20 cm) long, are located under each flower cluster, which measures 0.8 to 1.6 in (2 to 4 cm) long and 1.2 to 3.9 in (3 to 10 cm) wide and is made up of 3 to 10 spikes (unbranched clusters of unstalked flowers). Each spike measures 0.3 to 1.2 in (0.8 to 3 cm) long and 0.3 to 0.4 in (8 to 10 mm) wide and is made up of compressed spreading spikelets, each comprising seven to nine flowers. Fruits are three-angled achenes about 0.05 in (1.2 mm) long and about 0.03 in (0.7 mm) wide. This species differs from others in the genus in Hawaii by its smaller size and its narrower, flattened, and more spreading spikelets (Koyama 1990).

Historically, *Mariscus fauriei* was found on east Molokai, in the northwestern and southwestern portions of Lanai, and on the island of Hawaii on

the northern slope of Hualalai and the northwestern and southernmost slopes of Mauna Loa. A total of 3 extant populations and about 33 to 43 known individuals of the species are found on Molokai and Hawaii; the species is almost certainly extinct on Lanai now. One population of about 20 to 30 plants occurs on Molokai above Kamiloloa on State-owned land. Two populations located about 45 mi (72 km) apart are known on Hawaii on the Hualalai side of Mauna Loa and in the South Point area. The land is privately owned, and there are a total of about 13 known individuals on that island (HHP 1991o1 to 1991o8, HPCC 1991g; R. Hobdy, pers. comm., 1992). This species typically grows in lama-dominated Lowland Dry Forests, often on aa substrate, at elevations between 880 and 6,000 ft (300 and 1,830 m) (HHP 1991o8, HPCC 1991g, Koyama 1990). Associated species include alahe'e, *Peperomia* sp. ('ala'ala wai nui), and *Rauvolfia sandwicensis* (hao) (HHP 1991o8, HPCC 1991g). The major threat to *Mariscus fauriei* on Molokai is grazing and trampling by feral goats and axis deer (*Axis axis*), and on Hawaii, competition from alien species such as Christmas berry and *Oplismenus hirtellus* (basketgrass). On both islands, the species is faced with stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991o8, HPCC 1991g; R. Hobdy, pers. comm., 1992).

First collected on the island of Hawaii by Charles Pickering during the United States Exploring Expedition of 1840 and 1841, *Nothocestrum breviflorum* was named by Gray in 1862. He chose the specific epithet to refer to the short corolla of the flower of this species. In 1888, Hillebrand named var. *longipes*, but in the current treatment of the genus (Symon 1990), no varieties of the species are recognized.

Nothocestrum breviflorum of the nightshade family (Solanaceae), a stout tree 33 to 39 ft (10 to 12 m) tall with a trunk up to 18 in (45 cm) in diameter, has deciduous, alternate, stalked, oblong or elliptic-oblong, thick and papery-textured, toothless leaves which are 2 to 4.7 in (5 to 12 cm) long and 1.2 to 2.4 in (3 to 6 cm) wide. Numerous bisexual, radially symmetrical flowers are clustered at the ends of short spurs (branches with much shortened internodes) on individual stalks 0.2 to 0.4 in (4 to 10 mm) long. Each flower consists of a 0.2 to 0.4 in (6 to 11 mm) long, four-lobed tubular calyx split on one side and a greenish-yellow four-lobed corolla which barely projects beyond the calyx. The fruit, a somewhat spherical or oblong, orange-red berry about 0.2 to 0.3 in (6 to 8 mm) in diameter, is enclosed by the calyx. Seeds have not been observed. This species can be distinguished from others of this endemic Hawaiian genus by the leaf shape; the clusters of more than three flowers arranged on the ends of short branches; and the broad fruit enclosed by the calyx (Symon 1990).

Historically, *Nothocestrum breviflorum* was found only on the island of Hawaii from the southern portion of the Kohala Mountains; the northern slope of Hualalai; and the eastern, southern, and western slopes of Mauna Loa. Today, extant populations have been found in much of the species' historic range, from near Waimea, near Kiholo, in Puu Waawaa, in Hawaii Volcanoes National Park (HVNP) in Kipuka Ki and near Holei Pali, and in the South Point area. These 9 populations, which extend over a distance of about 63 by 41 mi (101 by 66 km), are found on privately, State-, and federally owned land and contain an estimated 53 known individuals (HHP 1991p1 to 1991p12; J. Lau and W. Wagner, pers. comms., 1992). This species typically grows in koa- and 'ohi'a- or lama-dominated Lowland Dry Forests and Montane Dry or Mesic Forests, often on as substrate, at elevations between 590 and 6,000 ft (180 and 1,830 m) (Gagne and Cuddihy 1990, HHP 1991p1, 1991p2, 1991p5, 1991p7, 1991p12, HPCC 1991h, Symon 1990). Associated species include 'iliahi, *Caesalpinia kavaiensis* (uhiuhi), and *Erythrina sandwicensis* (wiliwili) (HHP 1991p1, 1991p3, 1991p4, 1991p12, HPCC 1991h; W. Wagner, pers. comm., 1992). The major threats to *Nothocestrum breviflorum* are habitat conversion associated with residential and recreational development, competition from alien species such as Christmas berry, fountain grass, lantana, and *Leucaena leucocephala* (koa haole); browsing by cattle; fire; and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (HHP 1991p4, 1991p6, 1991p12, Lamb 1981; W. Wagner, pers. comm., 1992).

Ochrosia kilaueaensis was first collected by Forbes in 1915 and was named by St. John in 1978. The specific epithet refers to Kilauea, the type locality of the plant on the island of Hawaii. Based on a specimen collected in 1909 by Rock, St. John (1978) named *O. konaensis*. In the current treatment of the genus (Wagner *et al.* 1990), *O. konaensis* is considered synonymous with *O. kilaueaensis*.

Ochrosia kilaueaensis of the dogbane family (Apocynaceae) is a hairless tree 49 to 59 ft (15 to 18 m) tall with milky sap. The lance- or ellipse-shaped toothless leaves are arranged three or four per node, are 2.4 to 7.5 in (6 to 19 cm) long and 0.9 to 2.6 in (2.2 to 6.5 cm) wide, and have veins arising at nearly right angles to the midrib. Open clusters of numerous flowers have main stalks 1.8 to 2.5 in (4.5 to 6.3 cm) long, secondary branches 0.4 to 1 in (1.1 to 2.5 cm) long, and individual flower stalks 0.2 to 0.3 in (5 to 7 mm) long. Each flower has a five-lobed calyx about 0.4 in (10 to 11 mm) long and a trumpet-shaped greenish-white corolla with a tube 0.3 to 0.4 in (7 to 11 mm) long and lobes 0.5 to 0.6 in (12 to 15 mm) long. The fruit is a drupe (a fruit with a firm outer layer, a fleshy inner layer, and a stony inner layer surrounding a single seed) thought to be yellowish brown at maturity, 1.8 to 1.9 in (4.5 to 4.9 cm) long, and 0.9 to 1.1 in (2.4 to 2.9 cm) wide. This species is distinguished from other Hawaiian species of the genus by the greater height of mature trees, the open flower clusters, the longer flower stalks, and the larger calyx and lobes of the corolla (Wagner *et al.* 1990).

Historically, *Ochrosia kilaueaensis* has been collected on the northern slope of Hualalai and on the eastern slope of Mauna Loa. There is one known extant population located at Puu Waawaa on State-owned land and consisting of an unknown number of individuals (HHP 1991q1, 1991q2). This species typically grows in koa- and 'ohi'a- or lama-dominated Montane Mesic Forests at elevations between 2,200 and 4,000 ft (670 and 1,220 m) (Gagne and Cuddihy 1990, HHP 1991q1, 1991q2, Wagner *et al.* 1990). Associated species include 'aiea, kauila, *Gardenia brighamii* (nanu), and *Psychotria hawaiiensis* (kopiko) (HHP 1991q1). The major threats to *Ochrosia kilaueaensis* are competition from alien species such as fountain grass, browsing by feral goats, fire, and stochastic extinction and/or reduced reproductive vigor due to the single existing known population (Bruegmann 1990, CPC 1990).

Gray (1862) named *Plantago pachyphylla* var. *hawaiiensis* and *P. pachyphylla* var. *hawaiiensis* subvar. *gracilis* based on specimens collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841 and by Remy in the 1850s, respectively. Leveille (1911) published *P. gaudichaudiana* based on another specimen from the island of Hawaii. In 1923, Pilger raised the taxon to specific rank, resulting in *P. hawaiensis*, and also published a new variety, var. *laxa* (Pilger 1937). The specific epithet refers to the island where the plant grows. In the current treatment of the genus, only

P. hawaiensis is accepted (Wagner *et al.* 1990).

Plantago hawaiensis of the plantain family (Plantaginaceae), a perennial herb which grows from a stout short stem, has thick, leathery, narrowly oval or oblong leaves located at the base of the plant which measure 3 to 8.7 in (7.5 to 22 cm) long and usually 0.6 to 1.3 in (1.5 to 3.2 cm) wide. The flowering stalk is 7.9 to 35 in (20 to 90 cm) long and is topped by a spike usually 5.9 to 9 in (15 to 23 cm) long. Each upward pointing flower, subtended by a single bract 0.08 to 0.1 in (2.1 to 2.6 mm) long, has a four-lobed calyx 0.06 to 0.09 in (1.6 to 2.2 mm) long and a trumpet-shaped corolla about 0.04 in (1 mm) long. The capsule, 0.1 to 0.2 in (2.6 to 4 mm) long and projecting from the calyx, opens to release four to six dull black seeds about 0.04 in (1 mm) long and winged on one end. This species is distinguished from other endemic and naturalized species of the genus in Hawaii by its perennial herbaceous habit; its thick leathery leaves; its upward pointing flowers; and its capsules which project from the calyx (Wagner *et al.* 1990).

Historically, *Plantago hawaiensis* was found only on the island of Hawaii on the southern slope of Mauna Kea; the northeastern, southeastern, and southern slopes of Mauna Loa; and the western slope of Hualalai. Today, the species is known to occur on the Humuula Saddle, in the Upper Waiakea Forest Reserve, and near the Keapohina Upland on privately and State-owned land. The four extant populations extend over a distance of approximately 14 by 4 mi (23 by 6 km). There are no more than 10 known individuals (HHP 1991r1 to 1991r6). This species typically grows in boggy conditions in Montane Wet Herblands or in Montane Dry Shrublands dominated by koa or 'ohi'a trees of short stature, or sometimes in lava cracks, at elevations between 5,900 and 6,400 ft (1,800 and 1,950 m) (HHP 1991r1, 1991r2, 1991r4, 1991r6, Wagner *et al.* 1990). The major threat to *Plantago hawaiensis* is stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations.

Portulaca sclerocarpa was first collected during the United States Exploring Expedition of 1840 and 1841 and was named by Gray (1854). The specific epithet refers to the hardened capsule.

Portulaca sclerocarpa of the purslane family (Portulacaceae), a perennial herb with a fleshy tuberous taproot which becomes woody, has stems up to about 7.9 in (20 cm) long. The stalkless, succulent, grayish-green leaves are almost circular in cross-section, 0.3 to 0.8 in (8 to 21 mm) long, and about 0.06 to 0.1 in (1.5 to 2.5 mm) wide. Dense tufts of hairs are located in each leaf axil and underneath the tight clusters of three to six stalkless flowers grouped at the ends of the stems. Sepals are about 0.2 in (5 mm) long and have membranous edges. Petals are white, pink, or pink with a white base, about 0.4 in (10 mm) long, and surround about 30 stamens and an 8-branched style. The hardened capsules are about 0.2 in (4 to 4.5 mm) long, have walls 0.01 to 0.02 in (0.18 to 0.5 mm) thick, open very late or not at all, and contain glossy, dark reddish-brown seeds about 0.02 in (0.4 to 0.6 mm) long. This species differs from other native and naturalized species of the genus in Hawaii by its woody taproot, its narrow leaves, and the colors of its petals and seeds. Its closest relative, *Portulaca villosa*, differs mainly in its thinner-walled, opening capsule (Wagner *et al.* 1990).

Historically, *Portulaca sclerocarpa* was found on an islet off the south coast of the island of Lanai and on the island of Hawaii in the Kohala Mountains, on the northern slope of Hualalai, the northwestern slope of Mauna Loa, and near Kilauea Crater. There is one extant population on Poopoo Islet off the coast of Lanai which contains about 10 plants (R. Hobdy, pers. comm., 1992). On Hawaii, 11 extant populations extend over a distance of about 54 by 32 mi (87 by 51 km) and are located on 3 cinder cones in the Nohonaohae area; at PTA near the Multi-Purpose Range Complex (MPRC); at Puu Anahulu; and near Puu Keanui and Puu Lehua on privately, State-, and federally owned land. The 11 populations on the island of Hawaii contain a total of approximately 72 to 122 individuals (Cuddihy *et al.* 1983, HHP 1991s1 to 1991s12; R. Shaw, pers. comm., 1992; R. Shaw, *in litt.*, 1993). This species typically grows in Montane Dry Shrublands, often on bare cinder and even near steam vents, at elevations between 3,380 and 5,340 ft (1,030 and 1,630 m) (Gagne and Cuddihy 1990, Wagner *et al.* 1990). Associated species include mamane and 'ohi'a (HHP 1991s1, 1991s8 to 1991s10, 1991s12, HPCC 1991i). The major threats to *Portulaca sclerocarpa* are competition from alien grasses such as fountain grass and *Andropogon virginicus* (broomsedge); trampling and habitat disturbance by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; and fire (HHP 1991s2, 1991s9, HPCC 1991i; R. Shaw, pers. comm., 1992).

Based on collections by Rock on the island of Hawaii, Beccari named *Pritchardia affinis* and three varieties: Var. *halophila* (misspelled as "holaphila"), var. *rhopalocarpa*, and var. *gracilis* (Beccari and Rock 1921). In the current treatment of the genus (Read and Hodel 1990), no subspecific taxa are recognized.

Pritchardia affinis of the palm family (Arecaceae) is a fan-leaved tree 33 to 82 ft (10 to 25 m) tall with pale or pinkish soft wool covering the underside of the petiole and extending onto the leaf blade. The wedge-shaped leaf has a green and smooth upper surface and a pale green lower surface with scattered yellowish scales. The branched, hairless flower clusters are located among the leaves. Each flower comprises a cup-shaped, three-lobed calyx; three petals; six stamens; and a three-lobed stigma. The spherical fruit is about 0.9 in (2.3 cm) in diameter. This species is distinguished from other species of *Pritchardia* by the long, tangled, woolly hairs on the underside of the petiole and the base of the lower leaf blade; the stout hairless flower clusters which do not extend beyond the wedge-shaped leaves; and the smaller, spherical fruit (Read and Hodel 1990).

Historically, *Pritchardia affinis* was found only on the island of Hawaii in the Kohala Mountains and along the western and southeastern coasts. Today, scattered individuals of the species can be found throughout much of the historically known coastal range at Kiholo, at Kukio, near Palani Road, on Alii Drive in Kailua, in Captain Cook, at Hookena, at Milolii, and at Punaluu. Most plants grow within areas of human habitation or development, and the trees may have been cultivated by Hawaiians or others rather than having occurred in these areas naturally. There are an estimated 50 to 65 known individuals at 8 or more localities which extend along about 110 mi (180 km) along the coast on privately and State-owned land (HHP 1991t1 to 1991t6; Norman Bezona, Hawaii Cooperative Extension Service, Brien Meilleur, Amy Greenwell Ethnobotanical Garden, and P. Weissich, pers. comms., 1992). This species typically grows in Coastal Mesic Forests at coastal sites or in gulches further inland at elevations between sea level and 2,000 ft (0 and 610 m), possibly associated with brackish water (HHP 1991t2, Read and Hodel 1990; C. Corn, pers. comm., 1992). Native associated species of this loulu are unknown, since all trees are found in cultivated zones, which have long been cleared of their native cover (B. Meilleur, pers. comm., 1992). The major threats to *Pritchardia affinis* are predation on seeds by roof rats, development of land where individuals

grow, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals. In the past, the species' natural habitat was cleared for agriculture and housing, and feral pigs destroyed seedlings of the species, preventing regeneration (Beccari and Rock 1921, Hull 1980; C. Corn, pers. comm., 1992).

Gray (1854) mentioned an unnamed variety of *Silene struthioloides*, in reference to a specimen collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841. Sherff named this taxon *S. struthioloides* var. *gracilis* in 1946 and later elevated it to specific rank, resulting in *S. hawaiiensis* (1949). He chose the specific epithet to refer to the island where the plant is found.

Silene hawaiiensis of the pink family (Caryophyllaceae), a sprawling shrub with slanting or climbing stems 6 to 16 in (15 to 40 cm) long originating from an enlarged root, is covered with short, often sticky hairs. The stalkless narrow leaves are 0.2 to 0.6 in (6 to 15 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. Flowers are arranged in elongate clusters. Each flower has a stalk 0.1 to 0.2 in (3 to 6 mm) long; a five-toothed purple or purple-tinged calyx 0.4 to 0.6 in (11 to 14 mm) long; and five petals, greenish white above and maroon below, with a stalk-like base and a flat, two-lobed, expanded portion about 0.2 in (4.5 to 5.5 mm) long. The fruit is a capsule about 0.3 in (6.5 to 8 mm) long which releases pale brown seeds 0.02 to 0.03 in (0.4 to 0.7 mm) long. This species differs from others of *Silene* in Hawaii by its growth habit; its covering of short, often sticky hairs; the shape of its leaves; the arrangement of its flower clusters; and the color of its petals (Wagner *et al.* 1990).

Historically, *Silene hawaiiensis* was found only on the island of Hawaii from the western slope of Mauna Kea; the summit of Hualalai; Humuula Saddle; the northern, western, and northwestern slopes of Mauna Loa; and near Kilauea Crater. Today, over 50 populations are found in Hamakua District; on Humuula Saddle; at PTA, including inside MPRC; north of Puu Keanui; and in HVNP on privately, State-, and federally owned land. These populations extend over a distance of approximately 12 by 7 mi (19 by 11 km) and contain over 3,000 individuals (HHP 1991u1 to 1991u10, HPCC 1991j; R. Shaw, pers. comm., 1992, R. Shaw, *in litt.*, 1993). This species typically grows in Montane or Subalpine Dry Shrublands in decomposed lava and ash, but can be found on all ages of lava and cinder substrates, at elevations between 3,000 and 4,300 ft (900 and 1,300 m) and sometimes up to 8,500 ft (2,575 m) (Wagner *et al.* 1990; R. Shaw, *in litt.*, 1993). Associated species include *Dodonaea viscosa* ('a'ali'i), *Styphelia tameiameiae* (pukiawe), and *Vaccinium reticulatum* ('ohelo) (HHP 1991u6, HPCC 1991j; R. Shaw, pers. comm., 1992). Many populations of *Silene hawaiiensis* are threatened by competition with alien plant species, particularly fountain grass; grazing, browsing, and trampling by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; fire; and volcanic activity (HPCC 1991j). While the existing populations of *Silene hawaiiensis* are not in immediate danger of extinction, if these threats are not curtailed, the species will become endangered in the future.

Gray (1861a) named a plant collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841 *Vittadenia arenaria*. Hillebrand (1888) transferred the species to the genus *Tetramolopium* and named a second variety, var. *dentatum*. In the current treatment of the genus (Lowrey 1986, 1990), two subspecies, ssp. *arenarium* and ssp. *laxum*, are recognized. Variety *confertum*, described by Sherff in 1934, is recognized (Lowrey 1986, 1990) as a variety of ssp. *arenarium*. Because of a recently recognized typification problem, ssp. *laxum* actually should be referred to as ssp. *arenarium*, leaving what was called ssp. *arenarium* without a published name (Laven *et al.* 1991).

Tetramolopium arenarium of the aster family (Asteraceae), an erect tufted shrub 2.6 to 4.3 ft (0.8 to 1.3 m) tall, is covered with tiny glands and straight hairs. The alternate, toothless or shallowly toothed leaves are more or less lance-shaped, 0.6 to 1.5 in (15 to 37 mm) long, and 0.1 to 0.4 in (3 to 9 mm) wide. Five to 11 heads (dense flower clusters) are grouped at the end of each stem. Each head comprises a bell-shaped structure of 20 to 34 bracts 0.1 to 0.2 in (2.5 to 5 mm) high and 0.2 to 0.4 in (4 to 9 mm) in diameter beneath the flowers; a single series of 22 to 45 white, male ray florets 0.05 to 0.09 in (1.3 to 2.2 mm) long; and 4 to 9 bisexual disk florets with maroon petals 0.12 to 0.17 in (3.1 to 4.4 mm) long. Fruits are compressed achenes 0.06 to 0.1 in (1.5 to 3 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. This species is distinguished from others of the genus by its erect habit; the presence and types of glands and hairs on the plant; the fewer heads per flower cluster; the larger, male ray florets; the fewer, bisexual, maroon-petalled disk florets; and the wider achenes (Lowrey 1990).

Historically, *Tetramolopium arenarium* was found on the island of Maui on the western slope of Halakeala and on the island of Hawaii from the Kohala Mountains, the northwestern slopes of Mauna Kea and Mauna Loa, and the slopes of Hualalai. Only one population is known today, and it occurs on Hawaii in Kipuka Kalawamauna at PTA on federally managed land. At last count (January 1993), there were 29 reproductive and 79 juvenile plants in a 660 by 200 ft (200 by 60 m) area (HHP 1991v1 to 1991v4, 1991w, HPCC 1990a, Laven *et al.* 1991; R. Shaw, pers. comm., 1992; R. Shaw, *in litt.*, 1993). This species typically grows in open 'a'ali'i-dominated Lowland or Montane Dry Forests at elevations between 2,600 and 4,900 ft (800 and 1,500 m) (Lowrey 1990). Associated species include 'a'ali'i, pukiawe, *Chamaesyce olowaluana* ('akoko), and *Dubautia linearis* (na'ena'e) (HPCC 1990a). The major threats to *Tetramolopium arenarium* are competition from alien plant species, particularly fountain grass; grazing, browsing, trampling, and habitat disturbance by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; fire; and stochastic extinction and/or reduced reproductive vigor due to the single existing population (Douglas *et al.* 1989, HPCC 1990a, Herbst and Fay 1979).

Hillebrand (1888) described *Zanthoxylum hawaiiense* based on a specimen collected on the island of Hawaii and also indicated an unnamed variety for a specimen collected on Lanai. Other names published for portions of this taxon include: *Z. bluettianum* (Rock 1913), *Z. hawaiiense* var. *citriodora* (Rock 1913), *Z. hawaiiense* var. *velutinosum* (Rock 1913), and *Z. hawaiiense* var. *subacutum* (St. John 1976). Some authors placed Hawaiian species in the genus *Fagara*, resulting in *F. hawaiiensis* (Engler 1896) and *F. bluettiana* (Engler 1931). Sherff (1958) named *F. hawaiiensis* var. *citriodora*, *F. hawaiiensis* var. *subacutata*, and *F. hawaiiensis* var. *velutinosa*, all of which are considered within the range of variation of *Z. hawaiiense* in the current treatment of the Hawaiian species (Stone *et al.* 1990).

Zanthoxylum hawaiiense of the rue family (Rutaceae), a thornless tree usually 10 to 26 ft (3 to 8 m) tall with a trunk up to 10 in (25 cm) in diameter, has alternate leaves comprising three leathery, triangular-oval or lance-shaped, gland-dotted, lemon-scented, toothed leaflets usually 1.3 to 3.9 in (3.4 to 10 cm) long and 0.6 to 2 in (1.5 to

5 cm) wide. The stalk of each of the two side leaflets has one joint, and the stalk of the terminal leaflet has two joints. Flowers are usually either male or female, and usually only one sex is found on a single tree. Clusters of 15 to 20 flowers 1.6 to 3.1 in (4 to 8 cm) long have a main flower stalk 0.8 to 2 in (20 to 50 mm) long and individual flower stalks 0.08 to 0.2 in (2 to 4 mm) long. Each flower has four narrowly triangular sepals about 0.04 in (1 mm) long and four hairless petals (possibly absent in male flowers) of an unknown color. The fruit is a sickle-shaped follicle (dry fruit that opens along one side) 0.3 to 0.4 in (8 to 10 mm) long, containing one black seed about 0.3 in (7 to 8 mm) in diameter. This species is distinguished from other Hawaiian species of the genus by its leaves, which are always made up of three leaflets of similar size; the presence of only one joint on some of the leaflet stalks; and the shorter follicle with a rounded tip (Stone *et al.* 1990).

Historically, *Zanthoxylum hawaiiense* was known to occur in the central portion of the island of Kauai; on east Molokai; in the central part of the island of Lanai; on east Maui on the southwestern and southern slopes of Haleakala; and on the island of Hawaii in the Kohala Mountains, on the northern slope of Hualalai, and on the northwestern slope of Mauna Loa. There is now one living individual known on Kauai in Kawaiiki Valley on State-owned land. On Molokai, three extant populations of the species occur on privately and State-owned and federally managed land in Kalaupapa National Historical Park (NHP), in Pelekunu Valley, and near Puu Kolekole. The Molokai populations extend over a distance of about 3 by 2 mi (5 by 3 km). Although the number of plants at one of the sites is uncertain, it is estimated that the three populations contain five plants. On Lanai, one population with an unknown number of individuals has been reported on privately owned property in Kaiholena Gulch. On east Maui, extant populations of *Z. hawaiiense* have been found in Kahikinui, above Lualailua, above Kanaio, and in Auwahi. These four populations extend over a distance of approximately 5 by 3 mi (8 by 5 km) and contain a total of fewer than ten plants. On the island of Hawaii, individuals are found at Puu Waawaa and at PTA on State-owned and federally managed land. These extant populations are located about 13 mi (21 km) apart and contain a total of about 150 plants (R. Shaw, pers. comm., 1993; R. Shaw *in litt.*, 1993). In summary, *Zanthoxylum hawaiiense* is currently located on 5 islands and consists of 11 populations and about 166 individuals (HHP 1991x1 to 1991x16; R. Shaw, pers. comms., 1991, 1993; R. Shaw, *in litt.*, 1993).

Zanthoxylum hawaiiense typically grows in 'ohi'a-dominated Lowland Dry or Mesic Forests, and Montane Dry Forests, often on aa lava, at elevations between 1,800 and 5,710 ft (550 and 1,740 m) (Gagne and Cuddihy 1990, Stone *et al.* 1990). Associated species include *Antidesma platyphyllum* (hame) on Kauai, *Pleomele auwahiensis* (hala pepe) on Molokai, *Streblus pendulinus* (a'ia'i) on Maui, and mamane and naio on the island of Hawaii (HHP 1991x1, 1991x5, 1991x9, 1991x11, HPCC 1990b; R. Shaw, pers. comm., 1992). A threat to *Z. hawaiiense* on Kauai is competition from alien plant species such as lantana and *Melia azedarach* (Chinaberry) (HHP 1991x11). On Molokai, competition with alien plant species, grazing, browsing, trampling, and habitat disturbance by feral goats are threats (HHP 1991x5; Lyman Perry, The Nature Conservancy of Hawaii, *in litt.*, 1993). On Maui, competition with Kikuyu grass, which forms a continuous mat in many areas, and grazing, browsing, trampling, and habitat disturbance by cattle and goats are threats (A. Medeiros, pers. comm., 1992; A. Medeiros and Lloyd Loope, Haleakala National Park, *in litt.*, 1993). The major threats to the species on the island of Hawaii are competition from alien plant species such as fountain grass; grazing, browsing, trampling, and habitat disturbance by feral goats and sheep; habitat disturbance and damage to plants as a result of military exercises; and fire (CPC 1990, HHP 1991x10, HPCC 1990b). In addition, the species is threatened by stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Cyanea hamatiflora* ssp. *carlsonii* (as *C. carlsonii*), *Cyanea shipmanii, Hesperocnide sandwicensis, Ischaemum byrone, Nothocestrum breviflorum* (as *N.* breviflorum var. *breviflorum*), *Portulaca sclerocarpa*, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citriodora*) were considered to be endangered. *Cyrtandra giffardii, Silene hawaiiensis* (as *S. hawaiiensis* var. *hawaiiensis*), and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and *Z. hawaiiense* var. *velutinosum*) were considered to be threatened. *Clermontia pyrularia, Isodendrion pyrifolium, Nothocestrum breviflorum* (as *N. breviflorum* var. *longipes*), and *Tetramolopium arenarium* (as *T. arenarium* var. *arenarium, T. arenarium* var. *confertum*, and *T. arenarium* var. *dentatum*) were considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered or thought to be extinct. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82480), September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). In these notices, 10 of the taxa (including synonymous taxa) that had been proposed as endangered in the June 16, 1976, proposed rule were treated as Category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. *Clermontia*

lindseyana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea shipmanii, Hesperocnide sandwicensis, Ischaemum byrone, Nothocestrum breviflorum, Portulaca sclerocarpa, and *Zanthoxylum hawaiiense,* which were proposed as endangered in the June 16, 1976, proposed rule, were considered Category 1 candidates on all three notices of review; *Cyanea hamatiflora* ssp. *carlsonii* was considered a Category 1 taxon as *Cyanea carlsonii* in the 1980 and 1985 notices and as *Cyanea hamatiflora* ssp. *carlsonii* in the 1990 notice. *Cyanea stictophylla* and *Silene hawaiiensis* were considered Category 1 species in all three notices. In the 1980 and 1985 notices, *Isodendrion pyrifolium* and *Tetramolopium arenarium* were considered Category 1* species. In the 1990 notice, these two species were accorded Category 3A status, but because new information regarding their existence has become available, they were proposed in 1992 for listing. Category 1* taxa are those which are possibly extinct, and Category 3A taxa are those for which the Service has persuasive evidence of extinction. *Cyrtandra giffardii* appeared as a Category 2 species and *Clermontia peleana* as a Category 3C species in the 1980 and 1985 notices. *Ochrosia kilaueaensis* first appeared as a Category 2 species in the 1985 notice. Category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. Category 3C taxa are those which are more abundant than previously believed, and/or those that are not subject to any identifiable threat. Because new information provided support for listing, the above three species were conferred Category 1 status in the 1990 notice. The Service recognized *Cyanea copelandii* ssp. *copelandii, Cyrtandra tintinnabula, Mariscus fauriei, Plantago hawaiensis,* and *Pritchardia affinis* as Category 1 taxa for the first time in the 1990 notice.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions that present substantial information indicating that the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the Service to consider the petition as having been resubmitted, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final 1-year finding for these taxa.

On December 17, 1992, the Service published in the **Federal Register** (57 FR 59951) a proposal to list 22 plant taxa from the island of Hawaii as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program, the Hawaii Plant Conservation Center, and observations of botanists and naturalists. The Service now determines 20 taxa primarily from the island of Hawaii to be endangered and 1 taxon from the island of Hawaii to be threatened, with the publication of this rule. One additional taxon has been withdrawn from consideration for listing.

Summary of Comments and Recommendations

In the December 17, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final decision on the proposal. The public comment period ended on February 16, 1993. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comments were published in the Honolulu Advertiser on January 4, 1993 and in the Hawaii Tribune Herald on January 6, 1993. Nine letters of comment were received. No requests for public hearings were received. Additional biological information contained in these comments has been incorporated into the final rule. Three letters provided only biological information and did not provide any comments on the proposed listing. Three letters provided both additional information and supported the listing of all 22 species as endangered species. One letter provided additional biological information and specifically recommended that three of the species not be listed as endangered or threatened. One letter suggested that it would be better to promote the horticultural use of a particular taxon rather than list it as endangered. These issues and the Service's response are discussed below:

Issue 1: Status of *Hesperocnide sandwicensis:* One respondent stated that this species should not be listed as an endangered or threatened plant, because there are a large number of individuals (possibly over 1 million), the taxon is widespread, the species is adapted to disturbance, there is an abundance of protected habitat, and there are few serious threats to its survival.

Service Response: At the time the proposed rule was written, the number of *Hesperocnide sandwicensis* was thought to range from several hundred to approximately 1,300 individuals. Extensive surveys in 1992 and early 1993 have documented tens of thousands of plants on lava flows between Mauna Loa and Mauna Kea (R. Shaw, *in litt.,* 1993). The Service has carefully considered the respondent's comments and concurs with his evaluation. Due to the location and large number of new populations and individuals now known, the Service is not including *Hesperocnide sandwicensis* in the final rule. This species is placed in category 3C of the Service's plant notice of review and is removed from the list of candidate species, although the Service will continue to monitor threats to the populations.

Issue 2: Status of *Pritchardia affinis:* One respondent suggested that an alternative to listing the species as endangered would be to promote the use of *Pritchardia affinis* for use as a culturally significant landscape plant.

Service Response: Designating *Pritchardia affinis* as an endangered species affords this taxon significant legal protection. While the use of species such as *Pritchardia affinis* for landscaping purposes may have important educational or cultural benefits, such plantings would not ensure the protection of the few remaining individuals in the wild.

Issue 3: Status of *Silene hawaiiensis:* One respondent stated that this species should not be listed as an endangered or threatened species, because the taxon is relatively common throughout its range (over 3,000 plants), the taxon is widely distributed, many populations are in protected areas, there are few serious threats to its survival, and there are significant taxonomic uncertainties regarding its status as a species.

Service Response: At the time the proposed rule was written, the number of *Silene hawaiiensis* was thought to be between 2,600 and 2,700 individuals in 17 populations. Despite extensive surveys in the area of PTA, the total number of known plants is still fewer than 4,000 individuals (R. Shaw, *in litt.,*

1993). While small populations of this taxon are found throughout the area between Mauna Loa and Mauna Kea, most populations are still threatened by fire, grazing, and disturbances. Fewer than 1,000 plants are known from well protected areas (Hawaii Volcanoes National Park). The most authoritative taxonomic treatment of Hawaiian *Silene* maintains this taxon as a valid species (Wagner *et al.* 1990). No published taxonomic studies since then have questioned the validity of *Silene hawaiiensis*. Based on the above information, the Service determines that *Silene hawaiiensis* is not now in danger of extinction, but that *Silene hawaiiensis* is likely to become endangered in the foreseeable future if the threats posed by fire, competition from alien plant species, and feral goats, pigs, and sheep are not curbed. Thus, this taxon is designated a threatened species.

Issue 4: Status of *Zanthoxylum hawaiiense:* One respondent questioned if it was possible to list this taxon as endangered only on the islands of Kauai, Molokai, Lanai, and Maui and not list it on the island of Hawaii because it is more common on Hawaii (possibly between 750 and 3,750 plants).

Service Response: The Act does not allow for the listing of plants in only a portion of their ranges. Consequently, a plant species is listed as endangered if it is in danger of extinction over all or a significant portion of its range. At the time the proposed rule was written, the number of *Zanthoxylum hawaiiense* was thought to be fewer than 75 individuals. Extensive surveys in the area of PTA have located approximately 150 individuals (R. Shaw, pers. comm., 1993). The respondent's figures of between 750 and 3,750 plants is based upon an extrapolation of plant densities on PTA to lower elevation areas which, in general, have been more affected by cattle grazing, goats, pigs, and fires. This type of extrapolation is not warranted, given the potential differences between the two areas. However, even if these estimates were correct, the species would still be in danger of extinction due to the presence, throughout its entire range, of uncontrolled threats such as fire; competition from alien plant species; and susceptibility to grazing, browsing, trampling, and habitat disturbance by feral goats and sheep. For these reasons, *Zanthoxylum hawaiiense* is determined to be an endangered species.

Summary of Factors Affecting the Species

After thorough review and consideration of all information available, the Service has determined that 20 plant taxa from the island of Hawaii should be classified as endangered species and 1 taxon from the island of Hawaii should be classified as threatened. One taxon has been withdrawn from consideration.

Procedures found at section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 21 taxa are summarized in Tables 1 and 2.

TABLE 1.—SUMMARY OF THREATS

Species	Alien mammals	Disease insects	Alien plants	Limited numbers*
Clermontia lindseyana	CGPr		X	
Clermontia peleana	PR			X1
Clermontia pyrularia	r		X	X1,2
Colubrina oppositifolia	P	X	X	
Cyanea copelandii ssp. *copelandii*	r			X1,2
Cyanea hamatiflora ssp. *carlsonii*	Cr		X	X2,3
Cyanea shipmanii	r			X2,3
Cyanea stictophylla	Cr			X2,3
Cyrtandra giffardii	P			X2,3
Cyrtandra tintinnabula	P			X2,3
Ischaemum byrone	dg		X	
Isodendrion pyrifolium			X	X2,3
Mariscus fauriei	DG		X	X2,3
Nothocestrum breviflorum	C		X	X2,3
Ochrosia kilaueaensis	Gr	X	X	X1,2
Plantago hawaiensis		X	X	X1,2
Portulaca sclerocarpa	GPS		X	
Pritchardia affinis	R	P		X3
Silene hawaiiensis	GPS		X	
Tetramolopium arenarium	GPS		X	X2
Zanthoxylum hawaiiense	dG		X	X

Table 1. Key:
C/c=Cattle
D/d=Deer
G/g=Goats
P/p=Pigs
R/r=Rats
S/s=Sheep
X=Immediate and significant threat. Alien mammals shown in uppercase characters.
P=Potential threat. Alien mammals shown in lowercase characters.
*=No more than 100 known individuals and/or no more than 5 known populations.
1=No more than 10 known individuals.
2=No more than 5 known populations.
3=No more than 100 known individuals.

TABLE 2.—SUMMARY OF THREATS

Species	Fire	Natural disasters	Human impacts	Military
Clermontia lindseyana				
Clermontia peleana		X	X	
Clermontia pyrularia			P	
Colubrina oppositifolia	X		P	X
Cyanea copelandii ssp. *copelandii*			P	
Cyanea hamatiflora ssp. *carlsonii*				
Cyanea shipmanii				
Cyanea stictophylla				
Cyrtandra giffardii			P	
Cyrtandra tintinnabula				
Ischaemum byrone		X	X	
Isodendrion pyrifolium	X		X	
Mariscus fauriei				
Nothocestrum breviflorum	X		X	
Ochrosia kilaueaensis	X		P	
Plantago hawaiensis				
Portulaca sclerocarpa	X		P	X
Pritchardia affinis			X	
Silene hawaiiensis	X	X	P	X
Tetramolopium arenarium	X		P	X
Zanthoxylum hawaiiense	X		P	X

Key: X=Immediate and significant threat.
P=Potential threat.

These factors and their application to *Clermontia lindseyana* Rock ('oha wai), *Clermontia peleana* Rock ('oha wai), *Clermontia pyrularia* Hillebr. ('oha wai), *Colubrina oppositifolia* Brongn. ex H. Mann (kauila), *Cyanea copelandii* Rock ssp. *copelandii* (haha), *Cyanea hamatiflora* ssp. *carlsonii* (Rock) Lammers (haha), *Cyanea shipmanii* Rock (haha), *Cyanea stictophylla* Rock (haha), *Cyrtandra giffardii* Rock (ha'iwale), *Cyrtandra tintinnabula* Rock (ha'iwale), *Ischaemum byrone* (Trin.) Hitch. (Hilo ischaemum), *Isodendrion pyrifolium* A. Gray (wahine noho kula), *Mariscus fauriei* (Kukenth.) T. Koyama (NCN), *Nothocestrum breviflorum* A. Gray ('aiea), *Ochrosia kilaueaensis* St. John (holei), *Plantago hawaiensis* (A. Gray) Pilg. (laukahi kuahiwi), *Portulaca sclerocarpa* A. Gray (po'e), *Pritchardia affinis* Becc. (loulu), *Silene hawaiiensis* Sherff (NCN), *Tetramolopium arenarium* (A. Gray) Hillebr. (NCN), and *Zanthoxylum hawaiiense* Hillebr. (a'e) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The habitat of the plants included in this rule has undergone extreme alteration because of past and present land management practices, including deliberate alien animal and plant introductions; agricultural, commercial, and urban development; and military and recreational use. Natural disturbances such as flooding, landslides, and volcanic activity also destroy habitat and can have a significant effect on small populations of plants. Competition with alien plants as well as destruction of plants and modification of habitat by introduced animals are the primary threats facing 18 of the 21 taxa included in this rule (See Table 1).

Beginning with Captain James Cook in 1792, early European explorers introduced livestock, which became feral, increased in number and range, and caused significant changes to the natural environment of Hawaii. The 1848 provision for land sales to individuals allowed large-scale agricultural and ranching ventures to begin. So much land was cleared for these enterprises that climatic conditions began to change, and the amount and distribution of rainfall were altered (Wenkam 1969). Plantation owners supported reforestation programs which resulted in many alien trees being introduced in the hope that the watershed could be conserved.

Past and present activities of introduced alien mammals are the primary factor in altering and degrading vegetation and habitats on the island of Hawaii as well as on Kauai, Oahu, Molokai, and Maui, where some populations of these species occur. Feral ungulates trample and eat native vegetation and disturb and open areas. This causes erosion and allows the entry of alien plant species (Cuddihy and Stone 1990, Wagner *et al.* 1990).

Fourteen taxa in this rule are directly threatened by habitat degradation resulting from introduced ungulates: 4 taxa are threatened by cattle, 1 taxon by deer, 7 taxa by goats, 8 by pigs, and 4 by sheep.

Axis deer (*Axis axis*), native to Sri Lanka and India, were first introduced to the Hawaiian Islands in 1868 as a game animal on Molokai, later to Oahu and Lanai, and finally to east Maui in 1960. Hunting of axis deer is allowed only on Molokai and Lanai during 2 months of the year (Hawaii DLNR 1985, Tomich 1986). The animal constitutes a threat to *Mariscus fauriei* on Molokai and a potential threat to *Ischaemum byrone* and *Zanthoxylum hawaiiense* on Molokai and Maui (HHP 1991x5, HPCC 1990b, Medeiros *et al.* 1986; R. Hobdy, pers. comm., 1992).

Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds developed as a result of restrictions on killing cattle decreed by King Kamehameha I. While small cattle ranches were developed on Kauai, Oahu, and west Maui, very large ranches of tens of thousands of acres were created on east Maui and Hawaii. Much of the land used in these private enterprises was leased from the State or was privately owned and considered Forest Reserve and/or Conservation District land. On Kauai, both sides of Waimea Canyon were supporting large

cattle ranching operations by the 1870s (Ryan and Chang 1985). Feral cattle roamed Oahu, but most were removed by the early 1960s; today only a few can be found in the northwestern part of the island (J. Lau, pers. comm., 1990). Feral cattle were formerly found on Molokai and Maui and damaged the forests there. Feral cattle can presently be found on the island of Hawaii, and ranching is still a major commercial activity there. Hunting of feral cattle is no longer allowed in Hawaii (Hawaii DLNR 1985). Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle becomes degraded to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. Several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Cuddihy and Stone 1990, Tomich 1986).

The habitats of many of the plants in this rule were degraded in the past by feral cattle, and this has had effects which still persist. Some taxa in this rule are still being directly affected by cattle. These include: *Clermontia lindseyana, Cyanea hamatiflora* ssp. *carlsonii, Cyanea stictophylla*, and *Nothocestrum breviflorum* (HHP 1991a1, 1991p4, 1991p5, HPCC 1990b, 1991a, 1991h; F. Duvall and A. Medeiros, pers. comms., 1992).

Goats (*Capra hircus*), a species originally native to the Middle East and India, were successfully introduced to the Hawaiian Islands in 1792, and currently there are populations on Kauai, Oahu, Molokai, Maui, and Hawaii. On Kauai, feral goats have been present in drier, more rugged areas since 1820; they still occur in Waimea Canyon. Goats have been on Oahu since about 1820, and they currently occur in the northern Waianae Mountains. On Molokai, goats degrade dry forests at low elevations. On Maui, goats have been widespread for 100 to 150 years and are common throughout the south slope of Haleakala (Medeiros *et al.* 1986). On Hawaii, goats damage low-elevation dry forest, montane parkland, subalpine woodlands, and alpine grasslands. Goats are managed in Hawaii as a game animal, but many herds populate inaccessible areas where hunting has little effect on their numbers. Goat hunting is allowed year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). Goats browse on introduced grasses and native plants, especially in drier and more open ecosystems. They also trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Cuddihy and Stone 1990, Culliney 1988, Tomich 1986). *Clermontia lindseyana, Mariscus fauriei, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* are currently threatened by goats (Bruegmann 1990, CPC 1990, HHP 1991s5, 1991x5, HPCC 1990b; R. Hobdy, A. Medeiros, and R. Shaw, pers. comms., 1992), and *Ischaemum byrone* is potentially threatened by the animal (HHP 1991m11; R. Hobdy, pers. comm., 1992).

Sheep (*Ovis aries*) have become firmly established on the island of Hawaii (Tomich 1986) since their introduction almost 200 years ago (Cuddihy and Stone 1990). Like feral goats, sheep roam the upper elevation dry forests of Mauna Kea (above 3,300 ft (1,000 m)), including PTA, causing damage similar to that of goats (Stone 1985). Sheep have decimated vast areas of native forest and shrubland on Mauna Kea and continue to do so as a managed game species. Sheep threaten the habitat of at least two previously listed endangered species as well as the following plant species included in this rule: *Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* (Cuddihy and Stone 1990, HHP 1991s4, HPCC 1990a, 1990b, Shaw *et al.* 1990, Stone 1985; K. Nagata and R. Shaw, pers. comms., 1992).

Pigs (*Sus scrofa*) are originally native to Europe, northern Africa, Asia Minor, and Asia. European pigs, introduced to Hawaii by Captain James Cook in 1778, became feral and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai, Oahu, Molokai, Maui, and Hawaii and inhabit rain forests and grasslands. Pig hunting is allowed on all islands either year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). While rooting in the ground in search of the invertebrates and plant material they eat, feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and threaten forest regeneration by damaging seeds and seedlings. They disturb soil substrates and cause erosion, especially on slopes. Alien plant seeds are dispersed in their hooves and coats as well as through their digestive tracts, and the disturbed soil is fertilized by their feces, helping these plants to establish (Cuddihy and Stone 1990, Medeiros *et al.* 1986, Smith 1985, Stone 1985, Tomich 1986, Wagner *et al.* 1990). Feral pigs pose an immediate threat to one or more populations of the following taxa in this rule: *Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Cyrtandra giffardii, Cyrtandra tintinnabula, Portulaca sclerocarpa, Silene hawaiiensis*, and *Tetramolopium arenarium* (Bruegmann 1990, CPC 1990, HPCC 1990a, 1991a, 1991d1, 1991d2; J. Lau, A. Medeiros, John Obata, Hawaii Plant Conservation Center, and W. Wagner, pers. comms., 1992).

Land development for housing and commercial activities threatens *Pritchardia affinis, Isodendrion pyrifolium*, and *Nothocestrum breviflorum* (C. Corn, K. Nagata, and P. Weissich, pers. comms., 1992). These threats range from specific, previously approved projects to more general development pressures affecting much of the leeward portion of the island of Hawaii. A State-sponsored housing development at the site of the only known population of *Isodendrion pyrifolium* is currently being modified to reduce its impact on this taxa. However, this modification is not finalized, and the development could still pose a significant threat to the long-term survival of the species.

Illegal cultivation of *Cannabis sativa* (marijuana) occurs in isolated portions of public and private lands in the Hawaiian Islands. This agricultural practice opens areas in native forest into which alien plants invade after the patches are abandoned (Medeiros *et al.* 1988). Marijuana cultivation is considered a threat to the integrity of the habitat of *Clermontia peleana* (Bruegmann 1990, CPC 1990).

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

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all of the taxa in this rule, but especially to *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis*, each of which has only 1 or 2 populations and a total of 10 or fewer known individuals. Any collection of whole plants or reproductive parts of any of these two species could cause an adverse impact on the gene pool and threaten the survival of the species.

C. Disease or Predation

Axis deer, cattle, goats, or sheep have been reported in areas where populations of most of the taxa occur. As the taxa are not known to be

unpalatable to these ungulates, predation is a probable threat where those animals have been reported, potentially affecting the following taxa: *Clermontia lindseyana, Cyanea hamatiflora* ssp. *carlsonii, Cyanea stictophylla, Ischaemum byrone, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense.* The lack of seedlings of several of the taxa and the occurrence of some populations or taxa only in areas inaccessible to ungulates seem to indicate the effect that browsing mammals, especially cattle and goats, have had in restricting the distribution of these plants.

Of the four species of rodents that have been introduced to the Hawaiian Islands, the species with the greatest impact on the native flora and fauna is probably roof or black rat (*Rattus rattus*), which now occurs on all the main Hawaiian Islands around human habitations, in cultivated fields, and in dry to wet forests. Roof rats, and to a lesser extent house mouse (*Mus musculus*), Polynesian rat (*R. exulans*), and Norway rat (*R. norvegicus*) eat the fruits of some native plants, especially those with large, fleshy fruits. Many native Hawaiian plants produce their fruit over an extended period of time, and this produces a prolonged food supply which supports rodent populations. Rodents damage fruit of *Pritchardia affinis* (Beccari and Rock 1921). It is probable that rats damage the fruit of *Ochrosia kilaueaensis*, which has fleshy fruits and occurs in areas where rats are found. Rats feed on *Clermontia peleana*, and, since rats are found in remote areas of most islands in Hawaii, it is likely that predation occurs on the other taxa of *Clermontia* and *Cyanea*, potentially affecting *Clermontia lindseyana, Clermontia pyrularia, Cyanea copelandii* ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii*, and *Cyanea stictophylla* (HPCC 1990a; J. Lau, pers. comm., 1990).

Black twig borer (*Xylosandrus compactus*) is a small beetle about 0.06 in (1.6 mm) in length which burrows into branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs. Twigs, branches, and even the entire plant can be killed from such an infestation. Black twig borer is known to attack *Colubrina oppositifolia* and is a threat to this species (Cuddihy and Stone 1990, HHP 1991e9, 1991e16).

Pritchardia affinis is known to be susceptible to lethal yellows, which is a bacteria-like organism producing disease in many palms. This disease is not yet in Hawaii, but if it ever is accidentally introduced on plant material brought into the State, it is a potential threat to this species. Cultivated loulu specimens in areas outside Hawaii may be affected by the disease (Hull 1980).

D. The Inadequacy of Existing Regulatory Mechanisms

Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4).

None of the 21 taxa in this rule are presently listed as an endangered species by the State of Hawaii. Fifteen of the 21 taxa in this rule have populations located on privately owned land. Two taxa, *Cyanea shipmanii* and *Cyanea stictophylla*, are found exclusively on private land. At least one population of each taxon except *Cyanea shipmanii, Cyanea stictophylla, Silene hawaiiensis,* and *Zanthoxylum hawaiiense* occurs on State land. *Colubrina oppositifolia, Cyanea copelandii* ssp. *copelandii, Cyrtandra giffardii, Cyrtandra tintinnabula,* and *Ischaemum byrone* each have one or more populations located in State parks, Natural Area Reserves, or the State seabird sanctuary, which have rules and regulations for the protection of resources (Hawaii DLNR 1981; HRS, sects. 183D–4, 184–5, 195–5, and 195–8). However, the regulations are difficult to enforce because of limited personnel. One or more populations of at least 18 of the 21 taxa included in this rule are located on land classified within conservation districts and owned by the State of Hawaii or private companies or individuals. Regardless of the owner, lands in these districts, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in conservation districts are chosen by considering how best to make multiple use of the land (HRS, sect. 205–2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205–4, 205–17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205–2, 205–4). For any proposed land use change that will occur on county or State land, will be funded in part or whole by county or State funds, or will occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). Federal listing, because it automatically invokes State listing, would also trigger these other State regulations protecting the plants.

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). The Hawaii DLNR is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1). State and Federal agencies have programs to locate, eradicate, and deter marijuana cultivation, which is a threat to one of the taxa in this rule (CPC 1990). Despite the existence of various State laws and regulations which give protection to Hawaii's native plants, their enforcement is difficult due to limited funding and personnel. These State laws

and regulations are therefore inadequate to protect the taxa that occur on State land. Listing of these 21 plant taxa would reinforce and supplement the protection available under the State Act and other laws. The Federal Endangered Species Act would offer additional protection to these 21 taxa because, if they were to be listed as endangered or threatened, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small numbers of populations and individuals of most of these taxa increase the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. This constitutes a major threat to 15 of the 21 taxa included in this rule (See Table 1). Five of the taxa, *Cyanea copelandii* ssp. *copelandii*, *Cyanea shipmanii*, *Isodendrion pyrifolium*, *Ochrosia kilaueaensis*, and *Tetramolopium arenarium*, are known from a single population. Seven other taxa are known from only two to five populations. Fourteen of the taxa are estimated to number no more than 100 known individuals. Five of these taxa, *Clermontia peleana*, *Clermontia pyrularia*, *Cyanea copelandii* ssp. *copelandii*, *Ochrosia kilaueaensis*, and *Plantago hawaiensis*, number no more than ten known individuals.

One or more species of 12 introduced plants threaten 12 of the taxa in this rule. The original native flora of Hawaii consisted of about 1,000 species, 89 percent of which were endemic. Of the total native and naturalized Hawaiian flora of 1,817 species, 47 percent were introduced from other parts of the world and nearly 100 species have become pests (Smith 1985, Wagner *et al.* 1990). Naturalized, introduced species degrade the Hawaiian landscape and compete with native plants for space, light, water, and nutrients (Cuddihy and Stone 1990). Some of these species were brought to Hawaii by various groups of people, including the Polynesian immigrants, for food or cultural reasons. Plantation owners, alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral animals, supported the introduction of alien tree species for reforestation. Ranchers intentionally introduced pasture grasses and other species for agriculture, and sometimes they inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, Wenkam 1969).

Lantana camara (lantana), brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub which can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). One or more populations of each of the following taxa are threatened by lantana: *Colubrina oppositifolia*, *Nothocestrum breviflorum*, and *Zanthoxylum hawaiiense* (HHP 1991e4, 1991e8, 1991e15, 1991e16, 1991p4, 1991p12, 1991x11, HPCC 1991b, 1991h). *Leucaena leucocephala* (koa haole), a naturalized shrub which is sometimes the dominant species in low elevation, dry, disturbed areas on all of the main Hawaiian islands, threatens *Nothocestrum breviflorum* (Geesnick *et al.* 1990, HHP 1991p12, HPCC 1991h). *Melia azedarach* (Chinaberry), a small tree widely cultivated and naturalized on most of the main Hawaiian Islands, threatens *Zanthoxylum hawaiiense* on Kauai (HHP 1991x11, Wagner *et al.* 1990). *Passiflora mollissima* (banana poka), a woody vine, poses a serious problem to mesic forests on Kauai and Hawaii by covering trees, reducing the amount of light which reaches trees as well as understory, and causing damage and death to trees by the weight of the vines. Animals, especially feral pigs, eat the fruit and distribute the seeds (Cuddihy and Stone 1990, Escobar 1990). Banana poka threatens *Clermontia lindseyana*, *Clermontia pyrularia*, and *Cyanea hamatiflora* ssp. *carlsonii* (HHP 1991a3, 1991y, HPCC 1991c1 to 1991c3). After escaping from cultivation, *Schinus terebinthifolius* (Christmas berry) became naturalized on most of the main Hawaiian Islands (Wagner *et al.* 1990). It threatens *Colubrina oppositifolia*, *Mariscus fauriei*, and *Nothocestrum breviflorum* (HHP 1991e8, 1991e15, 1991e16, 1991o8, 1991p12, HPCC 1991b, 1991g).

Several hundred species of grasses have been introduced to the Hawaiian Islands, many for animal forage. Of the approximately 100 grass species which have become naturalized, 6 species threaten 11 of the 21 taxa in this rule. *Andropogon virginicus* (broomsedge) is a perennial, tufted grass which is naturalized on Oahu and Hawaii along roadsides and in disturbed dry to mesic forest and shrubland. This is a fire-adapted grass which threatens *Portulaca sclerocarpa* (Cuddihy and Stone 1990, HPCC 1991i, O'Connor 1990). *Digitaria ciliaris* (Henry's crabgrass) is an annual grass which forms thick mats. It has naturalized on all the main Hawaiian islands in lawns and pastures and threatens *Ischaemum byrone* (HPCC 1991f, O'Connor 1990). *Oplismenus hirtellus* (basketgrass) is a perennial grass which is naturalized in shaded mesic valleys and forests and sometimes in wet forests on most of the main Hawaiian Islands. *Mariscus fauriei* is threatened by basketgrass (HPCC 1991g, O'Connor 1990). *Pennisetum clandestinum* (Kikuyu grass), an aggressive, perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and has naturalized on four Hawaiian Islands in dry to mesic forest. It produces thick mats which choke out other plants and prevent their seedlings from establishing and has been declared a noxious weed by the U.S. Department of Agriculture (7 CFR 360) (Medeiros *et al.* 1986, O'Connor 1990, Smith 1985). Kikuyu grass is a threat to *Clermontia lindseyana*, and *Zanthoxylum hawaiiense* (HPCC 1991a; A. Medeiros, pers. comm., 1992). *Pennisetum setaceum* (fountain grass) is a fire-adapted bunch grass that has spread rapidly over bare lava flows and open areas on the island of Hawaii since its introduction in the early 1900s. Fountain grass is particularly detrimental to Hawaii's dry forests because it is able to invade areas once dominated by native plants, where it interferes with plant regeneration, carries fires into areas not usually prone to fires, and increases the likelihood of fires (Cuddihy and Stone 1990, O'Connor 1990, Smith 1985). Fountain grass threatens one or more populations of the following taxa: *Colubrina oppositifolia*, *Isodendrion pyrifolium*, *Nothocestrum breviflorum*, *Ochrosia kilaueaensis*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* (HHP 1991p5, HPCC 1990a, 1991h; J. Lau and P. Weissich, pers. comms., 1992).

Because Hawaiian plants were subjected to fire during their evolution only in areas of volcanic activity and from occasional lightning strikes, they are not adapted to recurring fire regimes and are unable to recover well following a fire. Alien plants are often better adapted to fire than native plant species, and some fire-adapted grasses have become widespread in Hawaii; native shrubland can thus be converted to land dominated by alien grasses. The

presence of such species in Hawaiian ecosystems greatly increases the intensity, extent, and frequency of fire, especially during drier months or drought. Fire-adapted alien species can re-establish in a burned area, resulting in a reduction in the amount of native vegetation after each fire. Fire can destroy dormant seeds as well as plants, even in steep or inaccessible areas. Fires may result from natural causes, or they may be accidentally or purposely set by hunters, or military ordnance or personnel. Vegetation within PTA on the northwestern slope of Mauna Loa is particularly vulnerable to fire, as this is an area managed for recreational hunting and used for military training. The only known population of *Tetramolopium arenarium* occurs in Kipuka Kalawamauna, and to protect this area from fires, the U.S. Army has installed firebreaks and now redirects ordnance firing away from that kipuka. Planned military maneuvers are now being re-evaluated in light of several Category 1 and listed endangered species within the boundaries of PTA, and an Environmental Impact Statement is being prepared for the area in response to a court decision (Cuddihy and Stone 1990, U.S. Fish and Wildlife Service 1979; R. Shaw, pers. comm., 1992). Fire is a threat to one or more populations of the following taxa in this rule: *Colubrina oppositifolia, Isodendrion pyrifolium, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense* (HHP 1991e15, 1991p5, HPCC 1990a, 1990b, 1991b, 1991h; J. Lau and K. Nagata, pers. comms., 1992).

Natural changes to habitat and substrate can result in the death of individual plants as well as the destruction of their habitat. This especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges and is often exacerbated by human disturbance and land use practices (See Factor A). Landslides produced by burrowing seabirds in an offshore islet population of *Ischaemum byrone* are a potential threat to that species (HHP 1991m10; R. Hobdy, pers. comm., 1992). Flooding is a threat to *Clermontia peleana*, which often grows in a riparian habitat (Bruegmann 1990, CPC 1990). A population of *Ischaemum byrone* is presumed to have been destroyed by volcanic activity, and another population is affected by drifting black sand (HHP 1991m3; C. Lamoureux, pers. comm., 1992). Some populations of *Silene hawaiiensis* are also considered to be threatened by volcanic activity (HPCC 1991j).

People are more likely to come into contact with taxa that have populations near trails or roads or in recreational areas. Alien plants may be introduced into such areas as seeds on footwear, or people may cause erosion, trample plants, or start fires (Cuddihy and Stone 1990). The following taxa have populations in recreational areas or close to roads or trails and are immediately or potentially threatened by human disturbance: *Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyrtandra giffardii, Ischaemum byrone, Nothocestrum breviflorum, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense.*

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to issue this final rule. Based on this evaluation, this rulemaking will list these 20 plant taxa as endangered: *Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea copelandii* ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Ischaemum byrone, Isodendrion pyrifolium, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Plantago hawaiensis, Portulaca sclerocarpa, Pritchardia affinis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense.* One taxon is listed as threatened, *Silene hawaiiensis.* Fourteen of the taxa determined to be endangered number no more than about 100 individuals and/or are known from 5 or fewer populations. The 20 taxa are threatened by 1 or more of the following: habitat degradation and/or predation by axis deer, cattle, goats, insects, pigs, rats, and sheep; competition from alien plants; fire and natural disasters; human and military impacts; and lack of legal protection or difficulty in enforcing laws which are already in effect. Small population size and limited distribution make these taxa particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because these 20 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Although all populations of *Silene hawaiiensis* are threatened to some degree by fire, competition with alien plant species, predation by feral animals, and/or human activities, the widespread distribution of populations, rocky habitat, presence of population regeneration, and total numbers of plants reduces the danger that this species will become extinct in the near future. For these reasons, this species is not now in immediate danger of extinction throughout all or a significant portion of its range. However, *Silene hawaiiensis* is likely to become endangered in the foreseeable future if the threats are not curbed. As a result, *Silene hawaiiensis* fits the definition of a threatened species as defined in the Act.

Hesperocnide sandwicensis has been reassessed with regard to the five factors addressed above and the new information about the species' abundance and location. Although individual plants and populations of plants are threatened by competition from alien grasses, grazing by feral pigs, goats, and sheep, habitat disturbance and damage to plants as a result of military exercises, and fire, large reproductive populations located throughout PTA are relatively secure from these threats. The Service now finds that *Hesperocnide sandwicensis* fails to meet the definition of either an endangered or threatened species, and has withdrawn it from consideration for endangered or threatened status (see notice of withdrawal published concurrently in this **Federal Register**).

Critical habitat is not being designated for the 21 taxa included in this rule, for reasons discussed in the **Critical Habitat** section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered. The Service finds that designation of critical habitat is not presently prudent for these taxa. As discussed under Factor B in the "Summary of Factors Affecting the Species," the taxa face numerous anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required in a designation of critical habitat, would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the general location and importance of

protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process. Designation of critical habitat for these taxa is not prudent at this time because such a designation would increase the potential for vandalism, collecting, or other human activities and is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. One or more populations of 10 of the taxa are located on federally owned and/or managed land: Four taxa are located in Hawaii Volcanoes National Park on the island of Hawaii and one taxon in Kalaupapa NHP on Molokai; six taxa are located on military lands, including one species on Makua Military Reservation on Oahu and five taxa on PTA on the island of Hawaii; two taxa are found in Hakalau Forest National Wildlife Refuge on the island of Hawaii; and a population of one taxon occurs at a U.S. Coast Guard lighthouse on Maui. Federal agencies that would become involved if any of their activities may affect these 21 taxa include the National Park Service, Department of Defense, Environmental Protection Agency, Fish and Wildlife Service, and the U.S. Coast Guard.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, 17.63, 17.71 and 17.72 for endangered and threatened plants set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plant species. With respect to the 20 plant taxa in this rule listed as endangered, all of the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. With respect to the taxon listed as threatened, the provisions of 50 CFR 17.71, apply. These prohibitions, in part, make it illegal with respect to any endangered or theatened plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction. For plants listed as endangered, the Act prohibits the malicious damage or destruction of any such species on any area under Federal jurisdiction; or to remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement "of cultivated origin" appears on their containers.

The Act and 50 CFR 17.62, 17.63 and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. It is anticipated that few permits would ever be sought or issued. The taxa are not common in cultivation or in the wild, and only one taxon, *Pritchardia affinis*, is known to be in an active program of cultivation.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503/231–6243).

National Environmental Policy Act

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

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Author

The author of this final rule is Loyal A. Mehrhoff, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

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

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • •		•	•	•	•	
Apocynaceae—Dogbane family:						
Ochrosia Kilaueaensis.	Holei	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Arecaceae—Palm family:						
Pritchardia affinis	Loulu	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Asteraceae—Aster family:						
Tetramolopium arenarium.	None	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Campanulaceae—Bellflower family:						
Clermontia lindseyana.	'Oha wai	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Clermontia peleana	'Oha wai	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Clermontia pyrularia	'Oha wai	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Cyanea copelandii ssp. *copelandii.*	Haha	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Cyanea hamatiflora ssp. *carlsonii.*	Haha	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Cyanea shipmanii	Haha	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Cyanea stictophylla	Haha	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Caryophyllaceae—Pink family:						
Silene hawaiiensis	None	U.S.A. (HI)	T	532	NA	NA
• • •		•	•	•	•	
Cyperaceae—Sedge family:						
Mariscus fauriei	None	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Gesneriaceae—African Violet family:						
Cyrtandra giffardii	Ha'iwale	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Cyrtandra tintinnabula.	Ha'iwale	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Plantaginaceae—Plantain family:						
Plantago hawaiensis	Laukahi kuahiwi	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Poaceae—Grass family:						
Ischaemum byrone	Hilo ischaemum	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	
Portulacaceae—Purslane family:						

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Portulaca sclerocarpa	Po'e	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	•
Rhamnaceae—Buckthorn family:						
Colubrina oppositifolia.	Kauila	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	•
Rutaceae—Citrus family:						
Zanthoxylum hawaiiense.	A'e	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	•
Solanaceae—Nightshade family						
Nothocestrum breviflorum.	'Aiea	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	•
Violaceae—Violet family:						
Isodendrion pyrifolium.	Wahine noho kula	U.S.A. (HI)	E	532	NA	NA
• • •		•	•	•	•	•

Dated: February 10, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–4841 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 59, No. 43
Friday, March 4, 1994

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[Docket No. AO–160–A71; DA–93–30]

Milk in the Middle Atlantic Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals to amend the Middle Atlantic milk marketing order. The proposals would amend provisions dealing with pooling qualifications for distributing plants and cooperative reserve processing plants, producer milk diverted to nonpool plants, and the qualification of pool plants under more than one Federal order. Two of the proposals would authorize the market administrator to adjust pool plant qualification standards and producer milk diversion limits to reflect changes in marketing conditions.

DATES: The hearing will convene at 9 a.m. local time on May 3, 1994.

ADDRESSES: The hearing will be held at the Holiday Inn-Independence Mall, 400 Arch Street, Philadelphia, Pennsylvania 19106, telephone (215) 923–8660.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7183.

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.

Notice is hereby given of a public hearing to be held at the Holiday Inn-Independence Mall, 400 Arch Street, Philadelphia, Pennsylvania 19106, telephone (215) 923–8660, beginning at 9 a.m. on May 3, 1994, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforesaid marketing area.

The hearing is called 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).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small business.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 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 the law and requesting a modification of an 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 6 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Pennmarva Dairymen's Federation, Inc.

Proposal No. 1

Amend § 1004.7(a)(1) to exclude milk diverted as producer milk by either the plant operator or by a cooperative association from receipts used to calculate pool distributing plant qualification.

Proposal No. 2

Delete § 1004.7(a)(4), so that a plant changing from regulation under Order 4 to regulation under another Federal order will not be exempt from the provisions of § 1004.7(a)(3).

Proposal No. 3

Delete § 1004.7(f)(2) to leave the determination of which order should regulate a plant with route disposition in more than one Federal milk order to the provisions of § 1004.7(f)(1).

Proposal No. 4

Change from 30 percent to 25 percent the percentage of a cooperative association's member milk that must be

transferred from a cooperative-operated reserve processing plant to, or physically received from member producers at, pool distributing plants if the reserve processing plant is to qualify as a pool plant.

Proposal No. 5

Add a new paragraph § 1004.7(g) to allow the market administrator to increase or decrease the required percentage disposition or shipping requirements for pool qualification of distributing, supply or reserve processing plants at the market administrator's own initiative or at the request of interested parties.

Proposal No. 6

Amend § 1004.12(d) to more clearly define the pooling requirements for producer deliveries to pool plants and the status of producers whose marketing is interrupted by compliance with health regulations.

Proposal No. 7

Amend § 1004.12(d)(2)(i) to increase the permissible percentage of nonpool deliveries of member milk by a cooperative or federation of cooperative associations from a maximum of 50 percent of total volume of member milk to a maximum percentage of 55 percent.

Proposal No. 8

Add a new paragraph § 1004.12(g) to authorize the market administrator to increase or reduce the applicable shipping percentages of § 1004.12(d)(2)(i) and (ii).

Proposed by Johanna Dairies Incorporated

Proposal No. 9

Amend § 1004.12(d)(2)(ii) to increase the permissible percentage of nonpool deliveries for nonmember milk from a maximum of 40 percent of the total nonmember milk to a maximum percentage of 45 percent.

Proposed by Dairy Division, Agricultural Marketing Service

Proposal No. 10

Make such changes as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Middle Atlantic marketing area, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture,
Office of the Administrator, Agricultural Marketing Service,
Office of the General Counsel,
Dairy Division, Agricultural Marketing Service (Washington office only),
Office of the Market Administrator, Middle Atlantic Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: February 25, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–4919 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Parts 1744, 1753

Post-Loan Policies and Procedures Common to Guaranteed and Insured Telephone Loans; Telecommunications System Construction Policies and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its post-loan regulations for telephone borrowers to ease borrower reporting requirements and further clarify existing REA policy. In addition, REA proposes to amend the telecommunications system construction regulations to reflect minor technical changes such as moving the definitions section from one subpart to another.

DATES: Comments concerning this proposed rule must be received by REA or bear a postmark or its equivalent no later than May 3, 1994.

ADDRESSES: Submit written comments to Matthew P. Link, Director, Rural Telephone Bank Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue, SW., room 2832–S, Washington, DC 20250–1500. REA requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 2238–S, at the address listed above, between 8:30 a.m. and 5 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron, III, Chief, Northeast Engineering Branch, Eastern Regional Division, at the address listed above, telephone number (202) 720–3299.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not:

(1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

REA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The REA telephone program provides loans to REA borrowers at interest rates and terms that are more favorable than those generally available from the private sector. REA borrowers, as a result of obtaining federal financing, receive economic benefits which exceed any direct economic costs associated with complying with REA regulations and requirements. Moreover, this action liberalizes certain contract requirements by changing contract limits and allowing negotiation of fee schedules which further offsets economic costs.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section

3504 of that Act, the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for approval. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

REA has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

The proposed rules are primarily aimed at further clarifying and relaxing existing REA regulations concerning post-loan and system construction policies and procedures. Further clarification of REA policy would ease borrower reporting requirements by clearly defining certain post-loan construction procedures, such as contract construction and closeout procedures.

In part 1744, subpart B is revised to explain what REA means by "in the interests of the Government". Also, definitions sections of subpart B and subpart C are combined into a single list of definitions, located in subpart B.

In part 1753, subpart B is revised to delete definitions which merely repeat those in subpart A. Also, a monthly construction progress reporting requirement is deleted because it contains information reported elsewhere.

Subparts F and I are revised to increase the maximum allowable dollar amount of the Form 773 contract. This requires miscellaneous revisions throughout part 1753.

Minor and technical corrections are made throughout part 1753.

Appendices A through F are revised to change the requirement to distribute certain documents to REA.

Specifically, Appendix A is amended by adding to the table the distribution of Seismic Safety Certifications, required by 7 CFR part 1792, to the contractor and REA.

Appendix B is amended by removing from the table the distribution of the Switching Diagram and Set of Drawings to REA, and to delete reference to REA Form 744 which has been replaced by REA Form 754.

Appendix C is amended by removing from the table the distribution of Final Key Maps and Final Central Office Area and Town Detail Maps to REA, and to reduce to one copy the number of other final documents required for REA.

Appendix D is amended to comply with the revisions proposed to Appendix C.

Appendix E is amended by removing from the table the distribution of Detail Maps and Key Maps to REA.

Appendix F is amended by adding to the table the distribution of REA Form 213, Buy American Certificate to REA.

List of Subjects

7 CFR Part 1744

Accounting, Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1753

Loan programs-communications, Telecommunications, Telephone.

For reasons set forth in the preamble, 7 CFR chapter XVII is proposed to be amended as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1744.40, paragraph (a)(3) is revised to read as follows:

§ 1744.40 Non-act purposes.

(a) * * *

(3) Approval of the request is in the interests of the Government. Generally, it would not be in the Government's interest if the accommodation or subordination is being requested to enable the borrower to avoid complying with such REA policies or procedures, as competitive bid procedures or purchasing equipment acceptable to REA, under 7 CFR part 1753.

* * * * *

§ 1744.21 [Amended]

§ 1744.61 [Removed and reversed]

3. The paragraph designations in §§ 1744.21 and 1744.61 are removed, the definition in § 1744.21 are put in alphabetical order, the definitions in § 1744.61 are transferred to § 1744.21 in alphabetical order, and § 1744.61 is removed and reserved.

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1753 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1753.5, paragraph (b)(1) is revised to read as follows:

§ 1753.5 Methods of major construction.

* * * * *

(b) *Contract construction.* (1) Whether the contractor is selected through sealed competitive bidding or negotiation, as approved by REA, award of the contract is subject to REA approval.

* * * * *

3. In § 1753.6, paragraph (b) is revised to read as follows:

§ 1753.6 Standards, specifications, and general requirements.

* * * * *

(b) The borrower may use REA loan funds to finance nonstandard construction materials or equipment only if approved by REA in writing prior to purchase or commencement of construction.

* * * * *

4. In § 1753.8, paragraphs (a)(11)(ii), (a)(12)(i), (b)(2), (b)(3), and (b)(4) are revised, and paragraph (b)(5) is removed to read as follows:

§ 1753.8 Contract construction procedures.

(a) * * *

(11) * * *

(ii) If an award is made, the borrower shall award the contract to the lowest responsive bidder, subject to REA approval. The borrower may award the contract immediately upon determination of the lowest responsive bidder if the following conditions are met:

(A) The project is included in an approved loan and adequate funds were budgeted in the loan and are available.

(B) All applicable REA procedures were followed, including those in the Notice and Instructions to Bid in the standard forms of contract.

* * * * *

(12) *Execution of contract:* (i) Upon approval by REA of the award of contract by the borrower, the borrower shall submit to REA three original counterparts of the contract executed by the contractor and borrower.

* * * * *

(b) * * *

(2) For negotiated purchases, borrowers shall use REA contract forms, standards, and specifications.

(3) For all contract forms except REA Form 773:

(i) After a satisfactory negotiated proposal has been obtained, the borrower shall submit it to REA for approval, along with the engineer's recommendation, and evidence of acceptance by the borrower.

(ii) If REA approves the negotiated proposal, the borrower shall submit three copies of the contract, executed by the contractor and borrower, to REA for approval.

(iii) If REA approves the contract, REA shall return one copy of the contract to the borrower and one copy to the contractor.

(4) For REA Form 773, the borrower is responsible for negotiating a satisfactory proposal, executing contracts, and closing the contract. See 7 CFR 1753, subparts F and I, for requirements for major and minor construction, respectively, on Form 773.

5. In § 1753.9, paragraphs (a) and (c) are revised to read as follows:

§ 1753.9 Subcontracts.

(a) REA construction contract Forms 257, 397, 515, and 525 contain provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

* * * * *

(c) As stated in contract Forms 257, 397, 515, and 525, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is not relieved of any obligations to the borrower and to the Government under the contract.

* * * * *

6. In § 1753.16, paragraphs (b)(3), (b)(4) and (b)(5) are redesignated as paragraphs (b)(4), (b)(5) and (b)(6), respectively, and a new paragraph (b)(3) is added to read as follows:

§ 1753.16 Architectural services.

* * * * *

(b) * * *

(3) If the fee schedule has to be modified in order for the borrower to obtain adequate architectural services, the borrower shall obtain written REA approval of the revised fee schedule prior to executing contracts.

* * * * *

7. In § 1753.17, paragraph (e) is revised to read as follows:

§ 1753.17 Engineering services.

* * * * *

(e) The borrower shall obtain status of contract and force account proposal reports from the engineer once each month. The report shall show for each contract or FAP the approved contract or FAP amount, the date of approval, the scheduled date construction was to begin and the actual date construction began, the scheduled completion date, the estimated or actual completion date, the estimated or actual date of submission of closeout documents, and an explanation of delays or other pertinent data relative to progress of the project. One copy of this report shall be submitted to the GFR.

* * * * *

8. In § 1753.25, a new paragraph (f)(4) is added to read as follows:

§ 1753.25 General.

* * * * *

(f) * * *

(4) 7 CFR 1792, subpart C, which requires that the building design comply with applicable seismic design criteria. Prior to the design of buildings, borrowers shall submit to REA a written acknowledgement from the architect or engineer that the design will comply.

* * * * *

9. In § 1753.26, paragraph (b) introductory text is revised, paragraph (c) is redesignated as paragraph (d), and new paragraph (c) is added to read as follows:

§ 1753.26 Plans and specifications (P&S).

* * * * *

(b) REA Contract Form 257 shall be completed as follows:

* * * * *

(c) The plans and specifications shall show the identification and date of the model code used for seismic safety design considerations, and the seismic factor used. See 7 CFR 1792, subpart C.

* * * * *

§ 1753.29 [Amended]

10. In § 1753.29, paragraph (a) is removed, and paragraphs (b), (c), (d), and (e) are redesignated as paragraphs (a), (b), (c), and (d).

11. In § 1753.30, paragraphs (b)(2)(i) and (c)(2) are revised to read as follows:

§ 1753.30 Closeout procedures.

* * * * *

(b) * * *

(2) * * *

(i) Arrange with its architect or engineer, contractor, and the GFR for final inspection of the project.

* * * * *

(c) * * *

(2) Complete, with the assistance of its architect or engineer, the documents listed in Appendix A that are required for the closeout of force account construction.

* * * * *

12. In § 1753.39, paragraph (g) is revised to read as follows:

§ 1753.39 Closeout documents.

* * * * *

(g) Final payment shall be made according to the payment terms of the contract.

* * * * *

13. In § 1753.46, paragraph (c) is added to read as follows:

§ 1753.46 General.

* * * * *

(c) The two contract forms which may be used for major outside plant construction are Form 515 and Form 773. Limitations on the applicability of these forms shall be as follows:

(1) Form 515 shall be used for major outside plant construction projects which will be competitively bid. The contract contains plans and specifications and has no dollar limitation. See §§ 1753.47, 1753.48 and 1753.49.

(2) A Form 515 contract which is for less than $200,000, may, at the borrower's option, be negotiated. See § 1753.48(b).

(3) Form 773 shall be used for major outside plant projects which may not be competitively bid, and which cannot be designed and staked at the time of contract execution. Projects of this nature include routine line extensions and placement of subscriber drops. The Form 773 contract is limited to a maximum of $200,000. REA will not finance more than $400,000 in Form 773 contracts for a borrower in any twelve month period. This $400,000 limitation includes all major and minor construction performed under Form 773 contracts, and is determined by the date the Form 773 contract is executed. See § 1753.50.

14. In § 1753.49, paragraph (c)(3) is revised to read as follows:

§ 1753.49 Closeout documents.

* * * * *

(c) * * *

(3) Final payment shall be made according to the payment provisions of Article III of Form 515.

15. § 1753.50 is added to read as follows:

§ 1753.50 Construction by Form 773 contract.

(a) The borrower shall prepare the contract form and provide such details of construction as may be available. Compensation may be based upon unit prices, hourly rates, or another mutually agreeable basis.

(b) Neither the selection of the contractor nor the contract requires REA approval.

(c) Borrowers are urged to obtain quotations from several contractors before entering into a contract to be assured of obtaining the lowest cost.

(d) The borrower must ensure that the contractor selected meets all Federal and State requirements, and that the contractor maintains the insurance coverage required by the contract for the duration of the work. See 7 CFR part 1788.

(e) The borrower shall finance major construction under the Form 773 contract with general funds and obtain reimbursement with loan funds when construction is completed and an executed Form 771 has been submitted to REA.

(f) If the contract exceeds $100,000, a contractor's bond shall be required. See 7 CFR part 1788.

(g) When the construction is completed to the borrower's satisfaction, the borrower shall obtain from the contractor a final invoice and an executed copy of REA Form 743, Certificate of Contractor and Indemnity Agreement.

(h) The closeout document for the Form 773 contract is REA Form 771. See § 1753.81 for the requirements for completing Form 771.

(i) An original and two copies of Form 771 shall be sent to the GFR. The GFR may inspect the construction, and will initial and return the original and one copy to the borrower.

(j) The original Form 771 shall be submitted with an FRS to REA only in conjunction with a request for an advance of loan funds for the work.

16. In § 1753.68, paragraph (d)(3)(iii) is revised to read as follows:

§ 1753.68 Purchasing special equipment.

* * * * *

(d) * * *

(3) * * *

(iii) Final payment shall be made according to the payment terms of the contract.

17. In § 1753.78, paragraph (a) is revised to read as follows:

§ 1753.78 Construction by contract.

(a) REA Form 773 shall be used for minor construction by contract. Compensation may be based upon unit prices, hourly rates, or another basis agreed to in advance by the borrower and the contractor. A single work project may require more than one contractor.

* * * * *

18. In § 1753.80, paragraph (a) is revised to read as follows:

§ 1753.80 Minor construction procedure.

(a) If the borrower performs minor construction financed with loan funds, the borrower's regular work order procedure shall be used to administer construction activities that may be performed entirely by a contractor under Form 773 contract, by work order, or jointly by work order and one or more contractors under Form 773 contracts. REA will not finance more than $400,000 in Form 773 contracts for a borrower in any twelve month period. This $400,000 limitation includes all major and minor construction performed under Form 773 contracts, and is determined by the date the Form 773 contract is executed.

* * * * *

19. Appendices A through F of part 1753 are revised to read as follows:

Appendices to Part 1753

APPENDIX A.—DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS

Form furnished by REA	Description	Use with		Prepared by			Number of copies	Distribution			
		Contract	Force account	Contractor	Architect/engineer	Borrower		Borrower	REA	Architect	Contractor
238	Construction or Equipment Contract Amendment (Submit to REA for approval, as required).	x			x		3		3		
181	Certificate of Completion (Contract Construction) [1].	x			x		3	1	1		1
181a	Certificate of Completion (Force Account Construction).		x		x		2	1	1		
231	Certificate of Contractor	x		x			2	1	1		
224	Waiver and Release of Lien (2 copies from each supplier).	x		x			2	1	1		
213	Certificate (Buy American).	x		x			1	1			
284	Statement of Architect's Fee.	x	x		x		3	1	1	1	
	Inventory—List Materials and Services Furnished by Borrower Upon Which Architectural Services Were Furnished. Show Cost (See Form 284).	x	x			x	3	1	1	1	

APPENDIX A.—DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS—Continued

Form furnished by REA	Description	Use with		Prepared by			Number of copies	Distribution			
		Contract	Force account	Contractor	Architect/engineer	Borrower		Borrower	REA	Architect	Contractor
	Inventory—List Materials and Services Furnished by Borrower Upon Which Architectural Services Were Not Performed Show Cost.	x	x	.....	.....	x	3	1	1	1	.....
(2)	"As Built" Plans and Specifications.	x	x	.....	x	.....	1	1	.....	.....	.....
	Guarantees, Warranties, Bonds, Operating or Maintenance Instructions, et cetera.	x	.....	x	.....	.....	1	1	.....	.....	.....
	Architect/Engineer Seismic Safety Certification.	x	x	.....	x	.....	3	1	1	.....	1

[1] Cost of Materials and Services Furnished by Borrower not to be Included in total Cost on Form 181.
[2] When only Minor Changes Were Made During Construction, Two Copies of a Statement to that Effect from the Architect Will be Accepted in Lieu of the "As-Built Plans and Specifications.

APPENDIX B.—DOCUMENTS REQUIRED TO CLOSEOUT CENTRAL OFFICE EQUIPMENT CONTRACT

Form furnished by REA	Description	Use with		Prepared by		Total No. of copies	Distribution		
		REA form 525	REA form 545	Contractor	Engineer		Borrower	Contractor	REA
238	Construction or Equipment Contract Amendment (Submit to REA for approval, if required, before following documents).	x	x	.....	x	3	.....	.....	3
754	Certificate of Completion and Certificate of Contractor and Indemnity Agreement (If submitted, Form 744 is not required).	x	.....	x	x	4	2	1	1
517	Results of Acceptance Tests (Prepare and distribute copies immediately upon completion of the acceptance tests of each central office).	x	.....	.....	x	2	1	1	.....
752a	Certificate of Completion—Not Including Installation.	.....	x	.....	x	3	1	1	1
224	Waiver and Release of Lien (Two copies from each supplier).	x	.....	x	.....	2	1	.....	1
231	Certificate of Contractor	x	.....	x	.....	2	1	.....	1
213	Certificate (Buy American)	x	x	x	.....	1	2	.....	1
	Switching Diagram, as installed	x	x	x	.....	2	2	.....	.....
	Set of Drawings (Each set to include all the drawings required under the Specification REA Form 522).	x	x	x	.....	2	2	.....	.....

APPENDIX C.—DOCUMENTS REQUIRED TO CLOSEOUT TELEPHONE CONSTRUCTION CONTRACT REA FORM 515

REA Form No.	Description	No. of Copies	Form available from REA	Prepared by		Distribution		
				Engineer	Contractor	Borrower	Contractor	REA
724	Final Inventory	3	x	x	.....	1	1	1
724a	Final Inventory	3	x	x	.....	1	1	1
	Contractor's Board Extension (When required).	3	.....	.....	x	1	1	1

APPENDIX C.—DOCUMENTS REQUIRED TO CLOSEOUT TELEPHONE CONSTRUCTION CONTRACT REA FORM 515—Continued

REA Form No.	Description	No. of Copies	Form available from REA	Prepared by		Distribution		
				Engineer	Contractor	Borrower	Contractor	REA
281	Tabulation of Materials Furnished by Borrower.	3		x		1	1	1
213	Certificate ("Buy American")	1	x		x	1		
	Listing of Construction Change Orders	2						1
224	Waiver and Release of Lien (Two copies from each supplier).	2	x	x	x	1		1
231	Certificate of Contractor	2	x		x	1		1
527	Final Statement of Construction	3	x	x		1	1	1
	Reports on Results of Acceptance Tests	2		x		1	1	
	Set of Final Staking Sheets	1		x		1		
	Tabulation of Staking Sheets	1		x		1		
	Treated Forest Products Inspection Reports or Certificates of Compliance (Prepared by inspection company or supplier).	1				1		
	Final Key Map (when applicable)	1		x		1		1
	Final Central Office Area and Town Detail Maps.	1		x		1		1

APPENDIX D.—STEP-BY-STEP PROCEDURE FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT—LABOR AND MATERIALS, REA FORM 515

Sequence		By	Procedure
Step No.	When		
1.	Prior to completion of construction.	Borrower's Engineer	Receives instructions from the GFR concerning the closeout procedure.
2.	Upon completion of construction.	Borrower's Engineer	Prepares the following: 1 set of Key Maps, when applicable, which show work done under the construction contract marked with red pencil. 1 set of Detail Maps, which show work done under the construction contract marked with red pencil. 1 copy of Tabulation of Staking Sheets. 1 copy of tentative Final Inventory, REA Forms 724, 724a.
3.	After construction has been completed and acceptance tests made.	Borrower's Engineer	Forwards letter to the borrower with copies to the GFR stating that the project is ready for final inspection.
4	Upon receipt of letter from borrower's engineer.	GFR	Promptly arranges with borrower, borrower's engineer, and contractor for final inspection of construction. It is contemplated that final inspections will be made on sections of line as construction is completed, leaving a minimum amount to be inspected at this time.
5.	When requested by the GFR.	REA Field Accountant	Audits REA Form 281, if borrower supplied part of the materials.
6.	Inspection date scheduled	Borrower's Engineer	Shall have the following documents available for the GFR: 1 set of "as constructed" Key Maps (when applicable). 1 set of "as constructed" Detail Maps. 1 copy of the List of Construction Change Orders. 1 set of Final Staking Sheets. 1 copy of Tabulation Staking Sheets. 1 copy of Treated Forest Products Inspection Reports or Certificates of Compliance. 1 copy of tentative Final Inventory REA Form 724, 724a. 1 copy of tentative Tabulation, REA Form 231, if borrower furnished part of material. 1 copy of Report on Results of Acceptance Tests.
7.	During inspection	Borrower's Engineer	Issues instructions to contractor covering corrections in construction found during inspection by GFR in the company of the borrower's engineer and the contractor or his/her representative.
8.	During inspection	Contractor	Corrects defects in construction on basis of instructions from the borrower's engineer. The corrections should proceed closely behind the inspection in order that the borrower's engineer can check the corrections before leaving the system.
9.	During inspection	Borrower's Engineer	With GFR inspects and approves corrected construction.
10.	During inspection	Borrower's Engineer	Marks inspected areas on the Key Map, if available, otherwise on the Detail Maps.
11.	Upon completion of inspection.	Borrower's Engineer	Prepares or obtains all the closeout documents listed in Appendix C. Makes distribution of the copies of the documents as indicated in Appendix C. Forwards the documents for REA to the GFR.
12.	After reviewing final documents.	REA GFR	Reviews documents and distributes copies as indicated in Appendix C.

APPENDIX D.—STEP-BY-STEP PROCEDURE FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT—LABOR AND MATERIALS, REA FORM 515—Continued

Sequence		By	Procedure
Step No.	When		
13.	After signing final inventory.	Borrower	Prepares and submits Financial Requirement Statement, REA Form 481, requesting amount necessary to make final payment due under contract.
14.	On receipt of final advance.	Borrower	Promptly forwards check for final payment to contractor.
15.	During next loan fund audit review after final payment to contractor.	REA Field accountant	Makes an examination of borrowers construction records for (1) compliance with the construction contract and Subpart F and (2) REA Form 281, Tabulation of Materials Furnished by Borrowers, if any, for appropriate costs.

APPENDIX E.—DOCUMENTS REQUIRED TO CLOSE OUT FORCE ACCOUNT OUTSIDE PLANT CONSTRUCTION

Item No.	REA form No.	Description on title of document	No. of copies required and distribution of documents		
			Total No.	Owner	REA
a.	817, 817a, 817b	Final inventory force account construciton and certificate of engineer	2	1	1
b.	213	Certificate, "Buy American" (as applicable—one from each supplier)	1	1	0
c.		Detail maps	1	1	0
d.		Key map if applicable	1	1	0
e.		Staking sheets	1	1	0
f.		Tabulation of staking sheets	1	1	0
g.		Treated forest porducts inspection reports, if applicable	1	1	0

APPENDIX F.—DOCUMENTS REQUIRED TO CLOSEOUT EQUIPMENT CONTRACTS

Form furnished by REA	Description	No. of copies		Prepared by				Distribution		
		Form 397	Form 398	Form 397		Form 398		Borrower	Contractor	REA
				Contractor	Engineer	Contractor	Engineer			
238	Construction or Equipment Contract Amendment (If required, submit to REA for approval before other closeout documents.).	3	3	.....	x	.....	x	.....	.....	3
396	Certificate of Completion—Special Equipment Contract (Including Installation).	3	.....	.....	x	.....	x	1	1	1
396a	Certificate of Completion—Special Equipment Contract (Not Including Installation).	.....	3	.....	x	.....	x	1	1	1
744	Certificate of Contractor and Indemnity Agreement.	2	.....	x	.....	.....	.....	1	.....	1
213	Certificate (Buy American)	2	2	x	.....	x	.....	1	.....	1
	Report in writing, including all measurements and other information required under Part II of the applicable specifications.	2	2	x	.....	.....	x	1	.....	1
	Set of maintenance recommendations for all equipment furnished under the contract.	1	1	x	.....	x	.....	1	.....	.....

Dated: February 25, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–4858 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–701]

Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Availability of letters.

SUMMARY: The Department of Energy today gives notice that copies of three letters related to the "Background" statement in a pending notice of proposed rulemaking, 58 FR 67710 (December 22, 1993), have been placed in the Freedom of Information Reading Room for public inspection. That document contains proposed amendments to the existing test procedure applicable to clothes washers under 10 CFR part 430, subpart B, appendix J. Two of the letters involve an exchange of correspondence between the Department and the Whirlpool Corporation regarding the meaning of the existing test procedure. The third letter conveys copies of the first two letters to all clothes washer manufacturers.

ADDRESSES: Copies of the three letters may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9507.

Issued in Washington, DC, February 28, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–5008 Filed 3–3–94; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Nonmember and Public Unit Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendments.

SUMMARY: Currently federally insured credit unions that wish to maintain public unit and nonmember accounts in excess of 20 percent of their total shares must have a waiver request approved by the Regional Director. The waiver request must include a plan setting forth the intended sources and uses of the funds. The proposed amendments would change the amount of nonmember and public unit accounts that a credit union may maintain, without a waiver, to 20 percent of total shares or $1.5 million, whichever is greater. Credit unions accepting nonmember accounts in excess of 20 percent of total shares but not greater than $1.5 million would, as under the current rule, be required to develop a written plan and send it to the Regional Director. Prior NCUA approval, however, would no longer be required.

DATES: Comments must be postmarked by April 4, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Staff Attorney, Office of General Counsel, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA Board, as part of its ongoing program of regulatory review, proposes to revise the regulation under which federally insured credit unions maintain nonmember and public unit accounts. Federal credit unions (FCUs) are authorized by section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) to receive nonmember shares from other credit unions, from certain governmental entities ("public units") and, if the credit union has a "low-income" designation from NCUA, from other outside sources. These nonmember shares, and equivalent accounts authorized for federally insured state credit unions under the state law are defined by section 101(5) of the Act (12 U.S.C. 1752(5)) as "accounts" and "member accounts" for purposes of the various provisions of the FCU Act, including those establishing insurance coverage by the National Credit Union Share Insurance Fund (NCUSIF).

NCUA's current regulation on nonmember accounts requires any federally-insured credit union that wishes to accept nonmember accounts in excess of 20 percent of total shares to submit to NCUA a plan setting forth the intended use of the funds and obtain NCUA approval. This rule was imposed in December 1988 (53 FR 50918, 12/19/88) in response to mismanagement and misuse of nonmember accounts by some credit unions. Pursuant to § 741.6 of NCUA's Regulations, federally-insured state chartered credit unions must adhere to NCUA's requirements regarding nonmember accounts.

B. Discussion

In most credit unions, the only forms of nonmember accounts are public unit and credit union accounts. However, as described above, credit unions with a low-income designation from NCUA are authorized to accept nonmember accounts from any source.

When the current nonmember account rule was instituted, NCUA's concern with these accounts stemmed from abuses involving large sums of money, often in excess of the $100,000 limit. In order to attract and retain these accounts, some credit unions paid higher than market dividend rates. Large influxes of funds into credit unions caused asset/liability management problems that were often not within management's expertise to control. In some cases, the total amount of such account was far in excess of the amount necessary to meet the legitimate needs of the members and was used to fund high risk loans and questionable investments.

The imposition of the 20 percent limitation has virtually eliminated problems involving nonmember funds. As discussed more fully below, however, the process of requesting waivers, which has fallen almost entirely on low-income credit unions, has proven burdensome for some credit unions. The purpose of this proposal is to reduce that burden without significantly increasingly the risk to the credit union system and the NCUSIF.

As of June 1993, only 57 low-income credit unions out of 146 maintained

nonmember accounts. The total dollar amount of these accounts was approximately nineteen million, with the average dollar amount per low-income credit union approximately $339,000. Surveys indicate that low-income credit unions maintaining nonmember accounts are currently paying below market rates on the vast majority of these funds. It appears that most low-income credit unions, as most other credit unions, use nonmember accounts prudently and do not maintain excessive amounts of these funds.

NCUA recognizes that nonmember accounts can be crucial to a low-income credit union in meeting the fundamental purpose of a credit union: Promoting thrift and creating a source of credit for its members. Nonmember funds can be invested to provide earnings that are paid out to members in the form of dividends, and they can provide a source of much needed loan funds. Moreover, nonmember accounts can generate income that can be a source of badly needed capital.

Over the period from the adoption of the regulation in 1988 through June 1993, 50 of 59 waiver requests (85%) have been approved. This suggests that most waiver requests have been justified and acceptable to the regional director. Although a high percentage of the waivers have been approved, the procedure has proven burdensome for some credit unions. Given the small asset size of most credit unions, the 20 percent limit frequently requires waivers for small amounts of funds that pose very little risk to the credit union and the NCUSIF. Both credit unions and NCUA may be expending much more time and paperwork on waiver requests than safety and soundness requires.

Although the NCUA Board remains concerned with the potential misuse of nonmember accounts, the Board believes that a modification of the 20 percent limit may be justified. The Board is proposing the following changes to the rule.

It is proposed that a credit union be able to maintain permissible nonmember accounts up to 20 percent of total shares or $1.5 million, whichever is greater, before a waiver by the regional director is required. This change recognizes the benefit of a limitation on nonmember accounts but also allows a credit union to maintain a reasonable amount of nonmember accounts, up to $1.5 million, without requesting one or more waivers from the regional director.

As under the current rule, all credit unions accepting nonmember accounts in excess of 20 percent of total shares would be required to have a plan for the use of such deposits. Further, the plan would be submitted to the Regional Director for information. Prior NCUA approval would be required, however, only for amounts in excess of both 20% and $1.5 million.

The plan would describe how nonmember accounts will be used to serve the credit union's membership, i.e., by providing loanable funds to its members or through increased earnings. This requirement should ensure that federally-insured credit unions have a reasonable plan in place for the use of the funds. As under the current rule, the plan would provide for matching maturities of nonmember accounts with corresponding assets, or a justification for any mismatch; and provide for an adequate income spread between public unit and nonmember shares and corresponding assets. The credit union would submit the plan to the regional director, prior to receiving nonmember accounts in excess of 20 percent, for NCUA's information and monitoring. NCUA approval would not be required before the credit union accepts additional nonmember accounts, unless the aggregate amount exceeded both 20% of shares and $1.5 million.

The proposed amendments, if adopted, would allow small credit unions to receive significant amounts of nonmember shares, in relation to their total shares, without the prior NCUA approval that has been required since 1988. The Board is committed to working with these credit unions to ensure that nonmember funds are used in a safe and sound manner to benefit their membership. In this connection, the Board requests comment on whether periodic reporting on the sources and uses of nonmember shares, in excess of 20 percent of total shares, should be established. The Board may consider a monthly or quarterly reporting requirement or alternatively, revisions to the NCUA Call Report (NCUA Form 5300), to gather additional information on sources and uses of nonmember funds.

C. Request for Comments

The Board also requests comment on a related issue; the length of an approved waiver, in those cases where a waiver request and approval are still required. The regulation currently states in § 701.32(b)(2) that the waiver request will normally be for a two-year period. Although the Board believes this language provides the regional director with sufficient discretion to approve waivers for a shorter or longer period, the Board is requesting comment on whether a nondiscretionary time period for the waiver should be stated, possibly three years, or whether the waiver should be open-ended and only terminated upon action by the regional director or the credit union.

Paperwork Reduction Act

The proposed amendments do not change paperwork requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The revised rule is generally less restrictive than the current regulation. Overall, the NCUA Board expects the change to benefit credit unions by permitting them to maintain a larger amount of nonmember accounts before requesting a waiver from the Regional Director. Accordingly, the Board determines and certifies that this final rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The amendment applies to federally-insured state-chartered credit unions that accept public unit and nonmember accounts. The proposed rule would make it possible for a federally-insured credit union to accept a larger amount of nonmember deposits without requesting an exemption.

List of Subjects in 12 CFR Part 701

Credit unions, Nonmember accounts, Public units.

By the National Credit Union Administration Board on February 28, 1994.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. It is proposed that § 701.32(b) be amended by redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(4)

through (b)(6) respectively, revising paragraph (b)(1) and the newly designated (b)(6), and adding new paragraphs (b)(2) and (b)(3) to read as follows:

§ 701.32 Payments on shares by public units and nonmembers, and low-income designation.

* * * * *

(b) *Limitations.* (1) Unless a greater amount has been approved by the Regional Director, the maximum amount of all public unit and nonmember accounts shall not, at any given time, exceed 20% of the total shares of the federal credit union or $1.5 million, whichever is greater.

(2) Before accepting any public unit or nonmember shares in excess of 20% of total shares, the board of directors must adopt a specific plan concerning the intended use of these shares. The written plan must include: (i) A statement of the credit union's need, sources and intended uses of public unit and nonmember shares;

(ii) Provision for matching maturities of public unit and nonmember shares with corresponding assets, or justification for any mismatch; and

(iii) Provision for adequate income spread between public unit and nonmember shares and corresponding assets.

(3) A federal credit union seeking an exemption from the limits of paragraph (b)(1) of this section must submit to the Regional Director a written request including: (i) The new maximum level of public unit and nonmember shares requested, either as a dollar amount or a percentage of total shares;

(ii) The plan adopted by the credit union's board of directors concerning the use of public unit and nonmember shares;

(iii) A copy of the credit union's latest financial statement; and

(iv) A copy of the credit union's loan and investment policies.

* * * * *

(6) Upon expiration of an exemption, nonmember shares currently in the credit union in excess of the limits established pursuant to paragraph (b)(1) of this section will continue to be insured by the National Credit Union Insurance Fund within applicable limits. No new shares in excess of the limits established pursuant to paragraph (b)(1) of this section shall be accepted. Existing share certificates in excess of the limits established pursuant to paragraph (b)(1) of this section may remain in the credit union only until maturity.

[FR Doc. 94-4977 Filed 3-3-94; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-07-AD]

Airworthiness Directives; Boeing Model 747-400 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 all Boeing Model 747-400 series airplanes. This proposal would require various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. This proposal is prompted by an investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment, which has revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by April 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-07-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2687; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-07-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-07-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

In May 1991, a Boeing Model 767 series airplane was involved in an accident in which a thrust reverser deployed inadvertently during flight. While the investigation of the accident has not revealed the cause of that deployment, it has identified a number of possible failure modes in the thrust reverser control system. Inadvertent deployment of a thrust reverser during flight could result in reduced controllability of the airplane.

The FAA and the aviation industry are conducting an in-depth investigation of the thrust reverser systems installed on various types of large transport airplanes. In particular, this investigation has focused on airplane controllability in the event of an in-flight deployment of a thrust reverser, and thrust reverser reliability in general.

Based on the data gathered from this ongoing investigation, the FAA has issued several airworthiness directives (AD) to require periodic inspections and tests of the thrust reverser systems on certain Boeing Model 757 and 767 series airplanes [for example, reference AD 91–20–09, Amendment 39–8043 (56 FR 46725, September 16, 1991) for certain Model 757 series airplanes; and AD 92–24–03, Amendment 39–8408 (57 FR 53258, November 9, 1992) for certain Model 767 series airplanes]. In addition, the FAA has issued or proposed several AD's to require an additional locking device on thrust reversers that are installed on Model 737–300/–400/–500, 757, and 767 series airplanes. This action was taken to enhance the level of reliability on airplane models that were determined to have unacceptable flight characteristics following an in-flight deployment of a thrust reverser.

Until now, the investigation of thrust reverser system reliability on Boeing Model 747 series airplanes has not been given as high a priority as the other Boeing models because Model 747 series airplanes have never experienced control problems as a result of an in-flight thrust reverser deployment. In fact, previously there had been at least 29 incidents in which the thrust reverser installed on Model 747 series airplanes powered by Pratt & Whitney JT9D series engines deployed during flight and the airplane was still controllable. Based on this long safety record and the available evidence up to this time, it has been accepted generally that all Model 747 series airplanes would be shown to be controllable throughout the flight envelope following an in-flight thrust reverser deployment.

Recently, however, Boeing has responded to an FAA request for further investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment. The investigation results thus far indicate that Model 747–400 series airplanes could experience certain control problems in the event of a thrust reverser deployment occurring during high speed climb or during cruise.

In light of this new information, the FAA has determined that certain inspections and functional tests of the thrust reverser control and indication system on Model 747–400 series airplanes, similar to those required previously for Model 757 and 767 series airplanes, are necessary as precautionary actions to provide an acceptable level of safety for Model 747–400 series airplanes. Accomplishment of these inspections and functional tests is intended to reduce the exposure of the airplane to potential undetected single failures in the thrust reverser control system. The presence of an undetected failure in the thrust reverser control system, in some cases, can increase the likelihood of an uncommanded thrust reverser deployment in the event of an additional thrust reverser control system failure.

The assessment of the thrust reverser system reliability of Model 747–100, –200, –300, SP, and SR series airplanes is continuing. The FAA may consider rulemaking action for those airplanes based upon the results of that assessment.

The FAA has reviewed and approved Boeing Service Bulletins 747–78–2112, dated November 11, 1993 (for Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines); 747–78–2113, dated November 11, 1993 (for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines); and 747–78–2115, dated October 28, 1993 (for Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines). These service bulletins describe procedures for various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found.

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 various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. The actions would be required to be accomplished in accordance with the service bulletins described previously.

This proposed AD also would require that operators submit a report of initial inspection and test results to the FAA.

This is considered to be interim action until final action is identified for these airplanes, at which time the FAA may consider further rulemaking.

There are approximately 286 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines of U.S. registry would be affected by this proposed AD, that it would take approximately 48 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 of Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines is estimated to be $102,960, or $2,640 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Currently, there are no Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines on the U.S. Register. However, should one of these airplanes be imported and placed on the U.S. Register in the future, it would require approximately 60 work hours to accomplish the proposed actions, at an average labor charge of $55 per work hour. Based on these figures, the total cost impact of this AD would be $3,300 per airplane.

Additionally, there are no Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines on the U.S. Register at this time. However, should one of these airplanes be imported and placed on the U.S. Register in the future, it would require approximately 30 hours to accomplish the proposed actions, at an average labor charge of $55 per work hour. Based on these figures, the total cost impact of this AD would be $1,650 per airplane.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 94–NM–07–AD.

Applicability: All Model 747–400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) For Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines: Accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Boeing Service Bulletin 747–78–2112, dated November 11, 1993.

(1) Within 90 days after the effective date of this AD, perform an inspection to detect damage to the bullnose seal on the translating sleeve of the thrust reverser in accordance with paragraph C. of the Accomplishment Instructions of the service bulletin; and perform a test of the lock mechanism of the center locking actuator in accordance with paragraph E. of the Accomplishment Instructions of the service bulletin. Repeat this inspection and test thereafter at intervals not to exceed 1,000 hours time-in-service.

(2) Within 6 months after the effective date of this AD, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs A., B., D., and F. through M. of the Accomplishment Instructions of the Service Bulletin. Repeat these inspections and functional tests thereafter at intervals not to exceed 15 months.

(b) For Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines: Accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with Boeing Service Bulletin 747–78–2113, dated November 11, 1993.

(1) Within 90 days after the effective date of this AD, perform an inspection to detect damage to the bullnose seal on the translating sleeve of the thrust reverser in accordance with paragraph B. of the Accomplishment Instructions of the service bulletin; and perform a continuity test of the position switch module of the center drive unit (CDU) and a cone brake test of the CDU in accordance with paragraph C. of the Accomplishment Instructions of the service bulletin. Repeat the inspection and tests thereafter at intervals not to exceed 1,000 hours time-in-service.

(2) Within 6 months after the effective date of this AD, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs A., D., F., G., H., and J. through M. of the Accomplishment Instructions of the Service Bulletin. Repeat these inspections and functional tests thereafter at intervals not to exceed 15 months.

(c) For Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines: Within 6 months after the effective date of this AD, and thereafter at intervals not to exceed 15 months, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs D. through K. of the Accomplishment Instructions of Boeing Service Bulletin 747–78–2115, dated October 28, 1993.

(d) If any of the inspections and/or functional tests required by this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78–2112, dated November 11, 1993 (for Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines); 747–78–2113, dated November 11, 1993 (for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines); or 747–78–2115, dated October 28, 1993 (for Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines); as applicable.

(e) Within 10 days after performing each initial inspection and test required by this AD, submit a report of the inspection and/or test results, both positive and negative, to the FAA, Seattle Aircraft Certification Office (ACO), ANM–100S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(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, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4953 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–212–AD]

Airworthiness Directives; Boeing Model 747 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 Boeing Model 747 series airplanes. This proposal would require inspection to detect cracking of certain fuselage longitudinal lap joints, repair of any cracking found, and replacement of the countersunk fasteners in those laps joints with protruding head fasteners. This proposal is prompted by a structural reassessment of Model 747 series airplanes. The actions specified by the proposed AD are intended to prevent skin cracking in the longitudinal lap joints of certain stringers, which can lead to rapid decompression of the airplane.

DATES: Comments must be received by April 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–212–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–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Recently, the Boeing Commercial Airplane Group, manufacturer of Model 747 series airplanes, conducted a structural reassessment of these airplanes. The FAA has reviewed the results of this reassessment and has determined that the longitudinal lap joints of Stringer (S–)12 are critical to the structural integrity of these airplanes.

The upper skin in the S–12 longitudinal lap joints are made of waffle doublers that are hot bonded to skin panels. The S–12 longitudinal lap joints have three rows of countersunk fasteners. The depth of the countersink exceeds the thickness of the skin panel. If the waffle doubler disbonds from the skin panel, the resultant sharp edges at the longitudinal lap joint fasteners can cause fatigue cracking at the fastener holes.

Skin cracking in the longitudinal lap joints of S–12L and S–12R, if not detected and corrected, could result in rapid decompression of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747–53–2366, dated August 6, 1992, that describes procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracking of the skin around the fasteners in the upper row of the longitudinal lap joints of S–12L and S–12R from station 520 to station 741.1, and replacement of the countersunk fasteners in these longitudinal lap joints with protruding head fasteners.

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 repetitive external HFEC inspections to detect cracking of the skin around the fasteners in the upper row of the longitudinal lap joints of S–12L and S–12R from station 520 to station 741.1, and replacement of the countersunk fasteners in these longitudinal lap joints with protruding head fasteners. The actions would be required to be accomplished in accordance with the service bulletin described previously. This proposal also would require repair of all cracking in accordance with procedures specified in the 747 Structural Repair Manual.

This proposal is applicable only to airplanes having line numbers 201 through 230. Since the tolerance specifications for the bonding process for airplanes manufactered after line number 230 were more stringent, those airplanes are not subject to the unsafe condition addressed by this proposed AD.

There are approximately 30 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 17 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed inspections on U.S. operators is estimated to be $11,220, or $935 per airplane.

The FAA estimates that it would take approximately 302 work hours per airplane to accomplish the proposed requirement to replace fasteners, and that the average labor rate is $55 per work hour. Required parts would be nominal in cost. Based on these figures, the total cost impact of the proposed requirement to replace fasteners on U.S. operators is estimated to be $199,320, or $16,610 per airplane.

Based on the figures, above, the total cost impact of the proposed actions (cost of inspections added to the cost of replacement of fasteners) on U.S. operators is estimated to be $210,540, or $17,545 per airplane.

The FAA recognizes that the proposed replacement of fasteners would require a large number of work hours to accomplish. However, the 4-year compliance time specified in paragraph (b) of this proposed AD should allow ample time for the replacement of the fasteners to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14

CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 93–NM–212–AD.

Applicability: Model 747 series airplanes, having line numbers 201 through 230 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform an external high frequency eddy current (HFEC) inspection to detect cracking of the skin at the upper row of countersunk fasteners in the longitudinal lap joints of Stringer (S–)12L and S–12R from station 520 to station 741.1, in accordance with Boeing Service Bulletin 747–53–2366, dated August 6, 1992.

(1) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 4,000 flight cycles until the replacement of fasteners required by paragraph (b) of this AD is accomplished.

(2) If any cracking is found, prior to further flight, repair in accordance with the 747 Structural Repair Manual. After repair, repeat the inspection at intervals not to exceed 4,000 flight cycles until the replacement of fasteners required by paragraph (b) of this AD is accomplished.

(b) Prior to the accumulation of 20,000 total flight cycles or within 4 years after the effective date of this AD, whichever occurs later, replace the countersunk fasteners in the upper row of the longitudinal lap joints of S–12L and S–12R from station 520 to station 741.1 with protruding head fasteners in accordance with Boeing Service Bulletin 747–53–2366, dated August 6, 1992. Replacement of these fasteners constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) Prior to the accumulation of 10,000 total flight cycles after replacement of the countersunk fasteners required by paragraph (b) of this AD, perform an external HFEC inspection to detect cracking of the skin at the upper row of protruding head fasteners in the longitudinal lap joints of S–12L and S–12R from station 520 to station 741.1 in accordance with Boeing Service Bulletin 747–53–2366, dated August 6, 1992.

(1) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is found, prior to further flight, repair in accordance with the 747 Structural Repair Manual. After repair, repeat the inspection at intervals not to exceed 3,000 flight cycles.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4954 Filed 3–3–94; 8:45 am]

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14 CFR Part 39

[Docket No. 93–NM–213–AD]

Airworthiness Directives; Canadair Model CL–600–2B19 (Regional Jet) 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 Canadair Model CL–600–2B19 (Regional Jet) series airplanes. This proposal would require modification of the stall protection system (SPS) input wiring, a revision to the FAA-approved Airplane Flight Manual (AFM) to specify that a pre-flight check of the slip/skid indications must be conducted prior to engine start; and modification of the attitude and heading reference system (AHRS). This proposal is prompted by a report that the AHRS could send conflicting input to the stall protection computer (SPC) on the airplane. The actions specified by the proposed AD are intended to prevent the loss of stall warning protection on the airplanes.

DATES: Comments must be received by April 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–213–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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

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–213–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–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair Model CL–600–2B19 series airplanes. Transport Canada advises that the attitude and heading reference system (AHRS) could send conflicting input to the stall protection computer (SPC) on these airplanes. When the AHRS sends input to the SPC, the left- and right-hand channels on the SPC receive and compare that input. The SPC has a built-in feature that compares lateral acceleration from these channels. When the SPC recognizes unequal lateral acceleration signals of 0.03g or higher, it will inhibit the stall horn, light, and stick push command, and an "SPS FAILURE" caution message will display on the primary flight display. Due to a build-up effect of AHRS tolerances, these unequal signals may be detected within the SPC at a roll rate within the normal flight envelope. This condition, if not corrected, could result in the loss of stall warning protection on the airplane.

Bombardier, Inc., has issued Regional Jet Canadair Alert Service Bulletin S.B. A601R–34–028, Revision 'A,' dated October 22, 1993, that describes procedures for modification of the stall protection system (SPS) input wiring. The modification involves removing the right channel input wires from the connection to the SPC, capping and stowing the removed wires, installing splices from the left-hand channel input to the right-hand channel connection of the SPC, and installing a ground jumper wire. Accomplishment of these wiring changes will prevent a build-up effect of AHRS tolerances and unequal signals between the left- and right-hand SPC channels. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–93–27, dated October 26, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, 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 SPS input wiring. The modification would be required to be accomplished in accordance with the alert service bulletin described previously.

This proposed AD would also require revising the Normal Procedures section of the FAA-approved Airplane Flight Manual (AFM) to specify that a pre-flight check of the slip/skid indications must be conducted prior to engine start. Finally, this proposed AD would require modification of the AHRS to restore the dual AHRS inputs to the SPC. This modification would be required to be accomplished in accordance with a method approved by the FAA.

It should be noted that Canadian AD CF–93–27 requires that the flight crew be advised of the possibility of an inadvertent inhibition of the stall horn, light, and stick push command at a roll rate within the normal flight envelope, and that an "SPS FAILURE" caution message will be displayed on the primary flight display. The Canadian AD requires that when such a message is displayed, appropriate abnormal procedures in the AFM should be followed. However, the FAA's position in this regard is that it is not necessary to include a requirement in this proposed AD to direct the flight crew to follow existing AFM procedures.

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost for required parts would be minimal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $990, or $110 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:

Canadair Limited: Docket 93–NM–213–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7026 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of stall warning protection on the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the stall protection system (SPS) input wiring, in accordance with Canadair Regional Jet Alert Service Bulletin A601R–34–028, Revision 'A,' dated October 22, 1993.

(b) Prior to further flight after accomplishment of the modification required by paragraph (a) of this AD, revise the Normal Procedures section of the FAA-approved Airplane Flight Manual (AFM) by

inserting the following into the AFM as facing page 04–20–13 <FAA> to advise the flight crew that a pre-flight check of the slip/skid indications must be accomplished as a "Before Start" item. This may be accomplished by inserting a copy of this AD into the AFM.

"Change step (4) within paragraph E, Before Start, to read as follows:

(4) EFIS—Checked and Set

Check that no annunciations are displayed on EFIS

EFIS slip/skid indications—Normal

Indications of a one-half (1/2) symbol width lateral deviation should be interpreted as an AHRS failure.

Note

One-half (1/2) symbol width displacement corresponds to approximately one-half displacement on a conventional inclinometer.

EFIS—Set for Departure"

Note 1: Insertion of Canadair Regional Jet Airplane Flight Manual CSP A–012, Temporary Revision RJ/26, dated October 21, 1993, in the Normal Procedures section of the AFM is an acceptable method of compliance with the requirements of paragraph (b) of this AD.

(c) Within 6 months after the effective date of this AD, modify the attitude and heading reference system (AHRS) to restore the dual AHRS inputs to the stall protection computer (SPC), in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller 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, New York ACO, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4955 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

RIN 1515–AB20

Petroleum Refineries in Foreign Trade Subzones

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document invites public comment on a proposed revision of the notice of proposed rulemaking published in the **Federal Register** on August 10, 1992 (57 FR 35530), which would add special procedures and requirements to the Customs Regulations governing the operations of crude petroleum refineries approved as foreign trade subzones. The proposed rule is necessary to implement a section of the Technical and Miscellaneous Revenue Act of 1988 which amended the Foreign Trade Zone Act to make specific provision for petroleum refinery subzones. Customs has significantly revised the initial notice of proposed rulemaking as a result of the extensive and varied input received from the oil refinery and foreign trade zone communities, as well as from other interested parties, in response to the initial notice.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Legal aspects: Cari Berdut, Entry Rulings Branch, (202–482–7040).

Operational aspects: Louis Hryniw, Office of Regulatory Audit, (202–927–1100).

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1992 (57 FR 35530), Customs published a document in the **Federal Register**, proposing to amend the Customs Regulations to add special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in implementation of section 9002 of the Technical and Miscellaneous Revenue Act of 1988, which amended the Foreign Trade Zones Act, 19 U.S.C. 81c(d), to make specific provision for petroleum refinery subzones.

Briefly, as stated in the August 10, 1992, notice of proposed rulemaking, the amendment obviates the need to determine exactly when and where in the manufacturing process crude and other feedstocks become other products. In so doing, it permits refiners as well as Customs to assess the relative value of such multiple products at the end of the manufacturing period from which such products were produced, when the actual quantities of these products resulting from the refining process can be measured with certainty. Also, the amendment permits the products refined in a subzone during a manufacturing period to be attributed to given crude or other feedstocks introduced into production during the period, to the extent that such products were producible (could have been produced) therefrom in the quantities removed from the subzone.

By a document published in the **Federal Register** on September 14, 1992 (57 FR 41896), Customs extended the public comment period for the proposed rule until December 8, 1992. Subsequently, by a document published in the **Federal Register** on November 24, 1992 (57 FR 55198), Customs further extended the public comment period until February 8, 1993, and gave notice of a public meeting which was held on December 15 and 16, 1992, concerning the proposed amendments.

As a result of the extensive and varied input received from the oil refinery and foreign trade zone communities, as well as from other interested parties, in response to the initial notice of proposed rulemaking and the public meeting, Customs has decided to significantly revise its initial notice, and is requesting additional public comment on the revised proposed rule.

The following discussion includes a summary of the various comments received in response to the August 10, 1992, notice of proposed rulemaking, together with an explanation and analysis regarding the sections proposed to be added, eliminated or further revised. The proposed rule as revised is thereafter set forth.

Discussion of Comments

Comment: Most commenters favor deletion of proposed § 146.92(a), involving the definition of "Assay".

Response: Customs agrees. Laboratory analyses are sufficient to verify feedstock characteristics and provide API gravity.

Comment: Most commenters indicated that the cumulative entry activity report defined in proposed

§ 146.92 (c) is only required in the Houston District and, therefore, favor its deletion because the information is already contained in the subzone activity report.

Response: Upon further consideration, Customs has determined to delete proposed § 146.92 (c), (d), (h) and (l), involving the report in question, as well as certain related reports, specifically, the duty and user fee report, the inventory disposition report, and the product shipment report, all of which were principally addressed in proposed § 146.96 which, as a result, is also deleted from the proposed rule.

Comment: Commenters indicated that the definition in proposed § 146.92(e) concerning "feedstock" should be expanded to include natural gas and other hydrocarbons to comply with EPA regulations.

Response: Customs agrees and has so modified the wording of proposed § 146.92(e) (now redesignated as § 146.92(b)).

Comment: Many commenters noted that proposed § 146.92(f) defining "final product" should also include products consumed in the zone.

Response: Customs agrees with this suggestion and has so changed proposed § 146.92(f) (now redesignated as § 146.92(d)).

Comment: Most commenters indicated that fungibility is already defined in § 146.1(b), and that a definition for this term is not needed in the proposed subpart if the assay requirement is deleted.

Response: Customs agrees. Proposed § 146.92(g) has been eliminated.

Comment: A majority of commenters propose that the "manufacturing period" coincide with the normal accounting cycle.

Response: After reviewing the comments, particularly those of the Congressional sponsors of the legislation, Customs is convinced that a literal interpretation of the statutory language would not be appropriate. Therefore, proposed § 146.92(i) (now redesignated as § 146.92(e)) dealing with this matter has been reworded. The definition allows an operator to make the attribution of a final product either during the period in which the final product was produced (even if not consumed or removed from the refinery subzone during that same period) or the period in which the final product was consumed or removed from the zone (even if the final product was made in a prior period). The selection of the method is at the operator's option, but once selected, the method must be used consistently.

Comment: Most commenters suggested that they should be permitted to use standard product values, based on published prices.

Response: Customs agrees that standard product values, based on published prices, may be utilized, but that this must be done on a consistent basis. Thus, proposed § 146.92(j) (now redesignated as § 146.92(g)), involving the price of products in the subzone, has been reworded.

Comment: Most commenters suggested rewording proposed § 146.92(n) which defined the "relative value" of products produced in the subzone.

Response: The definition of "relative value" proposed by the commenters has been included in proposed § 146.92(n) (now redesignated as § 146.92(i)) because it states the same information as the proposed regulation, albeit more succinctly.

Comment: Many commenters noted that, generally, the "time of separation" will coincide with the "manufacturing period".

Response: Customs agrees that the "time of separation" coincides with the "manufacturing period". Therefore, proposed § 146.92(p) (now redesignated as § 146.92(k)) defining the time of separation has been modified accordingly.

Comment: Most commenters favor deletion of proposed § 146.92(q) which defines the term "unique identifier" (UIN) because this term is already defined in § 146.1(b)(19).

Response: Customs agrees and, therefore, this definition has been deleted.

Comment: Most commenters proposed eliminating proposed § 146.93(a)(1) regarding the use of the UIN (unique identifier) because this matter is already covered elsewhere in part 146.

Response: Customs agrees that existing § 146.22 adequately addresses this matter, and, therefore, paragraphs (a), (a)(1) and (a)(2) of proposed § 146.93 have been eliminated.

Comment: A number of commenters suggested that proposed § 146.93(b)(1) be deleted because zone admittance is already covered in subpart C of part 146.

Response: Customs agrees. Proposed § 146.93(b)(1) has been deleted.

Comment: Most commenters suggest deletion of the requirement that domestic feedstock be assigned a UIN, as provided in proposed § 146.93(c)(1), because existing regulations do not require that a Customs Form (CF) 214 be filed on domestic feedstocks.

Response: Customs agrees that a CF 214 is not required, and, therefore, proposed § 146.93(c)(1) has been deleted. Nevertheless, it must be noted that a domestic feedstock must be assigned a UIN under existing regulations.

Comment: A few commenters suggested that references to T.D. 66–16 concerning the attribution of final product to given feedstock be eliminated from proposed § 146.93(d)(1) because this is already discussed elsewhere in the proposed regulations.

Response: Customs agrees and, therefore, the proposed language has been duly modified and the section redesignated as proposed § 146.93(a)(1). Also, proposed § 146.93(d)(2) (now redesignated as § 146.93(a)(3)) dealing with attribution using alternative inventory control has been revised to make reference to the use of FIFO; the use of FIFO is illustrated in an Appendix which has been added to the revision of proposed subpart H. In addition, proposed § 146.93(d)(3) dealing with "stock in process" has been deleted, in concert with the deletion of this term from the definition section; in its place, a new proposed § 146.93(a)(2) makes reference to the use of actual production records in attributing product to feedstock.

Comment: Commenters suggested that products consumed within the zone should be included in proposed § 146.93(e).

Response: This suggestion has been incorporated in proposed § 146.93(e) (now redesignated as § 146.93(b)).

Comment: Commenters objected to the language of proposed § 146.94(a) regarding the introduction of feedstock into the refining process because they believe it requires a direct identification system.

Response: The commenters have misread this section, the purpose of which is to establish the amount and identity of the feedstocks available for attribution during each manufacturing period. The proposed language has been modified to eliminate any such misunderstanding.

Comment: Most commenters suggested deletion of the sentence, "This date establishes the end of the manufacturing period.", in proposed § 146.94(b).

Response: Given the proposed definition of "manufacturing period" this suggested change has been adopted.

Comment: Commenters indicated that the language contained in proposed § 146.94(c) regarding the removal of product from a refinery subzone is specific to a calendar week. However, an accounting period may be greater than a week.

Response: While a manufacturing or accounting period may be greater than a week, there is no authority to permit a consumption entry covering products removed from a zone to exceed one week. Thus, the language of § 146.94(c) remains in substance as originally proposed. However, Customs will reevaluate the possibility of permitting monthly entries, in light of the Customs modernization portion of the recently passed North American Free Trade Agreement Implementation Act, particularly § 637.

Currently, a refiner who desires to make attributions on the basis of a monthly manufacturing or accounting period must attribute and make any required relative value calculation by attributing current removals or consumptions to final products that were produced in a prior manufacturing or accounting period. A refiner who reports removals and consumption on a weekly basis and who elects to attribute a final product that is removed or consumed, in the same week that it is produced, must make the appropriate attribution and relative value calculation for that week.

Comment: Commenters noted that attribution is more appropriately dealt with in proposed § 146.99 (now redesignated as proposed § 146.96), rather than in proposed § 146.95 titled "Feedstock inventories".

Response: Customs agrees with the comments that attribution can be dealt with more appropriately in proposed § 146.99 (now redesignated as § 146.96); therefore, proposed § 146.95 concerning feedstock inventories has been deleted. Proposed § 146.97 titled "producibility" is now renumbered as § 146.95.

Comment: Commenters suggested deleting the last sentence and four reports listed in proposed § 146.96 concerning a subzone activity report.

Response: As already stated above, this proposed section has been deleted in its entirety.

Comment: Commenters noted that proposed § 146.97(a) must provide for products consumed within the subzone.

Response: Customs agrees with the comments that proposed § 146.97(a) must provide for consumption within the zone. Therefore, appropriate language has been included in proposed § 146.97(a) (now redesignated as § 146.95(a)).

Comment: Comments indicated that, as currently worded, proposed § 146.98(a) is limited to operators using producibility.

Response: Proposed § 146.98(a) (now redesignated as § 146.93(c)) has been modified to avoid any misunderstanding in this respect.

Comment: Commenters stated that attributions are binding except for adjustments needed upon reconciliation.

Response: Proposed § 146.99(a) (now redesignated as § 146.96(a)) has been modified to address this concern. Reconciliation is limited to changes in amounts, and mathematical and clerical errors, but does not include changes in the identity of the feedstock.

Comment: Commenters noted that other inventory control methods are already covered in proposed § 146.93(d)(2), so there is no need for proposed § 146.99(c).

Response: Customs has decided to essentially revise former proposed § 146.99(c) and to make it the subject of a new § 146.97 regarding the approval of other recordkeeping systems for subzone oil refinery operations. As already noted above, proposed § 146.93(d)(2) (now redesignated as § 146.93(a)(3)) has been revised to refer exclusively to the use of the FIFO method of inventory accounting.

Comment: Commenters also indicated that the proposed regulations do not take into account the three relative value methods listed in proposed § 146.98(b). Commenters also pointed out that the proposed regulation does not provide a mechanism to attribute consumption within the zone.

Response: Customs agrees and has determined to eliminate proposed § 146.98(b) from the revised proposed rule; and proposed § 146.98(c) is now redesignated as § 146.93(e). In addition, as previously emphasized, revised §§ 146.93, 146.95 and 146.96 now provide for consumption within the subzone. Moreover, Customs has decided to add an Appendix to proposed subpart H as revised in order to give detailed examples of attribution as well as the relative value calculation.

Conclusion

After careful consideration of the comments received and further review of the matter, it has been determined to republish the proposal with the modifications noted and to allow interested persons an additional opportunity to submit comments on the proposal. Also, Customs has determined to add definitions in the revised proposed rule for "feedstock factor", "petroleum refinery", and "refinery operating unit", and to eliminate the definitions for "protection of the revenue" and "stock in process" formerly set forth in proposed § 146.92(m) and (o), respectively. Commenters on the original proposal need not resubmit their comments. They will be considered along with any new comments received in response to this notice.

Comments

In developing the final regulations, any written comments (preferably in triplicate) that are timely submitted to Customs will be given consideration, along with the comments already submitted in response to the August 10, 1992, notice of proposed rulemaking. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, D.C.

Regulatory Flexibility Act and Executive Order 12866

For the reasons explained in the peamble to the prior notice of proposed rulemaking and to this document, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This proposed rule is not a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking is in §§ 146.93–146.97. The respondents would be businesses. The information is necessary in order to effectively supervise and control the activities of oil refineries operating in foreign trade subzones, and to ensure compliance with the requirements of law as well as the protection of the revenue.

The collection of information contained in this notice of proposed rulemaking has already been approved by the Office of Management and Budget (OMB) under 1515–0189, in connection with the prior notice of proposed rulemaking.

Estimated total annual reporting and/or recordkeeping burden: 18,824 hours

Estimated average annual burden per respondent and/or recordkeeper: 2,353 hours

Estimated number of respondents and/or recordkeepers: 8

Estimated annual frequency of responses: 52

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the U.S. Customs Service at the address previously specified.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

Proposed Amendment

For the reasons set forth in the preamble, it is proposed that part 146, Customs Regulations (19 CFR part 146) be amended as follows:

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–u, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1623, 1624.

* * * * *

2. It is proposed to amend part 146 by adding a new subpart H thereto to read as follows:

Subpart H—Petroleum Refineries in Foreign Trade Subzones

Sec.

Subpart H—Petroleum Refineries in Foreign Trade Subzones

§ 146.91 Applicability.

This subpart applies only to a petroleum refinery (as defined herein) engaged in refining petroleum in a foreign trade zone or subzone. This subpart also applies only to feedstocks (crude petroleum and derivatives thereof) which are introduced into production in a refinery subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart.

§ 146.92 Definitions.

The following definitions are applicable to this subpart H:

(a) *Attribution.* "Attribution" means the association of a final product with its source material by application of:

(1) Actual operating records;

(2) Producibility under T.D. 66–16; or

(3) Other Customs approved method.

(b) *Feedstocks.* "Feedstocks" means crude petroleum or intermediate product that is used in a petroleum refinery to make a final product.

(c) *Feedstock factor.* "Feedstock factor" means the relative value of final products utilizing T.D. 66–16 (see § 146.92(h)), and which takes into account any loss or gain.

(d) *Final product.* "Final product" means any petroleum product that is produced in a refinery subzone and thereafter removed therefrom or consumed within the zone.

(e) *Manufacturing period.* "Manufacturing period" means a period selected by the refiner which shall not exceed a calendar month, for which attribution to a source feedstock must be made and, if required, a relative value assigned for every final product made, consumed in or removed from the refinery subzone.

(f) *Petroleum refinery.* "Petroleum refinery" means a facility that refines a feedstock listed on the top line of the tables set forth in T.D. 66–16 into a product listed in the left column of the tables set forth in T.D. 66–16.

(g) *Price of product.* "Price of product" means the average per unit market value of each final product for a given manufacturing period or the published standard product value if updated each month.

(h) *Producibility.* "Producibility" is a method of attributing products to feedstocks for petroleum manufacturing in accordance with the Industry Standards of Potential Production set forth in T.D. 66–16.

(i) *Relative value.* "Relative value" means a value assigned to each final product attributed to the separation from a privileged foreign feedstock based on the ratio of the final product's value compared to the privileged foreign feedstock's duty.

(j) *Refinery operating unit.* "Refinery operating unit" means a unit in a refinery in which feedstock is processed such as a distillation tower, cracking tower or reformer.

(k) *Time of separation.* "Time of separation" means the manufacturing period in which a privileged foreign status feedstock is deemed to have been separated into two or more final products.

§ 146.93 Inventory control and recordkeeping system.

(a) *Attribution.* (1) *Producibility.* The producibility method of attribution requires that records be kept to attribute final products to feedstocks which have been introduced into a refinery operating unit during the current or prior manufacturing period.

(2) *Actual production records.* An operator may use its actual production records as provided for under § 146.96(b) of this subpart.

(3) *Other inventory method.* An operator may use the FIFO (first-in, first-out) method of accounting (see § 191.22(c) of this chapter). The use of this method is illustrated in the Appendix to this subpart.

(4) *Feedstock not eligible for attribution.* Feedstock admitted into the refinery subzone, until it is introduced into a refinery operating unit in the subzone, is not eligible for attribution to any final product.

(b) *Consumption or removal of final product.* Each final product that is consumed in or removed from a refinery subzone must be attributed to a feedstock introduced into a refinery operating unit during the current or a prior manufacturing period. Each final product attributed as being produced from the separation of a privileged foreign status feedstock must be assigned the proper relative value as set forth in paragraph (c) of this section.

(c) *Relative value.* A relative value calculation is required when two or more final products are produced as the result of the separation of privileged foreign status feedstock. Ad valorem and compound rates of duty must be converted to specific rates of duty in order to make a relative value calculation.

(d) *Consistent use required.* The operator must use the selected method and the price of product consistently (see § 146.92(g)) of this subpart).

§ 146.94 Records concerning establishment of manufacturing period.

(a) *Feedstock charged into a refinery operating unit.* The operator must record the date and amount of each feedstock charged into a refinery operating unit during each manufacturing period.

(b) *Final product consumed in or removed from subzone.* The operator

must record the date and amount of each final product consumed in, or removed from the subzone.

(c) *Consumption or removal.* The consumption or removal of a final product during a week may be considered to have occurred on the last day of that week for purposes of attribution and relative value calculation instead of the actual day on which the removal or consumption occurred, unless the refiner elects to attribute using the FIFO method (see Example II to Appendix to this subpart).

(d) *Gain or loss.* A gain or loss that occurs during a manufacturing period must be taken into account in determining the attribution of a final product to a feedstock and the relative value calculation of privileged foreign feedstocks. Any gain in a final product attributed to a nonprivileged foreign status feedstock is dutiable if entered for consumption unless otherwise exempt from duty.

(e) *Determining gain or loss; acceptable methods.*

(1) *Converting volume to weight.* Volume measurements may be converted to weight measurements using American Petroleum Institute conversion factors to account for gain or loss.

(2) *Calculating feedstock factor to account for volume gain.* A feedstock factor may be calculated by dividing the value per barrel of production per product category by the quotient of the total value of production divided by all feedstock consumed. This factor would be applied to a finished product that has been attributed to a feedstock to account for volume gain.

(3) *Calculating volume difference.* Volume difference may be determined by comparing the amount of feedstocks introduced for a given period with the amount of final products produced during the period, and then assigning the volume change to each final product proportionately.

§ 146.95 Producibility.

(a) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility attribution method are contained in tables published in T.D. 66–16. With these tables, a subzone operator may attribute final products consumed in, or removed from, the subzone to feedstocks during the current or a prior manufacturing period.

(b) *Attribution to product or feedstock not listed in T.D. 66–16.* For purposes of attribution, where a final product or a feedstock is not listed in T.D. 66–16, the operator must submit a proposed attribution schedule, supported by a technical memorandum, to the appropriate district director. If an operator elects to show attribution on a producibility basis, but fails to keep records on that basis, Customs shall use the operator's actual operating records to determine attribution and any necessary relative value calculation.

§ 146.96 Methods of attribution.

(a) *Producibility.* (1) *General.* A subzone operator must attribute the source of each final product. The operator is limited in this regard to feedstocks introduced into a refinery operating unit during the current or a prior period. Attribution of the final products is allowable to the extent that the quantity of such products could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66–16. Once attribution is made for a particular product, that attribution is binding. Subsequent attributions of feedstock to product must take prior attributions into account. Each refiner shall keep records showing each attribution.

(2) *Attribution to privileged foreign feedstock; relative value.* If a final product is attributed to the separation of a privileged foreign feedstock, their relative values must be assigned.

Example. An operator who elects to attribute on a monthly basis files the following estimated removal of final products for the first week in September:

Jet Fuel (deemed exported on international flights)	20,000
Gasoline:	
Domestic Consumption	15,000
Duty-free certified as emergency war material	10,000
Petroleum coke exportations	10,000
Distillate for consumption	5,000
Petrochemicals exported	10,000
Total removals	70,000

Because it does not elect to make attributions for feedstocks that were charged to operating units during the same week, the operator attributes the estimated removals to final products made during August from the following feedstocks:

Class II PF (privileged foreign) crude	20,000
Class III PF crude	35,000
Class III D (domestic) crude	20,000
Class III NPF (nonprivileged foreign) crude	20,000
	95,000

During August the operator produced from those feedstocks:

Jet	35,000
Gasoline	40,000
Petroleum Coke	10,000
Distillate	5,000
Petrochemicals	15,000
	105,000

There is a gain: 105,000 − 95,000=10,000

Using the tables in T.D. 66–16, the following choices are available for attribution:

	Charged	Jet	Gasoline	Petroleum		Petro-chemical
				Coke	Distillate	
Class II PF Crude	20,000	13,000	17,200	4,400	17,200	5,000
Class III PF Crude	35,000	24,500	31,850	14,000	31,150	10,150
Class III D Crude	20,000	14,000	18,200	8,000	17,800	5,800
Class III NPF Crude	20,000	14,000	18,200	8,000	17,800	5,800

Relative value factors are calculated:

	Barrels	Value/barrels	Value	Feedstock factors
Gasoline	40,000	$25	$1,000,000	.9117
Jet Fuel	35,000	23	805,000	.8388
Distillate	5,000	20	100,000	.7294
Petroleum Coke	10,000	10	100,000	.3647

	Barrels	Value/barrels	Value	Feedstock factors
Petrochemicals	15,000	40	600,000	1.4587
Gain	105,000		2,605,000	
	−10,000	2,605,000		
Total	95,000	[1]95,000		

[1] Equals $27.42 average value p/bbl.

Using the feedstock factor the refiner makes the following attributions:

Jet Fuel	24,192	(20,291 feedstock attributed to Class III PF Crude.)
	10,808	—Class III NPF Crude (attribution of 9066 solely for purpose of accounting for the amount of NPF used).
	35,000	
Gasoline	5,000	(4,559 feedstock attributed to Class III PF Crude.)
	5,000	—Class III NPF Crude (attribution of 4599 solely for purpose of accounting for the amount of NPF used).
	15,000	(13,676 feedstock attributed.)
	25,000	
Petroleum Coke	8,418	(3,070 feedstock attributed to Class II PF Crude.)
	1,582	—Class III NPF Crude (attribution of 577 solely for purpose of accounting for the amount of NPF used).
	10,000	
Distillate	5,000	(3,647 feedstock attributed to Class III Domestic.)
Petrochemicals	3,975	(5,800 feedstock attributed to Class III NPF Crude solely for purpose of accounting for the amount of NPF used).
	6,025	(8,789 feedstock attributed to Class III PF Crude.)
	10,000	

(b) *Actual production records.* An operator may use the actual refinery production records to attribute the feedstocks used to the removed or consumed products. Customs shall accept the operator's recordation conventions to the extent that the operator demonstrates that it actually uses the conventions in its refinery operations. Whatever convention is elected by the operator, it must be used consistently in order to be acceptable to Customs.

Example. If the operator mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials. If, in the alternative, the operator assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

§ 146.97 Approval of other recordkeeping systems.

(a) *Approval.* An operator must seek approval of another recordkeeping procedure by submitting the following to the Director, Office of Regulatory Audit:

(1) An explanation of the method describing how attribution will be made when a finished product is removed from or consumed in the subzone, and how and when the feedstocks will be decremented;

(2) A mathematical example covering at least two months which shows the amounts attributed, all necessary relative value calculations, the dates of consumption and removal, and the amounts and dates that the transactions are reported to Customs.

(b) *Failure to comply.* Requests received that fail to comply with paragraph (a) of this section will be returned to the requester with the defects noted by the Director, Office of Regulatory Audit.

(c) *Determination by Director.* When the Director, Office of Regulatory Audit, determines that the recordkeeping procedures provide an acceptable basis for verifying the admissions and removals from or consumption in a refinery subzone, the Director will issue a written approval to the applicant.

Appendix to Subpart H—Examples of Attribution and Relative Value

I. Attribution Using Producibility

Day 1

Transfer, within the refinery subzone, from one or more storage tanks to the crude distillation unit:

50,000 pounds privileged foreign (PF) class II crude oil
50,000 pounds PF class III crude oil
50,000 pounds domestic status class III crude oil

Day 20

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 20. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.D. 66–16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds (50,000 × .30). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds (50,000 × .40). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, and 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported; 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class

III crude oil would be available for further production, of which up to 5,000 pounds could be attributed to aviation gasoline.

Day 21

Transfer, within the refinery subzone, from one or more storage tanks to the crude oil distillation unit:

50,000 pounds PF status class I crude oil
50,000 pounds PF status class IV crude oil

Day 30

Removal from the refinery subzone:

30,000 pounds of motor gasoline for consumption
10,000 pounds of jet fuel sold to the US Air Force for use in military aircraft
10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights
10,000 pounds of kerosene for exportation

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 30, the period of manufacture is Day 1 to Day 30. If the refiner chooses to attribute the crude oils that entered production on Day 21 as the designated sources of the products removed on Day 30 using the production standards published in T.D. 66–16, the manufacturing period is Day 21 to Day 30. This 30 choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 30 and the manufacturing period from Day 21 to Day 30, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that entered production on Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66–16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds (50,000 × .20). Likewise, the class IV crude oil could 31 produce aviation gasoline in an amount up to 8,500 pounds (50,000 × .17).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds (35,000—5,000 × .91) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the US Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that class II crude oil (32,300 × .65). Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of 9,812 pounds of jet fuel (22,300 × .44). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene (30,000 × .50).

II. Attribution on a FIFO Basis

Day 1–5

Transfer, within the Refinery Subzone, from one or more storage tanks into process 150 barrels of Privileged Foreign (PF) Class II crude oil, equivalent to 50,000 pounds.

Day 6

Removal from the refinery subzone 119 barrels of residual oils to customs territory, equivalent to 40,000 pounds.

Since the operator uses the FIFO method of attribution, as the product is removed from the subzone, or consumed or lost within the subzone, attribution must be to the oldest feedstock available for attribution. Accordingly, the 40,000 pounds (119 barrels) of residual oils will be attributed to 40,000 pounds of the PF Class II crude oil from Day 1–5.

Day 10

Transfer, within the refinery subzone, from one or more storage tanks 4 barrels of domestic motor gasoline blend stock, equivalent to 1,000 pounds to motor gasoline blending tank.

Day 6–15

Transfer, within the refinery subzone, from one or more storage tanks into process 320 barrels of Domestic Class III crude oil, equivalent to 100,000 pounds.

Day 16

Removal from the refinery subzone 14 barrels of asphalt to customs territory, equivalent to 5,000 pounds.

The 5,000 pounds of asphalt will be attributed to 5,000 pounds of PF Class II crude oil from Day 1–5.

Day 17

Removal from the refinery subzone, 324 barrels of motor gasoline to customs territory, equivalent to 81,000 pounds.

The 81,000 pounds of motor gasoline will be attributed to 1,000 pounds of domestic motor gasoline blend stock from Day 10, to the remaining 5,000 pounds of PF Class II crude oil from Day 1–5 and 75,000 pounds of domestic Class III crude oil from Day 6–15.

Day 16–20

Transfer, within the refinery subzone, from one or more storage tanks into process 169 barrels of Privileged Foreign (PF) 34 Class III crude oil, equivalent to 50,000 pounds.

Day 22

Removal from the refinery subzone, 214 barrels of jet fuel for exportation, equivalent to 60,000 pounds.

The 60,000 pounds of jet fuel will be attributed to the remaining 25,000 pounds of domestic Class III crude oil from Day 6–15 and 35,000 pounds of PF Class III crude oil from Day 16–20.

Day 21–25

Transfer, within the refinery subzone from one or more storage tanks into process, 143 barrels of domestic Class I crude oil, equivalent to 50,000 pounds.

Day 30 (End of Manufacturing Period)

It is determined that during the manufacturing period just ended, that 34 barrels of fuel, equivalent to 10,000 pounds was consumed, and 5 barrels of oil, equivalent to 1,500 pounds was irrecoverably lost as provided in § 146.53(c)(1)(iv) of this part, in the refining production process within the refinery subzone.

The 10,000 pounds of fuel consumed will be attributed 10,000 pounds of PF Class III crude oil from Day 16–20. The 1,500 pounds of oil lost in the refining production process will be attributed to 1,500 pounds of PF Class III crude oil from Day 16–20. The remaining 3,500 pounds of PF Class III crude oil from Day 16–20 will be the first to be attributed during the next manufacturing period.

III. Relative Value Calculation

Because privileged foreign feedstocks transferred into process during Day 1–5 and Day 16–20 have two or more products attributed to them, each feedstock will require a relative value calculation.

Relative value calculation for UIN Day 1–5, 50,000 pounds, equivalent to 150 barrels.

	A lbs	B bbls	C $/bbl	D product value	E feedstock factor	F r.v. bbl	G dutiable bbl
Residual, Oil Po;	40,000	119	15.00	1,785	.9047	108	108
Asphalt	5,000	14	13.00	182	.7840	11	11
Motor Gasoline	5,000	20	26.00	520	1.5682	31	31
Totals	50,000	153		2,487		150	150

A=Pounds Attributed.
B=Equivalent Barrels.
C=Price of Product.
D=B×C.
E=C/(Total of Column D/Attributed Crude BBLS).
Residual Oil Feedstock Factor=15.00/(2,487/150)=.9047.
F=B×E.
G=Dutiable Barrels.

Since all products attributed to the 50,000 pounds (150 BBLS) of PF Class II crude entered customs territory duty equals $7.88 (150 × .0525).

Relative value calculation for UIN Day 16–20, 46,500 pounds equivalent to 157 barrels.

	Lbs	Bbls	$/bbl	Product value	R.V. factor	R.V. bbl	Dutiable bbl
Jet Fuel	35,000	125	27.00	3,375	1.1030	138	0
Fuel	10,000	34	12.00	408	0.4902	17	0
Consumed Process Loss	1,500	5	12.00	60	0.4902	2	0
Totals	46,500	164		3,843		157	0

Since jet fuel was exported, no duty is applicable. Fuel consumed for refinery process was consumed within the subzone premises and did not enter customs territory, thus no duty is applicable. Likewise, the process loss occurred entirely within the subzone. Therefore, no duty is applicable.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 28, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–5023 Filed 3–3–94; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH53–1–6092; FRL–4844–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On August 20, 1993, the Ohio Environmental Protection Agency (OEPA) submitted materials in response to requirements in part D of title I of the Clean Air Act for new source review in nonattainment areas. This submittal included no revisions to any Ohio regulations. Instead, the submittal described how Ohio intended to implement various applicable part D requirements, and presented a rationale that no revisions to State regulations would be necessary to satisfy these requirements. USEPA disagrees with this rationale and proposes to disapprove the State's submittal for failure to satisfy applicable requirements.

DATES: Comments on this proposed action must be received by April 4, 1994.

ADDRESSES: Comments should be submitted to William L. MacDowell at the Region 5 address. Copies of the State's submittals, the public comment letter, and USEPA's technical support document of November 9, 1993, are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Background

On August 20, 1993, the Ohio Environmental Protection Agency (OEPA) submitted a letter with attachments to the United States Environmental Protection Agency (USEPA) addressing new source review in nonattainment areas. USEPA notified OEPA on October 22, 1993, that it found this submittal complete. This submittal was intended to satisfy Clean Air Act requirements for new source review in nonattainment areas, particularly the new requirements established by the Clean Air Act Amendments of 1990.

Provisions for new source review in Ohio were included in the original State Implementation Plan (SIP) submitted on January 31, 1972, and replacement regulations submitted on June 6, 1973. The relevant regulations provided for best available control technology (BACT) and other requirements applied uniformly throughout the State. Subsequently, the Clean Air Act Amendments of 1977 provided for designations of areas as being in attainment or nonattainment of the air quality standards, and required a further State submittal to impose additional requirements (most notably lowest achievable emission rates (LAER) and offsets) for new sources in nonattainment areas. Ohio submitted relevant material on July 25, 1980, and September 25, 1980. USEPA conditionally approved these submittals on October 31, 1980, on the condition that Ohio submit regulations delineating requirements that new sources in nonattainment areas must meet.

Ohio submitted revised regulations on October 4, 1982, and January 24, 1983. These regulations impose nonattainment area new source permitting requirements by

incorporating appendix S to title 40 of the Code of Federal Regulations, part 51 (appendix S to 40 CFR part 51—"Emission Offset Interpretative Ruling") into the State regulations. USEPA granted limited approval to this submittal on September 8, 1993 (58 FR 47211), concluding that the regulation strengthened the SIP but did not fully satisfy the nonattainment area planning requirements established in 1977 in part D of title I of the Clean Air Act. Of particular concern were the exemptions of temporary sources and resource recovery facilities provided in appendix S (and thus incorporated by reference in the State rules) but not approvable under the criteria established in 40 CFR part 51, subpart I. By the time of this 1993 rulemaking, the Clean Air Act Amendments of 1990 had imposed further requirements for nonattainment area new source review. The State provided USEPA material concerning the new requirements on November 19, 1992, December 2, 1992, January 13, 1993, and April 26, 1993. USEPA notified the State on June 1, 1993, that these materials did not represent a complete submittal. The State then provided additional information on August 20, 1993, which USEPA found on October 22, 1993, to constitute a complete submittal. USEPA has conducted a full review and proposes to disapprove the submittal for failing to satisfy the current nonattainment area new source review requirements of part D of title I of the Clean Air Act.

The Clean Air Act Amendments of 1990 established numerous new requirements for new source review. Among the more significant of these requirements that apply to Ohio are provisions for specific emission offset requirements in ozone nonattainment areas, including specified minimum offset rations, for review of major new sources and major modifications for nitrogen oxides (NO_x) in ozone nonattainment areas, and for an alternative siting analysis for all nonattainment area pollutants. Additionally, the State plan must include provisions for proper calculation of offsets, provisions reflecting certain substantial restrictions on growth allowances, provisions for supplying from nonattainment new source review permits to USEPA's RACT/BACT/LAER Clearinghouse, provisions relating to rocket engines or motors, provisions relating to stripper wells, provisions relating to the definition of "stationary source" affecting the treatment of internal combustion engine sources, and provisions relating to temporary clean coal technology demonstration projects.[1]

The 1990 Amendments also specify various deadlines for submittal of SIP revisions to satisfy these requirements. For areas designated nonattainment for fine particulate matter, a plan satisfying the requirements of sections 173 and 189 was to be submitted by June 30, 1992. For areas designated nonattainment and classified as marginal or above for ozone, a plan satisfying the requirements of sections 173 and 182 was to be submitted by November 15, 1992. For areas designated nonattainment for carbon monoxide, a plan satisfying the requirements of section 173 was to be submitted by November 15, 1993. The State of Ohio has areas designated nonattainment for ozone and particulate matter, for which it was required to meet these SIP revision deadlines. The August 20, 1993, material was submitted in an effort to satisfy these requirements.

II. Review of State's Submittal

A. Review Relative to Pre–1990 Requirements

The State's recent submittal does not address new source review requirements that applied prior to the Clean Air Act Amendments of 1990. Therefore, the USEPA review of the State's plan relative to pre–1990 requirements published on September 8, 1993 (58 FR 47211), remains current. The September 8 notice granted limited approval on the basis of the strengthening effect of the 1982 regulations relative to the prior SIP, but found the State's plan to be insufficient to meet the pre–1990 new source review requirements. The 1982 regulations essentially incorporate appendix S of 40 CFR part 51 by reference. USEPA identified deficiencies relating to the exemptions from offset requirements for resource recovery facilities and temporary sources provided in appendix S and therefore incorporated by reference into Ohio's regulations. Since these deficiencies have not been addressed, the State's new source review program continues to fail to satisfy part D requirements.

The September 8 notice also noted that the provisions of appendix S, as incorporated by reference into Ohio's regulations, are not as explicit as the current requirements of subpart I of 40 CFR part 51 for annual, actual emissions offsets. Although USEPA interprets Ohio's regulations to require that federally enforceable actual emission offsets be obtained as a condition of any permit pursuant to part D, section 173(c requires that Ohio clarify that this requirement applies.

B. Review Relative to Post–1990 Requirements

The substance of Ohio's submittal of August 20, 1993, is a document entitled "Ohio EPA New Source Review State Implementation Plan—Requirements for Major New Sources in Nonattainment Areas." This document focuses on requirements established by the Clean Air Act Amendments of 1990 and identifies OEPA's plans for implementing these requirements. This document is referred to below as Ohio's statement of permitting criteria.

The State's submittal provides no new regulations to govern review of new sources in nonattainment areas. Instead, the submittal states that regulations adopted in 1974 provide the necessary authority to implement the new requirements for new source review, and that these SIP approved regulations in conjunction with the submittal's statement of permitting criteria should satisfy Clean Air Act requirements. Thus, a key question in this rulemaking is whether USEPA can approve this approach and enforce the intended permitting requirements.

The USEPA, in its technical support document, evaluated the adequacy with which Ohio's submittal satisfies selected key requirements. USEPA's review indicated that the statement of permitting criteria does not provide adequate specificity and clarity of criteria by which detailed implementation decisions would be made. The following discussion of sample requirements illustrates the basis for this conclusion.

The Clean Air Act Amendments of 1990 require that specified offset ratios for volatile organic compounds (VOC) emissions and presumptively for nitrogen oxides (NO_x) emissions must be obtained in ozone nonattainment areas. That is, any significant increase in potential emissions for either of these pollutants must be accompanied by an decrease in actual emissions that is larger by at least a specified ratio. Ohio's statement of permitting criteria includes: (1) A preliminary clause stating that "the following additional

[1] The amended Act also requires that new source review requirements apply to lower size sources in areas classified Serious or above, and in some cases requires new source review for particulate matter precursor sources in particulate matter nonattainment areas. However, Ohio presently has no areas classified Serious or above, and the requirement relating to particulate matter precursors will not apply if USEPA finalizes a determination proposed on August 3, 1993, that precursors do not contribute significantly to particulate matter violations.

requirements will be applicable," (2) an item 1 identifying "minimum required offset ratios," and (3) an item 4 noting that "NO_x . . . shall be treated as a nonattainment pollutant" in ozone nonattainment areas. No definition of offset ratio is provided, and so it is unclear what averaging time applies, whether offsets are to reflect allowable or actual emissions, whether all emission increases must be offset (e.g., fugitive and secondary emissions), where the offsets must occur, and whether interpollutant offsets are permissible. (Item 4 of Ohio's statement implies that NO_x offsets must come from the same county as the emission increases.) The statement also does not explicitly state that either VOC or NO_x offsets are required.

A second new requirement is that the other various major source requirements (e.g., lowest achievable emission rates) also apply to major sources of NO_x in ozone nonattainment areas, unless USEPA makes certain determinations that NO_x control would not be beneficial. Ohio implies the applicability of these requirements by making the above statement that NO_x is to be treated as a nonattainment pollutant. Ohio's statement continues that "[n]ew source applicants are required to meet the major new source definitions and major modifications thresholds as specified in the CAA." However, the Clean Air Act itself does not explicitly define "major new source" and does not specify major modification thresholds. Also, Ohio's statement could be read to require all sources to meet the size minimums for major new sources or major modifications. Ohio's statement continues: "For major modifications, these CAA requirements will be applicable to sources of NO_x greater than 40 tons per year." It is not clear whether Ohio intends this apparent reduction from 100 to 40 tons per year of the threshold of source sizes at which major modifications trigger new source review requirements.

Review of further requirements established by the 1990 Amendments is provided in the technical support document. The conclusion of USEPA's review is that the statement of permitting criteria does not address many of the questions that would arise in imposing the identified requirements.

C. Analysis of the Need for Regulations

The above examples clarify a central issue in this rulemaking, i.e. whether formal regulations are necessary to establish the requirements dictated by the Clean Air Act. Ohio's statement and the submittal cover letter present the State's position that existing Ohio statutes and regulations already require that the provisions of the amended Clean Air Act be met. Specifically, Ohio notes that its Rule 3745–31–05 requires that permits to install shall be issued only if the construction and operation will "not result in a violation of any applicable laws," which is defined to include the Clean Air Act including any amendments. Although Ohio proceeds to describe in general terms how it intends to apply the new requirements, the submittal cover letter expressly states that "the current, federally approved, Ohio SIP is adequate for fulfilling the requirements of a NSR SIP, and that no changes are necessary."

Ohio's position raises fundamental questions about the role of implementing regulations. In general, statutes present general criteria that must be met, whereas regulations define the specific requirements that apply in each circumstance. In limited circumstances a statute may be enforced without implementing regulations, but generally regulations are necessary to define the precise obligations of affected individuals and the precise criteria by which relevant decisions (e.g. determinations of compliance) will be made. The proper adoption of clearly defined criteria for making relevant decisions is essential to support these decisions. Therefore, in the absence of exhaustively detailed statutes, the adoption of detailed regulations is essential for successful program implementation.

In the case of new source review, the Clean Air Act identifies general provisions which are to be included in State plans. The State's statement of permitting criteria closely parallels the language in the Clean Air Act. As the above examples illustrate, Ohio's submittal fails to define many of the details of how these requirements would be implemented. In the absence of these details, a subject source could not be expected to know its obligations pursuant to these requirements, and could object to the imposition of the general requirements based on the failure of the State to pre-define the specific criteria that would be applied. Further, as a commenter noted when the State proposed its SIP revision, the statement of permitting criteria was not adopted according to the full procedures in Ohio for adoption of regulations, even though this statement is intended to serve purposes normally served by regulations. Consequently, the statement of permitting criteria lacks the specificity, the regulatory standing, and the assurance of being enforceable that are needed to satisfy Clean Air Act requirements.

III. This Action

USEPA's review indicates that Ohio's submittal does not clearly establish the specific criteria by which judgments in new source permitting will be made. Furthermore, by relying not on properly adopted regulations but rather on a general regulatory provision (requiring compliance with the Clean Air Act) in conjunction with a statement of permitting criteria, the State has failed to follow proper procedures to become authorized to impose specific, detailed permit conditions in accordance with the Clean Air Act requirements. In addition, the existing regulations exempt two types of sources which may not be exempted under applicable USEPA regulations. For these reasons, USEPA proposes to disapprove Ohio's submittal for failure to satisfy part D requirements.

Under section 179(a)(2), if USEPA takes final action to disapprove a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, USEPA must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to USEPA: highway funding restrictions, and a requirement for two-for-one offsets. The 18-month period referred to in section 179(a) would begin to run at the time USEPA publishes final notice of this disapproval. Moreover, the final disapproval would trigger the Federal Implementation Plan (FIP) requirement under section 110(c). Separate rulemaking is being conducted to identify which sanction would apply first and to address related issues on the application of sanctions, for example whether USEPA must publish final approval of a new submittal before the deficiency may be considered corrected.

Public comment is solicited on this proposed rulemaking action. Comments received by [Insert date 30 days from date of publication] will be considered in the development of USEPA's final rulemaking action.

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

entities with jurisdiction over populations of less than 50,000.

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

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), based on revised SIP processing review tables approved by the Acting Assistant Administrator for Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 7401–7671q.

Dated: February 14, 1994.

David Ullrich,

Acting Regional Administrator.

[FR Doc. 94–4992 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 63

[AD–FRL–4846–6]

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks: Reopening of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: EPA is reopening the public comment period for the proposed national emission standards for hazardous air pollutants (NESHAP) for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks. As initially published in the **Federal Register** of December 16, 1993 (58 FR 65768), written comments on the proposed rule were to be submitted to EPA on or before February 14, 1994 (a 60-day comment period). The public comment period is being reopened and will end on March 18, 1994.

DATES: Comments. Comments must be received on or before March 18, 1994.

ADDRESSES: Comments should be submitted to the docket.

Docket. Docket No. A–88–02, containing supporting information used in developing the proposed rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5420.

SUPPLEMENTARY INFORMATION: Several persons who intend to submit comments concerning the proposed NESHAP for chromium electroplating and anodizing operations have requested additional time to prepare their comments, beyond the 60 days originally provided. In consideration of these requests, EPA is reopening the comment period in order to give all interested persons the opportunity to comment fully. This reopening of the public comment period is necessary to ensure that interested parties have adequate time to provide the EPA with written comments on the proposed rule.

Dated: March 1, 1994.

Ann E. Goode,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–5131 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 261

[SW–FRL–4844–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to grant a petition submitted by Bethlehem Steel Corporation (BSC), Sparrows Point, Maryland, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in § 261.31 and § 261.32. This action responds to a delisting petition submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. The proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from regulation as a hazardous waste under the Resource Conservation and Recovery Act (RCRA).

The Agency is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until April 18, 1994. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with the Director,

Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by March 21, 1994. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–94–B8EP–FFFFF".

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (Room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–1436.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the Agency on procedural grounds (*Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991)). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). The Agency plans to address issues related to waste mixtures and residues in a future rulemaking.

B. Approach Used To Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a landfill is the most reasonable, worst-case disposal scenario for BSC's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the Agency is proposing to use a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal in a regulated municipal solid waste landfill and to determine the potential impact of disposal of BSC's waste on human health and the environment. Specifically, the Agency used the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because BSC is seeking an upfront delisting (*i.e.*, an exclusion based on data from waste generated from a bench-scale treatment process), ground-water monitoring data collected from the areas where the petitioner plans to dispose of the waste in the future are not necessary. Because the petitioned waste is not currently generated or disposed of, ground-water monitoring data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal sites and, thus, would serve no purpose. Therefore, the Agency did not request ground-water monitoring data.

BSC petitioned the Agency for an upfront exclusion (for waste that has not yet been generated) based on descriptions of the proposed stabilization process that will be used to treat BSC's dewatered filter cake, characterization of dewatered (unstabilized) filter cake, and results from the analysis of waste subjected to BSC's proposed stabilization process.

Similar to other facilities seeking upfront exclusions, this upfront exclusion (*i.e.*, an exclusion based on information characterizing the process and waste) would be contingent upon the analytical testing of the petitioned waste once stabilization is initiated at BSC's Sparrows Point facility. Specifically, BSC will be required to collect representative samples of stabilized filter cake to verify that the stabilization process is on-line and operating as described in the petition. The verification testing requires BSC to demonstrate that the proposed stabilization process, once on-line, will generate a non-hazardous waste (*i.e.*, a waste that meets the Agency's verification testing conditions).

From the evaluation of BSC's delisting petition, a list of constituents was developed for the verification testing conditions. Tentative maximum allowable leachable concentrations for these constituents were derived by back calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (*i.e.*, "delisting levels") are the proposed verification testing conditions of the exclusion.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents will be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delistings will allow new facilities to receive exclusions prior to generating wastes, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous, and managed as such sooner than otherwise would be possible. At the same time, conditional testing requirements to verify that the delisting levels are achieved by the fully operational treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Bethlehem Steel Corporation, Sparrows Point, Maryland.

A. Petition for Exclusion

Bethlehem Steel Corporation (BSC), located in Sparrows Point, Maryland, is involved in the production of tin and chromium plated parts and steel strip. BSC petitioned the Agency to exclude its chemically stabilized wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents of concern for EPA Hazardous Waste No. F006 waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed) (see part 261, appendix VII).

BSC petitioned the Agency to exclude its stabilized filter cake because it does not believe that the waste, once generated, will meet the criteria of the listing. BSC claims that its treatment process will generate a non-hazardous waste because the constituents of concern in the waste are either not present or are in an essentially immobile form. BSC also believes that the waste will not contain any other constituents that would render the waste hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of BSC's petition.

B. Background

On January 2, 1991, BSC petitioned the Agency to exclude its stabilized filter cake from the lists of hazardous

wastes contained in § 261.31 and § 261.32, and subsequently provided additional information to complete its petition. Specifically, BSC requested that the Agency grant an upfront exclusion (*i.e.*, an exclusion that applies to waste not presently generated) for dewatered filter cake that will be stabilized using lime kiln dust and powerplant fly ash at its Sparrows Point facility.

In support of its petition, BSC submitted: (1) Detailed descriptions of its manufacturing, waste treatment, and stabilization processes, including schematic diagrams; (2) Material Safety Data Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24, nickel, cyanide, zinc, and sulfide from representative samples of the dewatered (unstabilized) filter cake and the stabilized filter cake; (4) results from the EP Toxicity Test and the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the dewatered (unstabilized) filter cake, uncured stabilized filter cake, and the cured stabilized filter cake; (5) results from total oil and grease analyses from representative samples of the dewatered (unstabilized) filter cake and stabilized filter cake; (6) results from the Multiple Extraction Procedure (MEP, SW–846 Method 1320) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the stabilized filter cake; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; (8) results from the TCLP analyses for the TC volatile and semivolatile organic compounds from representative samples of the dewatered (unstabilized) filter cake; and (9) results from total constituent analyses for hexavalent chromium from representative samples of dewatered (unstabilized) filter cake.

Similar to other facilities seeking upfront exclusions, once BSC's proposed stabilization system is on-line at its Sparrows Point, Maryland facility, BSC would be required to submit additional analytical data for the petitioned waste to verify that the on-line stabilization system meets the treatment capability of the stabilization process as described in the petition and the verification testing conditions specified in the exclusion (see Section F—*Verification Testing Conditions*).

BSC's Sparrows Point, Maryland facility is involved in electroplating operations producing tin and chromium plated parts and steel strip. Three plating lines contribute wastes to the wastewater treatment plant generating BSC's chromium high density filter cake, namely, a tin free steel-chromium type (TFSCT) plating line and two halogen tinning lines.

The TFSCT plating line is designed to deposit a layer of chromium on the steel strip with an additional outer protective covering of chromium oxides. The TFSCT plating line consists of five major sections: The Entry Section, the Pre-Treatment Section, the Plating Section, the Post-Treatment Section, and the Delivery Section. The purpose of the entry section is to join the ends of the steel coils in preparation for subsequent continuous processing in the following sections. The pre-treatment section cleans and prepares the steel to be plated. The strip passes through an electrolytic cleaning system, brush scrubber, and pickle and pickle rinse cells to remove oil, dirt, rust, and other foreign substances. In the plating section, the steel strip passes through the plater conditioner cell prior to entering the plating cell. The chromium and chromium oxide layers are electrolytically plated onto the steel strip. The steel strip is rinsed, after it leaves the plater, in the dragout and rinse cells. In the post-treatment section, the coated steel strip is washed, dried, and oiled prior to being coiled for shipping or storage. The oil film helps to prevent scratching of the coated strip during handling, serves as a lubricant for punching and forming operations, and retards oxidation and corrosion. The delivery section consists of the equipment required for strip tension control, storage, measurement and inspection, and shearing and winding into coils.

During the TFSCT plating process overflow chromic acid solution from the plater conditioner, overflow rinse waters from the dragout and rinse cells of the plater section, and overflow rinse waters from the final washer cell are sent to a sump (the chromium sump) which collects only chromium-bearing wastewaters. The collected wastewater is then pumped from the chromium sump to the chromium High Density Sludge (HDS) Wastewater Treatment Plant. In addition, if it is necessary to shut down the TFSCT plating line for repairs or in the event of a strip break, chromium-bearing wastewaters from the plater conditioner and plater section are sent to a storage tank for subsequent treatment via the chromium HDS wastewater treatment plant.

The two halogen tinning lines are designed to deposit a thin layer of tin on metal strip with an outer protective covering of a very thin film of chromium and chromium oxides. The two halogen lines also consist of five major sections: the Entry Section, the Pre-treatment Section, the Tin Plating Section, the Post-Treatment Section, and the Delivery Section. The purpose of the entry section is to join the ends of the coils in preparation for subsequent continuous processing in the following sections. The pre-treatment section cleans and prepares the metal strip to be plated. The metal strip is cleaned in a hot, alkaline solution. A brush scrubber removes loosened dirt and any remaining caustic film, then a sulfuric acid solution is used to remove metal oxides. A second brush scrubber removes the remaining acid film. In the plating section, the cleaned, prepared metal strip is electroplated with tin. In the tin plating unit, the strip rides on top of the halogen plating solution, while a series of soluble anodes below the surface provide the tin for plating. The metal strip is sprayed and rinsed, after it leaves the plater, to remove any residual plating solution. After being dried, the metal strip passes through the electrical induction reflow (melting) process where the plated tin is converted from a matte (as plated) finish to a bright finish. The post-treatment section consists of a chemical treatment tank and a washer. In the chemical treatment tanks sodium dichromate is used to produce a thin uniform chromium and chromium oxide layer on the tinned surface via cathodic electrolysis. The film serves to stabilize or "passivate" the tinned surface preventing the undesirable tin oxides from forming. This section is completed with a dryer, Trion oiler, and a bridle roll. The delivery section consists of the delivery looping tower, a bridle roll, inspection and a recoil area where the metal strip is cut and transferred to empty reels.

During the halogen tinning process, rinse waters from the chemical treatment washer are sent to the chemical treat sump and further pumped to the chromium HDS treatment system. This is the only wastewater entering the chromium HDS wastewater treatment system from the Halogen Tinning Lines.

The waste streams from the TFSCT plating (chromium sump) and Halogen Tinning (chemical treat sump) lines are combined in a 50,000-gallon storage tank. From the storage tank the wastewater is pumped to a 10,000-gallon reduction reactor where the pH of the wastewater is adjusted by the addition of sulfuric acid. In addition, liquid sulfur dioxide (SO_2) is added to

reduce hexavalent chromium to trivalent chromium. The reduced chromium wastewater is next transferred to a 7,000-gallon neutralization tank and mixed with lime and previously-precipitated solids. The wastewater then flows by gravity to a 1,200-gallon flocculator tank where a polymer is added to promote flocculation of the metal hydroxides. The neutralized wastewater, containing approximately 2–5 percent solids, is then sent through a 50-foot diameter gravity thickener, where thickened sludge is removed and subsequently dewatered by a rotary drum vacuum filter to 35–55 percent solids. The thickener effluent is filtered and the filtrate is discharged to the Tin Mill Canal for further wastewater treatment prior to discharge to a receiving surface water body. The filtrate from the vacuum filter and the filter backwash are returned to the flocculator tank. The dewatered filter cake is discharged to a collection hopper and currently shipped to/treated at a permitted hazardous waste treatment facility (Envirite Corporation, York, Pennsylvania) before disposal.

In its petition, BSC proposed to stabilize the dewatered filter cake using lime kiln dust and powerplant fly ash. This process is based on the pozzolanic reaction that adsorbs and/or encapsulates the heavy metals present in the chromium filter cake into a calcium-alumino-silicate matrix. Based on bench-scale studies of its proposed stabilization process, BSC proposed using 3 parts lime kiln dust, 2 parts powerplant fly ash to 5 parts dewatered filter cake (by weight) and 2 parts water to form the stabilized filter cake. Once delisted, BSC plans to dispose of the stabilized filter cake at an on-site to-be-constructed Subtitle D landfill.

BSC initially collected a total of four composite samples of its dewatered filter cake during a four-week period between April 1, 1988 and April 28, 1988. The samples were collected using a scoop as sludge was discharged from the end of the vacuum filter press. Each composite sample was comprised of grab samples collected over a period of approximately five days. Portions of the composite samples were then stabilized using lime kiln dust and powerplant fly ash in a bench-scale process. Specifically, 1,000 grams of dewatered filter cake were mixed with 600 grams of lime kiln dust, 400 grams of powerplant fly ash, and water and allowed to cure until air-dried.

BSC provided analysis results for samples of dewatered (unstabilized) filter cake, filter cake samples that had just been stabilized, and filter cake samples that were allowed to cure for 15 days. Four composite samples of dewatered (unstabilized) filter cake and four composite samples of stabilized filter cake samples were analyzed for the total concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the eight TC metals, nickel, cyanide, zinc, sulfide, and total oil and grease content. Composite samples of dewatered (unstabilized) filter cake, uncured stabilized filter cake, and cured stabilized filter cake were also analyzed for EP Toxicity and TCLP leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the eight TC metals (except for barium and selenium) and nickel.

On March 18, 1992, BSC submitted additional information which included results from the analysis of four composite samples of dewatered (unstabilized) filter cake. These samples were collected over a period of four weeks from January 15, 1992 to February 10, 1992. Using a stainless steel scoop, BSC collected grab samples from the middle and both ends of the filter drum to ensure a representative sample. Each daily composite sample was comprised of 5 grab samples. After the last grab sample was taken each day, the samples of filter cake were thoroughly mixed to form the daily composite. All four dewatered (unstabilized) filter cake composite samples were analyzed for total chromium, hexavalent chromium, and TCLP leachate concentrations of the TC volatile and semivolatile organic compounds.

BSC claims that due to consistent manufacturing and waste treatment processes, the analytical data obtained from the two sampling events are representative of any variation in the chemically stabilized wastewater treatment filter cake constituent concentrations. BSC further explained in its petition that the samples collected in January and February 1992 represent filter cake generated specifically when different combinations of the three plating lines were operating.

C. Agency Analysis

BSC used SW–846 Method 7000 to quantify the total constituent concentrations of arsenic, barium, cadmium, lead, nickel, selenium, silver, and zinc in the filter cake samples. BSC used an Agency approved Bethlehem Steel Standard Method [1] to quantify the total constituent concentration of chromium in the filter cake samples. BSC used SW–846 Method 3060 to digest the samples, and then followed Method 7195 to analyze/quantify hexavalent chromium concentrations in the dewatered (unstabilized) filter cake samples. BSC used "Determination of Mercury in Water By Gold-Film Analyzer", to quantify the total constituent concentration of mercury in the filter cake samples. BSC used SW–846 Method 9010 to quantify the total constituent concentration of cyanide in the filter cake samples. BSC used "Methods for Chemical Analysis of Water and Wastes" Method 376.1 to quantify the total constituent concentration of sulfide in the filter cake samples.

Using SW–846 Method 9071, BSC determined that its stabilized filter cake had a maximum oil and grease content of 0.099 percent; therefore, the leachate analyses did not have to be modified in accordance with the Oily Waste EP methodology (i.e., wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard leachate procedures, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample).

BSC used SW–846 Method 1310 (EP)/Method 7000 to quantify the EP leachable concentrations of arsenic, cadmium, chromium, lead, mercury, nickel, and silver in the filter cake samples, and used modified SW–846 Method 1310 (using distilled waster, instead of acetate buffer, in the extraction) and Method 9010 to quantify the EP leachable concentration of cyanide in cured stabilized samples. BSC used SW–846 Method 1311 (TCLP)/Method 7000 to quantify the TCLP leachable concentrations of arsenic, cadmium, chromium, lead, mercury, nickel, and silver in the filter cake samples. BSC used SW–846 Method 1320 (MEP)/Method 7000 to quantify the MEP leachable concentrations of the TC metals (except for barium and selenium) and nickel in the cured stabilized filter cake.

Table 1 presents the maximum total constituent concentrations of the eight TC metals, nickel, cyanide, zinc, and sulfide for the dewatered (unstabilized) filter cake and stabilized filter cake.

[1] Bethlehem Steel Standard Method. "Methods of Sampling and Analysis Vol. I Iron and Steel" - Chromium by the Persulfate Oxidation Method. Additional descriptive information about this method is included in the RCRA public docket for today's notice.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM)[1] FILTER CAKE

Constituents	Dewatered (unstabilized) filter cake	Stabilized filter cake
Arsenic	<2.0	52
Barium	<100	<100
Cadmium	0.55	0.50
Chromium (total)	240,000	55,000
Chromium (hexavalent)	45	.....
Lead	140	350
Mercury	0.087	0.091
Nickel	96	85
Selenium	<1.0	<1.0
Silver	<6.0	<6.0
Cyanide (total)	342	52
Zinc	120	90
Sulfide	220	160

<Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituents found in any sample of dewatered (unstabilized) filter cake and stabilized filter cake collected by BSC. The maximum level of a specific constituent in dewatered filter cake does not necessarily correspond to the maximum level of the constituent in stabilized filter cake. In addition, these levels do not necessarily represent the specific levels found in one sample.

Table 2 presents the maximum reported or calculated EP or TCLP leachate concentrations for the eight TC metals, nickel, cyanide (EP analysis only), and zinc. Table 3 presents the leachate concentrations obtained from the MEP leachate analysis performed on the cured stabilized filter cake.

The detection limits presented in Tables 1, 2, and 3 represent the lowest concentrations quantifiable by BSC when using the appropriate SW–846 or Agency-approved analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

BSC used SW–846 Method 1311 (TCLP) to leach, then followed Method 8260 and Method 8270 to quantify the leachable concentrations of the volatile and semivolatile organic compounds listed in Table 1 of § 261.24. Chloroform, the only detected organic constituent, was found at a maximum concentration of 0.0624 ppm (without blank correction) in BSC's dewatered (unstabilized) filter cake. Chloroform was also detected at a level of 0.0950 ppm in one of two method blanks; therefore, its presence in the waste is uncertain and may be attributed to laboratory contamination.

Last, on the basis of explanations provided by the petitioner, none of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22 and § 261.23.

TABLE 2.—MAXIMUM EP AND TCLP LEACHABLE CONCENTRATIONS (PPM)[1] FILTER CAKE

Constituents	Dewatered (unstabilized) filter cake	Uncured stabilized filter cake	Cured stabilized filter cake
EP Analysis Results:			
Arsenic	<0.02	0.03	<0.02
Barium	.....	.....	[2]<5.0
Cadmium	<0.02	<0.02	<0.02
Chromium	12.7	<0.05	<0.05
Lead	0.03	0.04	<0.01
Mercury	<0.002	0.004	<0.002
Nickel	0.30	0.14	0.10
Selenium	.....	.....	[2]<0.05
Silver	<0.05	<0.05	<0.05
Cyanide	.....	.....	<0.02
Zinc	.....	.....	[2]4.5
TCLP Analysis Results:			
Arsenic	<0.02	<0.02	<0.02
Barium	.....	.....	[2]<5.0
Cadmium	<0.02	<0.02	<0.02
Chromium	31.2	<0.05	0.10
Lead	0.04	<0.01	<0.01
Mercury	<0.002	0.002	<0.002
Nickel	0.30	0.20	0.20
Selenium	.....	.....	[2]<0.05
Silver	<0.05	<0.05	<0.05
Zinc	.....	.....	[2]4.5

<Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituent found in any sample of dewatered (unstabilized) filter cake, uncured stabilized filter cake and cured stabilized filter cake collected by BSC. The maximum level of a specific constituent in dewatered filter cake does not necessarily correspond to the maximum level of the constituent in uncured stabilized filter cake or cured stabilized filter cake. In addition, these levels do not necessarily represent the specific levels found in one sample.

[2] Calculated from the maximum total constituent level in stabilized filter cake samples by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2 liters of TCLP leaching solution) and a theoretical worst-case leaching of 100 percent.

TABLE 3—MEP[1] LEACHATE CONCENTRATIONS (PPM) CURED STABILIZED FILTER CAKE

Constituents	EP Extract	Days/Concentrations[2]								
		1	2	3	4	5	6	7	8	9
Arsenic	0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	
Cadmium	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02

TABLE 3—MEP [1] LEACHATE CONCENTRATIONS (PPM) CURED STABILIZED FILTER CAKE—Continued

Constituents	EP Extract	Days/Concentrations [2]								
		1	2	3	4	5	6	7	8	9
Chromium	<0.05	<0.05	<0.05	0.13	0.05	0.08	<0.05	<0.05	<0.05	<0.05
Lead	0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Mercury	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002
Nickel	<0.10	<0.10	0.10	<0.10	<0.10	<0.10	<0.10	<0.10	<0.10	<0.10
Silver	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05

<Denotes that the constituent was not detected at the detection limit specified in the table.

[1] Multiple Extraction Procedure (MEP) is a series of nine synthetic acid rain extractions, which simulates the hypothetical long-term leaching effects of acid rain.

[2] The highest concentration of each EP Tox metal found in each of the nine-day continuous extraction analyses of stabilized filter cake samples.

BSC submitted a signed certification stating that, based on the current annual generation rate of dewatered (unstabilized) filter cake, the maximum annual generation rate of stabilized filter cake will be 1,476 wet tons (approximately 1100 cubic yards, based on a bulk density of 1.34 tons per cubic yard). The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste generation rate. EPA accepts BSC's certified estimate of 1100 cubic yards per year of stabilized filter cake.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting a final exclusion. The Agency was present at BSC's Sparrow Point facility to observe the collection of dewatered (unstabilized) filter cake samples on January 23, 1992.

D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for BSC's chemically stabilized filter cake and decided, based on the information provided in the petition, that disposal in a municipal solid waste landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated BSC's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground-water contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (*i.e.*, a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The Agency requests comments on the use of the EPACML as applied to the evaluation of BSC's petitioned waste.

For the evaluation of BSC's petitioned waste, the Agency used the EPACML to evaluate the mobility of the hazardous inorganic constituents detected in the extract from BSC's stabilized filter cake. The Agency's evaluation, using a maximum annual waste volume estimate of 1100 cubic yards per year and the maximum reported or calculated EP, TCLP, or MEP leachate concentrations (see Tables 2 and 3), yielded compliance-point concentrations (see Table 4) that are orders of magnitude below the health-based levels used in delisting decision-making. Maximum leachable levels from both uncured and cured stabilized waste were below levels of concern.

TABLE 4.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) STABILIZED FILTER CAKE

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Arsenic	0.0003	0.05
Barium	0.0521	2.0

TABLE 4.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) STABILIZED FILTER CAKE—Continued

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Chromium	0.0014	0.1
Lead	0.0004	0.015
Mercury	0.00004	0.002
Nickel	0.0021	0.1
Selenium	0.0005	0.05
Zinc	0.0469	7.0

[1] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," July 1992, located in the RCRA public docket for today's notice.

The maximum reported or calculated leachate concentrations of arsenic, barium, chromium, lead, mercury, nickel, selenium, and zinc in the stabilized filter cake yielded compliance point concentrations well below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, cadmium, silver, and cyanide) from BSC's waste because they were not detected in the leachate using the appropriate analytical test methods (see Tables 2 and 3). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

As also reported in Table 1, the maximum concentration of total cyanide in BSC's stabilized filter cake is 52 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the maximum level of reactive cyanide will not exceed

52 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent concentration of sulfide in the stabilized filter cake is 160 ppm (see Table 1), the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency Memorandum in the RCRA public docket.

As noted previously, chloroform was detected in the TCLP extracts of unstabilized waste, and also in one of the method blanks. Thus, the presence of chloroform is uncertain and may be attributed to laboratory contamination. However, the Agency also used the EPACML to evaluate the mobility of chloroform detected in the extract from BSC's dewatered (unstabilized) filter cake as a worst-case analysis of this constituent. The Agency's evaluation, using a maximum annual waste volume estimate of 1100 cubic yards per year and a maximum leachate concentration of 0.0624 ppm, yielded a compliance-point concentration of 0.0006 ppm. Thus, even under these worst-case assumptions, this concentration is less than the delisting health-based level for chloroform of 0.006 ppm.

The Agency concluded, after reviewing BSC's processes and raw materials list, that no other hazardous constituents of concern, other than those tested for, are being used by BSC and that no other constituents of concern are likely to be present or formed as reaction products or by-products in BSC's waste. In addition, on the basis of explanations provided by BSC, pursuant to § 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

During its evaluation of BSC's petition, the Agency also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersal in particular, the Agency believes that exposure to airborne contaminants from BSC's stabilized waste is unlikely.

BSC's dewatered (unstabilized) filter cake is composed of metal hydroxides, primarily chromic hydroxide, which is one of the more stable wastes in the environment. BSC's dewatered filter cake will then be stabilized through the pozzolanic reaction of lime and fly ash, which adsorbs and binds the heavy metals present in the chromium filter cake into a calcium-alumino-silicate matrix, thereby rendering them essentially immobile. The stabilization product will ultimately cure into a concrete-like solid material. Therefore, EPA does not believe that airborne exposure to hazardous contaminants released from BSC's chemically stabilized filter cake is likely to present a hazard to human health. In addition, there are no significant volatile constituents of concern present in the filter cake for that could lead to airborne exposure to any organic constituent.

However, the Agency evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from BSC's waste in an open landfill. The results of this worst-case analysis indicated that no substantial present or potential hazard to human health from exposure to particulate emissions from BSC's waste is likely. A description of the Agency's assessment of the potential impact of BSC's waste, with regard to airborne dispersal of waste contaminants, is presented in the docket for today's proposed rule.

The Agency also considered the potential impact of the petitioned wastes via a surface water route. Because BSC's waste will be stabilized in a solidified form, contamination of surface water is unlikely to occur through particulate runoff from a landfill containing the BSC's waste. The Agency also believes that containment structures at municipal solid waste landfills can effectively control surface water run-off, as the recently promulgated Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters.

Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in either the TCLP or MEP leachate analyses reported in today's notice, due to the aggressive acid medium used for extraction in the TCLP and MEP tests. The Agency believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first travelling through the saturated subsurface zone where further dilution and attenuation of hazardous constituents will also occur. Significant releases to surface water through erosion and runoff of landfilled BSC's waste are unlikely due to the solidified concrete form of the waste. Furthermore, in the unlikely event that BSC's chemically stabilized filter cake reached surface water, the stabilized form of the waste would mitigate any impact. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituent that may be mobilized in surface water, as well as ground water. The reported TCLP and MEP extraction data show that the metals in BSC's chemically stabilized filter cake are essentially immobile in aqueous solution. For example, the maximum leachable chromium level was 0.10 ppm, which is less than 0.0002% of the chromium present in BSC's chemically stabilized filter cake. Therefore, BSC's waste that might be released to surface water would be likely to remain undissolved. Finally, any transported constituents would be further diluted in the receiving surface water body due to relatively large flows of the streams/rivers of concern.

Based on the reasons discussed above, EPA believes that contamination of surface water through run-off from the waste disposal area is very unlikely. Nevertheless, the Agency evaluated potential impacts on surface water if BSC's waste were released from a municipal solid waste landfill through run off and erosion (see the docket for today's proposed rule). The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The Agency, therefore, concluded that BSC's chemically stabilized waste is not a substantial present or potential hazard to human health and environment via the surface water exposure pathway.

E. Conclusion

The Agency believes that BSC's descriptions of its stabilization process and its characterization of waste composition, in conjunction with the proposed delisting testing requirements, provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced, and thus, that BSC's petition for an upfront conditional exclusion should be granted. The Agency believes that the sampling procedures used by BSC were adequate, and that the samples are representative of the day-to-day variations in constituent concentrations found in the stabilized filter cake. The Agency believes that data submitted in support of the petition show that BSC's proposed stabilization process can render the dewatered filter

cake immobile and non-hazardous. In addition, under the testing provisions of the conditional exclusion, BSC will be required to re-treat or dispose of as hazardous any batch exhibiting extract levels at or above a specified level (*i.e.*, "delisting level") (see Section F—*Verification Testing Conditions*).

The Agency proposes to grant a conditional, upfront exclusion to Bethlehem Steel Corporation, located in Sparrows Point, Maryland, for the stabilized filter cake described in its petition as EPA Hazardous Waste No. F006. The Agency's decision to exclude this waste is based on process descriptions, characterization of dewatered (unstabilized) filter cake, and results from the analysis of waste subjected to BSC's proposed stabilization process. If the proposed rule is finalized, the petitioned stabilized filter cake, provided the conditions of the exclusion are met, will no longer be subject to regulation under Parts 262 through 268 and the permitting standards of Part 270.

F. Verification Testing Conditions

As proposed, verification tests are to be conducted in two phases, initial and subsequent. The initial testing requirements apply to at least the first eight weeks that BSC stabilizes its dewatered filter cake as described in its petition. Upon approval by EPA, the subsequent testing requirements apply to the stabilized waste generated after the initial verification testing period. The proposed conditions also include an annual testing requirement.

If the final exclusion is granted as proposed, BSC will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the stabilized filter cake continues to meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by BSC. The Agency may choose to modify these proposed conditions based on comments that may be received during the public comment period for this proposed rule. This proposed exclusion for BSC's stabilized filter cake is conditional upon the following requirements:

(1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA).

(A) *Initial Verification Testing:* During at least the first eight weeks of operation of the full-scale treatment system, BSC must collect and analyze weekly composites representative of the stabilized waste. Weekly composites must be composed of representative grab samples collected from every batch during each week of stabilization. The composite samples must be collected and analyzed, prior to the disposal of the stabilized filter cake, for all constituents listed in Condition (3). BSC must report the analytical test data, including a record of the ratios of lime kiln dust and fly ash used and quality control information, obtained during this initial period no later than 60 days after the collection of the last composite of stabilized filter cake.

The Agency has determined, based on the generation rate of stabilized filter cake, that approximately eight weeks would be required for BSC to collect sufficient data to verify that a full-scale stabilization process is operating correctly. The proposed initial testing condition, if promulgated, will require BSC to collect a minimum of eight composite samples during the first eight weeks that BSC stabilizes its dewatered filter cake. The Agency believes that proposed initial verification testing is appropriate, because the volume of dewatered (unstabilized) filter cake to be generated daily is relatively small, and hazardous constituents in the filter cake become immobile after chemical stabilization. This initial testing condition would ensure that the full-scale treatment system is closely monitored during the start-up period. If the Agency determines that the data collected under this condition reveal that the treatment system is not being operated as described in BSC's petition, the exclusion will not cover the generated stabilized filter cake. If the Agency determines that the data obtained from the initial verification period demonstrates the treatment process is effective, EPA will notify BSC in writing that the testing conditions in (1)(A) may be replaced with the testing conditions in (1)(B).

The Agency believes that the concentrations of the constituents of concern in the stabilized filter cake may vary somewhat over time. Based on information BSC provided in its petition, total chromium concentrations in the dewatered (unstabilized) filter cake range from 7.75 percent to 24 percent. To ensure that BSC's stabilization process effectively handles the variation in chromium concentration in the dewatered filter cake, the Agency is proposing a subsequent verification testing condition. In addition to chromium, low leachable concentrations of lead and nickel were found in unstabilized and stabilized filter cake. Thus, the proposed subsequent testing would demonstrate that the stabilization process is operating as described in the petition and that the stabilized filter cake does not exhibit unacceptable levels of key toxic constituents (*i.e.*, chromium, lead, and nickel). Therefore, the Agency is proposing to require BSC to analyze monthly composites of the stabilized filter cake as described in Condition (1)(B).

(B) *Subsequent Verification Testing:* Following written notification by EPA, BSC may substitute the testing condition in (1)(B) for (1)(A). BSC must collect and analyze at least one composite representative of the stabilized filter cake generated each month. Monthly composites must be comprised of representative samples collected from all batches that are stabilized in a one-month period. The monthly samples must be analyzed prior to the disposal of the stabilized filter cake for chromium, lead and nickel. BSC may, at its discretion, analyze composite samples more frequently to demonstrate that smaller batches of waste are non-hazardous.

The Agency is also proposing to require BSC to demonstrate, on an annual basis, that the characteristics of the petitioned waste remain as originally described. Therefore, the Agency is proposing to require BSC to analyze, on an annual basis, a representative composite sample of the stabilized filter cake for all Toxicity Characteristic (TC) constituents as described in Condition (1)(C).

(C) *Annual Verification Testing:* In order to confirm that the characteristics of the waste do not change significantly over time, BSC must, on an annual basis, analyze a representative composite sample of stabilized filter cake for all TC constituents listed in 40 CFR § 261.24 using the method specified therein. This composite sample must represent the stabilized filter cake generated over one week.

The Agency believes that collecting monthly composite samples will ensure that BSC's stabilization process is not adversely affected by the potential variability in concentrations of chromium, lead and nickel. The data obtained from the annual recharacterization of the petitioned waste will assist EPA in determining whether the petitioned waste is more variable than originally described by the petitioner. The Agency also believes that the annual recharacterization of the petitioned waste is not overly burdensome to the petitioner and notes that these data will assist the petitioner in complying with § 262.11(c) which

requires generators to determine whether their wastes are hazardous, as defined by the Toxicity Characteristic (see § 261.24).

Future delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the manufacturing and treatment processes, the waste, the volume of waste (including whether there is a fixed volume of waste), and other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (see *e.g.*, 56 FR 41286, August 20, 1991, and 56 FR 67197, December 30, 1991), may require more frequent and more extensive continuous batch testing.

(2) *Waste Holding and Handling*: BSC must store, as hazardous, all stabilized filter cake generated until verification testing (as specified in Conditions (1)(A) and (1)(B)) is completed and valid analyses demonstrate that the delisting levels set forth in Condition (3) are met. If the levels of hazardous constituents measured in the samples of stabilized filter cake generated are below all of the levels set forth in Condition (3), then the stabilized filter cake is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any weekly or monthly composite sample equal or exceed any of the delisting levels set in Condition (3), the stabilized filter cake generated during the time period corresponding to this sample must be retreated until it is below these levels or managed and disposed of in accordance with Subtitle C of RCRA.

The purpose of Condition (2) is to ensure that stabilized filter cake which contains hazardous levels of specific constituents is managed and disposed of in accordance with Subtitle C of RCRA. Holding the stabilized filter cake until characterization is complete will protect against improper handling of hazardous material. The stabilized samples must be analyzed for the appropriate parameters, and must meet the appropriate delisting levels in Condition (3), in order for the waste to be excluded from the hazardous waste regulatory system.

The Agency selected the set of constituents specified in Condition (3) after reviewing information about the composition of BSC's unstabilized and stabilized F006 filter cake and descriptions of BSC's manufacturing and treatment processes. The analytes in Condition (3) include TC metallic constituents currently regulated under § 261.24 and nickel.

The Agency established the delisting levels by first back-calculating the maximum allowable leachate concentrations (MALs) from the health-based levels (HBLs) for the constituents of concern using the EPACML DAF of 96 for BSC's maximum annual stabilized waste volume of 1,100 cubic yards, *i.e.*, MAL=HBL × DAF. The calculated MALs were then compared with the maximum contaminant concentrations for the toxicity characteristic (*i.e.*, TC levels) shown in § 261.24, as § 260.22(d)(3) precludes delisting any waste that exhibits a characteristic. The delisting levels established in Condition (3) are the lesser of the calculated MALs and the TC levels. Delisting levels are set at the TC levels for selenium, barium, chromium, and silver.

(3) *Delisting Levels*: All concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. The leachable concentrations for the constituents must be below the following levels (ppm): arsenic—4.8; barium—100; cadmium—0.48; chromium—5.0; nickel—9.6; lead—1.4; mercury—0.19; selenium—1.0; silver—5.0.

Condition (4) given below allows BSC to alter the stabilization process (*e.g.*, the stabilization reagents) from the process conditions identified during the initial verification testing under (1)(A). The Agency believes that this condition allows BSC a reasonable amount of flexibility to change and improve its process, but still requires BSC to notify EPA and to confirm that the process remains effective.

(4) *Changes in Operating Conditions*: After completing the initial verification test period in Condition (1)(A), if BSC decides to significantly change the stabilization process (*e.g.*, stabilization reagents) developed under Condition (1), then BSC must notify EPA in writing prior to instituting the change. After written approval by EPA, BSC may manage the waste generated from the changed process as non-hazardous under this exclusion, provided the other conditions of this exclusion are fulfilled.

Condition (5) given below outlines the procedures BSC must follow in submitting data collected under the conditional exclusion to EPA. The certification statement that BSC must sign provides added assurance that data provided are accurate and complete.

(5) *Data Submittals:* Two weeks prior to system start-up, BSC must notify in writing the Section Chief, Delisting Section (see address below) when stabilization of the dewatered filter cake will begin. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS-333), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. The analytical data, including quality control information and records of ratios of lime kiln dust and fly ash used, must be compiled and maintained on site for a minimum of five years. These data must be furnished upon request and made available for inspection by EPA or the State of Maryland. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

If made final, the proposed exclusion will apply only to the stabilized filter cake generated during the treatment of dewatered filter cake produced by BSC's Sparrows Point, Maryland facility. In addition, if made final the exclusion will apply only to the processes and waste volume (a maximum of 1100 cubic yards of stabilized filter cake generated annually) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered beyond the changes in operating conditions described in Condition (4), such that an adverse change in waste composition (*e.g.*, if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat stabilized filter cake generated either in excess of 1100 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from subtitle C jurisdiction upon final promulgation of an

exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact due to today's rule. Therefore, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: January 26, 1994.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261, it is proposed to add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Bethlehem Steel Corporation	Sparrows Point, Maryland	Stabilized filter cake (at a maximum annual rate of 1100 cubic yards) from the treatment of wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final rule]. Bethlehem Steel (BSC) must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) *Initial Verification Testing:* During at least the first eight weeks of operation of the full-scale treatment system, BSC must collect and analyze weekly composites representative of the stabilized waste. Weekly composites must be composed of representative grab samples collected from every batch during each week of stabilization. The composite samples must be collected and analyzed, prior to the disposal of the stabilized filter cake, for all constituents listed in Condition (3). BSC must report the analytical test data, including a record of the ratios of lime kiln dust and fly ash used and quality control information, obtained during this initial period no later than 60 days after the collection of the last composite of stabilized filter cake. (B) *Subsequent Verification Testing:* Following written notification by EPA, BSC may substitute the testing condition in (1)(B) for (1)(A). BSC must collect and analyze at least one composite representative of the stabilized filter cake generated each month. Monthly composites must be comprised of representative samples collected from all batches that are stabilized in a one-month period. The monthly samples must be analyzed prior to the disposal of the stabilized filter cake for chromium, lead and nickel. BSC may, at its discretion, analyze composite samples more frequently to demonstrate that smaller batches of waste are non-hazardous. (C) *Annual Verification Testing:* In order to confirm that the characteristics of the waste do not change significantly over time, BSC must, on an annual basis, analyze a representative composite sample of stabilized filter cake for all TC constituents listed in 40 CFR 261.24 using the method specified therein. This composite sample must represent the stabilized filter cake generated over one week. (2) *Waste Holding and Handling:* BSC must store, as hazardous, all stabilized filter cake generated until verification testing (as specified in Conditions (1)(A) and (1)(B)) is completed and valid analyses demonstrate that the delisting levels set forth in Condition (3) are met. If the levels of hazardous constituents measured in the samples of stabilized filter cake generated are below all the levels set forth in Condition (3), then the stabilized filter cake is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any weekly or monthly composite sample equal or exceed any of the delisting levels set in Condition (3), the stabilized filter cake generated during the time period corresponding to this sample must be retreated until it is below these levels or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Delisting Levels:* All concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. The leachable concentrations for the constituents must be below the following levels (ppm): arsenic—4.8; barium—100; cadmium—0.48; chromium—5.0; lead—1.4; mercury—0.19; nickel—9.6; selenium —1.0; silver—5.0. (4) *Changes in Operating Conditions:* After completing the initial verification test period in Condition (1)(A), if BSC decides to significantly change the stabilization process (*e.g.*, stabilization reagents) developed under Condition (1), then BSC must notify EPA in writing prior to instituting the change. After written approval by EPA, BSC may manage waste generated from the changed process as non-hazardous under this exclusion, provided the other conditions of this exclusion are fulfilled.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Two weeks prior to system start-up, BSC must notify in writing the Section Chief, Delisting Section (see address below) when stabilization of the dewatered filter cake will begin. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS–333), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. The analytical data, including quality control information and records of ratios of lime kiln dust and fly ash used, must be compiled and maintained on site for a minimum of five years. These data must be furnished upon request and made available for inspection by EPA or the State of Maryland. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 94–4990 Filed 3–3–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC35

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposal To Determine the Hawaiian Plant Hesperocnide Sandwicensis an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal to list *Hesperocnide sandwicensis* (no common name), a plant endemic to the island of Hawaii, Hawaiian Islands, as an endangered species under the U.S. Endangered Species Act, as amended (Act). Additional field surveys have provided new information revealing that the species has a wider distribution than previously known. The Service has considered the additional information and determined that this species is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for listing under the Act.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the Service published in the **Federal Register** (57 FR 59951) a proposal to list 22 plant taxa from the island of Hawaii as endangered or threatened. *Hesperocnide sandwicensis* was included in this proposal. During the comment period on the proposal, additional information was received regarding *Hesperocnide sandwicensis* indicating that individuals are more numerous than previously believed (possibly over 1 million) and they face few serious threats. The Service has considered the new information and determined that the species does not warrant listing under the Act. A final rule listing the other 21 plant taxa included in the proposal is published in the **Federal Register** concurrently with this notice of withdrawal of *Hesperocnide sandwicensis*. The final rule contains more detailed information about the status of *Hesperocnide sandwicensis*.

Author

The primary author of this notice is Susan Lawrence, U.S. Fish and Wildlife

Service, 452 Arlington Square, 4401 North Fairfax Drive, Fairfax, Virginia 22203 (703/358–2105).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 10, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–4840 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 940253–4053; I.D. 021494C]

RIN 0648–AG20

King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 2 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (BSAI). This FMP amendment would establish the Norton Sound Section of the Northern District of the king crab fishery as a superexclusive registration area. If this amendment is approved, existing regulations, which supersede State of Alaska (State) regulations that establish Norton Sound as a superexclusive registration area in the exclusive economic zone (EEZ) of the BSAI, will be removed and reserved. This action is necessary for the effective management of the fishery having the smallest biomass and guideline harvest level (GHL) in the BSAI crab fisheries. This action is intended to promote management and conservation of crab and other fishery resources and to further the goals and objectives contained in the FMP for the Commercial King and Tanner Crab Fisheries of the BSAI.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802 (Attn. Lori Gravel). Individual copies of Amendment 2 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) of this amendment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Kim J. Spitler, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: Section 304(a)(1)(D)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary of Commerce (Secretary) has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

Background

The commercial king and Tanner crab fisheries in the EEZ of the BSAI are managed under the FMP. This FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). It is a framework FMP that, with oversight by the Council and Secretary, defers management of the crab resources in the BSAI to the State. The FMP was approved by the Secretary and implemented on June 2, 1989. At times, regulations implementing the FMP must be amended to resolve problems pertaining to management of the BSAI crab fisheries.

The State's Board of Fisheries (Board) formulates regulations to manage the crab fisheries under procedures specified in the State's Administrative Procedure Act. On February 8, 1993, the Board established Norton Sound in the BSAI as a superexclusive registration area for purposes of managing the Norton Sound red king crab fishery. The operator of any vessel registered in a superexclusive area would not be able to register the vessel in any other area during that registration year. This management measure was proposed to address the unique collection of problems that make fishery management difficult in Norton Sound. The problems are associated with conservation and management of a fishery with a small biomass, small guideline harvest level (GHL), and a stock on the edge of its geographic range, which makes it biologically sensitive. The problems include overcapitalization, short seasons, high management costs, and both over-harvest and under-harvest of GHLs. Historically, the fishery has been characterized by years with low levels of participation and fairly high catch rates followed by years with high levels of participation and low catch rates. A combination of factors has led to high participation, which is expected to continue into the future. These factors are primarily the overcapitalized crab fleet and participants' efforts to establish catch histories in the event individual fishing quotas (IFQs) are instituted. Superexclusive registration would be expected to create a management environment discouraging participation by large crab vessels and catcher/processors. Probable results are a slower-paced fishery, fuller attainment of GHLs, a longer season, and reduced administrative and enforcement costs.

The Alaska Crab Coalition (ACC) appealed the State's designation of Norton Sound as a superexclusive registration area. Following Secretarial review of the State's action, the Secretary issued an interim final rule that superseded State regulations establishing Norton Sound as a superexclusive registration area in the EEZ of the BSAI (58 FR 38727, July 20, 1993). This action was necessary because the Secretary had determined that designation of superexclusive registration areas was inconsistent with provisions of the FMP. The FMP contains three categories of management measures: (1) Specific Federal management measures that require an FMP amendment to change; (2) framework type management measures, with criteria set out in the FMP that the State must follow when implementing changes in State regulations; and (3) measures that are neither rigidly specified nor frameworked in the FMP, and which may be freely adopted or modified by the State, subject to an appeals process or other Federal laws. Registration areas are listed as a Category 2 measure. Section 8.2.8 of the FMP specifies that king crab registration areas may be designated as either exclusive or nonexclusive. Designation of a registration area as superexclusive would require an FMP amendment and incorporation into the FMP as a Category 1 management measure.

In July 1993, the Council requested proposals for possible amendments to the FMP. On August 13, 1993, the Board submitted a proposal to designate

Norton Sound as a superexclusive registration area. This proposal was reviewed by the crab FMP plan team, which ranked it as a high priority and recommended it to the Council for consideration. At its September 1993 meetings, the Council recommended analysis of the Board's proposal. The Alaska Department of Fish and Game (ADF&G) and NMFS prepared a draft analysis for the proposed FMP amendment to designate Norton Sound as a superexclusive registration area. The draft analysis was reviewed by the Council and its Advisory Panel (AP) and Scientific and Statistical Committee (SSC) during the Council's December 1993 meetings and adopted for public review. At its January 1994 meetings, the Council considered the testimony and recommendations of the AP, SSC, fishing industry representatives and the general public on the proposed action to designate Norton Sound as a superexclusive registration area. The Council adopted the proposed action under Amendment 2 to the FMP and requested NMFS to remove existing regulations at 50 CFR 671.20, which supersede existing State regulations designating Norton Sound as a superexclusive registration area.

Classification

NMFS prepared an IRFA as part of the RIR, which concludes that this proposed rule, if adopted, could have significant effects on small entities. Overall, superexclusive registration area designation likely will result in a transfer of participation and income from a predominantly large-vessel fleet to a predominantly small-vessel fleet. Twenty-six vessels registered and fished in Norton Sound in 1992, and Norton Sound crab contributed no more than 0.7 percent to any of these vessels' crab landings for the year. Norton Sound crab contributed no more than 1.6 percent of the total for any of the catcher/processors in 1990. Neither operators of individual vessels nor participants in the pre-1993 fleet were dependent on this fishery in terms of year-to-year participation or landings within any one year.

Not knowing the outcome of the ACC's appeal and Secretarial review, many vessel owners chose not to register for the Norton Sound fishery in 1993. Twenty-eight percent of the vessels that were registered were from the local region. A new fresh market for summer king crab was developed and resulted in higher ex-vessel prices than that received for crab that are processed and frozen. Local residents are maintaining plans to develop this market further. Most of the fishermen on the small vessels are expected to be unemployed if they do not participate in this fishery. The infusion of employment and income from the 1993 small vessel fishery was significant in the Nome area. The 1993 king crab fishery represented the largest fishery in the region in terms of income.

Superexclusive registration is predicted to result in an increase in retained revenues and possibly to improve market conditions for increasing overall revenues. It is expected to reduce industry compliance costs. The economic impact on small entities under the proposed action would not result in a reduction in annual gross revenues of more than 5 percent, annual compliance costs that increased total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. A copy of this analysis is available from the Council (see **ADDRESSES**).

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 671 is proposed to be amended as follows:

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

1. The authority citation for 50 CFR part 671 continues to read as follows:

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

§ 671.20 [Removed and reserved]

2. Section 671.20 is removed and reserved.

[FR Doc. 94–4922 Filed 2–28–94; 4:22 pm]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 43
Friday, March 4, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny Wild and Scenic River Southern and Northern Advisory Councils; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Northern Advisory Council for the Allegheny National Wild and Scenic River will meet at 7 pm, Tuesday, March 22, 1994 at the Warren Public Library, Warren, PA.

The Southern Advisory Council will meet at 7 pm, Wednesday, March 23, 1994, at the Emlenton Civic Club, Emlenton, PA.

Both Councils will discuss (1) work on a newsletter informing the public of their progress to date and (2) also resource opportunities along the river.

Meetings are open to the public. A sign language interpreter will be provided if requested by March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Donna McDonald, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723–5150 or 814/726–2710 (TTY).

Dated: February 23, 1994.

Lionel A. Lemery,

Wild and Scenic River Coordinator.

[FR Doc. 94–5027 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–11–M

Hawaii Tropical Forest Recovery Task Force; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hawaii Tropical Forest Recovery Task Force will conduct a series of meetings with the public in Hawaii between March 28 and 31, 1994. These sessions have been scheduled on Kauai, Oahu, Molokai, Maui, and Hawaii to try to reach a broad range of community members. During these sessions, Task Force members will be inviting the public to share their ideas, concerns, and recommendations to help manage, protect, and use the tropical forests of Hawaii. The Task Force will also discuss relevant topics and review the position papers of the six working groups which drafted recommendations on Hawaii's Tropical Forests. All sessions are open to the public. Field trips will last approximately 4 hours. The public must provide their own transportation on the field trips and should bring rain gear and boots. A detailed meeting agenda is available on request

The Task Force is composed of 12 members, including the Administrator of the Department of Land and Natural Resources, State of Hawaii, and 11 others appointed by the Governor of Hawaii and the Secretaries of Agriculture and the Interior.

DATES: Meetings will be held on March 28, 1994, on the island of Kauai. On March 29, 1994, concurrent sessions will be held on the islands of Molokai, Maui, and Hawaii. On March 30 and 31, 1994, meetings will also be held on the island of Oahu.

ADDRESSES: On March 28, on Kauai, a field trip will depart at 8:30 a.m. from the Kokee Museum Parking Lot located along Waimea Canyon Drive. A Task Force business meeting will be held from 2 p.m. to 5 p.m. in the Niihau Room at the Kauai Resort Hotel located at 3–5920 Kuhio Highway in Kapaa. An open house will be held from 7 p.m. to 9 p.m. in the Kauai Resort Hotel's Alii Room.

On March 29, on Molokai, a field trip will depart at 9:30 a.m. from the Homelani Cemetery at the beginning of the forestry road (a four-wheel drive vehicle is required). An open house will be held between 6 p.m. and 8 p.m. at the Kaunakakai School's Cafetorium located along Hwy 460, East Kaunakakai

On March 29, on Maui, a field trip will depart at 11 a.m. from the Kahului Department of Land and Natural Resources Baseyard (DLNR) located at 685 Haleakala Highway. An open house will be held between 6 p.m. and 8 p.m. at the Mauiwaena Intermediate School's Cafetorium located at 795 Onehee Avenue in Kahului.

On March 29, on the island of Hawaii, a field trip will depart at 9:45 a.m. from Kona (Captain Cook) at the Greenwell Park parking lot located across from Manago Hotel. An open house will be held between 6 p.m. to 8 p.m. in Kona at the Old Kona Airport located off Kuakini Highway, and between 7 p.m. to 9 p.m. in Hilo in the Moku'ola #2 Room at the Hilo Hawaiian Hotel located at 71 Banyan Drive.

On March 30, on Oahu, a field trip will depart at 11 a.m. from the Makiki Forestry Baseyard located at 2135 Makiki Heights Drive. An open house will be held between 6 p.m. to 8 p.m. at the Paki Hale located at 3840 Paki Avenue.

On March 31, on Oahu, the concluding Task Force business meeting will be held between 8 a.m. and 2 p.m. at the Ala Wai Golf Clubhouse, Second Floor, Diamond Head Room, located at 404 Kapahulu Avenue.

FOR FURTHER INFORMATION CONTACT: Jan Lerum, Coordinator, Hawaii Tropical Forest Recovery Task Force, 1151 Punchbowl Street, room 323, Honolulu, HI 96813, Telephone: (808) 541–2628, FAX (808) 528–0556; after March 14, 1994: (808) 522–8230, FAX (808) 522–8236.

Dated: February 24, 1994.

Michael T. Rains,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 94–4917 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Aua Watershed, American Samoa

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR part 650); the Soil Conservation Service, Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Aua Watershed, American Samoa.

FOR FURTHER INFORMATION CONTACT: Joan B. Perry, Director, Pacific Basin Area, Soil Conservation Service, suite 602, GCIC Building, 414 W. Soledad Avenue, Agana, Guam, 96910, telephone (671) 472–4790.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Joan B. Perry, Director, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for residential flood prevention and water quality enhancement. Alternatives under consideration to reach this objective include levees, waterways, and animal waste disposal units.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held on April 14, 1994 to determine the scope of the evaluation of the proposed action. Further information on the proposed action or scoping meeting may be obtained from Joan B. Perry, Director, at the above address, or from Richard Hansen, District Conservationist, Soil Conservation Service, P.O. Box 4078, Pago Pago, AS 96799, telephone (684) 633–1031.

Dated: February 25, 1994.

Joan B. Perry,

Director, Pacific Basin Area.

[FR Doc. 94–4967 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations (19 CFR 353.22/355.22 (1993)), that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than March 31, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

Antidumping Duty Proceedings	Period
Australia: Canned Bartlett Pears (A–602–039)	03/01/93–02/28/94
Bangladesh: Shop Towels (A–538–802)	03/01/93–02/28/94
Brazil: Lead and Bismuth Steel (A–351–811)	09/28/92–02/28/94
Canada: Iron Construction Castings (A–122–503)	03/01/93–02/28/94
Chile: Standard Carnations (A–337–602)	03/01/93–02/28/94
Colombia: Certain Fresh Cut Flowers (A–301–602)	03/01/93–02/28/94
Ecuador: Certain Fresh Cut Flowers (A–331–602)	03/01/93–02/28/94
Finland: Rayon Staple Fiber (A–405–071)	03/01/93–02/28/94
France: Brass Sheet and Strip (A–427–602)	03/01/93–02/28/94
France: Lead and Bismuth Steel (A–427–804)	09/28/29–02/28/94
Germany: Brass Sheet and Strip (A–428–602)	03/01/93–02/28/94
Germany: Lead and Bismuth Steel (A–428–811)	09/28/92–02/28/94
Israel: Oil Country Tubular Goods (A–508–602)	03/01/93–02/28/94
Italy: Certain Valves and Connections of Brass, for Use in Fire Protection Systems (A–475–401)	03/01/93–02/28/94
Italy: Brass Sheet and Strip (A–475–601)	03/01/93–02/28/94
Japan: Ferrite Cores (of the Type Used in Consumer Electronic Products) (A–588–016)	03/01/93–02/28/94
Japan: Stainless Steel Butt-Weld Pipe Fittings (A–588–702)	03/01/93–02/28/94
Japan: Television Receivers, Monochrome and Color (A–588–015)	03/01/93–02/28/94
Mexico: Steel Wire Rope (A–201–806)	09/22/92–02/28/94
The Republic of Korea: Steel Wire Rope (A–580–811)	09/30/92–02/28/94
Sweden: Brass Sheet and Strip (A–401–601)	03/01/93–02/28/94
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing (A–583–803)	03/01/93–02/28/94
Thailand: Certain Circular Welded Carbon Steel Pipes and Tubes (A–549–502)	03/01/93–02/28/94
The People's Republic of China: Chloropicrin (A–570–002)	03/01/93–02/28/94
The People's Republic of China: Ferrosilicon (A–570–819)	11/05/92–02/28/94
United Kingdom: Lead and Bismuth Steel (A–412–810)	09/28/92–02/28/94
Colombia: Certain Textile Mill Products (C–301–401)	05/18/92–12/31/93
Thailand: Certain Textile Mill Products (C–549–401)	05/18/92–12/31/93
Countervailing Duty Proceedings:	
Argentina: Certain Apparel (C–357–404)	01/01/93–12/31/93
Argentina: Certain Textile Mill Products (C–357–404)	01/01/93–12/31/93
Argentina: Leather Wearing Apparel (C–357–001)	01/01/93–12/31/93
Brazil: Certain Castor Oil Products (C–351–029)	01/01/93–12/31/93
Brazil: Cotton Yarn (C–351–037)	01/01/93–12/31/93
Brazil: Hot-Rolled Lead and Bismuth CSP (C–351–812)	09/17/92–12/31/93
Chile: Standard Carnations (C–337–601)	01/01/93–12/31/93
France: Brass Sheet and Strip (C–427–603)	01/01/93–12/31/93
France: Hot-Rolled Lead and Bismuth CSP (C–427–805)	09/17/92–12/31/93
Germany: Hot-Rolled Lead and Bismuth CSP (C–428–812)	09/17/92–12/31/93
India: Sulfanilic Acid (C–533–807)	02/24/93–12/31/93
Iran: In-Shell Pistachios (C–507–501)	01/01/93–12/31/93
Israel: Oil Country Tubular Goods (C–508–601)	01/01/93–12/31/93
Mexico: Certain Textile Mill Products (C–201–405)	01/01/93–12/31/93

Antidumping Duty Proceedings	Period
Netherlands: Standard Chrysanthemums (C–421–601)	01/01/93–12/31/93
New Zealand: Carbon Steel Wire Rod (C–614–504)	10/01/92–09/30/93
Pakistan: Cotton Shop Towels (C–535–001)	01/01/93–12/31/93
Peru: Certain Textile Mill Products (C–333–402)	05/18/92–12/31/93
Peru: Certain Apparel (C–333–402)	05/18/92–12/31/93
South Africa: Ferrochrome (C–792–001)	01/01/93–12/31/93
Sri Lanka: Certain Textile Mill Products (C–542–401)	05/18/92–12/31/93
Sri Lanka: Certain Apparel (C–542–401)	05/18/92–12/31/93
Thailand: Certain Apparel (C–549–401)	01/01/93–12/31/93
Turkey: Certain Welded Carbon Steel Pipe and Tube (C–489–502)	01/01/93–12/31/93
Turkey: Welded Carbon Steel Line Pipe (C–489–502)	01/01/93–12/31/93
United Kingdom: Hot-Rolled Lead and Bismuth CSP (C–412–811)	09/17/92–12/31/93

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3069–A of the main Commerce Building. Further, in accordance with § 353.31(g) or § 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Departments's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by March 31, 1994.

If the Department does not receive, by March 31, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: February 25, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–5036 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–801]

Antifriction Bearings From France; United States Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On November 30, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France (56 FR 31748, July 11, 1991). *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–224, November 30, 1993) (*Federal-Mogul*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price. The CIT entered final judgment on all issues. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1993, the CIT in *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–94), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France (56 FR 31748, July 11, 1991) to the Department for the reconsideration of a number of issues. For one of these issues, the Court ordered the Department to determine the exact monetary amount of the value added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without adjustment. On September 1, 1993, the Department submitted to the CIT its redetermination on remand on the VAT and other issues. On November 30, 1993, the CIT ruled upon Commerce's redetermination in *Federal-Mogul*. In this decision, the CIT rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Federal-Mogul* on November 30, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of the subject merchandise pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from France to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT and direct liquidation in accordance with the amended determination.

Dated: February 18, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5032 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–801]

Antifriction Bearings From Germany; United States Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On November 30, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany (56 FR 31692, July 11, 1991). *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–221, November 30, 1993) (*Federal-Mogul*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price. The CIT entered final judgment on all issues. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1993, the CIT in *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–96), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany (56 FR 31692, July 11, 1991) to the Department for the reconsideration of a number of issues. For one of these issues, the Court ordered the Department to determine the exact monetary amount of the value added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without adjustment. On September 2, 1993, the Department submitted to the CIT its redetermination on remand on the VAT and other issues. On November 30, 1993, the CIT ruled upon Commerce's redetermination in *Federal-Mogul*. In this decision, the CIT rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Federal-Mogul* on November 30, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of the subject merchandise pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from Germany to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT and direct liquidation in accordance with the amended determination.

Dated: February 18, 1994.

Joseph A.Spetrini,

Acting Assistant Secretary For Import Administration.

[FR Doc. 94–5033 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–801]

Antifriction Bearings From Italy; United States Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On November 30, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy (56 FR 31751, July 11, 1991). *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–225, November 30, 1993) (*Federal-Mogul*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price. The CIT entered final judgment on the value added tax issue. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1993, the CIT in *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–95), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy (56 FR 31751, July 11, 1991) to the Department for the reconsideration of a number of issues. For one of these issues, the Court ordered the Department to determine the exact monetary amount of the value added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without

adjustment. On September 1, 1993, the Department submitted to the CIT its redetermination on remand on the VAT and other issues. On November 30, 1993, the CIT ruled upon Commerce's redetermination in *Federal-Mogul*. In this decision, the CIT rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Federal-Mogul* on November 30, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of the subject merchandise pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from Italy to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT and direct liquidation in accordance with the amended determination.

Dated: February 18, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5035 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

(C–351–037)

Cotton Yarn From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On January 3, 1994, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (59 FR 68). We have now completed that review and determine the net subsidy to be 0.30 percent ad valorem for all firms during the period January 1, 1992 through December 31, 1992. In accordance with 19 CFR 355.7, any rate less than 0.50 percent ad *valorem* is *de minimis*.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 68) the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (42 FR 14089; March 15, 1977). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Brazilian yarn, carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under item numbers 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1992 through December 31, 1992, eight companies and the following seven programs: (1) Income Tax Exemption for Export Earnings; (2) Reductions of Taxes and Import Duties through BEFIEX; (3) SUDENE Regional Tax Exemption; (4) CACEX (Carteira de Comercio Exterior) Working Capital Financing for Exports; (5) Preferential Export Financing under CIC-OPCRE of the Banco do Brasil; (6) Preferential Financing for Industrial Enterprises by the Banco do Brasil (FST and EGF loans); and (7) IPI (Tax on Industrialized Products) for Imports of Machinery or Equipment Under Decree Law 2324.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the subsidy rates of the eight companies subject to review to determine the overall subsidy from all countervailing programs benefitting exports of the subject merchandise to the United States. Because the overall weighted-average country-wide rate was de minimis, as defined by 19 CFR 355.7, we did not proceed any further in our analysis.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be 0.30 percent *ad valorem* for all firms during the period January 1, 1992 through December 31, 1992. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1992 and on or before December 31, 1992.

The Department will instruct the Customs Service to continue to suspend liquidation on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Because the net subsidy is *de minimis*, however, the cash deposit on such shipments will be zero. These instructions shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 25, 1994.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5037 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–307–810]

Alignment of the Final Countervailing Duty Determination With the Final Antidumping Duty Determination: Phthalic Anhydride From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Kristin Heim or Cynthia Thirumalai, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798 or 482–4087, respectively.

SUPPLEMENTARY INFORMATION: On January 27, 1994, we published a preliminary negative countervailing duty determination pertaining to phthalic anhydride from Venezuela (59 FR 3842).

On January 28, 1994, in accordance with 19 CFR 355.20(c) (1993), we received a request from petitioner to align the due date for the countervailing duty determination with the date of the final antidumping duty determination in the investigation of phthalic anhydride from Venezuela. Accordingly, the final determination in this countervailing duty investigation is due not later than June 14, 1994.

This notice is published in accordance with 19 CFR 355.20(c)(3) (1993).

Dated: February 10, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5038 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

Texas A&M Research Foundation; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

DECISION: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 93–107. *Applicant:* Texas A&M Research Foundation, College Station, TX 77843. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX 1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* November 16, 1993.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–5039 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–F

University of California, San Diego, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–030R. *Applicant:* University of California, San Diego, San Diego, CA 92121. *Instrument:* Wave Measuring Equipment. *Manufacturer:* Datawell, BV, The Netherlands. *Intended Use:* See notice at 58 FR 21973, April 26, 1993. *Reasons:* The foreign instrument provides: (1) more reliable wave direction estimates at frequencies under 1.0 Hz and over 3.0 Hz with less variability within that range and (2) better wave spread estimates than comparable domestic equipment. *Advice Received From:* National Oceanic and Atmospheric Administration, June 14, 1993.

Docket Number: 93–148. *Applicant:* U.S. Department of Commerce, NOAA, Stennis Space Center, MS 39529-6000. *Instrument:* Sounder System, Model EK 500. *Manufacturer:* Simrad Subsea, Norway. *Intended Use:* See notice at 58 FR 68876, December 29, 1993. *Reasons:* The foreign instrument provides: (1) a split beam (quadrant) transducer, (2) echo integration and (3) a relational data base processor to assist species identification. *Advice Received From:* U.S. Fish and Wildlife Service, February 2, 1994.

The National Oceanic and Atmospheric Administration and U.S. Fish and Wildlife Service advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–5040 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[Docket No. 940250–4050; I.D. 122893D]

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed List of Fisheries for calendar year 1994; request for comments.

SUMMARY: NMFS requests comments and further information on the proposed List of Fisheries for calendar year 1994 as well as several other actions associated with the Interim Exemption for Commercial Fishing under the Marine Mammal Protection Act (MMPA).

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: Send comments to Dr. William W. Fox, Jr., Director, Office of Protected Resources, F/PR, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (Attn: Comments on Proposed List of Fisheries).

FOR FURTHER INFORMATION CONTACT: Victoria R. Credle, 301–713–2322.

SUPPLEMENTARY INFORMATION: Section 114 of the MMPA establishes an interim exemption for the taking of marine mammals incidental to commercial fishing operations and requires NMFS to publish and annually update a List of Fisheries, along with a list of the marine

mammals and the number of vessels or persons involved in each such fishery, in three categories, as follows:

(I) A frequent incidental taking of marine mammals;

(II) An occasional incidental taking of marine mammals; or

(III) A remote likelihood of, or no known, incidental taking of marine mammals.

Based on Congressional guidance, NMFS interpretation of the 1988 Amendments, public comment, and meetings and consultations with state and Federal agencies, Regional Fishery Management Councils, and other interested parties, NMFS published the original List of Fisheries on April 20, 1989 (54 FR 16072). NMFS also published an interim rule governing the taking of marine mammals incidental to commercial fishing operations on May 19, 1989 (54 FR 21910), and a final rule governing reporting of the take of marine mammals incidental to commercial fishing operations on December 15, 1989 (54 FR 51718).

On June 14, 1993 (58 FR 32905), NMFS published the interim final List of Fisheries for 1993 and requested comments and information on the changes contained therein. All comments received were in support of the changes to the interim final List of Fisheries. A summary of the comments received are provided in the following section. Proposed revised changes for the 1994 List of Fisheries are based on the classification of fisheries as published in the 1993 interim final List of Fisheries.

The following criteria were used in classifying fisheries in the List of Fisheries:

Category I. There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20 day period.

Category II. (1) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20 day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Section 114(b)(1)(C) of the MMPA, requires the Assistant Administrator for Fisheries, NOAA, to annually publish and request comments on proposed revisions to the List of Fisheries to be effective for the next calendar year.

Comments Received on the 1993 Interim Final List of Fisheries

Thirteen comments were received in response to the request for comments on the interim final List of Fisheries for 1993. All of the comments received were in support of the changes published in the interim final List of Fisheries, and are summarized below.

Alaska Prince William Sound (Eshamy, Coghill, and Unakwik districts) Drift Gill Net Fishery and the Alaska Copper River and Bering River (adjacent to Prince William Sound) Drift Gill Net Fishery

Twelve comments were received supporting the split of the former Alaska Prince William Sound drift gill net fishery into two separate fisheries, based on the difference in take rates in the two areas. All comments received also supported the reclassification of the Alaska Prince William Sound (Coghill, Eshamy, and Unakwik districts) drift gill net fishery from Category I to Category II.

Atlantic, Caribbean, and Gulf of Mexico Tuna, Shark, and Swordfish Pair Trawl Fishery

One comment was received supporting the reclassification of the Atlantic, Caribbean, and Gulf of Mexico tuna, shark, and swordfish pair trawl fishery from Category II to Category I. The individual making the comment also suggested that all pair trawl fisheries be reclassified as Category I fisheries. NMFS is aware of only one other pair trawl fishery which operated for a short time in the Gulf of Maine, targeting groundfish. This fishery has been inactive following issuance of emergency regulations published on June 8, 1993 (58 FR 32062). Amendment 5 of the New England Groundfish Fishery Management Plan, approved on January 3, 1994, contains measures to continue the ban on the use of pair trawl gear in this fishery indefinitely. If new information is received regarding the use of pair trawl gear in other areas, further action will be taken on this recommendation.

Proposed Changes

1. *Recategorize* the Alaska Copper River and Bering River (adjacent to Prince William Sound) salmon drift gill net fishery from Category I (Table 1) to Category II (Table 2).

Many of the comments received on the 1993 interim final List of Fisheries indicated that the take rates given for the Alaska Copper River and Bering River (adjacent to Prince William Sound) drift gill net fishery were overestimated. Take rates were based on the total number of interactions, which included momentary interactions with the nets, e.g., animals brushing up against the net or swimming over it, as well as serious injuries, and mortalities. Many individuals submitting comments noted that if only those interactions resulting in serious injuries or mortalities were used to calculate take rates, the take rate would be much less than that reported in the interim final List. Therefore, NMFS has reviewed the observer data collected in this fishery and calculated a revised take rate of 0.56 marine mammal takes per 20 days of fishing, based on an estimated 252 serious injuries, and kills in 8,883 fishing vessel days. Based on the calculated take rate, NMFS proposes reclassification of the Alaska Copper River and Bering River (adjacent to Prince William Sound) drift gill net fishery from Category I to Category II.

2. *Recategorize* the WA, OR Lower Columbia River salmon drift gill net fishery from Category I (Table 1) to Category III (Table 3).

Marine mammal/fishery interaction and incidental take data have been collected in this fishery since 1991 under a marine mammal observer program that was completed at the end of calendar year 1993. Incidental take data have been collected by observers from the two major fishing seasons (winter and fall) with approximately 6 percent coverage of fishing effort in winter 1991, 4 percent in fall 1991, 10 percent in winter 1992, 7 percent in fall 1992, and 7 percent in winter 1993.

Percent observer coverage for the fall 1993 fishery is currently being estimated, and will be completed after all landing data have been reviewed. Only one marine mammal mortality, a harbor seal, was observed in 3 years of observations in the fall fisheries (1991, 1992, and 1993), while a total of 28 marine mammal serious injuries or mortalities (24 harbor seals and four California sea lions) were observed over the course of 3 years of observations in the winter fisheries (1991 through 1993). Based on the observer data from 1991–winter 1993 (fall 1993 data analysis is underway), less than 0.5 marine mammals are taken per vessel per 20 days of fishing in this fishery. Based on this, NMFS proposes that the WA, OR Lower Columbia River salmon drift gill net fishery be recategorized from Category I to Category III.

3. *Recategorize* the WA Willapa Bay salmon drift gill net fishery from Category I (Table 1) to Category III (Table 3).

Marine mammal/fishery interaction and incidental take data have been collected in this fishery since 1991 under a marine mammal observer program that was completed at the end of calendar year 1993. Incidental take data have been collected by observers from about 2 to 13 percent of the fishing effort since 1991. No marine mammal mortalities have been observed. Because the incidence of take is rare and does not meet the criteria for categorizing fisheries in Category I or II, NMFS proposes that the WA Willapa Bay salmon drift gill net fishery be recategorized from Category I to Category III.

4. *Recategorize* the WA Grays Harbor salmon set and drift gill net fishery from Category I (Table 1) to Category III (Table 3).

Marine mammal/fishery interaction and incidental take data have been collected in this fishery since 1991 under a marine mammal observer program that was completed at the end of calendar year 1993. Incidental take data have been collected by observers from about 4 to 10 percent of the fishing effort since 1991. Only one marine mammal mortality, a harbor seal, has been observed. Because the incidence of take is rare and does not meet the one take per vessel per 20 days criteria for categorizing fisheries in Category I or II, NMFS proposes that the WA Grays Harbor salmon set and drift gill net fishery be recategorized from Category I to Category III.

5. *Recategorize* all California gill net fisheries (except the CA Klamath River gill net fishery, Table 2), based on mesh size of net, by *adding* CA set and drift gill net fisheries that use a stretched mesh size of greater than 3.5 inches (8.9 cm) to Category I (Table 1), *adding* set and drift gill net fisheries that use a stretched mesh size of 3.5 inches (8.9 cm) or less to Category III (Table 3), *dropping* all other CA set and drift gill net fisheries, including: the CA thresher shark and swordfish drift gill net fishery (Table 1), the CA halibut set gill net fishery (Table 1), the CA soupfin shark, yellowtail, white sea bass set gill net fishery (Table 1), the CA white croaker, bonito, and flying fish gill net fishery (Table 2), and *redefining* the WA, OR, CA herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gill net fishery (Table 3) to include only WA and OR.

Since 1989, the categorization of gill net fisheries in California has been based on the species being targeted and the frequency of marine mammal mortality. Reviews of information on the rate of marine mammal mortality in a range of gill net mesh sizes indicate that larger mesh sizes (greater than 3.5 inches or 8.9 cm stretched mesh size) entangle marine mammals at a much higher rate than smaller mesh sizes (less than 3.5 inches or 8.9 cm stretched mesh size) (Miller 1983, Vojkovich 1987, 1988, 1989, Barlow *et al.* 1992). Observer placement in Category I fisheries, as required by the MMPA, could be achieved more effectively by evaluating the type of gear that will be used instead of the intended target species. Therefore, NMFS proposes that all California gill net fisheries (except the CA Klamath River fishery) be reclassified based on stretch mesh size, rather than by target species. Set or drift gill net vessels that use mesh sizes greater that 3.5 inches (8.9 cm), such as the CA thresher shark and swordfish drift gill net fishery (Table 1), the CA halibut set gill net fishery (Table 1), the CA soupfin shark, yellowtail, white sea bass set gill net fishery (Table 1) would remain in Table 1 and be subject to the requirements of a Category I fishery. Set or drift gill net vessels that use mesh sizes less than or equal to 3.5 inches (8.9 cm), such as the CA white croaker, bonito, and flying fish gill net fishery (Table 2), and the WA, OR, CA herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gill net fishery (Table 3) would be subject to the requirements for a Category III fishery.

6. *Recategorize* the GME Atlantic salmon aquaculture (net pen) fishery from Category III (Table 6) to Category II (Table 5).

Harbor seals and gray seals are known to interact with salmon net pens in the Gulf of Maine (GME), yet the rate at which interactions occur may be increasing based on stranding reports and communication with net pen owners and their representatives. Recently, the Maine Aquaculture Association appealed to NMFS to provide net pen owners with a means for limited intentional lethal taking of seals, indicating a 10 percent loss of salmon due to predation by seals. In their appeal, they noted that a "Predator Control Seminar" was held in Eastport, Maine, in April 1993 to discuss the effectiveness of non-lethal means of deterring seals. The group determined that although non-lethal deterrence efforts are being employed, "periodic intentional lethal take of individual seals is a necessary tool for the continued success of this industry."

Owners of salmon net pens have been subject to the reporting requirements of a Category III fishery, which require that all lethal takes of marine mammals be reported to NMFS within 10 days. However, only limited reports of seal mortalities due to salmon net pen operations have been received by NMFS since 1989. NMFS is concerned that the take rate of marine mammals in salmon net pen operations may be greater than previously estimated, and therefore proposes that the Gulf of Maine salmon net pen fishery be reclassified from Category III to Category II.

Literature Cited

Barlow, J., P. Perkins, and M. Beeson. 1992. Report on pinniped and cetacean mortality in California gillnet fisheries: 1990–1991. NMFS SWFC Admin. Rep. LJ–92–14.

Miller, D., M. Herder, and J. Scholl. 1983. California marine mammal-fishery interaction study, 1979–1981. NMFS SWFC Admin. Rep. LJ–83–13C.

Vojkovich, M., R. Reed, and K. Hieb. 1987 Progress report: Southern California nearshore gill and trammel net study, 1986. State of California, Resources Agency, Dept. of Fish and Game. Marine Resources Branch, Long Beach, CA.

Vojkovich, M., K. Miller, and R. Reed. 1988. Progress report: Southern California nearshore gill and trammel net study, 1987. State of California, Resources Agency, Dept. of Fish and Game. Marine Resources Branch, Long Beach, CA.

Vojkovich, M., K. Miller, and D. Aseltine. 1989. Summary of nearshore gill net observation data for 1988 and 1989. State of California, Resources Agency, Dept. of Fish and Game. Marine Resources Branch, Long Beach, CA.

Dated: February 25, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries.

[FR Doc. 94–4923 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 022594B]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Salmon Subcommittee of the Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will meet on March 7, 1994, at the Columbia River Red Lion Hotel's Clackamas Room, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111. The meeting will be held from 9 a.m. until 12 p.m. This meeting will immediately precede the SSC meeting announced in conjunction with the Council meeting scheduled for the week of March 7. The purpose of this meeting is to review proposed revisions to the methodologies to be used in the preseason planning process.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, suite 420, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: February 28, 1994.

David S. Crestin,

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

[FR Doc. 94–4995 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 021894A]

Marine Mammals

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

ACTION: Receipt of Application for a Scientific Research Permit (P377B).

SUMMARY: Notice is hereby given that Dr. A. Rus Hoelzel, LVC, Bldg. 560, National Cancer Institute, Frederick, MD 21702, has applied in due form for a permit to import *Tursiops truncatus* skin samples for purposes of scientific research.

DATES: Written comments must be received on or before February 28, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Applicant proposes to import 100 skin samples taken from bottlenose dolphins that are collected by salvage from already dead animals and by biopsy darting. The samples will be imported from Namibia and South Africa. Morphological distinctions related to body size and cranial dimensions have been described between the nearshore and offshore forms of bottlenose dolphin.

In this study, the applicant proposes to investigate the genetic differentiation of nearshore vs offshore populations from Namibia and South Africa.

Dated: February 28, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–4950 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

February 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6715. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65968, published on December 17, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 28, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool,

man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on March 7, 1994, you are directed to amend the directive dated December 13, 1993 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Romania:

Category	Adjusted twelve-month limit [1]
Sublevels in Group III:	
433/434	7,864 dozen.
435	7,289 dozen.
443	114,558 numbers.
444	39,039 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5030 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

February 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements to include certain part and merged categories.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on March 15, 1994, the existing export visa arrangement between the Governments of the United States and Macau is being amended to include the coverage of certain merged and part-categories, produced or manufactured in Macau and exported from Macau on and after March 15, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 46 FR 45979, published on September 16, 1981; and 52 FR 26719, published on July 16, 1987.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 28, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 16, 1981, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau for which the Government of Macau has not issued an appropriate visa.

Effective on March 15, 1994, you are directed to amend further the September 16, 1981 directive to include coverage of the following part and merged categories for goods exported on and after March 15, 1994:

Part-categories
359–C—Coveralls and overalls—only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010;
359–V—Vests—only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.
359–O—Other—all HTS numbers except those in Categories 359–C and 359–V.
659–C—Coveralls and overalls—only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
659–S—Swimwear—only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
659–O—Other—all HTS numbers except those in 659–C and 659–S.

Merged categories
331/831
333/334/335/833/834/835
333/335/833/835
336/836
347/348/847
350/850
351/851
359–C/659–C
445/446
625/626/627/628/629
633/634/635
638/639/838
641/840
642/842
645/646
647/648
652/852

Effective on March 15, 1994, you are directed to require an export visa for cotton and man-made fiber textile products in part-Categories 359–C, 359–V, 359–O, 659–C, 659–S and 659–O, produced or manufactured in Macau and exported from Macau on and after March 15, 1994.

Merchandise in the aforementioned merged categories may be accompanied by either the appropriate merged category visa, merged part-category visa, correct part-category visa or correct category visa corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5031 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: April 4, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 17 and 27, 1993, January 3 and 7, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 65971, 68398, 59 FR 74 and 1002) of proposed additions to and deletions from the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pallet, Wood
3990–00–NSH–0072
(Requirements for Federal Prison Industries, Inc., Washington, DC)

Cap Assembly, Plastic Water Can
7240–00–089–7312

Grommet
8140–01–063–7681

Services

Grounds Maintenance for the following U.S. Army Corps of Engineers Reservations:
Bayou Boeuf Lock, Berwick Lock, East/West Calumet Floodgates, Charenton Floodgate, Morgan City Vicinity, Louisiana

Janitorial/Custodial
INEL Electronic Technology Center (IETC), 1 Energy Drive, Idaho Falls, Idaho

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Paper, Teletypewriter Roll
7530–00–262–9178
7530–00–721–9691
7530–00–223–7969

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 94–5001 Filed 3–3–94; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 4, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 1, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 51319) of proposed addition to the Procurement List.

Comments were received from the current contractor in response to a Committee request for sales data. The contractor claimed that addition of these services to the Procurement List would have a tremendous impact on its employees in the Burlington, Vermont area, on its Vermont operations, and on the company as a whole. It noted that unemployment is high in the Burlington area, making it unlikely that the displaced workers would find other employment, and that non-Government-contract wages are lower. The contractor indicated that the contracts at issue are a large enough part of its Vermont operations that without them it would have to close its Vermont office and attempt to service its contracts in the area from its Massachusetts headquarters. It claimed that performance on those contracts would likely be impaired, and that performance problems would limit its ability to obtain Government contracts, which constitute the great majority of its business.

The contracts for the services proposed to be added to the Procurement List are only a very small portion of the contractor's total sales. Accordingly, loss of these contracts would not cause a severe adverse impact on the contractor's sales.

People with severe disabilities generally have unemployment rates exceeding 65 percent, considerably higher than the unemployment rate for people without disabilities in the Burlington, Vermont area. Consequently, the Committee believes that any potential loss of employment for the contractor's workers is outweighed by the actual creation of jobs for people with severe disabilities, who would have a much harder time finding other employment than the contractor's workers.

The Committee has taken into account the contractor's claims concerning the possible closing of its Vermont office and the effects this might have on its ability to perform its Government contracts and acquire others. However, the Committee, noting the speculative nature of these claims, does not believe they increase the impact of the small loss in sales which addition of these services to the Procurement List would have on the contractor sufficiently to constitute severe adverse impact on the contractor. After consideration of the material presented to it concerning

capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial for the following locations:
Federal Building, 11 Elmwood Avenue, Burlington, Vermont
Federal Building, 11 Lincoln Street, Essex Junction, Vermont
Social Security Administration Building, 58 Pearl Street, Burlington, Vermont

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94–5002 Filed 3–3–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 4, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity, military resale commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity, military resale commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodity, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity, military resale commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities, military resale commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Bag, Sand, Cotton,
8105–00–965–2509,
NPA: Columbia Industries, Kennewick, Washington.

Military Resale Commodities

Broom, Fiber,
M.R. 952,
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Broom, Patio,
M.R. 954,
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Broom, Upright,
M.R. 951,
M.R. 953,
NPA: Industries for the Blind Inc., Milwaukee, Wisconsin

Broom, Whisk,
M.R. 910,
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Brush, Bowl,
M.R. 917,
NPA: Alabama Industries for the Blind, Talladega, Alabama.

Brush, Duster,
M.R. 913,
NPA: The Lighthouse, Inc., Long Island City, New York.

Brush, Scrub,
M.R. 958,
M.R. 932,
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Services

Grounds Maintenance,
U.S. Army Reserve Center,
2000 North New Road,
Waco, Texas.
NPA: Heart of Texas Goodwill Industries, Waco, Texas.

Janitorial/Custodial,
Social Security Administration Building,
525 18th Street,
Rock Island, Illinois.
NPA: Alliance f/t Mentally Ill of Rock Island & Mercer County, Rock Island, Illinois.

Janitorial/Custodial,
R.B. Long Federal Courthouse,
777 Florida Street,
Baton Rouge, Louisiana.
NPA: Louisiana Industries for the Disabled, Baton Rouge, Louisiana.

Laundry Service,
Naval Hospital,
Oak Harbor, Washington,
NPA: Northwest Center for the Retarded, Seattle, Washington.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94–5003 Filed 3–3–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Board on the Investigative Capabilities of the Department of Defense; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Advisory Board on the Investigative Capability of the Department of Defense. The purpose of the meetings is to receive briefings by many of the agencies potentially affected by the work of this Advisory Board and for discussion following the briefings. These meetings are open to the public

DATES AND TIMES: March 17, 1994 from 8:30 a.m.–5:30 p.m. and March 18, 1994 from 9 a.m.–12:15 p.m.

ADDRESSES: 1700 N. Moore Street, suite 1425, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: E. Vaughn Dunnigan, Deputy Staff Director, Advisory Board on the Investigative Capability of the Department of Defense, 1700 N. Moore Street, suite 1420, Arlington, VA 22209; telephone (703) 696–6055.

Dated: February 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4918 Filed 3–3–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21–22 March 1994.

Time of Meeting: 1215–1700 (21 March), 0800–1700 (22 March).

Place: Pentagon (21 March), Arlington, VA (22 March).

Agenda: The Army Science Board's panel on "Missile Shelf Life" will meet for discussions focused on the review of previously collected data concerning missile shelf life, meet with the sponsor to discuss his intent concerning the study, and develop a study plan. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–5120 Filed 3–3–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11264 North Carolina]

Turbine Industries, Inc.; Availability of Draft Environmental Assessment

February 28, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the existing, unlicensed Coolemee Hydroelectric Project, located on the South Yadkin River, in the Town of Coolemee, Davie County, North Carolina, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 11264 to all comments. For further information, please contact Mary Glato, Environmental Coordinator, at (202) 219–2804.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–4927 Filed 3–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–14301T Colorado–62]

State of Colorado; NGPA Amended Determination by Jurisdictional Agency Designating Tight Formation

February 28, 1994.

Take notice that on February 24, 1994, the Colorado Oil and Gas Conservation Commission (Colorado) amended the notice of determination that was filed by the United States Department of Interior, Bureau of Land Management (BLM) in the above-referenced proceedings on September 2, 1993, pursuant to § 271.703(c)(3) of the Commission's regulations. The February 24, 1994 notice determined that a portion of the Corcoran-Cozzette Formation in Garfield County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA).

The February 24, 1994, amended notice of determination reduces the geographical area recommended for a tight formation designation. The amended area now covers only 48,274.78 acres; 23,974.20 acres or 49.66% are owned in Fee, and 24,300.58 acres or 50.34% are Federal Lands described as follows:

Township 6 South, Range 99 West
Sections 1–36: All

Township 6 South, Range 100 West
Sections 1–3, 10–15, 22–27, and 34–36: All

Township 7 South, Range 99 West
Sections 1–18: All

Township 7 South, Range 100 West
Sections 1–3, and 10–15: All

The notice of determination also contains Colorado's findings that the referenced portion of the Corcoran-Cozzette 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–4928 Filed 3–3–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 94–2—Certification Notice—129]

Bayside Cogeneration; Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Bayside Cogeneration, L.P. has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public

inspection, upon request, in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in acccordance with section 201(d).

Owner & Operator: Bayside Cogeneration, L.P.

Location: 1400 Tidelands Avenue, National City, California.

Plant Configuration: Topping cycle cogeneration.

Capacity: 49.9 megawatts.

Fuel: Natural gas.

Purchasing Utilities: San Diego Gas & Electric.

Expected In-Service Dates: April 1, 1995.

Issued in Washington, DC, February 28, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5007 Filed 3–3–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4845–3]

National Environmental Education and Training Foundation, Inc. Announcement of New Appointments to the Board of Directors

The National Environmental Education and Training Foundation was created by Public Law 101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation will develop and support a grant program that promotes innovative environmental education and training programs; it will also develop partnerships with government and other organizations to administer projects that promote the development of an environmentally literate public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following five appointments to the National Environmental Education and Training Foundation, Inc. Board of Directors. These appointees will join the seven current Board members, who include: Edward Bass, Chairman and CEO of Fine Line, Inc. and Chairman of Space Biospheres Ventures; Dr. James Crowfoot, Professor of Natural Resources and Urban and Regional Planning at the University of Michigan; Mark De Michele, President and CEO of Arizona Public Service Company; James Donnelley, Vice Chairman of the Board of R.R. Donnelley & Sons; Dr. Bonnie F. Guiton, Dean of the McIntire School of Commerce at the University of Virginia; Rebecca Rimel, Executive Director of the Pew Charitable Trusts; and Francis Pandolfi, President and CEO of Times Mirror Magazines, Inc. and Chairman of the Board of The Sporting News Publishing Company.

Great care has been taken to assure that these new appointees not only have the highest degree of expertise and commitment, but also bring to the Board diverse points of view relating to environmental education and training. Terms of office for the new appointees are: Mr. Parks, Mr. Krupp, Mr. Dach and Ms. Muyskens four year terms with possibility of an additional four year reappointment; Ms. Tabankin two years with possibility of an additional four year reappointment. The five new appointees are:

R. Ralph Parks—Mr. Parks is currently a General Partner, Investment Banking Division, Goldman Sachs & Company. From 1970 through 1980 he was Managing Director, Investment Banking Division, Merrill Lynch. He has a B.A. in History from Rice University and an M.B.A. from Columbia University School of Business.

Fred Krupp—Mr. Krupp is the Executive Director of the Environmental Defense Fund. He is also a member of the President's Council on Sustainable Development, serves on New York Governor Cuomo's Environmental Advisory Board, the Connecticut Fund for the Environment and the National Commission on Superfund. Mr. Krupp is a graduate of Yale University with a law degree from the University of Michigan.

Sarah Muyskens—Ms. Muyskens is a Management Consultant specializing in non-profits. She has worked at the Wilderness Society and the Environmental Defense Fund. Ms. Muyskens is on the Board of the Vermont Natural Resources Council and the Governor's Council of Environmental Advisors. Ms. Muyskens has a degree in British History from Yale University.

Leslie Dach—Mr. Dach is presently Executive Vice President/General Manager of Edelman Public Relations. He has over 15 years of experience in politics, lobbying, and press. While at Edelman he managed StarKist's announcement of its Dolphin Safe policy and a worldwide environmental communications policy for Johnson Wax. As a lobbyist, he worked for Audubon Society and the Environmental Defense Fund. He has also managed lobbying coalitions for the entire environmental movement on major pollution legislation. Mr. Dach has a B.S. in Biology from Yale and a M.P.A. from Harvard.

Margery Tabankin—Currently is the executive director of the Hollywood Women's Political Committee and the Barbara Streisand Foundation. Previously, Ms. Tabankin was an Institute of Politics Fellow at Harvard's John F. Kennedy School of Government and served as the executive director of the Arca Foundation and the director of VISTA. Ms. Tabankin has a B.A. in political science from the University of Wisconsin.

Dated: February 22, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–4914 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4708–9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly Receipt of Environmental Impact Statements Filed February 21, 1994 Through February 25, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940062, FINAL EIS, FAA, CA, Lindbergh Field Facilities Improvements, San Diego International Airport, Plan Approval, San Diego County, CA, Due: April 03, 1994, Contact: William Johnstone (310) 297–1621.

EIS No. 940063, DRAFT EIS, AFS, CA, North Yuba Trail Construction Project, between Rocky Rest in Indian Valley to Goodyears Bar, Tahoe National Forest, Downieville Ranger District, Sierra County, CA, Due: April 18, 1994, Contact: Mary Furney (916) 478–6253.

EIS No. 940064, DRAFT EIS, UAF, CA, Travis Air Force Base (AFB) Realignment, Construction and Operation, David Grant Medical Center (DGMC), CA, Due: April 18, 1994, Contact: Jean Reynolds (618) 256–3067.

EIS No. 940065, DRAFT EIS, COE, FL, Central and Southern Florida (Canal 111 (C–111) Project, for Flood Control and other Purposes, Implementation, South Dade County, FL, Due: March 28, 1994, Contact: Stephen Sutterfield (904) 232–1104.

EIS No. 940066, DRAFT EIS, COE, OH, Fernald Environmental Management Project (FEMP), Operable Unit 4 Remedial Investigation Feasibility Study, Implementation, City of Cincinnati, Butler and Hamilton Counties, OH, Due: April 20, 1994, Contact: Ken Morgan (513) 648–3131.

EIS No. 940067, FINAL EIS, FHW, PA, Mon/Fayette Transportation Project, Improvements, I–70 in Fallowfield Township to PA–51 in Jefferson Borough, Funding, COE Section 404 Permit and NPDES Permit, Mon Valley, Washington and Allegheny Counties, PA, Due: April 04, 1994, Contact: Manuel A. Marks (717) 782–3461.

Dated: February 28, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–5029 Filed 3–3–94; 8:45 am]

BILLING CODE 6550–50–U

[ER–FRL–4709–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 14, 1994 Through February 18, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–L65218–ID

Rating EC2, Jenkins Timber Sale, Harvesting Timber and Road Construction, Payette National Forest, New Meadows Ranger District, Idaho and Adams Counties, ID.

Summary: EPA expressed environmental concerns on the Best Management Practices effectiveness and potential wetlands and air quality impacts. Additional information is requested to: clarify monitoring commitments, document wetland impacts and discuss air quality impacts to sensitive areas.

ERP No. D–AFS–L65219–ID

Rating EC2, Hazard Helicopter Timber Sale, Harvesting Timber and Road Construction, Payette National Forest, New Meadows Ranger District, Idaho County, ID.

Summary: EPA expressed environmental concerns on potential effects on water quality and air quality. Additional information was requested on proposed monitoring and prescribed burning.

ERP No. D–AFS–L65221–ID

Rating EC2, Hungry-Mill Timber Sales, Harvesting Timber and Road Construction, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID.

Summary: EPA expressed environmental concerns regarding water quality impacts. EPA requested additional information concerning water quality, wetlands and riparian areas, and monitoring.

ERP No. D–BLM–K65158–CA

Rating EO2, Clear Creek Management Area, Land and Resource Management Plan Amendment, Implementation, San Benito and Fresno Counties, CA.

Summary: EPA expressed environmental objections to the preferred alternative based on the potential human health risks posed by exposure to asbestos, a known human carcinogen. In addition, water quality, soils and unique biological resources in the area are degraded as a result of past and current human activities including mining and recreation. EPA urged BLM to minimize asbestos emissions by implementing aggressive management actions. EPA also recommended that measures be implemented by BLM to improve water quality, soil stability, and riparian and upland vegetation.

ERP No. D–DOE–C22002–NY

Rating EC2, Tonawanda Site, (Formerly Utilized Sites Remedial Action Program) Remedial Investigation and Feasibility Study for Residual Radioactive Contamination, Funding, City of Tonawanda, NY.

Summary: EPA had environmental concerns about insufficient analysis of the possible locations for the on-site encapsulation cell, potential aquifer contamination, long-term institutional controls and site monitoring arrangements, and the need for appropriate wetlands mitigation measures.

ERP No. DS–BLM–K60023–CA

Rating EO2, Rail-Cycle-Bolo Station Class III Nonhazardous Waste Landfill Project, Construction and Operation, Updated Information, Federal Land Exchange and Right-of-Way Grants, San Bernardino County, CA.

Summary: EPA expressed environmental objections based on potential impacts to air quality. Additional information is needed in the FEIS on air quality impacts, air quality mitigation, groundwater monitoring, waters of the US, hazardous waste, biological resources and wilderness areas.

Final EISs

ERP No. F–AFS–L60096–ID

Moyer Salt Timber Sale, Timber Harvest and Road Construction/ Reconstruction, Implementation, Salmon National Forest, Cobalt Ranger District, Lemhi County, ID.

Summary: EPA expressed environmental concerns regarding the lack of BMP effectiveness monitoring. EPA recommended that the Forest Service consider including a commitment to BMP effectiveness monitoring for water quality in the Record of Decision.

ERP No. F–BLM–L65127–AK

Fort Wainwright Maneuver Area, Resource Management Plan for Nonmilitary Uses, AK.

Summary: The final EIS did not resolve EPA's concerns regarding cumulative impacts analysis, monitoring or the relationship of this Resource Management Plan to other plans yet to be developed.

ERP No. F–BLM–L65128–AK

Fort Greely Maneuver Area and Air Drop Zone, Resource Management Plan for Nonmilitary Uses, AK.

Summary: The final EIS did not resolve EPA's concerns regarding cumulative impacts analysis, monitoring or the relationship of this Resource Management Plan to other plans yet to be developed.

ERP No. F–FHW–F40321–MI

US 23 Improvements, MI–13 to MI–65 and segments of Standish and Omer Cities, Funding, Section 404 Permit and NPDES Permit, Arenac County, MI.

Summary: EPA agreed with the recommended alternative for the project: Improvements on existing alignment; and was appreciative that this alternative will have the least impact, other than the No Action, on area of wetlands. Accordingly, concerns raised in our June 5, 1992 letter have been adequately mitigated.

Dated: February 28, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–5028 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4845–5]

Delaware: Final Determination of Adequacy of the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of final determination of full program adequacy for the State of Delaware's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve; or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Delaware's MSWLF application and proposed a determination on November 15, 1993, that Delaware's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. As no comments or opposition to EPA's tentative determination were received, EPA is today issuing a final determination that the State of Delaware's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the State of Delaware shall be effective March 4, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Christopher Luksic, mailcode (3HW53), telephone (215) 597–2842.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval, as imposing several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above.

B. State of Delaware

On October 7, 1993, Delaware submitted an application for adequacy determination for Delaware's MSWLF permit program. On November 15, 1993, EPA published a tentative determination of adequacy for all portions of Delaware's program. Further background on the tentative determination of adequacy appears at 58 FR 60199–60201, November 15, 1993.

A public comment period began on November 15, 1993, and ended on December 27, 1993. In this notice of

tentative determination, EPA announced that if there was sufficient public interest, a public hearing would be held on December 27, 1993. EPA Region III received no public comment or request for a public hearing, therefore, a public hearing was not held.

In the State's final application for adequacy determination, Delaware proposed revisions to those portions of their existing regulations which did not meet the Federal requirements in EPA's 40 CFR part 258. EPA tentatively determined in the November 15, 1993 **Federal Register** that once adopted as final regulation, Delaware's proposed regulations would ensure compliance with 40 CFR part 258. Delaware has made the regulatory changes specified in the November 15, 1993 **Federal Register**, and as listed below; the revised Delaware Regulations Governing Solid Waste (DRGSW) became effective on November 24, 1993.

Subpart A—General

Section 258.2 Definitions—Where appropriate, the State has adopted key terms and definitions which will more clearly ensure compliance with the 40 CFR part 258 Criteria. These key definitions have been included in section 3 of the DRGSW.

Subpart B—Location Restrictions

Section 258.10 Airport Safety—The State has amended Section 5.A.3. of the DRGSW to require that the Federal Aviation Administration (FAA) and affected airport(s) are notified of a proposed landfill located within 5 miles of an airport.

Section 258.11 Floodplains—Delaware has included the requirements and terms of this section in Section 5.A.4.a. of the DRGSW.

Sections 258.13 Fault Areas, 258.14 Seismic Impact Zones, and 258.15 Unstable Areas—The State has included the requirements and terms of these sections in Sections 5.A.4.h., 5.A.4.i., and 5.A.4.j., respectively, of the DRGSW.

Section 258.16 Closure of Existing MSWLF Units—Delaware has certified that no currently operating landfills are sited in areas impacting airport safety (§ 258.10), floodplains (§ 258.11), or unstable areas (§ 258.15), as defined in these sections.

Subpart C—Operating Criteria

Section 258.20 Excluding Receipt of Hazardous Waste and § 258.26 Run-on/Run-off Control Systems—The State has amended Sections 5.I.2.l. and 5.F.2. of the DRGSW, to include the respective requirements of these sections.

Section 258.23 Explosive Gas Control—The State has amended Section 5.E.4. of the DRGSW to require the specific response actions of this section when critical levels of explosive gas are exceeded.

Subpart D—Design Criteria

Section 258.40 Design Criteria—The State has adopted EPA's performance standard for landfill design as specified in § 258.40(a)(1), (c) and (d) by amending Section 5.B.2. of the DRGSW to include these requirements.

Subpart E—Groundwater Monitoring and Corrective Action

Section 258.51 Groundwater Monitoring Systems—The State has adopted EPA's relevant point of compliance (150 meters), within which the downgradient monitoring wells must be located. Sections 5.G.2.b. and 5.G.4.g. of the DRGSW includes this requirement.

Section 258.53 Groundwater Sampling and Analysis Requirements—The State now requires, through amended DRGSW Section 5.G.3.a., that unfiltered groundwater samples be obtained except where turbidity cannot be controlled through careful well construction, development, and sampling. In addition, the State has adopted the data evaluation requirements found in subsections (e), (g), (h) and (i) of this section; these requirements are found in Section 5.G.4. of the DRGSW.

Section 258.54 Detection Monitoring—The State has adopted the requirements of this section into Sections 5.G.3.b. and 5.G.3.c. of the DRGSW, including the requirement that the owner/operators sample groundwater at least semi-annually for Appendix I parameters. Based on the results of groundwater and leachate monitoring, the State may modify the required list of groundwater monitoring parameters. In addition, the State has amended its regulations at Section 5.D.4.c. of the DRGSW to require leachate sampling with monthly analyses for indicator parameters and semi-annual analyses for Appendix II constituents.

Section 258.55 Assessment Monitoring—The State will proceed directly from Detection Monitoring to Corrective Measures Assessment.

Section 258.56 Corrective Measures Assessment—The required list of parameters for groundwater monitoring was expanded in the corrective measures assessment to include those Appendix II constituents deemed appropriate from the leachate monitoring data (See Section 5.G.6. of the DRGSW). During the corrective measures process there will be an opportunity for public input at the time of permit modification. A permit modification is required when corrective measures are deemed necessary.

Section 258.57 Selection of Remedy, and § 258.58 Implementation of Corrective Action—The State has adopted into regulation, the requirements of these sections into Section 5.G.8. of the DRGSW.

Subpart F—Closure And Post-Closure Care

Section 258.60 Closure Criteria—The State has amended their regulations at Section 5.H.2.b. to require that a geomembrane cover be used as part of a capping system where a MSWLF has been constructed with a geomembrane liner.

Subpart G—Financial Assurance Criteria

Section 258.70 Applicability and Effective Date—The State has amended their regulations to automatically remove the current financial assurance exemption for the Delaware Solid Waste Authority (DSWA), which currently manages all of Delaware's municipal solid waste. On April 9, 1995, the DSWA will be subject to the Federal financial assurance requirements adopted at Section 4.A.6.a. of the DRGSW.

Section 258.73 Financial Responsibility for Corrective Action—The State has adopted into regulation, at Sections 4.A.11.f. and 4.A.11.g. of the DRGSW, the requirements of this section.

C. Decision

Lacking public comment or opposition to EPA's tentative determination, I conclude that the State of Delaware's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Delaware is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered

to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in Delaware's program are currently in effect as a matter of State law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply, nor do these requirements become enforceable by EPA as federal law. Consequently, EPA does not find it necessary to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: February 24, 1994.

William T. Wisniewski,

Acting Regional Administrator.

[FR Doc. 94–4993 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30359; FRL–4754–5]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by April 4, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30359] and the registration/file symbol to: Public Response and Program Resources Branch, Field Operations Division (7506C), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Product Manager PM 22, Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing new active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing an Active Ingredient Not Included In Any Previously Registered Product

1. File Symbol: 432–TIG. Applicant: Roussel Uclaf Corporation, 95 Chestnut Ridge Road, Montvale, NJ 07645. Product name: Allercurb Plus. Insecticide/Fungicide. Active ingredients: Permethrin at 1.0 percent and imazalil sulfate at 0.15 percent. Proposed classification/Use: General. Domestic use indoors on textiles (ie. carpet, mattresses, pillow ticking, upholstery, drapes, etc.) for control of household mites and molds. (PM 22)

2. File Symbol: 707–EGG. Applicant: Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. Product name: RH-7592 2F. Fungicide. Active ingredient: Fenbuconazole; alpha [2-(4-chlorophenyl)ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile at 22.8 percent. Proposed classification/Use: General. For use on ornamental plants. (PM 22)

II. Product Involving A Changed Use Pattern

EPA Reg. No.: 43813–6. Applicant: Janssen Pharmaceutica, 1125 Trenton Harbourton Road, Titusville, NJ 08560–0200. Product name: Fungazil 500 EC (formerly named Fungaflor). Fungicide. Active ingredients: Imazalil 1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1*H*-imidazole at 44.6 percent. Proposed classification/Use: General. To include in its presently registered indoor nonfood use on chicken hatchery equipment, a domestic indoor use on carpets and carpet facing fiber. (PM 22)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 23, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–4989 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4845–4]

Draft Guidelines for Reproductive Toxicity Risk Assessment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of external review draft.

SUMMARY: This notice announces the availability of the external review draft of the "Guidelines for Reproductive Toxicity Risk Assessment" (EPA/600/AP–94/001). In 1988, EPA published separate Proposed Guidelines for Assessing Male Reproductive Risk (53 FR 24850–24869) and Proposed Guidelines for Assessing Female Reproductive Risk (53 FR 24834–24847). Following public comment, the EPA's Science Advisory Board (SAB) reviewed the proposed guidelines and recommended several changes, including combining the two guidelines. These draft guidelines have been prepared in response to the SAB and public comments and have been updated to reflect current scientific thinking in this area. In particular, the female component was expanded substantially but the original basic concepts were retained.

Since a number of changes have been made in this version of the guidelines from the original proposed guidelines, and due to the time elapsed since the proposals, EPA is asking for review and comment. This notice makes these draft guidelines available for public comment. Once comments are received, the guidelines will be reviewed by the EPA's Science Advisory Board before final publication.

DATES: The Agency will make the external review draft available on or about March 4, 1994. Comments must be submitted in writing and must be postmarked by April 18, 1994.

ADDRESSES: To obtain a single copy of this document, interested parties should contact the ORD publications office, CERI–FRN, U. S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; Tel: (513) 569–7562; facsimile (513) 569–7566. Please provide your name and mailing address and request the document by the title and EPA number.

This document also will be available for public inspection on the ORD Public Information Shelf of the EPA Headquarters Library, Waterside Mall, 401 M Street, SW., Washington, DC 20460. Library hours are from 10 a.m. until 2 p.m., Monday through Friday, excluding Federal holidays.

Information submitted in response to this notice may be mailed to Dr. Eric D. Clegg, Reproductive and Developmental Toxicology Branch (8602), Human Health Assessment Group, Office of Health and Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Teitelbaum, Technical Liaison, Risk Assessment Forum (8101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Tel: (202) 260–6743. (Copies of the document are not available at this address).

SUPPLEMENTARY INFORMATION: EPA is making available for public comment an external review draft of the Guidelines for Reproductive Toxicity Risk Assessment. Changes made based on previous public comment and SAB review include combining the separate guidelines for assessing male and female reproductive risk into a single document, integrating the hazard identification and dose-response sections, assuming as a default that an agent for which sufficient data are available on only one sex may also affect reproductive function in the other sex, expansion of the section on interpretation of female endpoints, and consideration of the benchmark dose approach for quantitative risk assessment.

Members of the public have the opportunity to submit written comments within the 45-day comment period. EPA will consider all comments received within that period.

Dated: February 23, 1994.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 94–4994 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4846–8]

Proposed Modification to Stipulated Settlement; Suit To Establish Schedule for Promulgation of Ozone Federal Implementation Plan for the Ventura Air Quality Management District Under Clean Air Act Section 110(c)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed stipulated settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a Stipulation and Agreement of Settlement to modify a prior (March 13, 1991) Stipulation and Agreement of Partial Settlement, to establish a schedule by which EPA must propose and promulgate an ozone federal implementation plan ("FIP") for the Ventura Air Quality Management District pursuant to section 110(c) of the Clean Air Act, 42 U.S.C. section 7410(c), *Citizens to Preserve the Ojai* v. *EPA*, No. CV–88 00982 HLH (C.D. Cal.).

The parties to the litigation, desiring to settle the matter without extensive proceedings, entered into a joint Stipulation that obligates the EPA Administrator to sign a Notice of Proposed Rulemaking by February 14, 1994, and to sign a Notice of Final Rulemaking no later than February 14, 1995. The joint Stipulation has been approved by counsel for all parties.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed schedule.

Copies of the Joint Stipulation are available from Jerry Ellis, Air and Radiation Division (2344R), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 235–5330. Written comments should be addressed to Jerry Ellis at the above address and must be submitted on or before April 4, 1994.

Dated: February 25, 1994.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–5127 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

First Chicago Corporation; Application to Engage in Certain Nonbanking Activities

This notice supplements a notice previously published. See First Chicago Corporation, 59 FR 9,215 (February 25, 1994).

First Chicago Corporation, Chicago, Illinois (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) (BHC Act) and § 225.23 of the Board's Regulation T (12 CFR 225.23), to engage *de novo* through its wholly owned subsidiary, First Chicago Capital Markets, Inc., Chicago, Illinois (Company), in the following nonbanking activities:

1. Underwriting and dealing in, to a limited extent, all types of debt securities, including sovereign debt securities, municipal revenue bonds, mortgage-related securities, consumer

receivable-related securities, commercial paper, corporate debt securities, convertible debt securities, and debt securities issued by a trust or other vehicle secured by or representing interests in debt obligations;

2. Acting as agent in the private placement of all types of securities, and providing related advisory services;

3. Purchasing and selling all types of securities as a "riskless principal" on the order of customers;

4. Providing full-service securities brokerage services, pursuant to § 225.25(b)(15)(ii) of Regulation Y;

5. Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions, pursuant to § 225.25(b) (4)(vi)(A)(2) of Regulation Y; and

6. Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to commodity prices and commodity indices, and similar transactions.

Applicant seeks approval to conduct the proposed activities throughout the United States.

In a matter related to this proposal, Applicant seeks permission for an indirect foreign subsidiary of The First National Bank of Chicago, First Chicago Capital Markets Asia, Limited (FCCMA), to act as agent for Company, and to engage in marketing activities on behalf of Company, outside the United States in connection with the purchase and sale of securities that state member banks are authorized to underwrite and deal in under sections 5(c) and 16 of the Glass-Steagall Act (12 U.S.C. 335 and 24(7)). Applicant has stated that FCCMA is a corporation organized under the laws of Hong Kong which operates in accordance with the Board's Regulation K (12 CFR part 211).

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 16, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, March 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5079 Filed 3–2–94; 10:14 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 922–3290]

American Institute of Habit Control, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Miami, Florida based company from making any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, unless they possess and rely upon competent and reliable scientific evidence to substantiate the representation.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, FTC/H–200, Washington, DC 20580. (202) 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of American Institute of Habit Control, Inc., a corporation, and Steven Present, individually and as an officer of said corporation.

File No. 922 3290.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of American Institute of Habit Control, Inc., a corporation, and Steven Present, individually and as an officer of said corporation ("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between American Institute of Habit Control, Inc., by its duly authorized officer, and Steven Present, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent American Institute of Habit Control, Inc., is a Florida corporation, with its principal office or place of business at 9655 South Dixie Highway, Miami, Florida 33156.

2. Proposed respondent Steven Present is the sole officer, director and shareholder of said corporation. He formulates, directs and controls the acts and practices of said corporation and his address is the same as that of said corporation.

3. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the

Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.24 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the attached draft complaint and the following order. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For the purposes of this Order, "competent and reliable scientific evidence" shall men those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondents American Institute of Habit Control, Inc., a corporation, its successors and assigns, and its officers, and Steven Present, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any smoking cessation program or weight loss program, including any such program that uses hypnosis, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the U.S. Surgeon General, in the 1989 U.S. Surgeon General's Report on Smoking, Reducing the Health Consequences of Smoking: 25 Years of Progress, states that the group hypnosis method used by respondents is one of the most effective ways to stop smoking.

B. Representing, directly or by implication, that ninety-seven percent of the participants who attend respondents' stop smoking seminars permanently abstain from smoking after those seminars, unless such is the case.

C. Making any representation, directly or any implication, about the relative or absolute performance or efficacy of any smoking cessation program or weight loss program, unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

D. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey or report.

E. Misrepresenting, directly or by implication, the performance or efficacy of any smoking cessation program or weight loss program.

II

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

III

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

IV

It is further ordered that the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or of his affiliation with the corporate respondent. In addition, for a period of three (3) years from the date of service of this Order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment that involves a smoking cessation program or a weight loss program. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of the respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

V

It is further ordered that respondents shall distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials; and, for a period of three (3) years from the date of entry

of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

VI

It is further ordered that respondents shall, within sixty (60) days after the date of services of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from American Institute of Habit Control, Inc. (hereinafter "AIHC") and its President, Steven Present, marketers of the Present Seminar, a single, two-and-a-half-hour, group hypnosis session program for smoking cessation and weight loss. The Present Seminar is offered to the public nationwide by Steven Present at hotel locales.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised: (1) The likelihood of success in achieving the and maintaining abstinence from smoking cigarettes and weight loss; and (2) the effectiveness of proposed respondents' smoking cessation methods in leading consumers to abstain from smoking, including the effectiveness of proposed respondents' programs compared to other smoking cessation programs.

Success

The complaint against AIHC and Steven Present alleges that the proposed respondents made false claims and failed to possess a reasonable basis for other claims they made regarding the success of their seminar participants in quitting smoking and achieving and maintaining weight loss.Through advertisements placed in various media in advance of their seminars, proposed respondents represented that 97 percent of their seminar participants permanently abstain from smoking after attending those seminars. The complaint alleges that this claim is false.

Proposed respondents further represented through their advertisements that seminar participants: (1) Are cured of smoking addiction and permanently abstain from smoking cigarettes; (2) are cured of smoking addiction without experiencing withdrawal, stress or weight gain; and (3) achieve and maintain weight loss.

The Commission believes that these success claims for seminar attendees' smoking cessation, weight loss and maintenance of achieved weight loss are deceptive because proposed respondents at the time they made the claims did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in three ways. First, the order (Part I.C.) requires proposed respondents to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the performance or efficacy of any smoking cessation or weight loss program.

Second, the proposed order (Part I.B.) prohibits proposed respondents from representing that 97 percent of their seminar attendees permanently abstain from smoking after those seminars, unless that is the case.

Finally, the proposed order (Part I.E.) generally prohibits proposed respondents from misrepresenting the performance or efficacy of any smoking cessation or weight loss program.

Efficacy

The Commission's complaint further alleges that proposed respondents made false claims and failed to possess a reasonable basis for other claims they made regarding relative ability of their hypnosis program to lead consumers to quit smoking. AIHC and Steven Present represented through their advertising that the U.S. Surgeon General, in the 1989 U.S. Surgeon General's Report on Smoking, Reducing the Health Consequences of Smoking; 25 Years of Progress, states that the group hypnosis method used by respondents is one of the most effective ways to stop smoking. The complaint alleges that this claim is false, because the cited Report does not state that proposed respondents' hypnosis method is one of the most effective ways to stop smoking.

Proposed respondents further represented through their advertisements that their single-session, group hypnosis seminar is more efficacious for smoking cessation than other smoking cessation methods. The Commission believes that this comparative efficacy claim for proposed respondents' hypnosis program is deceptive because proposed respondents at the time they made the claim did not possess adequate substantiation for the claim.

To address these efficacy misrepresentations, the proposed order (Part I.A.) prohibits AIHC and Steven Present from representing that the U.S. Surgeon General, in the 1989 U.S. Surgeon General's Report on Smoking, Reducing the Health Consequences of Smoking: 25 Years of Progress, states that the group hypnosis method used by respondents is one of the most effective ways to stop smoking. The proposed order (Part I.D.) further generally prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or report. Finally, the order (Part I.C.) requires proposed respondents to possess and rely upon competent and reliable scientific evidence substantiating any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, before they make such a claim.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–4964 Filed 3–3–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0005]

Columbia Healthcare Corporation, et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the respondents to divest the HCA Aiken Regional Medical Center, in South Carolina, to Commission-approved acquirers and to complete the divestiture within twelve months, or else consent to the appointment of a trustee to consummate the divestiture. In addition, the order would prohibit the respondents from acquiring or transferring, without prior Commission approval, any acute care hospital in the Augusta-Aiken area.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Oscar Voss, FTC/S3115, Washington, DC 20580. (202) 3262750.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the Matter of: Columbia Healthcare Corporation, a corporation, and HCA-Hospital Corporation of America, a corporation.

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of HCA-Hospital Corporation of America ("HCA") by Columbia Healthcare Corporation ("Columbia"), and it now appearing that Columbia and HCA, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts;

It is hereby agreed by and between Columbia and HCA, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Columbia Healthcare Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202.

2. Proposed respondent HCA-Hospital Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they may be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. "Columbia" means Columbia Healthcare Corporation, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202, as well as its directors, officers, employees, agents, representatives, parents, divisions subsidiaries, affiliates, and their respective successors and assigns, and the directors, officers, employees, agents, or representatives of Columbia's divisions, subsidiaries, affiliates, and their respective successors and assigns.

B. "HCA" means HCA-Hospital Corporation of America, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203, as well as its directors, officers, employees, agents, representatives, parents, divisions, subsidiaries, affiliates, and their respective successors and assigns, and the directors, officers, employees, agents, or representatives of HCA's divisions, subsidiaries, affiliates, and their respective successors and assigns.

C. "Respondents" means Columbia and HCA, collectively and individually.

D. "Acute care hospital" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient

services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

E. To "acquire an acute care hospital" means to directly or indirectly acquire the whole or any part of the assets of an acute care hospital; to acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates an acute care hospital; or to enter into any other arrangement to obtain direct or indirect ownership, management or control of an acute care hospital or any part thereof, including but not limited to a lease of or management contract for an acute care hospital.

F. To "operate an acute care hospital" means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

G. "Affiliate" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

H. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

I. "Augusta-Aiken" means the three-county area consisting of the counties of Richmond and Columbia in Georgia and Aiken County in South Carolina.

J. "HCA Aiken Regional Medical Center" means the general acute care hospital currently owned and operated by HCA at 202 University Parkway, Aiken, South Carolina 29801, all of its title, properties, stock, rights, privileges, and other assets and interests, and all other related HCA assets and interests in Augusta-Aiken, of whatever nature, tangible and intangible, including without limitation all medical office buildings, other buildings, machinery, equipment, and other property of whatever description, except for accounts receivable and cash.

K. "Commission" means the Federal Trade Commission.

II

It is further ordered that: A. Within twelve (12) months after the date this Order becomes final, respondents shall divest, absolutely and in good faith, HCA Aiken Regional Medical Center. HCA Aiken Regional Medical Center shall be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. A condition of approval by the Commission of the divestiture shall be a written agreement by the party or parties acquiring HCA Aiken Regional Medical Center that it will not sell for a period of ten (10) years from the date of the divestiture, directly or indirectly, through subsidiaries, partnerships or otherwise, without the prior approval of the Commission, HCA Aiken Regional Medical Center to any other person who operates, or will operate immediately following such sale, any other acute care hospital in Augusta-Aiken. The purpose of the divestiture required by this Order is to ensure the continuation of HCA Aiken Regional Medical Center as an ongoing, viable acute care hospital and to remedy the lessening of competition alleged in the Commission's compliant.

B. Respondents shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as respondents have divested HCA Aiken Regional Medical Center or until such other time provided in the Agreement to Hold Separate.

C. Pending divestiture, respondents shall take such action as is necessary to maintain the viability and marketability of HCA Aiken Regional Medical Center and shall not cause or permit the destruction, removal or impairment of any assets or businesses of HCA Aiken Regional Medical Center, except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered that: A. If respondents have not divested, absolutely and in good faith and with the prior approval of the Commission, HCA Aiken Regional Medical Center as required by Paragraph II of this Order within twelve (12) months after the date this Order becomes final, the Commission may appoint a trustee and respondents shall consent to the appointment of a trustee by the Commission to effect the divestiture required by Paragraph II of this Order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45 (*l*) or any other statute enforced by the Commission, respondents shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking a civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondents shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures of acute care hospitals. If respondents have not opposed, in writing, the selection of any trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest HCA Aiken Regional Medical Center.

3. The trustee shall have eighteen (18) months from the date of approval of the trust agreement described in Paragraph III.B.8 of this Order to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; provided, however, that the divestiture period may only be extended two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to HCA Aiken Regional Medical Center, or any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for the divestiture under this Paragraph III in an amount equal to the delay, as determined by the Commission or the Court for a court-appointed trustee.

5. Subject to respondents' absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of HCA Aiken Regional Medical Center. The divestiture shall be made in the manner set out in Paragraph II of this Order; provided, however, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or

entities selected by respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a Court may set. The trustee shall have authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the Court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on divestiture through the trustee.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within thirty (30) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the Court, respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the Court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain HCA Aiken Regional Medical Center.

12. The trustee shall report in writing to respondents and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, no respondent shall, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any acute care hospital in Augusta-Aiken; or

B. Permit any acute care hospital it operates in Augusta-Aiken to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in Augusta-Aiken.

Provided, however, that no acquisition shall be subject to this Paragraph IV of this Order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars ($1,000,000).

V

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, respondents shall not permit all or any substantial part of any acute care hospital they operate in Augusta-Aiken to be acquired by any other person (except pursuant to the divestiture required by Paragraph II of this Order) unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this Order, which agreement respondents shall require as a condition precedent to the acquisition.

VI

It is further ordered that, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondents made at their principal offices, respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in respondents' possession or control relating to any matter contained in this Order; and

B. Upon five days' notice to respondents and without restraint or interference from respondents, to interview their officers or employees, who may have counsel present, regarding such matters.

VII

It is further ordered that: A. Within sixty (60 days after the date this Order becomes final and every sixty (60) days thereafter until respondents have fully satisfied the divestiture obligations of this Order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestiture.

B. Annually, beginning on the first anniversary of the date this Order becomes final, and continuing for nine (9) years thereafter, respondents shall submit a verified report demonstrating the manner in which they have complied and are complying with this Order.

VIII

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries or affiliates, or any other change in respondents which may affect compliance obligations arising out of this Order.

Appendix I—Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among Columbia Healthcare Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202, and HCA-Hospital Corporation of America, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203 (collectively and individually referred to as "respondents"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Whereas, on or about October 2, 1993, Columbia Healthcare Corporation entered into an agreement to acquire all of the voting stock of HCA-Hospital Corporation of America (hereinafter the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order") which would require divestiture of HCA Aiken Regional Medical Center ("ARMC") in Aiken, South Carolina, the Commission

must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the assets and businesses of ARMC during the period prior to the issuance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of ARMC as described in Paragraph II of the Consent Order, and the Commission's right to seek to restore ARMC as a viable independent acute care hospital; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve ARMC as a viable independent acute care hospital pending its divestiture, and

(ii) Remedy any anticompetitive effects of the Acquisition; and

Whereas, respondents' entering into this Agreement shall in no way be construed as an admission by respondents that the Acquisition is illegal; and

Whereas, respondents understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from respondents with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to seek divestiture of ARMC as held separate pursuant to this Agreement, as follows:

1. Respondents agree to execute and be bound by the attached Consent Order.

2. Respondents agree that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a–2.c, they will comply with the provisions of paragraph 3 of this Agreement.

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the Consent Order, unless by that date the Commission has issued such Order; or

c. The day after the divestiture required by the Consent Order has been completed.

3. Respondents will hold the assets and businesses of ARMC as they are presently constituted separate and apart on the following terms and conditions:

a. ARMC, as it is presently constituted, shall be held separate and apart and shall be operated independent of respondents (meaning here and hereinafter, respondents excluding ARMC) except to the extent that respondents must exercise direction and control over ARMC to assure compliance with this Agreement.

b. Respondents shall not exercise direction or control over, or influence directly or indirectly, ARMC or any of its operations or businesses; provided, however, that respondents may exercise only such direction and control over ARMC as is necessary to assure compliance with this Agreement.

c. Respondents shall maintain the viability and marketability of ARMC and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair its marketability or viability.

d. Except for the single respondent director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined in subparagraph 3..h), respondents shall not permit any director, officer, employee, or agent of respondents to also be a director, officer or employee of ARMC.

e. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, respondents shall not receive or have access to, or use or continue to use, any "material confidential information" of ARMC not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to respondents from sources other than ARMC, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

f. Respondents shall not change the composition of the management of ARMC except that the directors or members serving on the New Board or Management Committee of ARMC (as defined in subparagraph 3.h) shall have the power to remove employees for cause.

g. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a–3.f hereof, shall be subject to a majority vote of the New Board or Management Committee (as defined in subparagraphs 3.h).

h. Respondents shall either separately incorporate ARMC and adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement or establish separate business ventures with articles of agreement covering the conduct of ARMC in accordance with this Agreement. Respondents shall also elect a new three person board of directors ("New Board") or Management Committee ("Management Commenttee") of ARMC. Respondents may elect the directors to the New Board or select the members of the Management Committee; provided, however, that such New Board or Management Committee shall include no more than one respondent director, officer, employee, or agent. Except as permitted by this Agreement, the director of the New Board or member of the Management Committee who is also a respondent director, officer, employee or agent, shall not receive in his or her capacity as a New Board director or Management Committee member material confidential information and shall not disclose any such information received under this Agreement to respondents or use it to obtain any advantage for respondents. Said director of the New Board or member of the Management Committee who is also a respondent director, officer, employee or agent, shall enter a confidentiality agreement prohibiting disclosure of material confidential information (as that term is defined in subparagraph 3.e). Such New Board director or Management Committee member shall participate in matters which come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transaction exceeding $1,000,000 and carrying out respondents' responsibility to assure that ARMC is maintained in such manner as will permit its divestiture as an ongoing, viable acute care hospital. Except as permitted by this Agreement, such New Board director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters, that would involve a conflict of interest if respondents and ARMC were separate and independent entities. Meetings of the New Board or Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

i. All earnings and profits of ARMC shall be retained separately in ARMC. If necessary, respondents shall provide ARMC with sufficient working capital to operate at its current rate of operation, and to carry out any capital improvement plans for ARMC which have already been approved.

j. Should the Federal Trade Commission seek in any proceeding to compel respondents (meaning here and hereinafter respondents including ARMC) to divest ARMC, or to seek any other injunctive or equitable relief, respondents shall not raise any objection based upon the expiration of

the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondents also waive all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondents made to their principal officer, respondents shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of respondents and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondents relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondents, and without restraint or interference from respondents, to interview officers or employees of respondents, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, and agreement to a proposed consent order from Columbia Healthcare Corporation ("Columbia") and HCA-Hospital Corporation of America ("HCA"). The agreement would settle charges by the Federal Trade Commission that Columbia's proposed acquisition of 100 percent of the voting stock of HCA would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act if it had been carried out.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

Both Columbia and HCA (the "respondents") own and operate acute care hospitals in various states, including acute care hospitals in a three-county urban area that includes the cities of Augusta, Georgia, and Aiken, South Carolina ("Augusta-Aiken"). The complaint accompanying the proposed consent order concerns the proposed acquisition's impact upon competition for acute care hospital services in Augusta-Aiken. According to the complaint, Columbia owns and operates Augusta Regional Medical Center in Augusta, Georgia. HCA owns and operates HCA Aiken Regional Medical Center, located about 15 miles northeast of Augusta, Georgia in Aiken, South Carolina.

The consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the Augusta-Aiken hospital market. The complaint alleges that Columbia and HCA are competitors in the market for acute care hospital services in Augusta-Aiken. The Augusta-Aiken hospital market, according to the complaint, was already highly concentrated, and entry by new competitors would be difficult. The complaint alleges that the Commission has reason to believe that the acquisition would have anticompetitive effects in the Augusta-Aiken hospital market, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture of HCA Aiken Regional Medical Center in Aiken, South Carolina. The purpose of the divestiture is to ensure the continuation of HCA Aiken Regional Medical Center as an ongoing, viable acute care hospital independent of Columbia, and to remedy the lessening of competition in the Augusta-Aiken hospital market resulting from the acquisition.

The proposed order allows the respondents to divest HCA Aiken Regional medical Center to one or more acquirers with the prior approval of the Commission. Under the terms of the order, the required divestiture would be completed within twelve months of the date the order becomes final. If the required divestiture were not completed within the twelve-month period, the respondents would consent to the appointment of a trustee, who would have eighteen additional months to effect the divestiture. The hold separate agreement executed as part of the consent order requires the respondents, until the completion of the divestiture or as otherwise specified, to hold separate and preserve all of the assets and businesses of HCA Aiken Regional Medical Center.

The proposed order provides that approval by the Commission of the divestiture shall be conditioned upon the agreement by the acquirer that, for ten years from the date of the divestiture, it will not sell, without the prior approval of the Commission, HCA Aiken Regional Medical Center to another person operating (or in the process of acquiring) any other acute care hospital in the area.

The order would prohibit the respondents from acquiring any acute care hospital in Augusta-Aiken without the prior approval of the Federal Trade Commission. It would also prohibit the respondents from transferring, without prior Commission approval, any acute care hospital they operate in Augusta-Aiken to another person operating (or in the process of acquiring) an acute care hospital in the area. These provisions, in combination, would give the Commission authority to prohibit any substantial combination of the acute care hospital operations of the respondents with those of any other acute care hospital in Augusta-Aiken, unless the respondents convinced the Commission that a particular transaction would not endanger competition in the Augusta-Aiken hospital market. The provisions would not apply to acquisitions or sales where the value of the transferred assets is $1 million or less, and the provisions would expire ten years after the order becomes final.

For ten years, the order would prohibit the respondents from transferring all or any substantial part of any hospital in Augusta-Aiken to a non-respondent without first filing with the Commission an agreement by the transferee to be bound by the order.

The purpose of this analysis is to invite public comment concerning the proposed order, to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by the respondents that their proposed acquisition would have violated the law, as alleged in the Commission's compliant.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part Columbia Healthcare Corp./HCA

Having reason to believe that the Columbia Healthcare Corporation's acquisition of HCA-Hospital Corporation of America may substantially lessen competition in the Augusta, Georgia-Aiken, South Carolina market, I concur in the decision to require divestiture of the Aiken Regional Medical Center. I dissent from the decision not to challenge the

transaction with respect to the Chattanooga, Tennessee market.

In Chattanooga, the merger will combine HCA's Parkridge Medical Center and Columbia's East Ridge Hospital in an already highly concentrated market. In 1985, after a full administrative hearing, the Commission ordered HCA to divest certain assets, including North Park Hospital, which has considerable similarity to East Ridge. Hospital Corporation of America, 106 F.T.C. 361, aff'd, 807 F.2d 1381 (7th Cir. 1986). Although some characteristics of the Chattanooga hospital market may have changed since 1985, I am not persuaded that the competitive situation is so fundamentally different to justify abandonment of the Commission's earlier position.

Dissenting Statement of Commissioner Deborah K. Owen In the Matter of Columbia Healthcare Corporation, et al.

The Commission is today issuing for public comment a proposed consent agreement in connection with the merger of two of the nation's largest hospital chains, Columbia Healthcare Corporation ("Columbia") and HCA-Hospital Corporation of America ("HCA"). The proposed consent agreement permits the merger to go forward, but requires the combined firm to divest one of its two hospitals in the Augusta, Georgia/Aiken, South Carolina area. I dissent from the decision to accept this consent agreement, principally because I do not find reason to believe that, after the merger, anticompetitive effects are likely in that geographic market.

I cannot, however, conclude with reasonable confidence that the proposed merger has no anticompetitive effects in any hospital market across the country. There is evidence (although incomplete) that in one market, the consolidation of the Columbia and HCA hospitals may create a monopoly that could injure consumers.

In that matter, one of the hospitals satisfies the statistical criteria for the hospital merger "safety zone" as set forth in the Statements of Enforcement Policy in the Health Care Area, adopted in September 1993 by the Department of Justice and the Federal Trade Commission (over my dissent).[1] Based on its size alone, the acquisition of this hospital has been declared by the federal enforcement agencies to be immune from antitrust review.[2]

This is not to suggest that the Commission is indifferent to the monopolization of all hospital markets. Last week, the Commission voted unanimously to authorize staff to file a preliminary injunction to prevent the merger to monopoly of the only two acute care hospitals in Pueblo, Colorado.[3] In Pueblo, the requirements of the hospital merger "safety zone" were not satisfied, so a full investigation and analysis of the likely competitive effects of the merger were undertaken, in accordance with the 1992 Horizontal Merger Guidelines.[4] In such a traditional analysis, the Commission considers whether the merging hospitals are economically viable, whether significant efficiencies may be achieved by combining the hospitals, whether these efficiencies are merger-specific, and whether cost savings are likely to be passed on to consumers in the form of lower prices or higher quality. Most critically, whether the anticipated efficiency benefits outweigh the substantial anticompetitive risks associated with the creation of a monopoly is also evaluated. Under a Guidelines analysis, the Commission's action in the Pueblo merger suggests a conclusion that the likely anticompetitive effects outweigh the possible efficiencies stemming from the merger.

The Commission did not, however, conduct a thorough investigation of the market in which the merger of Columbia and HCA may have created a monopoly. The Commission abandoned its traditional approach to merger analysis upon determining that the HCA hospital falls within the "antitrust safety zone."

In sum, the Antitrust Enforcement Policy Statements in the Health Care Area may have claimed their first casualty. Perhaps a full investigation would have demonstrated that the merger, though creating a monopoly, posed no anticompetitive problem. But we will never know at the level of confidence that consumers have a right to expect of us. I therefore dissent.

[1] Department of Justice and Federal Trade Commission Antitrust Enforcement Policy Statements in the Health Care Area, 4 Trade Reg. Rep. (CCH) ¶ 13,150; Dissenting Statement of Commissioner Deborah K. Owen on DOJ/FTC Antitrust Enforcement Policy Statements in the Health Care Area (September 14, 1993).

[2] Department of Justice and Federal Trade Commission Antitrust Enforcement Policy Statements in the Health Care Area, 4 Trade Reg. Rep. (CCH) ¶ 13,150 at 20,757:

The Agencies will not challenge any merger between two general acute-care hospitals where one of the hospitals (1) has an average of fewer than 100 licensed beds over the three most recent years, and (2) has an average daily inpatient census of fewer than 40 patients over the three most recent years, absent extraordinary circumstances. This antitrust safety zone will not apply if that hospital is less than 5 years old.

It is not clear what constitutes "extraordinary circumstances" within the contemplation of the Policy Statement. The Commission's action today may, however, be viewed as implicit support for the proposition that a merger to monopoly does not qualify as an "extraordinary circumstance."

[3] Parkview Episcopal Medical Center, FTC File No. 931–0125.

[4] U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,104 (Apr. 2, 1992).

[Dkt. 9252]

Sonic Technology Products, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California company and its officers from representing that any ultrasonic pest control device can eliminate rodent or flea infestations, and from misrepresenting the results of any scientific studies regarding their ultrasonic pest control products.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold or David Newman, FTC/San Francisco Regional Office, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of SONIC TECHNOLOGY PRODUCTS, INC. a corporation, and W. LOWELL ROBERTSON, individually and as an officer of said corporation, and BRIAN

PHILLIP JOBE, individually and as an officer of said corporation. Docket No. 9252.

This agreement, by and between Sonic Technology Products, Inc., a corporation, and W. Lowell Robertson and Brain Phillip Jobe, individually and as officers of Sonic Technology Products, Inc., and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. Accordingly, *It is hereby agreed:*

1. Respondent Sonic Technology Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its principal place of business located at 120 Richardson Street, suite C, Grass Valley, California 95945.

Respondents W. Lowell Robertson and Brain Phillip Jobe are officers of said corporation. Individually or in concert with others, they formulate, direct, and control the policies, acts, and practices of said corporation. Their office and place of business is the same as that of said corporation.

2. Respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in the attached draft complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of section 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Respondents have read the complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that Sonic Technology Products, Inc., ("Sonic") a corporation, and W. Lowell Robertson and Brian Phillip Jobe, individually and as officers of said corporation, and their successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, offering for sale, sale, or distribution of the "PestChaser," the "Pestrepeller," or any other ultrasonic pest control device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

A. That the device can or will eliminate infestations of rodents;

B. That the device can or will eliminate or reduce infestations of fleas; or

C. That the device can or will repel fleas.

II

It is further ordered that respondents, their successors and assigns, and the corporate respondent's officers, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any ultrasonic pest control device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations or purpose of any test, study or other scientific data.

III

It is further ordered that respondents, their successors and assigns, and the corporate respondent's officers, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any ultrasonic pest control device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the "PestChaser," the Pestrepeller," or any other ultrasonic pest control device will increase or assist the effectiveness of a user's efforts to eliminate or reduce infestations of rodents or other pests when the device is used in conjunction with other pest control methods, such as traps or poisons; or

B. Making, directly or by implication, any representation referring or relating to the performance or efficacy of any such device;

unless at the time of making such a representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable scientific evidence" shall mean, for purposes of this Order, those tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results;

Provided, That nothing in Section III of this Order shall prevent respondents from truthfully representing, by use of the words "Registered in Canada," that

the Canadian Department of Agriculture has registered the PestChaser, Pestrepeller or any other ultrasonic pest control device, and permitted the sale of such device in Canada.

IV

It is further ordered that respondents shall, within thirty (30) days after the date of service of this order, send to each catalog company with whom respondents have done business since January 1, 1992, a copy of this order and a notice that the catalog company shall immediately cease using or relying upon any of respondent's advertising or promotional materials containing representations prohibited by this order.

V

It if further ordered that for three (3) years from the date that the representation to which they pertain is last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All test reports, studies, or other materials in their possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

VI

It is further ordered that for three (3) years from the date of issuance of this Order, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents demonstrating or relating to compliance with the terms of this Order, including but not limited to:

A. All advertisements, promotional materials, documents, or other materials relating to the offer of sale or sale of any ultrasonic pest control device; and

B. All consumer complaints and requests for refunds.

VII

It is further ordered that, for three (3) years from the date of issuance of this Order, the corporate respondent, its successors and assigns, and the individual respondents, shall cause a copy of this Order to be distributed to each purchaser of respondents' ultrasonic pest control devices for resale, to each present and future managerial employee of respondents, and to each present and future saleperson of respondents' products, whether they are independent sales agents or employees of respondents.

VIII

It is further ordered that, for five (5) years from the date of issuance of this Order, respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution or subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

IX

It is further ordered that, for five (5) years from the date of issuance of this Order, each individual respondent shall notify the Commission, by submitting a report, in writing, of any change in his residence or business address, occupation, place of business, or place of employment.

X

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Sonic Technology Products, Inc., a Nevada corporation, and W. Lowell Robertson and Brian Phillip Jobe, individually and as officers of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the labeling and advertising of the PestChaser, a plug-in device that is designed to emit sound in ultrasonic frequencies, *i.e.*, frequencies inaudible to the human ear. The Commission's complaint charges that respondents' advertising contained false and unsubstantiated representations concerning the PestChaser's alleged ability to affect rodents and fleas. Specifically, the complaint alleges that respondents falsely claimed that the PestChaser: (1) Eliminates rodent infestations; and (2) eliminates or reduces flea infestations, or repels fleas.

The complaint further alleges that respondents falsely represented that competent and reliable scientific tests have established that the above efficacy claims are true. The complaint also alleges that respondents lacked substantive for the claim that the PestChaser, when used in conjunction with other pest control methods, such as traps and poisons, will increase the effectiveness of the user's efforts to eliminate or reduce infestations of rodents or other pests.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondents from claiming that their ultrasonic pest control devices can or will: (1) Eliminate infestations of rodents; (2) eliminate or reduce infestations of fleas; or (3) repel fleas.

Part II of the proposed order prohibits respondents from misrepresenting the existence, validity, results, conclusions, interpretations or purpose of any test, study or other scientific data.

Part III of the proposed order requires respondents to possess competent and reliable scientific evidence for: (1) any claim that any ultrasonic pest control device will increase or assist the effectiveness of a user's efforts to eliminate or reduce infestations of rodents or other pests when the device is used in conjunction with other pest control methods; or (2) any representation referring or relating to the performance or efficacy of any ultrasonic pest control device. Part III further provides that, notwithstanding this requirement, respondents may truthfully represent, by use of the words "Registered in Canada," that the Canadian Department of Agriculture has registered their ultrasonic pest control device, and permitted the sale of such device in Canada.

The proposed order also requires respondents to maintain materials relied upon to substantiate claims covered by the order, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to notify the Commission of certain changes in the business or employment of the named individual respondents.

The proposed order also requires respondents to distribute copies of the order to any catalog company with whom respondents have done business

since January 1, 1992, to present and future resellers of their ultrasonic pest control devices, and to their managerial employees and salespeople. Respondents must also file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–4966 Filed 3–3–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0441]

Medical Devices; Reclassification of the Daily Wear Soft and Daily Wear Nonhydrophilic Plastic Contact Lenses; Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order reclassifying daily wear soft and daily wear nonhydrophilic plastic contact lenses from class III (premarket approval) into class II (special controls). This reclassification is required by the Safe Medical Devices Act of 1990 (the SMDA). This reclassification only applies to daily wear soft and daily wear nonhydrophilic contact lenses. Lenses intended for extended wear will remain in class III, as will contact lens accessories. The SMDA also requires FDA to put into place any regulatory safeguards that are necessary to provide reasonable assurance of the safety and effectiveness of the reclassified lenses. Thus, FDA is announcing the availability of a guidance document entitled "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses." The guidance sets forth the evidence that should be submitted to FDA to demonstrate the substantial equivalence of new daily wear soft and daily wear nonhydrophilic plastic contact lenses to lenses already marketed. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to codify the reclassification of the daily wear contact lens from class III (premarket approval) into class II (special controls).

DATES: The reclassification is effective March 4, 1994. Written comments on the guidance document may be submitted at any time.

ADDRESSES: Submit all amendments to pending premarket approval applications (PMA's), including the PMA or PMA supplement number, to the Food and Drug Administration, Center for Devices and Radiological Health, PMA Document Mail Center (HFZ–401), 1390 Piccard Dr., Rockville, MD 20850. Submit written requests for single copies of "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses" to the Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6597 or 800–638–2041. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFA–350), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2205.

SUPPLEMENTARY INFORMATION:

I. The Statutory Requirements

The SMDA (Pub. L. 101–629), which amended the medical device provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321–394) contained specific provisions on transitional devices (i.e., those devices regulated as drugs before the Medical Device Amendments of 1976 (Pub. L. 94–295) became law) (see section 520(l) of the act (21 U.S.C. 360j(l))). In 1976, Congress classified all transitional products, including daily wear soft and daily wear nonhydrophilic plastic contact lenses, into class III (premarket approval). Essentially the SMDA, reflecting congressional concern that many transitional devices were being over regulated in class III, directed FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices and review the classifications of those transitional devices that still remained in class III to determine if the devices could be down classified to class II (special controls) or class I (general controls).

Under section 520(l)(5)(B) of the act, FDA was to publish regulations by December 1, 1992, either leaving the transitional class III devices in class III or revising their classifications down to class I or class II. However, as permitted by section 520(l)(5)(c) of the act, the agency, in the **Federal Register** of November 30, 1992 (57 FR 56586), published a notice extending the period for issuing such regulations until December 1, 1993.

With respect to the reclassification of daily wear soft and daily wear nonhydrophilic plastic contact lenses, however, the SMDA makes further provision. Section 4(b)(3)(A) of the SMDA provides that notwithstanding the provisions for reclassification of other transitional devices, FDA shall not retain daily wear soft or daily wear nonhydrophilic plastic contact lenses in class III unless the agency determines that the devices meet the statutory criteria for a class III device. Moreover, if FDA has not determined that these contact lenses must remain in class III and published its finding by November 28, 1993, in the **Federal Register**, then under section 4(b)(3)(D) of the SMDA, FDA "shall issue an order placing the lenses in class II."

Both the language and legislative history of the SMDA make it clear that the reclassification of daily wear soft and daily wear nonhydrophilic contact lenses shall occur as a matter of law unless FDA published a finding that the devices should remain in class III. FDA has not made such a finding: FDA believes that the safety and effectiveness of daily wear soft and daily wear nonhydrophilic plastic contact lenses can be ensured through specified "special controls" as authorized by the SMDA. Therefore, the agency has not made and published any finding that daily wear soft and daily wear nonhydrophilic contact lenses must remain in class III.

II. Order

Therefore, as required by section 4(b)(3)(D) of the SMDA, FDA is issuing this order to all manufacturers of daily wear soft and daily wear nonhydrophilic contact lenses reclassifying their devices from class III (premarket approval) into class II (special controls). The devices being reclassified are contact lenses intended for daily wear that meet the following descriptions:

Rigid Gas Permeable Contact Lens. A rigid gas permeable contact lens is a device intended to be worn directly against the cornea of the eye to correct vision conditions. The device is made of various materials, such as cellulose acetate butyrate, polyacrylate-silicone, or silicone elastomers, whose main polymer molecules generally do not absorb or attract water.

Soft (Hydrophilic) Contact Lens. A soft (hydrophilic) contact lens is a device intended to be worn directly against the cornea and adjacent limbal and scleral areas of the eye to correct vision conditions or to act as a therapeutic bandage. The device is made of various polymer materials, the main polymer molecules of which absorb or attract a certain volume (percentage) of water.

III. Guidance

In addition to issuing this order as required by the SMDA, FDA is issuing a guidance document for premarket notifications for the reclassified contact lenses entitled, "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses." This guidance sets forth the special controls that FDA has determined are needed to ensure the safety and effectiveness of daily wear plastic contact lenses. It also provides comprehensive directions to enable a manufacturer of a daily wear soft or daily wear nonhydrophilic plastic contact lens to submit a 510(k) premarket notification demonstrating substantial equivalence of the device to a legally marketed daily wear plastic contact lens (predicate device). Information on the battery of preclinical testing necessary to demonstrate substantial equivalence is included in the guidance. If the results of preclinical testing demonstrate the device to have new characteristics, clinical performance data may be needed to establish substantial equivalence. If clinical performance data are needed, the guidance document provides suggested methodologies (e.g., size and scope of the study) to be included in an investigational protocol.

The preclinical portion of the guidance document consists of manufacturing and chemistry, toxicology and microbiology sections outlining the type of testing that should be completed. Each section includes a summary of the basic requirements and suggested methods for meeting these requirements. Other elements of the guidance document include: (1) General information on the regulations and requirements for labeling contact lenses; (2) requirements that must be met prior to modifying a marketed contact lens; (3) suggested methodologies for meeting color additive requirements; (4) procedures for adding lens finishing laboratories for manufacturing and marketing of class II rigid gas permeable contact lenses; and (5) the procedure for implementing changes in packaging materials.

In the event that clinical trials are necessary, FDA emphasizes that manufacturers must conduct the trials in accordance with the Investigational Device Exemption regulations in 21 CFR part 812. At this time, FDA considers clinical studies of daily wear soft or daily wear nonhydrophilic plastic contact lenses to be nonsignificant risk investigations. FDA considers clinical studies of extended wear contact lenses to be significant risk investigations. Thus, for daily wear soft or daily wear nonhydrophilic plastic contact lenses, an institutional review board (IRB) approval is always necessary before initiating a clinical study, and an investigational plan and informed consent document must be presented to an IRB for review and approval. For extended wear contact lenses, the manufacturer must obtain both IRB and FDA approvals in accordance with 21 CFR part 812 before clinical testing can be initiated.

This guidance document will be discussed at the next meeting of the Ophthalmic Devices Panel of the Medical Devices Advisory Committee. The date, time, and place of this meeting will be announced in a future issue of the **Federal Register**.

IV. Transition Phase for Pending PMA's for Daily Wear Contact Lenses

Below, FDA discusses how it will deal with the pending original and supplemental PMA's involving daily wear soft or daily wear nonhydrophilic plastic contact lenses currently filed with the agency. As of today's date, all pending PMA applications will need to be examined to identify: (1) Those that are no longer subject to PMA review and can be converted to 510(k)'s or withdrawn and resubmitted to FDA by the applicant to be evaluated through the 510(k) process; and (2) those which can be withdrawn by the applicant and are required to be resubmitted and evaluated as a 510(k) prior to implementing the request. FDA will make all final decisions on converted PMA's based on 510(k) regulatory requirements as elaborated in the "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses."

To ensure expeditious conversions, sponsors should review their pending PMA's and advise the agency as to what administrative action the sponsor believes needs to be taken regarding their pending applications affected by the automatic reclassification. FDA is suspending the review of each pending original and supplemental PMA affected in whole or in part by this reclassification order until the respective sponsor amends its application setting forth the status of the devices and the administrative actions requested to be taken regarding its application.

These administrative actions can include the following:

(1) For a pending PMA that involves only contact lenses covered by this reclassification, the sponsor may ask that its PMA application be converted, in total, to a 510(k) application.

The amendment to the PMA should include all of the necessary content requirements for a 510(k), thus making the application as complete as possible when it is converted to a 510(k). For example, if an applicant has a pending PMA supplement for a modification to a previously approved daily wear contact lens, and if this modification has been identified in the "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses" as a change requiring submission of a 510(k), the applicant can amend this PMA with a request to convert it into a 510(k). PMA's converted to 510(k)'s under this order will retain their position in the review queue (if they are complete), and the review process will continue without further delay.

(2) For a pending PMA that involves both lenses that are covered by this reclassification and those that are not, the applicant should withdraw the portion of the application that addresses the reclassified lenses and resubmit it as a 510(k) application.

For example, if a pending PMA contains a request for a new or modified lens material for both a daily and extended wear contact lens, the applicant should withdraw the request for the daily wear lens and ask the agency to proceed with the review of that portion of the PMA involving the extended wear contact lens only. Pending PMA's that must, in part, be resubmitted as a 510(k) application will retain their position in the review queue if the applicant responds with the appropriate amendment and clearly states in the amendment that the daily wear contact lens portion of the PMA will be resubmitted as a 510(k) application.

Whichever option applies, the applicant should determine whether the previous request involving the daily

wear contact lens must be resubmitted and evaluated through the 510(k) process or be implemented without the need for submission of a 510(k). To make this determination, the applicant should consult the 510(k) procedures (21 CFR part 807) and the "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses." If the applicant determines that a 510(k) application is required, the sponsor should resubmit the application following the content and format requirements for 510(k) applications. The agency notes that preclinical and clinical data formerly required in the PMA may still be necessary to support a substantial equivalence determination. Preclinical and clinical data which is also contained in a pending PMA may be incorporated by reference in a 510(k) application. The applicant should include in the amendment the claim of substantial equivalence to their previously approved daily wear contact lens and a summary of the safety and effectiveness information or a statement that the applicant will make the safety and effectiveness information available to interested persons upon request.

In addition, sponsors should determine if there is information in the pending PMA that would not be needed when resubmitted as a 510(k) application. In making this determination, FDA cautions sponsors to review the regulations pertaining to releasability of information in PMA's and 510(k) applications before simply converting PMA's to 510(k) applications since the disclosure regulations may treat information in the applications differently. For this reason, a manufacturer may choose not to have the pending PMA converted to a 510(k) application, but instead choose to withdraw the pending application, purge it of unnecessary information that the sponsor might not want released, and resubmit the relevant data in a new 510(k) application.

If an applicant fails to submit an amendment as outlined above within 180 days, FDA will consider the pending PMA or PMA supplement to be voluntarily withdrawn. In such cases, the agency will notify the applicant by letter of the withdrawal. All amendments to pending PMA's shall include the PMA or PMA supplement number and shall be addressed to the PMA Document Mail Center (address above).

Additional questions regarding the administrative procedures resulting from this reclassification order should be directed to the PMA Staff (Kathy Lundsten, 301–594–2186), or to the Division of Ophthalmic Devices, Contact Lens Branch (David M. Whipple, 301–594–2205, or James F. Saviola, 301–594–1744).

Dated: February 24, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4697 Filed 3–3–94; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, February 4, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of requests).

1. Black Lung Clinic Program (42 CFR 55a) and Program Guidelines—0915–0081 (Extension)—The Health Resources and Services Administration uses the application information to determine applicants' eligibility for awards. The grantees are required to maintain patient treatment plans and a register of patients to ensure quality medical care. *Respondents:* State or local governments; *Non-profit institutions: Number of Respondents:* 14; *Number of Responses per Respondent:* 1; *Average Burden per Recordkeeper:* 3,000 hours; *Estimated Annual Burden:* 42,000 hours.

2. Special Volunteer and Guest Research Assignment—0925–0177 (Extension)—Form NIH–590 records names, address, employer, education, and other information on prospective Special Volunteers and Guest Researchers, and is used by the responsible National Institutes of Health approving official to determine the individual's qualifications and eligibility for such assignments. The form is the only official record of approved assignments. *Respondents:* Individuals or households; *Number of Respondents:* 1,000; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .08 hour; *Estimated Annual Burden:* 80 hours.

3. Ethics and Human Genetics: A Survey of Approaches in the United States of America—New—This survey will be valuable in establishing research priorities in prevention and treatment of mental retardation, in developing training programs for professionals, and in developing guidelines and policy options for the orderly introduction of information generated by human genome research into biomedical practices. Participants include geneticists, physicians, and the public. *Respondents:* Individuals or households; Businesses or other for-profit; Small businesses or organizations; *Number of Respondents:* 2,901; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.712; *Estimated Annual Burden:* 2,065 hours.

4. Evaluation of the HHS Access to Community Care and Effective Services and Supports (ACCESS) Program—0930–0164 (Revision)—The Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, is requesting clearance for an evaluation study that will assess services integration (SI) approaches for homeless persons with severe mental illnesses. SI sites will be contrasted with comparison sites to assess the impact of SI. Case studies will describe approaches to SI processes by which SI takes place and factors that influence SI. *Respondents:* Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Clients	7,200	.7	.93 hours.
Service Providers	1,935	14	.15 hours.

Estimated Total Annual Burden—8,799 hours.

5. Requests for Public Health Assessments—42 CFR part 90—0923–0002—(Extension)—This information collection provides a mechanism for the public to request that a public health assessment(s) be conducted by the Agency for Toxic Substances and Disease Registry at a site/location where there may be concerns that exposure to hazardous substances may be an issue. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; *Number of Respondents:* 60; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .5 hours; *Estimated Annual Burden:* 30 hours.

6. Tissue Bank Survey—New—This survey is designed to assess public health benefits, evaluate agency resource needs, and consider industry and consumer impact of federal regulation. Information is required about current practices, number, resources, and size of operations of tissue banks processing bone for therapeutic use. *Respondents:* Non-profit institutions; *Number of Respondents:* 199; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 2.6 hours; *Estimated Annual Burden:* 510 hours.

7. Congenital Syphilis Case Investigation and Reporting Form—0920–0128 (Extension-No Change) This data collection will provide a surveillance system for congenital syphilis (CS). The data will be used to monitor levels of disease, develop intervention strategies and evaluate ongoing efforts. *Respondents:* State or local governments; *Number of Respondents:* 65; *Number of Responses per Respondent:* 54; *Average Burden per Response:* .25 hours; *Estimated Annual Burden:* 875 hours.

8. Health Education Assistance Loan (HEAL) Program Forms—0915–0034 (Revision)—The forms are needed for lenders to make application to the health insurance program, to report accurately and timely on loan actions, including transfer of loans to a secondary agent, and to establish the repayment status of borrowers. This request is for revision of the Borrowers Status Form. *Respondents:* Individuals or household; businesses or other for-profit; non-profit institutions.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Lender Application HRSA Form 504	66	1	8 minutes.
Leinder's Manifest HRSA Form 505	31	141	5 minutes.
Loan Transfer Statement HRSA Form 507	66	123	10 minutes.
Borrower Status HRSA Form 508 (Borrower)	10,582	1	10 minutes.
Borrower Status HRSA Form 508 (Employer)	6,560	1.6	5 minutes.

Estimated Total Annual Burden—4,368 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address:

Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: February 28, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–4978 Filed 3–3–94; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, room 13–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, (Outside OH) 800–338–0166/(Inside OH) 800–362–8913 (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535 (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609 (moved 6/16/93)

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800–328–4142 / Outside MI: 800–225–9414 (formerly: HealthCare/Preferred Laboratories)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631

Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Avenue, Toledo, OH 43699–0008, 419–381–5213

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)

National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894

National Health Laboratories Incorporated, 75 Rod Smith Place,, Cranford, NJ 07016–2843, 908–272–2511

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92)
UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory had its certification reinstated on February 2, 1994:

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

The following laboratory voluntarily withdrew from the Program on December 31, 1993:

MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191 (formerly: MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; Bio-Analytical Technologies)

The following laboratory voluntarily withdrew from the Program on February 14, 1994:

Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811

The following laboratory voluntarily withdrew from the Program on March 1, 1994:

Damon/MetPath, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (formerly: Damon Clinical Laboratories; Chem-Bio Corporation; CBC Clinilab)

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–4903 Filed 3–3–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, February 4, 1994.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Application for Special Age 72-or-Over Monthly Benefits— 0960–0096. The information on form SSA–19 is used by the Social Security Administration to determine if an applicant is entitled to special age 72 payments. The respondents are applicants for these payments.

Number of Respondents: 250
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 83 hours

2. Final Regulation Concerning Payments for Vocational Rehabilitation Services (OR–333F) and State Vocational Rehabilitation Agency Claim (SSA–199)—0960–0310. The information collected by means of this regulation and form will be used by the Social Security Administration to determine if State vocational rehabilitation agencies are providing appropriate services, including referrals when necessary, and whether their claims for those services should be paid.

Number of Respondents: 90
Frequency of Response: On occasion
Average Burden Per Response: Varies: low=23 minutes, high=4 hours
Estimated Annual Burden: 8,588 hours

3. Claimant's Medications—0960–0289. The information on form HA–4632 is used by the Social Security Administration to compile a current list of medications used by a claimant. The list is provided to an Administrative

Law Judge (ALJ) who is considering the disability aspects of the claim. The affected public consists of claimants for disability benefits who have requested a hearing before an ALJ.

Number of Respondents: 223,742

Frequency of Response: 1

Average Burden Per Response: 15 minutes

Estimated Annual Burden: 55,936 hours

4. Representative Payee Report—0960–0068. The information on forms SSA–623 and 6230 is used by the Social Security Administration to determine if a person receiving Social Security benefits on behalf of someone else is using those benefits properly. The affected public is comprised of representative payees.

Number of Respondents: 4,329,360

Frequency of Response: 1

Average Burden Per Response: 15 minutes

Estimated Annual Burden: 1,082,340

5. Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—0960–0416. The information on form SSA–8203 is used by the Social Security Administration to conduct high risk redetermination of Supplemental Security Income (SSI) recipients' eligibility and payment amount. The respondents are recipients of SSI who are selected for a redetermination.

Number of Respondents: 580,000

Frequency of Response: 1

Average Burden Per Response: 17 minutes

Estimated Annual Burden: 164,333 hours

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 28, 1994.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 94–4862 Filed 3–3–94; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–73]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.)

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–

2300; (703) 325–0474; (This is not a toll-free number).

Dated: March 4, 1994.

Jacquie M. Lawing.

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 03/04/94

Suitable/Available Properties

Buildings (by State)

California

Bldg. 50, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779320022
Status: Underutilized
Comment: 252 sq. ft., 1 story wood frame, needs rehab, secured area w/alternate access, 5% in airport runway, most recent use—storage.

Bldg. 25, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779320023
Status: Unutilized
Comment: 1512 sq. ft., 1 story wood frame, most recent use—child care center, secured area w/alternate access.

Bldg. 223
Naval Postgraduate School
Butler Road
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779410014
Status: Unutilized
Comment: 8600 sq. ft., 2 story metal frame, most recent use—student study hall.

Bldg. 224
Naval Postgraduate School
Butler Road
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779410015
Status: Unutilized
Comment: 6400 sq. ft., 1 story metal frame, most recent use—printing plant/academic lab.

Bldg. 500
Naval Postgraduate School
Bouldry Road
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779410016
Status: Unutilized
Comment: 7392 sq. ft., 1 story metal frame, most recent use—mechanical engineering lab, needs major rehab.

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized
Comment: 100 sq. ft., 1-story, needs rehab, most recent use—gas station, off-site use only.

Bldg. T33 Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310003
Status: Unutilized
Comment: 1536 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 1599, Sentry House
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410010
Status: Excess
Comment: 160 sq. ft., 1 story concrete frame, off-site use only.

Bldg. 1031, Marine Barracks
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Location: Enter Nimitz Gate, turn left onto South Avenue
Landholding Agency: Navy
Property Number: 779410011
Status: Excess
Comment: 640 sq. ft., 1 story, most recent use—storage, possible asbestos, off-site use only.

Bldg. 1034, Marine Barracks
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Location: Enter Nimitz Gate, turn left onto South Avenue
Landholding Agency: Navy
Property Number: 779410012
Status: Excess
Comment: 1184 sq. ft., 1 story, most recent use—barber shop, off-site use only.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Underutilized
Comment: 7,270 sq ft., 1 story bldg, most recent use-storage, structural deficiencies.

Bldg. 332, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779240013
Status: Excess
Comment: 1248 sq. ft., 1-story, most recent use—office building, off-site use only.

Bldg. 333, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779240014
Status: Excess
Comment: 12672 sq. ft., 2-story, most recent use—office building, off-site use only.

Bldg. 373, Topsham Annex
Naval Air Station
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320024
Status: Excess
Comment: 1300 sq. ft., 1 story, most recent use—public works maintenance shop, on 2.55 acres.

North Carolina

Bldg. 014, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410046
Status: Excess
Comment: 12×76 mobile home w/addition, off-site use only.

Bldg. 032, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410047
Status: Excess
Comment: 960 sq. ft. double wide modular bldg., off-site use only.

Bldg. 033, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410048
Status: Excess
Comment: 1052 sq. ft., 1 story frame residence, off-site use only.

Bldg. 042, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410049
Status: Excess
Comment: 1257 sq. ft., 1 story frame, off-site use only.

Bldg. 051, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410050
Status: Excess
Comment: 1193 sq. ft., 1 story frame, off-site use only.

Bldg. 057, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410051
Status: Excess
Comment: 697 sq. ft., 1 story frame, off-site use only.

Bldg. 074, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410052
Status: Excess
Comment: 1220 sq. ft. mobile home, off-site use only.

Bldg. 075, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–

Landholding Agency: Navy
Property Number: 779410053
Status: Excess
Comment: 720 sq. ft. mobile home, off-site use only.

Bldg. 126, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410054
Status: Excess
Comment: 1504 sq. ft. mobile home w/ additions, off-site use only.

Bldg. 127, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410055
Status: Excess
Comment: 600 sq. ft. mobile home w/ additions, off-site use only.

Bldg. 130, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410056
Status: Excess
Comment: 1663 sq. ft., 1 story brick veneer residence, off-site use only.

Bldg. 133–1, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410057
Status: Excess
Comment: 460 sq. ft. mobile home, off-site use only.

Bldg. 133–2, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410058
Status: Excess
Comment: 500 sq. ft. mobile home, off-site use only.

Bldg. 133–3, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410059
Status: Excess
Comment: 352 sq. ft. mobile home, off-site use only.

Bldg. 139B, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410060
Status: Excess
Comment: 1095 sq. ft., 1 story frame residence, off-site use only.

Bldg. 142, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410061
Status: Excess
Comment: 985 sq. ft., 1 story brick veneer residence, off-site use only.

Bldg. 145, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410062
Status: Excess
Comment: 630 sq. ft., 1 story frame residence, off-site use only.

Bldg. 146, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410063
Status: Excess
Comment: 1137 sq. ft., 1 story brick veneer residence, off-site use only.

Land (by State)

Georgia

Naval Submarine Base,
Grid R–2 to R–3 to V–4 TO V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V.

Suitable/Unavailable Properties

Buildings (by State)

Maine

Bldg. 376, Naval Air Station
Topsham Annex
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320011
Status: Unutilized
Comment: 4530 sq. ft., 2-story, most recent use—quarters, needs rehab.

Maryland

Bldg. 230
Naval Communication Detachment
9190 Commo Road
Cheltenham Co: Prince George MD 20397–5520
Landholding Agency: Navy
Property Number: 779330010
Status: Unutilized
Comment: 12,384 sq. ft., 4-story, needs rehab, potential utilities, includes 37 acres of land.

Ohio

Naval & Marine Corps Res. Cntr
315 East LaClede Avenue
Youngstown OH
Landholding Agency: Navy
Property Number: 779320012
Status: Unutilized
Comment: 3067 sq. ft., 2 story, possible asbestos.

Texas

Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010161
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010162
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence

Bldg. 2460
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010163
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence

Bldg. 2462
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010164
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2464
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010165
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2466
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010166
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2467
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010167
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2468
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010168
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2472
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010169
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2476
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010170
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2482

Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010171
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2495
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010172
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2514
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010173
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2518
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010174
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2520
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010175
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2522
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010176
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2526
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010177
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2423
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010178
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2427
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010179
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2431
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010180
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2424
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010181
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2433
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010182
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2428
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010183
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2429
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010184
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2454
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010185
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2477
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010186
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2485
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010187
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2499
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010188
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2503
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010189
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2507
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010190
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2513
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010191
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2521
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010192
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2451
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010193
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2458
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010194
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2461
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010195
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2473
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010196
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2478
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010197
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2480
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010198
Status: Underutilized

Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2484
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010199
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2486
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010200
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2487
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010201
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2488
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010202
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2494
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010203
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2500
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010204
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2502
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010205
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2506
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010206
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2508
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010207
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2525
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010208
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2452
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010209
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2475
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010210
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2479
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010211
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2497
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010212
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2501
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010213
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2505
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010214
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2515
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010215
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2517
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010216
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2519
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010217
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2523
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010218
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2465
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010219
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.
Bldg. 2493
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010220
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.
Bldg. 2510
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010221
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.
Bldg. 2474
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010222
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.
Bldg. 2481
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010223
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.
Bldg. 2509
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010224
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.
Bldg. 2511
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010225
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.
Bldg. 2512
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy

Property Number: 779010226
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.
Bldg. 2527
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010227
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 779010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use-laundry.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003–
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq ft., 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city expires September 1990.

Land (by State)

Florida

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508–
Location: Southeast corner of Corey station—next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres.

Georgia

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779019255
Status: Underutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space.
Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office.
Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—dinning hall.
Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.
Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.
Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—storage.
Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—filling station.
Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access; most recent use—bowling alley.
Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Michigan

Marine Corps Reserve Center
3109 Collingwood Parkway
Flint MI 48502–
Landholding Agency: Navy
Property Number: 779240019
Status: Excess
Comment: 5 acres, previously had four bldgs on it.

Unsuitable Properties

Buildings (by State)

Alaska

Sand Shed, Map Grid 45024
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area.
LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area.
Bldg. 10196
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310021
Status: Unutilized
Reason: Secured Area.
Bldg. 10517
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310022
Status: Unutilized
Reason: Secured Area.
Bldg. 10518
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310023
Status: Unutilized
Reason: Secured Area.
Bldg. 10535
Naval Security Group Activity

Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310024
Status: Unutilized
Reason: Secured Area.

Bldg. 10538
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310025
Status: Unutilized
Reason: Secured Area.

Bldg. 10539
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310026
Status: Unutilized
Reason: Secured Area.

Bldg. 10540
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310027
Status: Unutilized
Reason: Secured Area.

Bldg. 10603
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310028
Status: Unutilized
Reason: Secured Area.

California

Bldg. 105
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010159
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: sewer treatment facility

Bldg. 31104
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Propoerty Number: 779340003
Status: Unutilized
Reason: Secured Area

Morris Dam Test Facility Range
Azusa Co: Los Angeles CA 91702–
Landholding Agency: Navy
Property Number: 779410001
Status: Unutilized
Reason: Secured Area

Bldg. 31568
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779410013
Status: Unutilized
Reason: Secured Area.

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone.

Georgia

Naval Submarine Base-Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area.

Guam

Bldg. 96
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779240018
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 6118
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779330001
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230012
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Other
Comment: Extensive Deterioration.

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230013
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230014
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Facility 189, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310045
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 342, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310046
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 343, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310047
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility S6194
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310048
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility S7124
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310049
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 5985
Naval Station Pearl Harbor
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779310086
Status: Excess
Reason: Extensive deterioration.

Bldg. 989
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320025
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 990
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320026
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 996
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320027
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1026
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320028
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1028
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320029
Status: Unutilized

Reason: Extensive deterioration.

Bldg. S959
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320030
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S1
Lualualei Branch, Naval Magazine
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779330006
Status: Underutilized
Reason: Extensive deterioration.

Bldg. S2
Lualualei Branch, Naval Magazine
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779330007
Status: Underutilized
Reason: Extensive deterioration.

Bldg. S3
Lualualei Branch, Naval Magazine
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779330008
Status: Underutilized
Reason: Extensive deterioration.

Bldg. S7
Lualualei Branch, Naval Magazine
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779330009
Status: Underutilized
Reason: Extensive deterioration.

Bldg. T–44
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 6, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 291, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1032, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1033, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410007
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 43, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 827, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410009
Status: Unutilized
Reason: Detached Latrine.

Illinois

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010120
Status: Unutilized
Reason: Secured Area.

Bldg. 28
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010123
Status: Unutilized
Reason: Secured Area.

Bldg. 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010126
Status: Unutilized
Reason: Secured Area.

South Wing—Building. No 62
Great Lakes Co: Lake IL 60088–5000
Landholding Agency: Navy
Property Number: 779110001
Status: Underutilized
Reason: Secured Area.

Bldg. 235
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310039
Status: Unutilized
Reason: Secured Area.

Bldg. 2B
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310040
Status: Unutilized
Reason: Secured Area.

Bldg. 90
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310041
Status: Unutilized
Reason: Secured Area.

Bldg. 232
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310042
Status: Unutilized
Reason: Secured Area.

Bldg. 233
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310043
Status: Unutilized
Reason: Secured Area.

Bldg. 234
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310044
Status: Unutilized
Reason: Secured Area.

Maine

Bldg. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779240015
Status: Excess
Reason: Secured Area.

Bldg. 384
Naval Air Station Topsham
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779340001
Status: Unutilized
Reason: Extensive deterioration.

North Carolina

Bldg. SH–7
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–11
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410018
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–13
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–16
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. Sh–17
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–21
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy

Property Number: 779410022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–31
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410023
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SSH–10
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–209
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410025
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–589
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410026
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–590
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410027
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–4138
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410028
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–4139
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410029
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 867
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410030
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 939
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410031
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 940
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410032
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. H–38
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410033
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SM–173
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410034
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1744
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410035
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 001, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410036
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 004, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410037
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 011, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410038
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 016, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410039
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 49, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410040
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 056, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410041
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 079 & 079B, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28455–
Landholding Agency: Navy
Property Number: 779410042
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 085, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28455–
Landholding Agency: Navy
Property Number: 779410043
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 139, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28455–
Landholding Agency: Navy
Property Number: 779410044
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 147, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28455–
Landholding Agency: Navy
Property Number: 779410045
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area.

Texas

Bldg. 2426
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279
Status: Underutilized
Reason: Floodway.

Bldg. 2432
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010280
Status: Underutilized
Reason: Floodway.

Bldg. 2476
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010281
Status: Underutilized
Reason: Floodway.

Bldg. 2498
Laguna Shores Housing Area

Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010282
Status: Underutilized
Reason: Floodway.

Bldg. 2504
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010283
Status: Underutilized
Reason: Floodway.

Bldg. 1730
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010284
Status: Underutilized
Reason: Floodway.

Bldg. 2422
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010285
Status: Underutilized
Reason: Floodway.

Bldg. 2425
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010286
Status: Underutilized
Reason: Floodway.

Bldg. 2430
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010287
Status: Underutilized
Reason: Floodway.

Bldg. 2434
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010288
Status: Underutilized
Reason: Floodway.

Bldg. 2449
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010289
Status: Underutilized
Reason: Floodway.

Bldg. 2450
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010290
Status: Underutilized
Reason: Floodway.

Bldg. 2453
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010291
Status: Underutilized
Reason: Floodway.

Bldg. 2455
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010292
Status: Underutilized
Reason: Floodway.

Bldg. 2456
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010293
Status: Underutilized
Reason: Floodway.

Bldg. 2463
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010294
Status: Underutilized
Reason: Floodway.

Bldg. 2483
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010295
Status: Underutilized
Reason: Floodway.

Bldg. 2516
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010296
Status: Underutilized
Reason: Floodway.

Bldg. 2524
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010297
Status: Underutilized
Reason: Floodway.

Bldg. 2528
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010298
Status: Underutilized
Reason: Floodway.

Washington

Bldg. 57
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Underutilized
Reason: Secured Area.

Land (by State)

California

Salton Sea Test Range
ElCentro Co: Imperial CA 93555–
Landholding Agency: Navy
Property Number: 779010068
Status: Excess
Reason: Secured Area.

Land—Marine Corps Base
Camp Pendleton
Camp Pendleton Co: San Diego CA 92055–
Landholding Agency: Navy
Property Number: 779330003
Status: Underutilized
Reason: Secured Area.

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Unutilized
Reason: Floodway.

East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone.

Georgia

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area.

Maryland

5,635 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch.

Puerto Rico

Destino Tract
Eastern Maneuver Area
Vieques PR 00765–
Landholding Agency: Navy
Property Number: 779240016
Status: Excess
Reason: Other
Comment: Inaccessible.

Punta Figueras—Naval Station
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779240017
Status: Excess
Reason: Floodway.

Washington

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area.

[FR Doc. 94–4889 Filed 3–3–94; 8:45 am]

BILLING CODE 4210–29–M

INTER-AMERICAN FOUNDATION

Privacy Act of 1974; Systems of Records

AGENCY: Inter-American Foundation (IAF).

ACTION: Notice of systems of records pursuant to Privacy Act of 1974.

IAF–1

SYSTEM NAME:

Conflict of Interest Files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Foundation at GS–13 level and above, Foundation Representatives, contracting personnel, employees with regular contacts with contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Title; Date of Appointment; grade, home address; Employment and financial interests, position in organization, nature of financial interest; names and addresses of creditors, character of indebtedness; interests in real property, nature of interest, type of property and address, name, address, and nature of subject matter of other persons supplying information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house." Notwithstanding the above, access may also be gained under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper Files.

RETRIEVABILITY:

Manual. Identifier—Name.

SAFEGUARDS:

Filed in locked, steel cabinets; records available to authorized persons only.

RETENTION AND DISPOSAL:

Destroyed six years after employee departure.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact the General Counsel. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

RECORD SOURCE CATEGORIES:

Individual himself and people named by individual to supply information.

IAF–2

SYSTEM NAME:

Foundation Fellowship Application Files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates who submitted applications in a fellowship competition for fellowship awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The application file contains such general personal information as home and work addresses and phone numbers, citizenship, date and place of birth, age, name and citizenship of spouse, social security number, number and ages of children, educational history, employment history, career information, travel experience, language capability, honors and publications, personal statement, letters of recommendation, grade transcripts, research/study prospectus, comments by Foundation staff and contracted evaluators. In addition, other general competition files provide scores by contracted evaluators of the individual candidate's application for fellowship award recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used by contracted specialists for evaluating applications and Foundation staff for managing the fellowship competition. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention

of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper Files.

RETRIEVABILITY:

Manual. Identifier—Name and Program.

SAFEGUARDS:

Filed in locked, steel cabinets; records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Fellowship Assistant. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Learning and Dissemination. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in Rules Safeguarding Personal Information.

RECORD SOURCE CATEGORIES:

Individual her/himself; educational institutions attended; letters of recommendation by people identified by individual; Foundation staff; contracted evaluators.

IAF–3

SYSTEM NAME:

Foundation Fellowship Grant Files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Successful Candidates ("Fellows") who submitted applications and received fellowship grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to all information from the individual's application file, the grant file contains such documents as the grant agreement and amendments, financial and disbursement records, correspondence, grade transcripts, programmatic and financial reports, research reports, staff memoranda, and comments by contracted evaluators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used by contracted specialists for evaluating grant progress and Foundation staff for managing the individual's grant. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier—Name, Grant Number, and Program.

SAFEGUARDS:

Filed in locked, steel cabinets; records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Fellowship Assistant. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Learning and Dissemination. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in Rules Safeguarding Personal Information.

RECORD SOURCE CATEGORIES:

Fellow her/himself; educational institutions attended; Foundation staff; contracted evaluators.

IAF–4

SYSTEM NAME:

Informal Personnel Files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Employment and Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

General personnel information including position descriptions, training records, request for notification of personnel action, notification of personnel action, performance plans on appraisals, time and attendance records, occupation, pay plan, service computation dates, date of birth, grade and salary, social security number,

home telephone number, resume, letters of recommendation, background investigation data for critical/sensitive, non-critical sensitive and security clearances, recommendation for performance recognition, employment staffing reports, handicap and race and national origin informal reports, informal notices of injury or occupational disease, records of requests for unemployment compensation payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information is used "in house" (non-routine uses) for personnel evaluation and management. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this syetem of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier—Name.

SAFEGUARDS:

Filed in locked, steel cabinets; records available to authorized persons only.

RETENTION AND DISPOSAL:

Destroyed after three years of inactivity. (Being negotiated.)

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Officer, Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above or Executive Vice President for Operations. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in Rules Safeguarding Personal Information.

RECORD SOURCE CATEGORIES:

Individual himself; educational institutions; previous employers; letters of recommendations named by individual himself.

IAF–5

SYSTEM NAME:

Personnel Investigation Records.

SYSTEM LOCATION:

Personnel Security, Office of Personnel Management, Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former employees or applicants for employment in the agency.

b. Individuals considered for access to classified information or restricted areas and/or security determinations as contractors, experts, and/or background, and consultants to agency programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files and/or background files which pertain to clearance investigations for Federal employment. These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with present and former supervisors, coworkers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; files relating to adjudication matters; reports of inquiries with law enforcement agencies, employers, educational institutions attended, creditors; reports of action after OPM or FBI section 8(d) Full Field Investigation; Notices of Security Investigation; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used in disclosing information:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when such agency, office, or establishment conducts an investigation of the individual for the purpose of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

b. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, having the responsibility to grant clearances to make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.

c. To the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence activities.

d. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the

investigation, and to identify the type of information requested.

e. To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

f. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

g. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

h. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are received by the name of the individual on whom they are maintained.

SAFEGUARDS:

Folders are maintained in a steel file cabinet. The key to the steel cabinet is locked in other secured file cabinets that are rarely opened. All employees are required to have an appropriate background investigation before they are allowed access to the records.

RETENTION AND DISPOSAL:

a. Log books which show the scheduling or completion of an investigation, and investigative files, if any, are retained for two years, plus the current year from the date of the most recent investigative activity. Other information which show no investigative record other than the completion of a clear National Agency Check or a clear National Agency Check and Inquiry, and where no investigative file folder exists, are retained for two years plus the current year.

b. Reports of action after OPM or FBI section 8(d) background investigation are retained for the life of the investigative file.

c. Notices of Security Investigations are retained for 20 years. All records are destroyed by shredding.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Personnel, Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager in writing. Individuals must furnish the following information for their records to be located and identified:

a. Full name
b. Date of birth
c. Social Security Number
d. Signature
e. Any available information regarding the type of record involved
f. The category of covered individuals under which the requester believes he or she fits.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding access to records. The section of this notice titled Systems exempted from certain provision of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their records should contact the U.S. Office of Personnel Management, FIPC, Boyers, PA 16018–0618 in writing. Individuals must furnish the following information for their records to be located and identified:

a. Full name
b. Date of birth
c. Social Security Number
d. Signature
e. Any available information regarding the type of record involved
f. The category of covered individuals under which the requester believes he or she fits.

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment to records.

The section of this notice titled Systems exempted from certain provisions of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment to their non-exempt records should contact the system manager in writing. Individuals must furnish the following information for their records to be located and identified:

a. Full name
b. Date of birth
c. Social Security Number
d. Signature
e. Any available information regarding the type of record involved
f. The category of covered individuals under which the requester believes he or she fits

RECORD SOURCE CATEGORIES:

Information contained in the system was obtained from the following categories of sources:

a. Applications and other personnel and security forms furnished by the individual

b. Investigative and other record material furnished by Federal agencies

c. Notices of personnel actions furnished by Federal agencies

d. By personal investigation or written inquiry from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system may contain the following types of information:

a. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled for law enforcement purposes in connection with the administration of the merit system. The Privacy Act, at 5 U.S.C. 552a(k)(2), permits an agency to exempt such material from certain provisions of the Act. Application of exemption (k)(2) may be necessary to preclude the data subject's access to and amendment of the record.

c. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5),

permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

1. Reveal the identify of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identify of the source would be in confidence; or

2. Reveal the identify of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

IAF–6

SYSTEM NAME:

Payroll/Travel Accounting Records.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual Payroll/Travel information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual employee pay records and official travel obligation/travel voucher records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Payroll records used for entry into IAF accounting system; travel documents used for expenditure of funds for travel advances, tickets, travel reimbursements. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records secured in locked files and made available only to authorized persons.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Accountant, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

RECORD SOURCE CATEGORIES:

Individual him/her self.

IAF–7

SYSTEM NAME:

Inter-American Foundation—General Financial Records.

SYSTEM LOCATION:

Department of Energy (DOE), Germantown, Md Office; copies held by the Inter-American Foundation. (DOE holds records for the Foundation under Inter-Agency Agreement.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present IAF employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Varied payroll records, including, among other documents, time and attendance sheets; payment vouchers; comprehensive listing of employees; health benefits records; requests for deductions; tax forms; W2 forms; overtime requests; leave data; retirement records. Records are used by the IAF and DOE employees to maintain adequate payroll information for IAF employees and otherwise by the IAF and DOE employees for IAF employees who have a need for the records in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. generally and Pub. L. 91–175.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF USES:

Records are released to GAO for audits, to the Internal Revenue Service for investigation, and to private attorneys, pursuant to a power of attorney. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or

other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contact, or the issuance of a license, grantor or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

(d) A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

(e) A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

POLICIES, AND PRACTICES FOR STORING, RETREIVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Paper and microfilm.

RETRIEVABILITY:

Manual. Identifier—Social Security Number.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Office, Office of Personnel, Vice President for Operations, Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President for Operations. Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in 22 CFR part 1003.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in 22 CFR part 1003.

RECORD SOURCE CATEGORIES:

The subject individual; the Inter-American Foundation.

IAF–8

SYSTEM NAME:

Personnel Budget Records.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203, Budget Office, Office of Administration and Finance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inter-American Foundation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual employee current and projected salaries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Budget preparation, tracking, and reporting. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Paper and electronic files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records secured in locked files and made available only to authorized persons.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGERS AND ADDRESS:

Budget Officer, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–9

SYSTEM NAME:

Accounts Payable.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203., Office of Administration and Finance, Accounting Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, both employees and others who are paid or due to be paid from Foundation's appropriations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to payments for travel, miscellaneous expenses, contractual services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used for entry into IAF'S accounting system. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGER AND ADDRESS:

Chief Accountant, Office of Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above at Inter-American Foundation, Office of Administration and Finance, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–10

SYSTEM NAME:

Contract files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals entering into contractual relationships with the IAF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contracts, Purchase Orders, bids, solicitations, and other records relating to the operations of the contract office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house" for management of contract activities. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING, OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records available to authorized persons only.

RETENTION AND DISPOSAL:

Contracts under $25,000 destroyed three years after final payment. Contracts exceeding $25,000 destroyed six years after final payment.

SYSTEM MANAGER AND ADDRESS:

Contracting Officer, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–10

SYSTEM NAME:

Automated Data Processing Management.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203, Office of Administration and Finance, ADP Unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IAF employees and on-site contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to access to the IAF's computer system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used by ADP administrator for control of IAF employees and on-site contractors to access IAF's computer system. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic/Paper Files.

RETRIEVABILITY:

Electronic. Identifier: Name/Office group.

SAFEGUARDS:

Access authorized only to ADP Administrator.

RETENTION AND DISPOSAL:

Disposed of when individual leaves the agency.

System manager(s) and address:

Automated Data Processing Administrator, Office of Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above at Inter-American Foundation, Office of Administration and Finance, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–11

SYSTEM NAME:

Security Card Accountability Records.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued security cards for after hours entry into office space.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of those employees issued security cards for after hours entry into office space.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house" for management of security activities. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the

requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of upon the departure of the employee from the agency.

SYSTEM MANAGER(S) AND ADDRESS:

General Services Officer, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–12

SYSTEM NAME:

Credit Card Accountability Records.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued Diners Club and Telephone Calling Cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of those employees issued Diners Club and Telephone Calling Cards for use in connection with official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house" for management of travel activities. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND RETAINING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of upon the departure of the employee from the agency.

SYSTEM MANAGER AND ADDRESS:

General Services Officer, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

Dated: February 28, 1994.

Evan M. Koster,

Privacy Act Officer.

[FR Doc. 94–4920 Filed 3–3–94; 8:45 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–03–4210–05; IDI–29331]

Management Framework Plans, etc.; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent of prepare a planning amendment to the Little Lost/Birch Creek Management Framework Plan (MFP).

SUMMARY: The following described public land in Butte County, Idaho, will be examined for possible disposal by direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719.

Boise Meridian, Idaho

T. 5 N., R. 29 E.,
Sec. 4, NW¼SW¼
Sec. 5, NE¼SE¼.

The land described above contains 80 acres, more or less.

An environmental assessment will be completed for this action. If the land is found suitable for disposal, the United States would offer it for direct sale to Butte County at fair market value. This action would provide Butte County with land for a bulky waste disposal site and transfer station. The public is invited to provide scoping comments on the issues that should be addressed in the planning amendment and environmental assessment. Planning criteria which will be used to prepare this planning amendment is available for review at the Bureau of Land

Management, Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho.

For a period of 30 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 524–7500.

Dated: February 23, 1994.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 94–4968 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–GG–M

[WY–060–04–4210–05; WYW125255]

Realty Action; Modified Competitive Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, modified competitive sale of public lands in Crook County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by modified competitive sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 STAT. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

T. 57 N., R. 66 W.,
Sec. 27, lots 2, 3, 8, SW¼NW¼.
111.31 acres.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Area Manager, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, 307–746–4453.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Newcastle Management Framework Plan. The purpose of this sale is to dispose of an isolated parcel of public land. The fair market values, planning document, and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Newcastle Resource Area, Newcastle, Wyoming.

The parcel will be offered by modified competitive sale to the adjoining landowners. The adjoining landowners will be required to submit proof of adjoining land ownership before a bid can be accepted.

The publication of this Notice of Realty Action in the **Federal Register** shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the notice segregates the land from the use applied for in the application. The segregative effect of this notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, whichever occurs first.

Sale Procedures

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality of political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

2. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Newcastle Resource Area Office by 11:00 a.m., May 25, 1994, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words "Public Land Sale, (WYW125255), Sale held May 25, 1994."

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

5. If the parcel fails to sell, it will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Resource Area Office by 11 a.m. on the fourth Wednesday of each month beginning June 22, 1994. Reoffered land will remain available for sale until sold or until the sale action is canceled or terminated. Reappraisals of the parcel will be made periodically to reflect the current fair market value. If the fair market value of the parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM Newcastle Resource Area Office.

3. F.A. Bush, Inc. is the grazing lessee (GR–8412) and owner of the following authorized permanent range improvement: Project No. 4338, a fence. If any party, other than F.A. Bush, Inc., is the successful bidder on the land being offered for sale, that party shall be required to reimburse F.A. Bush, Inc. for the adjusted value of the range improvement and furnish proof to the Authorized Officer, Bureau of Land Management, Newcastle Resource Area, before conveyance can be made. If the bidder and grazing lessee are unable to agree on compensation for the range improvement, the authorized officer shall determine the adjusted value.

For a period of 45 days from the date of this notice published in the **Federal Register**, interested parties may submit comments to the BLM, District Manager, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: February 25, 1994.

Donald Hinrichsen,

District Manager.

[FR Doc. 94–4969 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–22–M

[CO-050-4110-03]

Intent To Amend the Northeast Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Cañon City District as a cooperating agency with the U.S. Forest Service has prepared an environmental impact statement (EIS) for developing a management strategy on mountain plover. The EIS strategy deals primarily with lands within the Pawnee National Grassland Administrative Boundary. BLM is considering using information from the EIS to make decisions on lands outside the Administrative boundary for oil and gas leasing. Such a decision would be considered an amendment of the Northeast Resource Management Plan, and is in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR part 1600.

SUMMARY: The EIS analyzed different management strategies for the protection of mountain plover. The mountain plover has been nominated for listing as a threatened species under the Threatened and Endangered Species Act of 1973 as amended in 1982. The EIS provides new information for making oil and gas decisions on Federal mineral estate within areas considered to be important nesting and summer habitat of the mountain plover. Information in the EIS will be extended to cover lands with BLM-administered mineral estate, beyond the U.S. Forest Service boundaries, that meet the criteria defined in the EIS as mountain plover stronghold habitat. Stipulations for oil and gas leases on these lands will restrict oil and gas drilling and development activities during the period of April 10 to July 10. Because surface ownership of these lands is private, and the surface is subject to manipulation beyond the authority of the Bureau, a waiver will be considered for each lease stipulated for mountain plover protection at the time of application for development. The waiver will be granted if the lands have been rendered unsuitable habitat for plovers because of surface use by the private landowner. A waiver of the mountain plover stipulation does not affect any other existing protection stipulation that may apply to these lands.

DATES: Comments on the Bureau intention to apply the EIS analysis to the areas outside the U.S. Forest Service administrative boundaries will be accepted on or before April 4, 1994.

ADDRESSES: District Manager, Cañon City District Office, P.O. Box 2200, Cañon City, Colorado 81215-2200.

FOR FURTHER INFORMATION CONTACT: Interested parties may request further information at the above address. A copy of the EIS may be obtained from the U.S. Forest Service at the Pawnee National Grasslands, 660 "O" Street, suite 4, Greeley, Colorado 80631-3033.

SUPPLEMENTARY INFORMATION: Plan monitoring information and the EIS indicate a need for this action to protect mountain plovers. Implementation of this decision is consistent with the Bureau goals of biological diversity and ecosystem management. BLM will work with private landowners, local, state, and Federal government agencies, and other land managers to protect the mountain plover.

The area covered by this plan amendment will include all BLM managed lands within Adams, Larimer, Logan, Morgan, Washington and Weld counties in the State of Colorado.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 94-4970 Filed 3-3-94; 8:45 am]

BILLING CODE 4310-JB-M

National Park Service

Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing the development and operation of a new marina and related facilities and services for the public at Crescent Bay on Lake Roosevelt at Coulee Dam National Recreation Area, for a period of 15 years from July 1, 1994, through June 30, 2009.

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Interested parties should contact the Regional Director, Pacific Northwest Region, Concessions Division, 909 First Avenue, Seattle, Washington 98104-1060, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This proposed contract requires/authorizes a construction and improvement program. The proposed development was previously addressed in the Environmental Assessment for the park's General Management Plan approved in May, 1980. An Environmental Assessment describing alternatives for developing a marina at Crescent Bay, Coulee Dam National Recreation Area was released in December, 1984. A subsequent Environmental Assessment (approved June 1988) augmented the existing Environmental Assessment for the General Management Plan by analyzing the effects of rental boats on Lake Roosevelt. Additional environmental documents, if required, will be the responsibility of the concessioner.

The Secretary will consider and evaluate all proposals received as a result of this notice. Proposals must be received by the Superintendent not later than on the one hundred and twentieth (120th) day following publication of this notice to be considered and evaluated.

Dated: February 24, 1994.

Charles H. Odegaard,

Regional Director, Pacific Northwest Region.

[FR Doc. 94-4962 Filed 3-3-94; 8:45 am]

BILLING CODE 4310-70-M

Availability of Draft Wild and Scenic River Eligibility Report and Environmental Assessment for the Upper Klamath River, OR

AGENCY: National Park Service, USDOI.

ACTION: Publication of draft report and environmental assessment for public comment.

SUMMARY: The National Park Service is publishing for public review and comment a draft study report and environmental assessment on designating the upper Klamath River, Oregon, into the National Wild and Scenic Rivers System. The National Park Service has found that the upper Klamath River is eligible for the national system and is recommending as the preferred alternative that the river be designated.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Copies of the draft report and environmental assessment are available for public inspection at: National Park Service, 909 First Avenue, 4th Floor, Seattle, Washington 98104-1060; National Park Service, 800 North Capitol Street, NW., suite 490, Washington, DC 20013-7127; and Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Avenue, Building 25, Klamath Falls, Oregon 97603. Hours of availability are between 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Additional copies for review are located in the Klamath Falls, Medford, Ashland and Grants Pass, Oregon, libraries during normal hours of operation. Copies of the draft report and environmental assessment may be

obtained from Dan Haas, National Park Service, Pacific Northwest Regional Office, 909 First Avenue, Seattle, Washington 98104–1060, (206) 220–4079, ext. 3.

Comments should be directed to the National Park Service Pacific Northwest Regional Office, attention Dan Haas, at the address above.

FOR FURTHER INFORMATION CONTACT: Dan Haas, National Park Service, Pacific Northwest Regional Office, 909 First Avenue, Seattle, Washington 98104–1060, (206) 220–4079, ext. 3.

SUPPLEMENTARY INFORMATION: On April 22 of 1993, Earth Day, Oregon Governor Barbara Roberts petitioned the Secretary of the Interior to add an 11-mile reach of the upper Klamath River to the National Wild and Scenic Rivers System. The section of river under consideration extends from the John C. Boyle Hydroelectric Powerhouse (river mile 220.3) downstream to the Oregon-California border (river mile 209.3). Under section 2(a)(ii) of the National Wild and Scenic Rivers Act (P.L. 90–542, as amended), the Secretary has the authority to add a river to the national system at the request of a state provided the state has met certain conditions and the river meets eligibility criteria. These preconditions are:

(1) The river is already designated into a state river protection system.

(2) The state has the ability to manage the river at no cost to the federal government, except for those lands already in federal ownership.

(3) The river has resources of regional or national significance and is free-flowing as defined by the Departments of the Interior and Agriculture.

(4) The state has adequate mechanisms in place to protect the resources for which the river is eligible in the first place.

Upon the request of a state governor to the Secretary, the National Park Service, acting for the Secretary, undertakes an evaluation of the state's request. The National Park Service requested the assistance of the Bureau of Land Management in the preparation of the report and environmental assessment. This was done for two reasons: (1) The Bureau manages 75% of the area under consideration and (2) the Bureau has conducted two previous assessments of the river—one for a congressionally authorized wild and scenic river study, and one as part of its normal resource management planning process. The Bureau of Land Management agreed to act as a cooperator in the preparation of the assessment.

As a result of the evaluation, the National Park Service has concluded that the state of Oregon has met all requirements to include the upper Klamath River in the national system and the river itself meets all eligibility criteria. The National Park Service is recommending as the preferred alternative that the Secretary designate the upper Klamath as a National Scenic River.

Dated: February 22, 1994.

John Reynolds,

Acting Director, National Park Service.

[FR Doc. 94–4963 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

March 1, 1994.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Agway, Inc.

(2) Box 4943, Syracuse, NY 13221.

(3) 333 Butternut Drive, DeWitt, NY 13214.

(4) Larry Clark, Box 4746, Syracuse, NY 13221.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4983 Filed 3–3–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–156 (Sub-No. 19X)]

Delaware and Hudson Railway Co., Inc.; Abandonment Exemption; in Saratoga and Warren Counties, NY

Delaware and Hudson Railway Company, Inc. (D&H), has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 38.00 miles of rail line known as the Adirondack Branch, between milepost 55.00, at Corinth, and milepost 94.96, at North Creek, in Saratoga and Warren Counties, NY.[1]

D&H has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) have been received, this exemption will be effective on April 3, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2]

[1] D&H states that it plans to consummate this abandonment on or after February 1, 1994. Because the notice must be filed with the Commission at least 50 days before the abandonment/discontinuance is to be consummated, consummation cannot take place here before April 3, 1994. See 49 CFR 1152.50(d)(2).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29[4] must be filed by March 14, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 24, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Timothy G. Mulcahy, Esq., CP Legal Services, P.O. Box 8002, 200 Clifton Corporate Parkway, Clifton Park, NY 12065.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

D&H has filed an environmental report which addresses the abandonment's effect, if any, on the environment or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 9, 1994. Interested persons may obtain a copy of the EA from SEA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 24, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4984 Filed 3–3–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–400 (Sub-No. 2X)]

Seminole Gulf Railway, Inc.—Abandonment Exemption—In Lee County, FL

Seminole Gulf Railway, Inc. as General Partner of Seminole Gulf Railway, L.P., d/b/a Seminole Gulf Railway, L.P. (Seminole Gulf) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon service on 3.55 miles of its Baker Spur Line located in Lee County, FL. The portion of line being abandoned extends eastward from the new proposed end of track at Engineering station 79+95 to the existing end of track Engineering station 267+62, a distance of 18,767 feet.

Seminole Gulf has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report); 49 CFR 1105.8 (historic report); 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 3, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 14, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 24, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gordon H. Fay, 4110 Centerpointe Dr., Fort Myers, FL 33916.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Seminole Gulf has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 9, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4985 Filed 3–3–94; 8:45 am]

BILLING CODE 7035–01–P

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202)

395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Application for Asylum and Withholding to Deportation.
(2) I–589. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The information provided on this form is used by the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) to determine whether an alien applying for asylum and/or withholding of deportation in the United States is classifiable as a refugee, and is eligible to remain in the United States.
(5) 80,000 annual responses at 3.5 hours per response.
(6) 280,000 annual burden hours.
(7) Not applicable under Section 3504(h).
Public comment on this item is encouraged.

Dated: March 1, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–5004 Filed 3–3–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Tuesday, March 22, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business are filled; (b) conducting comparative research of business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted to management and decisionmaking positions; and (c) recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Tuesday, March 22, 1994, from 1 p.m. until 4 p.m. at the U.S. Department of Labor, room N3437 (A & B), 200 Constitution Avenue, NW., Washington, DC 20210.

AGENDA: The agenda for the meeting is as follows: Report By Subcommittee on research and Final Report, Discussion of Further Hearings, Discussion of Criteria for Perkins-Dole Award.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than March 14, if special accommodations are needed. Individuals or organizations wishing to submit written statements should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 28th day of February, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–5020 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any

modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Illinois
IL93–20 (Feb. 19, 1993)
(IL94–20)

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume V

Iowa
IA940053 (Mar. 4, 1994)
IA940054 (Mar. 4, 1994)
IA940055 (Mar. 4, 1994)
IA940056 (Mar. 4, 1994)
IA940057 (Mar. 4, 1994)
IA940058 (Mar. 4, 1994)
IA940059 (Mar. 4, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Maryland
MD940017 (Feb. 11, 1994)

Volume III

Georgia
GA940003 (Feb. 11, 1994)
GA940022 (Feb. 11, 1994)
GA940040 (Feb. 11, 1994)
GA940058 (Feb. 11, 1994)
GA940065 (Feb. 11, 1994)
GA940066 (Feb. 11, 1994)

Volume V

Illinois
IL940005 (Feb. 11, 1994)
IL940018 (Feb. 11, 1994)
Michigan
MI940001 (Feb. 11, 1994)
MI940002 (Feb. 11, 1994)
MI940003 (Feb. 11, 1994)
MI940004 (Feb. 11, 1994)
MI940005 (Feb. 11, 1994)
MI940007 (Feb. 11, 1994)
MI940012 (Feb. 11, 1994)
MI940017 (Feb. 11, 1994)
MI940031 (Feb. 11, 1994)
MI940036 (Feb. 11, 1994)
MI940046 (Feb. 11, 1994)
MI940049 (Feb. 11, 1994)

Volume V

None

Volume VI

Alaska
AK940003 (Feb. 11, 1994)
California
CA940001 (Feb. 11, 1994)
CA940002 (Feb. 11, 1994)
CA940004 (Feb. 11, 1994)
CA940027 (Feb. 11, 1994)
Colorado
CO940002 (Feb. 11, 1994)
CO940021 (Feb. 11, 1994)
Nevada
NV940001 (Feb. 11, 1994)
Oregon
OR940001 (Feb. 11, 1994)
OR940004 (Feb. 11, 1994)
Utah
UT940004 (Feb. 11, 1994)
UT940005 (Feb. 11, 1994)
UT940007 (Feb. 11, 1994)
Washington
WA940009 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 25th Day of February 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–4748 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–27,030]

ICD Drives, Inc. a/k/a Control Techniques, Inc., Grand Island and Tonawanda, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 15, 1992, applicable to all workers of ICD Drives, Inc., in Grand Island and Tonawanda, New York. The notice was published in the **Federal Register** on May 28, 1992 (57 FR 22492).

At the request of the State Agency the Department reviewed its certification. New information from the company shows that the Control Techniques is a successor-in-interest firm to ICD Drives, Inc. The same products are being produced with the same workers and in the same locations.

According, the Department is amending the certification to show the successor-in-interest firm, Control Techniques.

The amended notice applicable to TA–W–27,030 is hereby issued as follows:

All workers of ICD Drives, also known as a/k/a Control Techniques, Grand Island and Tonawanda, New York who because totally or partially separated from employment on or after March 3, 1991 are eligible to apply for

adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of February 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–5014 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 14, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 14, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Parkway Fabricators (workers)	South Amboy, NJ	02/14/94	12/18/93	29,478	Rubber Skin Diving Suits.
Alcatel Data Networks (Workers)	Mt. Laurel, NJ	02/14/94	01/26/94	29,479	Circuit Boards.
Metacomet Mfg Co., Inc (Workers)	Fall River, MA	02/14/94	01/05/94	29,480	Belts.
Brown Shoe Co (UFCW)	Mountain Grove, MO.	02/14/94	01/24/94	29,481	Women's Shoes.
BASF Corp (Co)	Lowland, TN	02/14/94	02/03/94	29,482	Nylon & Polyester Textile Fibers, Etc.
Deer Creek Petroleum, Inc (Workers)	Valley Center, KS	02/14/94	02/01/94	29,483	Oil and Gas Exploration.
Landmark Oil Exploration, Inc (Workers).	Wichita, KS	02/14/94	02/02/94	29,484	Crude Oil.
Londontown Corp (ACTWU)	Hancock, MD	02/12/94	01/12/94	29,485	Men's & Ladies' Rainwear.
Magnesium Corp of America (Co)	Salt Lake City, UT	02/14/94	02/03/94	29,486	Magnesium.
Middleton Aerospace Corp (Co)	Middleton, MA	02/14/94	02/01/94	29,487	Jet Turbine Engine Hardware.
North American Refractories Co (Workers).	Cleveland, OH	02/14/94	02/01/94	29,488	Metallic and Refractory Systems.
Rowe International (UAW)	Whippany, NJ	02/14/94	01/27/94	29,489	Vending Machines.
Seli Manufacturing, Inc (Workers)	Scranton, PA	02/14/94	01/27/94	29,490	Bride Maid Dresses/Gowns.
Sheildalloy Metalurgical Corp (Workers)	Cambridge, MA	02/14/94	01/28/94	29,491	Vanadium Alloys.
U.S. Shoe Corporation (Co)	Beloit, WI	02/14/94	01/31/94	29,492	Men's & Womens' Footwear.
Andy Fashions (Workers)	Pittston, PA	02/14/94	02/04/94	29,493	Ladies' Dresses.
Aileen's (Workers)	South Hill, VA	02/14/94	02/02/94	29,494	Ladies' Tops, Pants Shirts.
S.B. Manufacturing Co., Inc (ILGWU)	Saddlebrook, NJ	02/14/94	01/25/94	29,495	Ladies' Intimate Apparel.
Electronix Servicenter (Co)	Irving, TX	02/14/94	09/29/93	29,496	Sold & Repaired VCR's, Computers, etc.
Brown Shoe Co (UFCW)	Selmer, TN	02/14/94	01/28/94	29,497	Women's Boots.
Brown Shoe Co (UFCW)	Charleston, MO	02/14/94	02/03/94	29,498	Cut Leather & Man-Made Uppers.
Brown Shoe Co (UFCW)	Caruthersville, MO	02/14/94	01/31/94	29,499	Women's Shoes.
Coordinated Apparel Group, Inc (Co)	McRae, GA	02/14/94	02/03/94	29,500	Boys' & Girl's Pants and Jeans.
Denim Finishers (ILGWU)	Middlesboro, KY	02/14/94	01/31/94	29,501	Denim Jeans, Skirts, Shorts.
Tococo, Inc (ILGWU)	Wilmore, KY	02/14/94	01/31/94	29,502	Denim Jeans, Skirts, Shorts.
Tococo, Inc (ILGWU)	Midway, KY	02/14/94	01/31/94	29,503	Denim Jeans, Skirts, Shorts.
Amerimark Building Products (USWA)	Gnadenhutten, OH	02/14/94	01/27/94	29,504	Painted, Coiled Aluminum.
Apertus Tech (Workers)	Eden Prairie, MN	02/14/94	02/02/94	29,505	Monitors and PC's.
B.C. Manufacturing (ILGWU)	Plains, PA	02/14/94	02/02/94	29,506	Dresses.
Maura Manufacturing (ILGWU)	Wilkes-Barre, PA	02/14/94	02/02/94	29,507	Ladies' Dresses.
J&R Wood Products (Workers)	Roseburg, OR	02/14/94	02/02/94	29,508	Hardwood Lumber, Wood Chips and Logs.
Wolverine Manufacturing, Inc (Workers)	Gaylord, MN	02/14/94	02/01/94	29,509	Men's, Ladies' Children's Outerwear.
Winters Industries (IAM)	Canton, OH	02/14/94	02/01/94	29,510	Manifolds for Vehicles.
Winters Industries (IAM)	Alliance, OH	02/14/94	02/01/94	29,511	Manifolds for Vehicles.
Drackett, Inc (Workers)	Urbana, OH	02/12/94	01/12/94	29,512	Cleaning Products.
Rosaria Sportswear, Inc (ILGWU)	Passaic, NJ	02/14/94	01/25/94	29,513	Ladies' Skirts and Pants.
Dowing Garment (Workers)	Plymouth, PA	02/14/94	02/04/94	29,514	Ladies' Dresses.
Glen Lyon Garment (Workers)	Glen Lyon, PA	02/14/94	02/04/94	29,515	Ladies' Dresses.
Kingston Fashions (Workers)	Kingston, PA	02/14/94	02/04/94	29,516	Ladies' Dresses.
Pittston Fashions (Workers)	Pittston, PA	02/14/94	02/04/94	29,517	Ladies' Dresses.
Throop Fashions (Workers)	Throop, PA	02/14/94	02/04/94	29,518	Ladies' Dresses.
Steward, Inc, ICD (Co)	East Ridge, TN	02/14/94	01/27/94	29,519	Ferrite Components for Computers.

[FR Doc. 94–5017 Filed 3–3–94; 8:45 am]
BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,291; Simpson Timber Co., Korbel, CA

TA–W–29,315; S & S Cutting, Pittston, PA

TA–W–29,266; Owens Illinois, Inc., Huntington, WV

TA–W–29,273; Erving Health Care, New Brunswick, NJ

TA–W–29,333; CTS Connector Division, New Hope, MN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,093; Galdco Services, Inc., Ira, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,336; Willamette Industrial Forms Div., Beaverton, OR

Layoffs at the subject firm are attributable to a corporate decision to consolidate its operations resulting in the transfer of production from the subject plant in Beaverton, OR to another domestic plant.

TA–W–29,169; Wincup Holdings, Inc., Tinton Falls, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,144; Shiawassee Manufacturing Co., Owosso, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,302; Emerson Radio Corp., Princeton, IN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,468; Sensor Systems, Inc., Chatsworth, CA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,149; Duback Gas Co., Dubach, LA

TA–W–29,149A; Endevco, Inc., Houston, TX

TA–W–29,150; Duback Gas Co., (Clairborne Gas Plant), Lisbon, LA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29,213; Smead Manufacturing Co., Hastings, MN

A certification was issued covering all workers separated on or after August 1, 1993.

TA–W–29,298; Lear Seating Corp., Morristown, TN

A certification was issued covering all workers separated on or after November 11, 1992.

TA–W–29,363; The American Olean Tile Co., Inc., Lansdale, PA

A certification was issued covering all workers separated on or after December 10, 1992.

TA–W–29,368; Gilligan & O'Malley, Latta, SC

A certification was issued covering all workers separated on or after December 22, 1992.

TA–W–29,295; Nestle Beverage Co., Sunbury, OH

A certification was issued covering all workers separated on or after November 23, 1992.

TA–W–29,258; General Electric Co., Columbia, TN

A certification was issued covering all workers separated on or after November 12, 1992.

TA–W–29,324; Berwick Knitwear, Inc., Holdenville, OK

A certification was issued covering all workers separated on or after December 3, 1992.

TA–W–29,346, TA–W–29,347; Pennington Seismic Exchange, Inc., Tulsa, OK and Oklahoma City, OK

A certification was issued covering all workers separated on or after November 23, 1992.

TA–W–29,364, TA–W–29,365; First Base, Inc., Bayshore, NY and Mitoro Industries, Bayshore, NY

A certification was issued covering all workers separated on or after December 10, 1992.

TA–W–29,331; Exolon-Esk Co., Tonawanda, NY OH

A certification was issued covering all workers separated on or after December 22, 1992.

TA–W–29,382; Coordinated Apparel Group, Inc., Metter, GA

A certification was issued covering all workers separated on or after December 20, 1992.

TA–W–29,259; Elder Manufacturing Co., Paragould, AR

A certification was issued covering all workers separated on or after November 9, 1992.

TA–W–29,357; Aerovox M., Inc., Glasgow, KY

A certification was issued covering all workers separated on or after December 13, 1992.

TA–W–29,397; Shell Oil Co., Shell Western E & P, Inc., (SWEPI), Bakersfield, CA

TA–W–29,397A; All other (SWEPI) Operations in The State of California

TA–W–29,398; Shell Oil Co., Shell Development Co., Martinez, CA

A certification was issued covering all workers separated on or after December 13, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a) subchapter D, chapter 2, title II,

of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00013; Hubbell-Bell, Inc., Fogelsville, PA

A certification was issued covering all workers engaged in employment related to the production of electrical weatherproof products at Hubbell-Bell, Inc., Fogelsville, Pa separated on or after December 8, 1993.

NAFTA–TAA–00003; Simmons Upholstered Furniture, Inc., Vancouver, WA

A certification was issued covering all workers engaged in employment related to the sewing and cushion fill operations at Simmons Upholstered Furniture, Inc., Vancouver, Washington separated on or after December 8, 1993.

I further determine that all other workers at Simmons Upholstered Furniture, Inc., Vancouver, Washington, are denied eligibility to apply for NAFTA/TAA under section 250 of the Trade Act of 1974.

As a result, an investigation is currently in process under section 221 of the Trade Act. The number assigned to this investigation is TA–W–29,442.

I hereby certify that the aforementioned determinations were issued during the month of February, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: February 24, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–5016 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,134]

Utopia Spring Water Houston, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Utopia Spring Water Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,134; Utopia Spring Water Houston, Texas (February 17, 1994)

Signed at Washington, DC, this 18th day of February, 1994.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94–5013 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(a) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than March 14, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than March 14, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Gandalf (Workers)	Cherry Hill, NJ	02/14/94	02/14/94	NAFTA–00026	Electronic Equipment.
ACI America, Inc., VVP America Mexico (ABGW).	Memphis, TN	02/14/94	02/14/94	NAFTA–00027	Flat Top Glass Tables.
McCreary Roofing Co. (Workers)	Erie, PA	02/15/94	02/15/94	NAFTA–00028	Roofing Materials.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Wundies (Workers)	Williamsport, PA	02/17/94	02/16/94	NAFTA–00029	Ladies Underwear.
Dee Fashions, Inc. (Workers)	Centralia, PA	02/17/94	02/16/94	NAFTA–00030	Ladies Formal Wear.
Bus Industries of America (Workers).	Oriskany, NY	02/18/94	02/14/94	NAFTA–00031	Buses.
Niagara Frontier Tariff Bureau, Inc. (Co).	Buffalo, NY	02/18/94	02/16/94	NAFTA–00032	Tariff Research and Manuscripts.
Fisher-Price, Inc. (Co)	East Aurora, NY	02/18/94	02/16/94	NAFTA–00033	Toys.
Ferranti-Packard Transformers, Inc. (UEAMWOA).	Sheridan, NY	02/18/94	02/17/94	NAFTA–00034	Small to Medium Transformers.

[FR Doc. 94–5015 Filed 3–3–94; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00019]

North American Philips Lighting Co.; Fairmont, WV; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 4, 1994 in response to a petition filed by the International Union of Electrical, Radio and Machine Workers on behalf of the workers at North American Philips Lighting Company in Fairmont, West Virginia. The workers produce home and auto lighting products.

On January 31, 1994, all workers at North American Philips Lighting Company, Fairmont, West Virginia engaged in employment related to the production of home and auto lighting products who became totally or partially separated from employment on or after December 9, 1992 were certified as eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

In a letter dated February 15, 1994, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–5018 Filed 3–3–94; 8:45 am]
BILLING CODE 4510–30–M

Office of Federal Contract Compliance Programs

Reinstatement of Layton Construction Co., Inc.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of reinstatement, Layton Construction Company, Inc.

SUMMARY: This notice advises that Layton Construction Company, Inc., has been reinstated as an eligible bidder on Federal contracts and subcontracts and federally-assisted construction contracts.

FOR FURTHER INFORMATION CONTACT: Leonard J. Biermann, Deputy Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–3325, Washington, DC 20210 (202–219–9475).

SUPPLEMENTARY INFORMATION: Layton Construction Company, Inc., Salt Lake City, Utah, is, as of this date, reinstated as an eligible bidder on Federal contracts and subcontracts.

Signed February 25, 1994, Washington, DC.

Leonard J. Biermann,

Deputy Director, OFCCP.

[FR Doc. 94–5019 Filed 3–3–94; 8:45 am]
BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on March 22–23, 1994 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4215A–C, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on each day.

At this meeting, OSHA will consult with the Advisory Committee regarding the draft proposed rule for permit-required confined spaces in construction. In addition, the Advisory Committee will receive a report from its Priorities Work group and will make recommendations to OSHA regarding the Agency's goals and objectives for 1994. The Advisory Committee will also receive reports from the Engineering, Asphalt, Standards, and Targeting work groups.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicated below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202–219–8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC, this 28th day of February, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–5009 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–3–92]

TUV Rheinland of North America, Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Application of TUV Rheinland of North America, Inc. for recognition as a nationally recognized testing laboratory; extension of comment period.

SUMMARY: This notice announces an extension of the comment period on the application of TUV Rheinland of North America, Inc. for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

DATES: The last date for interested parties to submit comments is April 4, 1994.

ADDRESSES: For further information, or to send comments: Office of Variation Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On November 19, 1993, the Occupational Safety and Health Administration (OSHA) published in the **Federal Register** a notice of the application of TUV Rheinland of North America, Inc. for OSHA recognition as a nationally recognized testing laboratory pursuant to 29 CFR 1910.7 (58 FR 61101). The notice included a preliminary finding that TUV Rheinland of North America, Inc. (the applicant) could meet the requirements for recognition detailed in 29 CFR 1910.7 and it invited public comment on the application. Comments were requested by January 18, 1994.

On January 12, 1994, the American Council of Independent Laboratories, Inc. (ACIL) requested an extension of time in which to submit comments on the application of TUV Rheinland of North America, Inc. for recognition as an NRTL (Ex. 4–2). The ACIL claimed that its preliminary investigation had uncovered "substantial deficiencies" in the application and that more time was necessary to submit pertinent documentation related to the instant application. Issues raised by the ACIL include whether the applicant is completely independent from its parent organization and the nature of the applicant's operation. According to the ACIL, the resolution of the questions raised would require, among other things, the study and analysis of relevant German laws and requested some additional time, until March 18, 1994, to file its comments on the application of TUV Rheinland of North America, Inc.

The OSHA/NRTL staff has carefully reviewed the request for additional time in which to prepare comments on the issue of the applicant's independence. The concerns of the commentator may have merit; in any event the request for additional time appears to be reasonable under the circumstances and will be granted, although the length of time granted has been modified from the original request.

Therefore, the time in which to file comments on the application of TUV Rheinland of North America, Inc. to be recognized as an NRTL is hereby extended until April 4, 1994.

Copies of the TUV application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–3–92), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC this 1st day of March, 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–5021 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–26–M

New Mexico State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act), by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of subpart DD to part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

By letter dated January 20, 1994, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to Federal standards as follows: Amendment to § 1910.146, Permit-Required Confined Spaces (58 FR 34845–34851, dated June 29, 1993); Amendment to 1910 General Industry Standards (58 FR 35308–35310, dated June 30, 1993); Amendment to 1926 Construction Standards (58 FR 35077–35306 and 35310–35311, dated June 30, 1993); Amendment to 1926 Construction Standards (58 FR 40468, dated July 28, 1993); and Amendment to 1928 Agricultural Standards to add and reserve new subparts J and L, and add a new subpart M, Occupational Health, consisting of § 1928.1027, Cadmium (58 FR 21787–21850, dated April 23, 1993).

These standards, contained in New Mexico Occupational Health and Safety Regulations OHSR 200, OHSR 300 and OHSR 400, were promulgated on December 10, 1993, in accordance with applicable State law.

The subject standards become effective February 18, 1994, and February 19, 1994, pursuant to New Mexico State Law, section 50–9–1 through 50–9–25.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of

Labor-OSHA, 525 Griffin Street, room 602, Dallas, Texas 75202; Office of the Secretary, New Mexico Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87501; and the Office of State Programs, 200 Constitution Ave., NW., room N3700, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reason.

1. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation. The decision is effective March 4, 1994.

Authority: Sec. 18, Public Law 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Dallas, Texas, this 9th day of February 1994.

Gilbert J. Saulter,

Regional Administrator.

[FR Doc. 94–5011 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–26–M

Oregon State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of subpart D to part 1952 containing the decision.

The Oregon plan provides for adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required. The Oregon plan also provides for the adoption of Federal standards as State standards by reference.

In response to Federal standards amendments, the State has submitted by letters dated April 16, and October 16, 1992, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1910.1048, Formaldehyde, as published in the **Federal Register** (57 FR 2681) on January 23, 1992, (57 19262) on May 5, 1992, (57 FR 22290) on May 27, 1992, (57 FR 24701) on June 10, 1992, and (57 FR 27160) on June 18, 1992. The State's rules pertaining to Formaldehyde, contained in OAR 437–02–360(28), were adopted by reference on April 16, 1992, and October 13, 1992, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under OR–OSHA Administrative Orders 4–1992 and 12–1992. On March 24, 1991, and July 16, 1991, the State mailed the Notice of Proposed Amendment of Rules to those on the Department of Insurance and Finance Mailing list, established pursuant to OAR 431–01–000 and to those on the Department's distribution list as their interest appeared. No written requests for a public hearing were received. The State's rules pertaining to Formaldehyde, contained in OAR 437–02–360(28), were originally adopted by reference and approved in the **Federal Register** on January 13, 1989 (54 FR 1461), with other amendments approved on April 26, 1991 (56 FR 19382).

By letter dated January 6, 1993, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State on its own initiative submitted a repeal of OAR 437–02–370, and adopted by reference § 1910.1025(e)(1), table 1, Lead Implementation Schedule. The State standard was adopted and became effective on December 7, 1992, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under OR–OSHA Administrative Order 14–1992. The State's Lead standard was originally approved in the **Federal Register** (54 FR 38300) on September 15, 1989. The change became necessary when on July 19, 1991, the U.S. Court of Appeals for the District of Columbia lifted the judicial stays of the Lead standard for all industries, except brass and bronze ingot production.

On its own initiative, the State has submitted by letter dated October 19, 1993, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a revision to State rules comparable to 29 CFR 1910.134, Respiratory Protection, as published in the **Federal Register** (39 FR 23671) on June 27, 1974. The State's original adoption of Respiratory Protection was promulgated as OAR 437, Chapter 22–69, and received **Federal Register** approval at 40 FR 50583 on October 30, 1975. The State's standard was subsequently recodified as OAR 437, Division 129, with **Federal Register** approval at 52 FR 27026 on July 17, 1987. The State has repealed OAR 437, Division 129, in its entirety, and has incorporated 29 CFR 1910.134, Respiratory Protection, by reference as OAR 437–02–1910.134. The State's readoption by reference also deleted General and Special Industry Safety and Health Standards, Revocation, as published in the **Federal Register** (43 FR 49748) on October 24, 1978, and Revocation of Advisory and Repetitive Standards as published in the **Federal Register** (49 FR 5322) on February 10, 1984. The State has also adopted one State-initiated rule at OAR 437–02–133 on air quality in respirators in lieu of 29 CFR 1910.134(d)(1), which updates the Compressed Gas Association Commodity Specification from G–7.1–1966 (as in the Federal rule) to G–7.1–1989. During the early period of Oregon's program, the State elected not to adopt by reference standards comparable to 29 CFR 1910.137, Electrical Protective Devices, 1910.138, Effective Dates, § 1910.139, Sources of Standards, and 1910.140, Standards Organizations. (These standards are at the end of 29 CFR 1910 subpart I, Personal Protective Equipment.) With this notice the State has chosen to do so, at OAR 437–02, Subdivision I. On March 22, 1993, the Notice of Proposed Revision of Rules was mailed to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436–90–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for hearing; however, two written comments were received which recommended that the State retain its more specific language in some areas of the standard. The State's revision was adopted on July 29, 1993, with an effective date of September 15, 1993, through OR–OSHA Administrative Order 9–1993.

The State submitted by letter dated October 19, 1993, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standards revision comparable to 29 CFR 1910.133, Eye and Face Protection, as published in the **Federal Register** (39 FR 23670) on June 27, 1974. The Oregon Eye and Face Protection Standard is contained in OAR 437–02–1910.133. The State's original standard was adopted as OAR 437 chapter 7, section 3, rules 5 through 12 on March 19, 1974, and received **Federal Register** approval (39 FR 38036) on October 25, 1974. The State standard was subsequently recodified without change as OAR 437 Division 50–025 and received **Federal Register** approval (52 FR 27077) on July 17, 1987. OAR 437, Division 50 has been repealed in its entirety. On March 22, 1993, the Notice of Proposed Revision of Rules was mailed to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436–90–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for hearing; however, two written comments were received which recommended that the State retain its more specific language in some areas of the standard. The State's revision was adopted on July 29, 1993, with an effective date of September 15, 1993, through OR–OSHA Administrative Order 9–1993. The State has retained one State-initiated standard requiring eye protection for employees exposed to laser beams which was previously approved by OSHA. The renumbering changes for the State-initiated rule are as follows: Originally adopted as OAR 437–7–3–2, recodified as OAR 437–50–025(12), and readopted as OAR 437–02–130(2). The State's more stringent rule received **Federal Register** approval (39 FR 38036) on October 25, 1974 as part of Oregon's response to Federal OSHA's 29 CFR 1910.133, Eye and Face Protection, as published in the **Federal Register** (39 FR 23670) on June 27, 1974. The State has also retained a minor State-initiated rule at OAR 437–02–130(1), previously OAR 437–50–025(3), which requires eye and face protection equipment to be designed and used in accordance with ANSI Z87.1–1989.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, amendments and corrections, it has been determined that the State standard amendments for Formaldehyde, Lead, and Personal Protective Equipment are identical to the Federal standards. OSHA therefore approves these amendments. OSHA has also determined that the Respiratory Protection amendments are at least as effective as the comparable Federal amendments, as required by section 18(c)(2) of the Act. In addition, OSHA has determined that the differences between the State and Federal Respiratory Protection amendments are minimal and that the standards are thus substantially identical. OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objection be submitted to the Assistant Secretary.

Regarding the Eye and Face Protection amendments, OSHA has determined that these amendments are at least as effective as the comparable Federal amendments, as required by section 18(c)(2) of the Act. With the adoption by reference of § 1910.133, the State's standard is now identical to the Federal, except for the retention of two State-initiated rules. One of these rules was approved in the **Federal Register** in 1974, and the other rule is minor. OSHA therefore approves the standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, suite 715, Seattle, Washington 98101–3212; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendment is as effective as the Federal standard which was promulgated in accordance with the Federal law including meeting requirements for public participation.

2. The standard amendment was adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective March 4, 1994.

Authority: Sec. 18, Public Law 91–596, 84 Stat. 1608 [29 U.S.C. 667].

Signed at Seattle, Washington, this 29th day of December 1993.

Richard S. Terrill,

Deputy Regional Administrator.

[FR Doc. 94–5010 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–26–M

Vermont State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On October 16, 1973, notice was published in the **Federal Register** (38 FR 28658) of the approval of the Vermont State Plan and the adoption of subpart U to part 1952 containing the decision.

The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State Plan provides for the adoption of State standards which are at least as effective as comparable

Federal standards promulgated under section 6 of the Act. By letter dated December 2, 1993, from Barbara G. Ripley, Commissioner, Vermont Department of Labor and Industry, to John B. Miles, Jr., Regional Administrator; and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR parts 1910, 1915, 1926 and 1928, and subsequent amendments thereto, as described below:

(1) Correction to 29 CFR parts 1910, 1915, 1926 and 1928, Occupational Exposure to Cadmium; Correction; Final Rule (58 FR 21778, dated 4/23/93).

(2) Amendment and addition to 29 CFR 1926.62, Lead Exposure in Construction, Interim Final Rule (58 FR 26627, dated 5/4/93).

These standards became effective on November 19, 1993, pursuant to section 224 of State Law.

2. Decision

The above State standards have been reviewed and compared with the relevant Federal standard. It has been determined that the State standard is identical to the Federal standard, and is accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts 02114; Office of the Commissioner, State of Vermont, Department of Labor and Industry, 120 State Street, Montpelier, Vermont, 05602; and the Office of State Programs, 200 Constitution Avenue, NW., room N-3700, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Vermont State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of the State Law which included public comment, and further public participation would be repetitious.

This decision is effective March 4, 1994.

Authority: Sec. 18, Public Law 91-596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Massachusetts, this 3rd day of January, 1994.

John B. Miles, Jr.,

Regional Administrator.

[FR Doc. 94-5012 Filed 3-3-94; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94-015]

National Environmental Policy Act; Lidar In-space Technology Experiment

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq,), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), and NASA policy and regulations (14 CFR part 1216 Subpart 1216.3), NASA has made a Funding of No Significant Impact (FONSI) with respect to the proposed Lidar In-space Technology Experiment (LITE) be managed by the NASA Langley Research Center, Hampton, VA. LITE involves testing the capabilities of a lidar (LIght Detection And Ranging) system to monitor atmospheric conditions from space. LITE hardware would be carried into orbit by a Space Shuttle mission launched from the Kennedy Space Center in Florida.

DATES: Comments on the FONSI must be provided in writing to NASA on or before April 4, 1994.

ADDRESSES: Comments should be submitted to Tricia Romanowski, Environmental Engineer, Environmental Engineering Branch, SSQRD, M/S 429, 5 Hunsaker Loop, NASA/Langley Research Center, Hampton, VA 23681.

The Environmental Assessment (EA) prepared for the proposed LITE which supports this FONSI may be examined by contacting the Freedom of Information Act Office at any of the following locations:

(a) NASA, Headquarters, Washington, DC 20546 (202-358-1764).

(b) NASA, Ames Research Center, Moffett Field, CA 94035 (415-604-4191).

(c) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301-286-0730).

(d) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818-354-5359).

(e) NASA, Johnson Space Center, Houston, TX 77058 (713-483-8612).

(f) NASA, Kennedy Space Center, FL 32899 (407-867-2622).

(g) NASA, Langley Research Center, Hampton, VA 23665 (804-864-6125).

(h) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216-433-2902).

(i) NASA, Marshall Space Flight Center, AL 35812 (205-544-4523).

(j) NASA, Stennis Space Center, MS 39529 (601-688-2164).

A limited number of copies of the EA are available by contacting Tricia Romanowski, Environmental Engineer, at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Tricia Romanowski, 804-864-7020.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the proposed LITE and has determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. The EA is incorporated by reference in this FONSI.

NASA is proposing to test a lidar system in space for use in a global atmospheric monitoring program. The principal components of a lidar system are the laser transmitter module (LTM) and the telescope-receiver. The LTM shoots a pulsed laser beam into the atmosphere where much of the laser energy is absorbed by the atmosphere. Some of the energy is reflected back toward the telescope-receiver, while a small fraction passes through the atmosphere and reaches the Earth's surface. The energy reflected toward the telescope-receiver is used to assess meteorological conditions (e.g., cloud conditions) and atmospheric aerosols (e.g., atmospheric contaminants), and to monitor the ozone layer. NASA proposes to fly a lidar system as an attached payload on the Space Shuttle. The first flight is scheduled for the fall of 1994 as a 9-day mission to gain experience in operating a lidar system in a space environment and to evaluate the sensitivity of the lidar instrument for monitoring atmospheric conditions.

The proposed action and the No-Action Alternative (i.e., no space-based testing of a lidar system) were considered in the EA. The No-Action Alternative will not fulfill NASA's objective to advance atmospheric monitoring capabilities. Under the No-Action Alternative, it will not be possible to develop the technology for a space-based lidar atmospheric monitoring system, and it will be necessary to continue to rely on existing passive monitoring instruments which have limitations in assessing the vertical distribution of atmospheric constituents.

The proposed action is the normal operation of the LITE payload from

within the Space Shuttle cargo bay. The LITE payload will remain in the Shuttle cargo bay and will not produce any effluent which could escape the cargo bay during mission operations. The only feature of the LITE payload which will emerge from the cargo bay will be the laser beam.

The LITE LTM will produce laser energy in three wavelengths, one of which will be visible (pale green). The portion of the laser energy which will pass through the atmosphere will reach the Earth's surface in a series of circular "laser spots" as the Shuttle moves across the Earth's surface. The diameter of the spots will vary from 265 meters (870 feet) to 483 meters (1,585 feet). Exposure will occur only to persons who are within a laser spot. Each laser pulse will last for 20 nanoseconds. The planned mission orbits will be between 57 degrees north latitude and 57 degrees south latitude. Given the laser pulse rate and the Shuttle's orbiting velocity, a person cannot be within two consecutive laser spots.

A comprehensive safety analysis performed for the proposed LITE found minimal risk of skin or eye injury from operation of the LITE LTM. The maximum Radiant Exposure (RE) to a person within a laser spot was calculated to be more than a million times lower than the Maximum Permissible Exposure (MPE) for skin exposure and at least two orders of magnitude lower than the MPE for eye exposure for each of the three laser energy wavelengths. The cumulative effect or simultaneous exposure to multiple wavelengths was calculated to be at least two orders of magnitude lower than the MPE. RE to persons using binoculars to view the Shuttle from within a laser spot was calculated to be lower than the MPE. While RE to persons using a 165-mm (6.5-inch) telescope to view the Shuttle from within a laser spot was calculated to be equal to the MPE, there is still considerable safety factor in the MPE, since MPE's are established at exposures which are one to two orders of magnitude lower than the level of any known hazard.

A Phase I Flight Safety Review found that the LITE LTM lasers will not be hazardous to persons in aircraft and will not interfere with microwave, very-high-frequency, or ultra-high-frequency communications. A review by the U.S. Space Command Laser Clearinghouse found that the LITE lasers will not exceed the damage threshold to space systems.

No other potential environmental impacts were identified as a result of the environmental assessment. On the basis of the LITE EA and underlying reference documents, NASA has determined that the environmental impacts associated with this project will not individually or cumulatively have a significant effect on the quality of the environment. NASA will take no final action prior to the expiration of the 30-day comment period.

Gregory M. Reck,

Acting Associate Administrator, for Advanced Concepts and Technology.

[FR Doc. 94–5025 Filed 3–3–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE 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 April 4, 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; (2020395–7316). 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: FY 95/96 Arts Administration Fellows Program Application Guidelines.

Frequency of Collection: Triennially.

Respondents: Individuals.

Use: Guide instructions and applications elicit relevant information from individual arts administrators who apply in the for an eleven week residency fellowship in arts administration at the Endowment. This information is necessary for the accurate, fair and thorough consideration of competing proposal in the review process.

Estimated Number of Respondents: 300.

Average Burden Hours Per Response: 3.8.

Total Estimated Burden: 1300.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 94–4944 Filed 3–3–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: March 14, 1994; 8 a.m. to 5 p.m.

Place: Room 310, National Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Peter Arzberger and Dr. Charles Keith, Program Directors, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Database Activities in the Biological Sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4932 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

Date and Time

Monday, March 14, 1994 from 8:30 am–6 pm
Tuesday, March 15, 1994 from 8:30 am–6 pm
Wednesday, March 16, 1994 from 8:30 am–5 pm

Place: National Science Foundation, 4201 Wilson Blvd., room 390, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Machi Dilworth, Program Director, Biological Instrumentation and Resources, room 615, National Science Foundation, Arlington, Virginia 22230, Telephone No. (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowships in Plant Biology proposals as part of the election process for awards.

Reason of Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4933 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Computer and Information Science and Engineering.

Date and Time: March 21–22, 1994; 8:30 am to 5 pm.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Aubrey Bush, NCRI, National Science Foundation, room 1175, Arlington, VA 22230 (703 306–1950).

Purpose of Meeting: To provide oversight review of the NCR Program.

Agenda: To carry out Committee of Visitors review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4934 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacturing Systems (Code 1194)

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Design, Manufacturing Systems (Code 1194).

Date and Time: March 22, 1994, 8:30 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. F. Stan Settles, Program Director, Design and Integration Engineering, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation Award proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4935 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacturing Systems (Code 1194)

In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Design, Manufacturing Systems (Code 1194).

Date and Time: March 22, 1994, 8:30 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Pius Egbelu, Program Director, Operations Research and Production Systems, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation Award proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4936 Filed 3–3–94; 8:45 a.m.]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacturing Systems (Code 1194)

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Design, Manufacturing Systems (Code 1194).

Date and Time: March 24, 1994, 8:30 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, room 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Pius Egbelu, Program Director, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Research Deployment Teaching Initiative proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4937 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacturing Systems (Code 1194)

In accordance with the Federal Advisory Committee Act (Public Law

92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Design, Manufacturing Systems (Code 1194).

Date and Time: March 23, 1994, 8:30 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. F. Stan Settles, Program Director, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Faculty Internships Initiative proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4938 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis panel in Electrical and Communications Systems (1196).

Date and Time: March 22, 1994; 8:30 a.m. to 5 p.m.

Place: Rooms 310, 320, 370, 380, 390, and 3102, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Lawrence S. Goldberg, Acting Division Director, ECS, room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. Telephone: 703/306–1340.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate applications of NSF Young Investigators as part of the selection process for awards.

Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4939 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Graduate Education and Research Development; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education and Research Development.

Date and Time: March 23–24, 1994; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mary F. Sladek, Assistant Program Director, 4201 Wilson Boulevard, room 907, Arlington, VA 22230 Telephone: (703) 306–1696.

Purpose of Meeting: To provide advice and recommendations concerning applications to the NSF–NATO Postdoctoral Fellowships in Science and Engineering (NATO).

Agenda: Review and evaluate NATO Program applications.

Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4940 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Industrial Innovation Interface; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Committee for Industrial Innovation Interface (III).

Date and Time:

March 24, 1994; 8:30 a.m.—5 p.m.
March 25, 1994; 8:30 a.m.—3:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 580, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Ms. Carolyn J. Smith, Small Business Specialist, room 590, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 (703) 306–1391.

Summary of Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning support of research programs administered in the Division.

Agenda: March 24, 1994, 8:30 a.m.—12 noon. Review and discussion of current programs.

Division Reorganization.
Budget/Outlook for 1994/5.
Budget for FY 1995.
12 noon—1:30 p.m. Lunch.
1:30 p.m.—5 p.m. NSF/NASA SBIR Data Base.
Committee Worksessions on: (1) Commercialization Strategy, (2) Technological Opportunities into the Next Century.
March 25, 1994.
8:30 a.m.—12 noon. Individual Committee Member Reports on: Chemical Industry Outlook, Electronics Industry Outlook, Venture Capital Scene Today, National Governor's Association,
1:30 p.m.—3:30 p.m. Committee Report to the Division.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4941 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research.

Date and Time: March 29–30, 1994; 8:30 a.m. to 5 p.m.

Place: Room 1175, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Darleen Fisher, NCRI, National Science Foundation, room 1175, Arlington, VA 22230 (703 306–1950).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for Research Initiation Awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4943 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communication, Research and Infrastructure (NCRI); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research.

Date and Time: March 17, 1994; 8:30 am to 5 pm.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mr. Daniel Vanbelleghem, NCRI, National Science Foundation, Room 1175, Arlington, VA 22230 (703 306–1950).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for the NSFNET Connections Program Announcement.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4942 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[DD–94–02]

U.S. Department of Energy

Hanford Site; Director's Decision Under 10 CFR § 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regard to the Petition of July 25, 1991, by F. Robert Cook, that the Director of the Office of Nuclear Material Safety and Safeguards exercise his authority to require a license application from the U.S. Department of Energy (DOE) with respect to certain high-level radioactive wastes, consisting of spent nuclear fuel generated at Nuclear Regulatory Commission-licensed nuclear reactors, stored at locations at the Hanford Site in the State of Washington. Notice of Receipt of Petition for Director's Decision under 10 CFR 2.206 was published in the **Federal Register** on September 12, 1991, (56 FR 46449).

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision under 10 CFR § 2.206" (DD–94–02), which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 22nd day of February 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–4957 Filed 3–3–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–318]

Baltimore Gas and Electric Co., Calvert Cliffs Nuclear Power Plant, Unit No. 2

Exemption

I

The Baltimore Gas and Electric Company (BG&E/licensee) is the holder of Facility Operating License No. DPR–69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2 (the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Calvert County, Maryland.

The licensee is implementing upgrades to the existing safety-related emergency diesel generators (EDGs) to increase their load capacity. The first part of this effort will be to upgrade Unit 1 EDG No. 11 during the upcoming Unit 1 refueling outage (RFO–11). This outage commenced on February 8, 1994, and is scheduled to be completed in early May 1994. To support this initial portion of the upgrades, the licensee has identified one temporary exemption required at this time. The exemption is specified below.

II

The Code of Federal Regulations at 10 CFR part 50, appendix A, General Criterion-2 (GDC–2), requires that: Structures, systems and components important to safety shall be designed to withstand the effects of natural phenomena such as * * * tornadoes, * * * without loss of capability to perform their safety functions.

The licensee has requested the temporary exemption from GDC–2 because of the planned upgrade of the Unit 1 EDG No. 11. The effort will require temporary removal of a steel missile door which will expose portions of the support systems of EDG Nos. 12 and 21. These EDGs are required to be operable to support the operation of Unit No. 2 and require protection from the potential effects of postulated missiles generated by natural phenomena. The licensee indicates that the steel missile door will be removed 4 times during RFO–11. The licensee estimates that each of the missile door removals will last for about 24 hours which will result in a total removal time of about 100 hours during the scheduled 89 day outage.

The licensee is providing compensatory action to assure the safe operation of Unit No. 2 for the short periods of time during which the steel missile door will be removed. To encompass all severe weather conditions as defined in the plant site Emergency Response Plan Implementing Procedures 3.0, Attachment 18, a concerted effort will be made to reinstall the missile door if a tornado or hurricane watch is issued or if sustained winds are predicted to be greater than 35 miles/hour at the site. The only factor which would impede the reinstallation of the missile door would be to ensure the safety of the individuals performing the reinstallation.

Considering the existing design features and compensatory measure proposed by the licensee, the likelihood of damage to the exposed EDG support systems from postulated missiles generated by natural phenomena is minimal for the short periods of time that the protective door will be removed. Also, based on the compensatory measure provided, reasonable assurance exists that the ability to reinstall the missile door will be maintained prior to any severe

weather which could result in airborne missiles. Therefore, there is reasonable assurance that the proposed GDC–2 exemption will present no undue risk to public health and safety.

III

The Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances as set forth in 10 CFR 50.12(a)(2)(v) exists. The exemption would provide only temporary relief from the applicable regulation (GDC–2). The exemption is requested for a specific time period after which the facility would again be in conformance with all the requirements of GDC–2. The licensee has made good faith efforts in considering alternatives to the exemption request and has concluded that the EDG upgrades can only be conducted without the subject exemption during a period when both units are shut down.

Based on the above and on review of the licensee's submittal, as summarized in the Safety Evaluation, dated February 23, 1994, the NRC staff concludes that the likelihood of unacceptable damage to the exposed portions of the Unit No. 2 EDG support systems due to weather-induced missiles during the short duration exposures occurring in the exemption period is low.

Based on the low probability of unacceptable events, coupled with the compensatory measure which the licensee has committed to, the NRC staff finds the proposed exemption from GDC–2 to be acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the subject exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption; namely, that the exemption would provide only temporary relief from the applicable regulations and that the licensee has made good faith efforts to comply with the regulations.

Therefore, the Commission hereby approves the following exemption: Calvert Cliffs Nuclear Power Plant, Unit No. 2, may operate without conforming to the requirements of GDC–2 as they apply to the exposed portions of the support systems for EDG Nos. 12 and 21 providing that the compensatory measure as described herein is in place for the period of the exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant impact on the quality of the human environment (February 17, 1994, 59 FR 8033).

The subject Unit No. 1 EDG No. 11 upgrade GDC–2 exemption if effective from its date of issuance through May 15, 1994.

Dated at Rockville, Maryland, this 23rd day of February 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4958 Filed 3–3–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–70 and DPR–75 issued to the Public Service Electric and Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendment would increase the storage capacity of the spent fuel pool (SFP) from its current 1170 storage cells to 1632 storage cells. This would be accomplished by replacing 9 out of twelve of the existing high density fuel racks with 9 maximum density rack modules constructed of stainless steel and a neutron absorber material (boron carbide and aluminum-composite sandwich, product name "boral"). The proposed change would extend the date when full core discharge capacity is no longer available for Salem 1 from 1998 to 2008, and for Salem 2 from 2002 to 2012.

In addition, the proposed amendment would extend the decay time for refueling operations from 100 hours to 168 hours.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Public Service Electric and Gas Company] PSE&G has evaluated the following postulated accident scenarios:

1. A spent fuel assembly drop in the SFP
2. Loss of SFP cooling.
3. A seismic event.
4. An installation accident during reracking.

The Salem SFP has been analyzed considering fuel handling equipment, operating procedures, SFP cooling system, and seismic events. Reracking involves replacing 9 out of the 12 existing high density racks with 9 new maximum density racks. It does not require any system modifications or modifications to the cask handling crane, which by its physical location and design is prevented from moving over the SFP. Results confirm that the proposed modification does not increase the probability of the first three postulated accident scenarios.

NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants," sections 5.1.1, 5.1.2, and 5.1.6, provide guidance for heavy load handling operations during spent fuel storage rack replacement. Section 5.1.2 lists (4) alternatives for assuring safe heavy load handling during a fuel storage rack replacement. Alternative (1) satisfies the control of heavy loads guidelines through the implementation of defense-in-depth measures. These measures ensure that the potential for a heavy load drop is extremely small. PSE&G intends to utilize the defense-in-depth concept during reracking activities.

NUREG–0554, "Single Failure Proof Cranes for Nuclear Power Plants," provides guidance for the design, fabrication, installation, and testing of highly reliable new cranes. NUREG–0612, Appendix C, "Modification of Existing Cranes," provides guidance for the implementation of NUREG–0554 at operating plants. We have evaluated anticipated fuel handling crane movements for compliance with the guidelines specified in alternative (1) of Appendix C, and determined that alternative (1) was satisfied based on the extremely small probability of a storage rack drop. The maximum weight of any storage rack and its associated handling tool is 17 tons. The fuel handling crane will be upgraded to a 20 ton lifting capacity and a design safety factor, with respect to ultimate strength, of five times the lifting capacity (i.e., 100 tons). The uprated fuel handling crane has ample safety factor margin for

storage rack movement. This applies to non-redundant load-bearing components. Special redundant lifting devices, which have a rated capacity sufficient to maintain safety factors, will be utilized for storage rack movements. Per NUREG–0612, Appendix B, the substantial safety factor margin ensures that the probability of a load drop is extremely low. Additionally, a load drop analysis was performed to ensure the integrity of the pool structure. The analysis results were acceptable.

Based on the actions discussed above, the proposed modification does not increase the probability of an installation accident.

PSE&G evaluated the consequences of a spent fuel assembly drop in the SFP and determined that the criticality acceptance criterion, Keff less than or equal to 0.95, was not exceeded. The radiological consequences of a fuel assembly drop did not change significantly from those previously analyzed. The calculated doses are well within 10 CFR 100 requirements. A spent fuel assembly dropped on the racks, will not cause rack distortion that would prevent the performance of their safety function. Thus, the consequences of this postulated accident are not significantly changed from those previously evaluated.

The consequences of a loss of SFP cooling were evaluated. The evaluation concluded that sufficient time is available to establish an alternate means of cooling following a complete failure of the normal SFP cooling system. Calculations show that under a normal discharge scenario, if all indirect forced cooling paths (i.e., heat removal by heat exchangers) are lost at the instant the pool water reaches its maximum value, the pool will not begin bulk boiling for at least 4.61 hours. This time interval is sufficient to allow plant personnel to establish alternate heat removal methods. A piped cross-connection exists between Unit 1 and Unit 2's SFP heat exchangers. This allows for use of the opposite Unit's heat exchanger during emergencies, or when a given Unit's Service Water header or Component Cooling System are out-of-service. Thus, the consequences of this postulated accident are not significantly changed from those previously evaluated.

The new racks are designed and fabricated to meet applicable NRC requirements and industry standards. Seismic analyses were performed on the new racks and the existing racks using 3–D single rack (opposed phase motion) and Whole Pool Multi-Rack (WPMR) models. Kinematic and shear analyses conclude the existence of large margins of safety. The kinematic margin against rack-to-rack or rack-to-wall impact is at least 1.5 for all SFP racks. Maximum rack primary stresses, under [Safe Shutdown Earthquake] SSE conditions, are less than 50% of the allowable ASME Code value. Maximum supporting pool structure bending moments and thru-thickness shear, under factored load conditions, are less than 80% of the allowables. All racks (new and existing) are designed as free-standing racks, to ensure that rack and pool structure integrity is maintained during and after a seismic event. Thus, the consequences of a postulated seismic event are not increased from previously evaluated events.

The consequences of an installation accident were considered. All fuel in the SFP will have decayed for a minimum of (3) months prior to any heavy load movement in the SFP area. This allows sufficient time for decay of gaseous radionuclides in the fuel (gap activity). A postulated accidental gaseous release from all stored fuel assemblies would result in a potential offsite dose less than 10% of 10CFR100 limit. No equipment essential to safe reactor shutdown or employed to mitigate the consequences of an accident is located beneath, adjacent to, or within the area of influence of any load handling to support the SFP modification. Thus, the consequences of a postulated installation accident are not significantly increased from those previously evaluated.

The only postulated accident affected by decay time is a Loss of SFP cooling. The proposed increase in decay time prior to refueling operations is conservative and decreases the decay heat removal requirements. All thermal-hydraulic calculations used 168 hours as the assumed decay time and concluded that adequate heat removal capability existed. Thus, the probability and consequences of a loss of SFP cooling accident are not significantly increased from those previously evaluated.

Therefore, it may be concluded that the proposed changes do not increase the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed modification has been reviewed and analyzed for possible accidents. The criteria used in the analyses, design, and installation of the new spent fuel racks account for anticipated loadings and postulated conditions that may be imposed upon the structure during its lifetime, and is in conformance with established codes, standards, and specifications acceptable to the NRC.

Factors that could affect the SFP neutron multiplication factor have been addressed conservatively. PSE&G concluded that the maximum SFP neutron multiplication, with the addition of the maximum density racks, will not exceed the subcritically limit of Keff less than or equal to 0.95.

The increase in decay time prior to refueling operations reduces the initial heat load and SFP cooling equipments. The addition of new racks and associated spent fuel will produce an incremental heat load in the SFP. However, analysis has shown that the existing SFP cooling system is sufficient to absorb this incremental heat load. The peak bulk pool temperature will be maintained below the threshold value to preclude bulk boiling. The incremental heat load does not alter SFP cooling safety considerations from those previously reviewed and found acceptable.

Rack impact analysis was performed to investigate possible impact during seismic events (i.e., rack-to-rack and rack-to-wall impacts). The analysis concluded that the proposed SFP modification does not result in rack-to-rack impact in the cellular region or rack-to-wall impact during postulated seismic events.

The basic SFP reracking technology has been reviewed and approved by the NRC in numerous applications for spent fuel capacity increases. The safety function and operation of the SFP cooling system, makeup, and structural systems are unchanged by the modification. No new failure modes are created.

Therefore, it may be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The safety function of the SFP and the racks is to preclude inadvertent criticality in a safe, specifically designed, underwater storage location for spent fuel assemblies that require shielding and cooling during storage and handling. The NRC Staff has established that the issue of margin of safety, when applied to reracking modifications, should address the following areas:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material, and structural considerations.

Assessment in these areas assures that the SFP and racks will withstand specified design conditions, without impairment of the structural integrity or performance of required safety functions.

The criticality analysis confirms that the new and existing rack designs meet the NRC acceptance criterion of Keff less than or equal to 0.95 under all conditions. The criticality analysis methods conform to applicable industry codes, standards, specifications and NRC guidance.

Keff calculations include uncertainties at a 95%/95% probability confidence level. Thus, the proposed amendment does not involve a significant reduction in the nuclear criticality margin of safety.

Conservative methods and assumptions were used to calculate the maximum fuel temperature and the increase in SFP water temperature. The thermal-hydraulic evaluation employed methods previously used to evaluate existing spent fuel racks. The results demonstrate that the temperature margins of safety are maintained. The proposed modification, with the fuel inventory, will increase the heat load in the SFP. However, the decay time prior to refueling operations was increased from 100 to 168 hours to reduce the initial SFP cooling requirements. Evaluation results indicate that the existing SFP cooling system can maintain the bulk pool water temperature at or below 149 F under normal discharge scenarios. The maximum allowable temperature for bulk boiling is not exceeded for the calculated increase in pool heat load. Maximum local water temperatures, along the hottest fuel assembly, remain below the nucleate boiling condition. While no nucleate boiling is indicated for the standard storage condition, an assumption of 50% cell blockage results in a possible highly localized two-phase condition near the top of the fuel. Fuel clad thermal stresses remain less than 7000 psi, which is considerably lower than the endurance limit of the clad material. Thus, there is no significant reduction in the margin of safety for thermal-hydraulic or SFP cooling.

Maintaining the spent fuel assemblies in a safe configuration during normal and abnormal loadings is the primary safety function of the SFP and racks. Abnormal loading associated with an earthquake, a spent fuel assembly drop, or the drop of any other heavy object were considered. The mechanical, material, and structural design of the new spent fuel racks complies with applicable portions of the NRC OT Position Paper. Rack materials are compatible with the spent fuel pool environment and the spent fuel assemblies. The structural assessment of the new racks concluded that tilting and deflection or movement will not result in impact in the active fuel region during postulated seismic events. In addition, the spent fuel assemblies remain intact with no criticality concerns. Thus, there is no significant reduction in the margin of safety for mechanical, material and structural considerations.

Therefore, it may be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 4, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any

hearing held would take place before issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Charles L. Miller: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d)

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer shall grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated April 28, 1993, and revisions to this submittal dated August 12, 1993, November 17, 1993 and February 2, 1994, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 25th day of February 1994.

For the Nuclear Regulatory Commission.

James C. Stone,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5026 Filed 3–3–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Statements of Claimed Railroad Service and Earnings.

(2) *Form(s) submitted:* UI–9, UI–23, ID–4F, ID–4U, ID–4X, ID–4Y, ID–20–1, ID–20–2, ID–20–4, ID–20–5, ID–20–7.

(3) *OMB Number:* 3220–0025.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *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.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number or respondents:* 5,725.

(9) *Total annual responses:* 5,725.

(10) *Average time per response:* .10096 hours.

(11) *Total annual reporting hours:* 578.

(12) *Collection description:* When the railroad service and/or compensation on the RRB's records is insufficient to qualify a claimant for unemployment or sickness benefits, the statements obtain information needed to reconcile the, compensation and/or service on record with that claimed by the employee.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and

Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–4971 Filed 3–3–94; 8:45 am]

BILLING CODE 7905–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Red Rocks Centre and Springfield Green, Jefferson County, CO

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Red Rocks Centre, located in Morrison, and Springfield Green, located in Lakewood, Jefferson County, Colorado, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until June 2, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Jerry Williams, Resolution Trust Corporation, Valley Forge Field Office, P.O. Box 1500, Valley Forge, PA 19482–1500, (800) 782–6326; Fax (610) 650–0881.

SUPPLEMENTARY INFORMATION: The Red Rocks Centre property is located in southwest metropolitan Denver within the City of Morrison. The site contains wetlands, intermittent streams, undeveloped floodplains, and is adjacent to Bear Creek Park which is managed by the U.S. Army Corps of Engineers. The Red Rocks Centre property consists of approximately 170.4 acres of undeveloped land comprised of two tracts located north of Morrison Road. The site contains three small ravines and the topography drops sharply from the southern end to the north into a meadow area. The Red Rocks Centre property is located within ½ mile of the South Dinosaur Open Space Park and one mile from the Green Mountain Open Space Park managed by Jefferson County.

The Springfield Green property is located in southwest metropolitan Denver within the City of Lakewood. The site contains wetlands, has recreational value, and is adjacent to the Hayden Green Mountain Park managed by the City of Lakewood. The Springfield Green property consists of approximately 231.4 acres of undeveloped land comprised of 16 irregular shaped lots located south of Alameda Parkway. The site is moderately sloped with some steeper ravines. These properties are covered properties within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before June 2, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

Re: [insert name of property]

Federal Register Publication Date: _____ [insert **Federal Register** publication date]

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).
4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.
5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subject: Environmental protection.

Dated: February 28, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–4945 Filed 3–3–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33679; File No. SR–DTC–94–01]

Self-Regulatory Organization; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating To the Implementation of the Standing Instruction Database Feature of the Enhanced Institutional Delivery System

February 24, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on January 31, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of procedures for the Standing Instructions Database ("SID") feature of DTC's enhanced Institutional Delivery ("ID") system.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The enhanced ID system concept was approved in an earlier Commission order. The order specified that each individual feature of the enhanced ID system would be the subject of a separate filing under Section 19(b)(1). Securities Exchange Act Release No. 33466 (January 12, 1994), 59 FR 3139 [File No. SR–DTC–93–07] (order approving concept of enhanced ID system).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SID is a central repository for customer account and settlement information furnished by institutions, agents, and broker-dealers. The information includes items such as the agent for an institutional customer, the agent's internal account number for the institutional customer, and interested parties. A broker-dealer can link its internal account numbers for its institutional customers to the internal account numbers at the institutions. When entering trade data into the ID system, a broker-dealer can simply refer to its internal account number in SID, and the ID system will extract the necessary information from SID (such as customer name, agent, interested parties, and settlement related information) and automatically will add the information to the confirmation. SID will eliminate the need for the broker-dealer to provide all such information each time that the broker-dealer enters trade data into the ID system.

SID is an optional feature for ID users. However, once a broker-dealer links its internal customer account number with account information furnished to SID by the institutional customer, data in SID will be used for certain fields in ID system processing, regardless of whether the broker-dealer submits data for those fields, when the broker-dealer submits trade data for that institutional customer's trades.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the proposed rule change will further automate the process by which securities transactions are cleared and settled.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

SID has been developed through widespread consultations with securities industry members. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 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 DTC. All submissions should refer to File No. SR–DTC–94–01 and should be submitted by March 25, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4998 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–33663; File No. SR–GSCC–93–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Conditions for the Release of Confidential Data

February 23, 1994.

I. Introduction

On June 18, 1993, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the release of confidential data. Notice of the proposed rule change was published in the **Federal Register** on August 10, 1993.[2] On December 30, 1993, GSCC filed with the Commission an amendment ("Amendment No. 1") to the proposed rule change. Notice of Amendment No. 1 was published in the **Federal Register** on January 20, 1994.[3] No comments were received. This order approves the proposed rule change.

II. Description

Currently, GSCC Rule 29 provides that, absent valid legal process, GSCC will release clearing data[4] that is identifiable as to a member only to (1) that member, (2) the Commission upon request, (3) another self-regulatory organization, and (4) an "appropriate regulatory agency" as defined in Section 3(a)(34) (C) of the Act with regard to a member that is primarily regulated by such agency. The proposed rule change amends GSCC Rule 29 to permit GSCC to release clearing data to the Federal Reserve Bank of New York ("FRBNY") and to other third parties that perform a regulatory or oversight function related to the government securities marketplace.

An agreement between GSCC and the FRBNY controls the release of data to the FRBNY. The FRBNY has agreed to maintain member specific information in confidence, subject to certain exceptions. The FRBNY may share GSCC data with the members of the Interagency Working Group on Market

[1] 15 U.S.C. 78s(b) (1990).

[2] Securities Exchange Act Release No. 32710 (August 2, 1993), 58 FR 42584.

[3] Securities Exchange Act Release No. 33464 (January 12, 1994), 59 FR 3142.

[4] Clearing data is defined essentially to include any data relating to a member's trading activity that is held or produced by GSCC.

Surveillance[5] and may release GSCC data as required by law. The FRBNY also has agreed to follow certain procedures should third parties attempt to obtain release of GSCC data through the FRBNY.[6]

Before releasing data to third parties that perform a regulatory or oversight function related to the government securities market, GSCC must determine, and the Membership and Standards committee of the Board of Directors of GSCC must concur, that the following five conditions have been met. The requesting party must show a legitimate need for such data related to its market regulatory or oversight function. The data released by GSCC will be used solely for market regulatory or oversight purposes. The requesting party must make the request in writing and with sufficient specificity. With respect to member specific data, the member must be notified of the request and be given the opportunity to present GSCC with any objections to the release of data.[7] Finally, with respect to member specific data, the requesting party must show that it unsuccessfully attempted to obtain the data directly from the member.[8]

III. Discussion

Section 17A(b)(3)(F) of the Act[9] requires that the rules of a clearing agency be designed to protect investors and the public interest. The proposed rule change serves this goal by enhancing the surveillance of the government securities market.

As discussed in the Joint Report on Government Securities ("Joint Report"),[10] adequate surveillance of the government securities market is necessary to detect manipulation and address disorderly market conditions. In order to provide coordinated surveillance, the FRBNY was selected to collect and analyze a range of market data, which is transmitted promptly to the Federal Reserve Board, the Treasury, and the Commission. The FRBNY collects information from a variety of sources, including automated systems operated by vendors, daily telephone surveys of primary dealer operations, and weekly and daily reports of dealers. Their efforts provide additional safeguards to the government securities market. In addition, other government organizations have had the need to study the government securities market in order to evaluate suspicious activity in the market. GSCC, by providing data necessary to evaluate market activity, assists these organizations in the performance of their functions. Thus, the amendment furthers the protection of investors and the public interest.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, and particularly with Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–GSCC–93–05) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4929 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[5] The Interagency Working Group on Market Surveillance is composed of representatives from the FRBNY, the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), the United States Department of the Treasury ("Treasury"), the Commission, and the Commodity Futures Trading Commission ("CFTC"). The FRBNY will provide each member of the working group with a copy of the agreement with GSCC and request confirmation that the other members will follow the procedures contained in that agreement.

[6] If the FRBNY is presented with a request under the Freedom of Information Act ("FOIA") (5 U.S.C. 552 (Supp. I 1993)), the FRBNY will decline requests for member specific information to the extent that the information is exempt from FOIA. If a FRBNY determination under FOIA is appealed, the FRBNY will notify GSCC to permit GSCC to raise an objection. If the information is requested under a subpoena or other form of legal process, the FRBNY will notify GSCC, if not prohibited by law. The FRBNY, however, will make its own determination whether it is required to comply with the disclosure request under the subpoena.

[7] This prerequisite does not apply if valid legal process prohibits GSCC from informing the member of the request for data.

[8] This prerequisite does not apply if valid legal process prohibits GSCC from informing the member of the request for data.

[9] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[10] U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, and Securities and Exchange Commission, Joint Report on the Government Securities Market (January 1992).

[Release No. 32698A; File No. SR–NYSE–93–10]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change; Correction

February 28, 1994.

In FR Document No. 93–18600, beginning on page 41539 for Wednesday, August 4, 1993, several sentences were incorrectly stated. The sentences below should be changed to clarify that the Series 7A Examination is applicable to floor members whose public business is limited to accepting orders from professional customers for execution on the trading floor. The first change below, however, should be made so that the sentence correctly cites the language deleted from the proposal.

The first sentence of footnote 3 in Column 1 on page 41540 is corrected to read " The NYSE deleted "generally" from Rule 345, Interpretation .02 in order to clarify that the intent of the proposed interpretation is that the Series 7(a) Examination is applicable to floor members engaged in public business with professional customers."

Column 1, page 41540, 8th line after the heading "I. Proposal" insert the word "public" after the word "accept".

Column 2, page 41540, the 13th line add the word "public" to the end of the line after the word "whose".

Column 1, page 41541, 23rd of line of the second full paragraph remove the word "solely" from the last sentence before the heading "IV. Conclusion".

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4930 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33686; File No. SR–NYSE–88–14]

Self-Regulatory Organizations; New York Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Specialist Post Wires

February 25, 1994.

I. Introduction

On April 25, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit a specialist unit, with Exchange approval, to use the telephone line at its trading post location to enter options or futures hedging orders through a member on the floor of an options or futures exchange. The proposed rule change was published for comment in Securities Exchange Act Release No. 25694 (May 12, 1988), 53 FR 17812 (May 18, 1988). No comments were received on the proposal.

II. Description of the Proposal

The Exchange proposes to amend NYSE Rule 36.30 which currently permits a specialist unit, subject to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

Exchange approval, to maintain a telephone line at its trading post location on the Floor to enable the unit to communicate with its off-Floor office or clearing firm. In addition the Rule prohibits the use of such telephones for the purpose of transmitting to the NYSE Floor orders for the purchase or sale of securities, but permits the use of the telephones to enter options or futures hedging orders (*i.e.*, orders entered to offset the risk of making a market in the underlying speciality stock) through the specialist unit's off-Floor office or clearing firm. The proposed amendment will add language to the Rule to expand permitted usage of telephone lines at the specialist posts to include, with Exchange approval, the entry of a specialist unit's options or futures hedging orders "through a member (on the floor) of an options or futures exchange."

III. Discussion

The adoption by the NYSE of subsection .30 to rule 36, along with other amendments to the rule, codified the Exchange's policy concerning members' use of telephones on the Floor that can be used to communicate with non-members located off-floor.[3] Such communication is permitted with certain specifically enumerated restrictions.[4]

The instant proposed rule change will amend subsection .30 by adding language that will enable a specialist unit to use a telephone linkage at the specialist post to enter options or futures hedging orders through a member (on the floor) of an options or futures exchange. This would be in addition to the current language of subsection .30 which permits entry of such orders through a telephone linkage to the specialist unit's off-floor offices or its clearing firm. The NYSE states that the purpose of this amendment is to provide a faster means for specialists to enter options or futures hedging orders and to expand a specialist's ability to enter such orders from its post location on the Exchange floor directly with a member on the floor of an options or futures exchange.

The Commission, in originally approving the use of options by specialists for hedging their specialty stocks, was sensitive to concerns over the potential for specialist frontrunning,[5] tape racing, or other abuses arising from the specialist's informational advantage.[6] In order to allay these concerns, the NYSE rule permitting options hedging by specialists places restrictions on the size, timing and purpose of the options transactions.[7] The proposal being approved does not affect the restrictions currently in place for placing options orders. The proposal only provides a more efficient means for specialists to relay hedging orders to options and futures exchanges. Further, the NYSE has implemented surveillance procedures to monitor specialists' use of options to ensure they are consistent with these restrictions. For example, specialists are required to submit Form 81–O to report their options transactions.[8] With respect to futures hedging orders, the NYSE through an agreement with the Chicago Mercantile Exchange, which currently trades futures on the Standard & Poor's ("S & P") 500, Midcap 400 and the Major Market Index, exchange information relating to futures transactions on these indexes in addition to options on any of the aforementioned index futures and stock programs.[9]

IV. Conclusion

The Commission has reviewed closely the proposed NYSE rule change and believes that it is consistent with the requirements of the Act and, accordingly, should be approved. In particular, the Commission believes that the proposed rule change is consistent with the requirement of section 6(b)(5) of the Act in that it will facilitate transactions in securities by providing specialists with the ability to hedge their positions more rapidly by enabling them to communicate directly with a member on the floor of an option or futures exchange. The current process, which forces the specialist to route a hedging order through an off-floor office or clearing firm, can make the execution of the hedging order more cumbersome and less timely. By improving the process by which specialists can transfer the risk of their market making responsibilities, specialists would be better able to fulfill these responsibilities.

Finally, the Commission believes that any potential for frontrunning, tape racing, or other abuses by specialists that may be created by the proposed rule change is minimal, due in most part to the restrictions placed on the specialists' options activity and the NYSE surveillance. In addition, as noted above, the NYSE has some access through its agreement with the CME, and as an ISG member, to receive information on orders entered by the specialist on stock index futures and options on stock index futures that should allow it to surveil for potential abuses.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–88–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4999 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[3] See Securities Exchange Act Release No. 25842 (June 23, 1988), 53 FR 24539 (June 29, 1988). Prior to the adoption of these amendments, rule 36 regulated the establishment of communication links only between a member or member organization's offices and the Exchange Floor.

[4] These restrictions include a ban on portable phones on the Exchange floor. On August 19, 1988, a petition for review of the Commission's June 23 Order approving SR–NYSE–87–18 was filed by William J. Higgens, a NYSE member, in the United States Court of Appeals for the Second Circuit. Petitioner Higgens objected to the Second Circuit. Petitioner Higgens objected to the Commission's approval of that portion of the NYSE's proposal that prohibits members from using portable telephone son the Exchange floor. On January 20, 1989, the Court of Appeals issued a decision rejecting Higgins' objections and affirming the Commission's June 23 Order. See *Higgins* v. *SEC*, 866 F.2d 47 (2nd Cir.

[5] With respect to futures, the Commission notes that the NYSE has adopted a policy that prohibits intermarket frontrunning between the NYSE equities market and any futures exchange. See Securities Exchange Act Release No. 27047 (July 19, 1989), 54 FR 31131.

[6] See Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708 (February 11, 1985).

[7] See NYSE Rule 105 and the NYSE's "Guidelines for Specialists Specialty Stock Option Transactions Pursuant to Rule 105."

[8] See NYSE Rule 104A.50 (requirement that specialists submit options data trading reports).

[9] We also note that surveillance information is also shared through the Intermarket Surveillance Group ("ISG"). ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, CME & CBT) joined the ISG as affiliate members in 1990.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33692; File No. SR–Phlx–94–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Net Capital Requirements in Rule 703

February 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 28, 1994, the Philadelphia Stock Exchange ("Phlx" or "Exchange") filed with the

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. 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 Phlx proposes to amend Rule 703 (Financial Responsibility and Reporting) to correspond to recent Commission amendments to SEC Rule 15c3–1 ("SEC Net Capital Rule").[1] Pursuant to these amendments to the SEC Net Capital Rule, all specialists, except options market makers, who are currently exempt from the net capital requirements of Rule 703, will be subject to a minimum net capital requirement of $100,000.[2] As a result, the Exchange believes that the amendments to the SEC Net Capital Rule require the deletion of Phlx Rule 703(a) (iii), (iv), and (v). Currently Rule 703 (a) (iii), (iv), and (v) impose a minimum net liquid asset[3] requirement of $50,000 for equity specialists, $75,000 for options specialists, and $100,000 for firms which are both equity and options specialists.

The Exchange also proposes to amend Rule 703 to require each member organization and participant organization to notify the Exchange if it fails to maintain the minimum net capital required by the SEC Net Capital rule or it fails to maintain liquid assets in accordance with Phlx Rule 703. Specifically, the Exchange is proposing to add a new paragraph (v) to Phlx Rule 703(a) which would require a member organization or participant organization to promptly notify the Exchange if it ceases to be in compliance with the SEC Net Capital Rule or Phlx Rule 703(a) (iii) or (iv) (*i.e.*, former sections (a)(vi) or (a)(vii)).

Lastly, the Phlx proposes to amend paragraph (c)(vi) of Rule 703 to add the requirement that a floor broker's clearing agent guarantee orders entrusted on the floor with that floor broker, in addition to transactions and balances carried in the account.

[1] See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993).

[2] In addition, for certain purposes under the SEC Net Capital Rule, certain specialists will be exempt from the application of the rules haircut and undue concentration charges with respect to their specialty securities. *Id.*

[3] "Net liquid assets" is defined in Phlx Rule 703(b).

The text of the proposed rule change is available at the Office of the Secretary, Phlx, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments to received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 11, 1993, the Commission adopted amendments to its rules regarding minimum net capital requirements for broker-dealers. Specifically, the amendments to the SEC Net Capital Rule make all specialists, except options market makers, that previously were exempt from this rule under subparagraph (b)(1), subject to the rule. The amendments to the SEC Net Capital Rule will become effective on April 1, 1994.

The Phlx represents that the amendments to the SEC Net Capital Rule will have the following effects on Phlx specialists: instead of the current minimum net liquid assets requirements under Phlx Rule 703(a) of $50,000 for equity specialists, $75,000 for options specialists, and $100,000 for firms that act as both equity and options specialists, the SEC's minimum net capital requirement of $100,000 for dealer's would apply. As a result, existing paragraphs (iii)–(v) of Phlx Rule 703(a) are proposed to be deleted. Certain aspects of both the SEC Net Capital Rule and Rule 703 remain unchanged. Options market makers, who remain exempt from the net capital rule, continue to be subject to the financial requirements of Phlx Rule 703. New paragraph (a)(iii), which was previously paragraph (a)(vi), requires $25,000 in net liquid assets for market makers without a letter of guarantee; and new paragraph (a)(iv), which was previously paragraph (a)(vii), requires market makers with a letter of guarantee issued by a clearing member organization to maintain positive equity. In addition, Rule 703(a)(ii) continues to require net liquid assets of $25,000 upon admission.

With respect to the proposed notification requirement, new paragraph (v) of Rule 703(a) would require notification to the Exchange if a member organization or participant organization falls below the net capital requirement of the SEC Net Capital Rule or paragraphs (iii) or (iv) of Phlx rule 703(a).[4] Currently, Commission Rule 17a–11 requires, among other things, prompt telegraphic notice to a broker-dealer's designated examining authority, as well as the SEC, when a broker-dealer falls below its minimum net capital requirement pursuant to the SEC Net Capital Rule. This rule does not apply to options market makers, because they are exempt from the SEC Net Capital Rule. The Exchange's proposed notification provision would apply to all member organizations and participant organizations, including options market makers.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest, by amending Phlx Rule 703 to correspond to the Commission's recent amendments to the SEC Net Capital Rule. The Exchange also believes that the requirement that a floor brokers' clearing agent guarantee orders entrusted on the floor with that floor broker should promote just and equitable principles of trade as well as protect investors and the public interest by promoting liquidity and confidence in the credibility of floor broker orders, consistent with Section 6(b)(5) of the Act. In addition, the Exchange believes that the proposed notification requirement should prevent fraudulent and manipulative acts and practices and protect investors and the public interest by providing the Exchange with the ability to respond promptly to such notification, especially respecting options market makers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[4] A similar rule is in effect at the Chicago Board Options Exchange, Inc. ("CBOE"). See CBOE Rule 13.2.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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 public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–Phlx–94–04 and should be submitted by March 25, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5000 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 35–25994]

Filings Under the Public Utility Holding Company Act of 1935 ["Act"]

February 25, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The applicant(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 21, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy Initiatives, Inc. (70–8179)

Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054 ("EII"), an indirect subsidiary of General Public Utilities Corporation, a registered holding company, has filed a post-effective amendment under sections 6(a), 7, 9(a), and 10 of the Act and rule 50(a)(5) thereunder to its application-declaration filed under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rule 45 thereunder.

By order dated September 7, 1993 (HCAR No. 25876) ("Order"), the Commission authorized EII to, among other things, acquire up to 3,000 shares of common stock ("Stock"), for a purchase price of $2,500 per share, of a nonassociate corporation ("Cogen Corp") engaged in the business of developing, owning and operating power projects in the United States and in foreign countries. Power projects may be qualifying facilities, exempt wholesale generators, or foreign utility companies.

In accordance with the Order, EII entered into a stock purchase agreement ("Stock Purchase Agreement") and related agreements and acquired 824 shares of class D voting common stock and 176 shares of class C nonvoting common stock from Cogen Corp. The Stock Purchase Agreement also provides that, subject to receipt of further Commission authorization, EII would purchase up to an additional 400 shares of Cogen Corp. class C nonvoting common stock, in order to provide Cogen Corp. with additional equity capital.

EII now seeks to acquire, from time to time through July 1, 1996, the additional 400 shares of class C nonvoting common stock ("Additional Shares"), $2,500 per share, for $1 million. The proceeds of the sale of the Additional Shares would be used by Cogen Corp. to fund ongoing project development expenses. EII's ownership of the Additional Shares would, together with the 3,000 shares of Stock authorized in the Order, be subject to terms and conditions of a stockholders agreement that delineates the powers of the shareholders of Cogen Corp.

As described in the Order, EII has an obligation to acquire, from time to time through July 1, 1996, an additional 2,000 shares of Stock. As security for that obligation, EII has deposited $2.5 million in cash into an escrow account. However, under the Stock Purchase Agreement, EII may substitute an irrevocable bank letter of credit ("LOC") for the cash escrow. EII represents that use of an LOC for this purpose may be less expensive than cash collateral.

Accordingly, EII proposes to enter into a letter of credit reimbursement agreement with a bank, which would provide an LOC to Cogen Corp. The reimbursement agreement would obligate EII to repay the issuing bank in the event of any draw on the LOC. The LOC would have a maximum fact amount of $2.5 million. Drawings on the LOC would bear interest at a rate not more than 5% above the prime rate as in effect from time to time. EII may be also required to pay fees not to exceed 1% annually of the LOC face amount. The LOC would have a final maturity of not later than July 1, 1996.

Ohio Valley Electric Corporation, et al. (70–8337)

Ohio Valley Electric Corporation ("OVEC") and Indiana-Kentucky Electric Corporation ("Indiana-Kentucky"), both located at P.O. Box 468, Piketon, Ohio 45661 and both electric public-utility subsidiary companies of American Electric Power Company, Inc., a registered holding

company, have filed a declaration under Sections 6(a), 7, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Indiana law requires that permitees of a solid waste landfill in the state satisfy certain financial responsibility standards. To satisfy such standards for its fly ash landfill at the Clifty Creek Plant, Indiana-Kentucky proposes to enter into a reimbursement agreement in connection with the issue of a letter of credit. The letter of credit would not exceed $10 million and would be for a one year term then renewable annually. Drawings under the letter of credit would bear interest at not more than two percent above the bank's prime rate. Indiana-Kentucky may pay an annual fee which would not exceed one percent of the face amount of the letter of credit.

OVEC proposes to indemnify the bank issuing such letter of credit for any payments, or to guarantee the obligation of Indiana-Kentucky to reimburse the bank of such payments. OVEC's obligation to the bank would be on the same terms as Indiana-Kentucky's obligation to the bank. OVEC would charge no fee to Indiana-Kentucky for such indemnity or guaranty.

EUA Energy Investment Corporation (70–8351)

EUA Energy Investment Corporation ("EEIC"), P.O. Box 2333, Boston, Massachusetts 02107, a non-utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed an application under Sections 9(a) and 10 of the Act.

By order dated December 4, 1987 (HCAR No. 24515), as amended by order dated January 11, 1988 (HCAR No. 24515A) (collectively, "Orders"), EUA was authorized to organize and finance a new subsidiary corporation (named NewCo in the Orders, but chartered as EEIC) primarily for the purpose of participating in cogeneration and small power production facilities and in related activities. EEIC also was authorized to conduct certain energy or energy conservation research and to invest up to $2 million in the aggregate on such activities. Prior to acquiring an interest in any new business, EEIC is required to seek further Commission authorization.

EEIC proposes to invest a total of $275,000 to be paid as consideration for the acquisition of 9.9% of the common stock of Quality Power Systems, Inc., a Massachusetts corporation engaged in the manufacture, marketing and sale of uninterruptible power systems, utility interface front-end power supplies and other electric and electronic devices and equipment. EEIC further requests authorization to acquire without additional consideration such additional shares of the common stock of QPS as EEIC from time to time may be entitled to receive to maintain a 9.9% ownership interest in QPS.

EEIC also proposes to provide consulting services directly to QPS.

In accordance with a stock purchase agreement ("Stock Purchase Agreement") entered into on January 24, 1994, EEIC's investment would be used by QPS for the development and marketing of low harmonic distortion Uninterruptible Power Systems ("UPS") manufactured by QPS under a license to QPS by Digital Equipment Corporation ("DEC") pursuant to a license agreement between QPS and DEC. The Stock Purchase Agreement also imposes several affirmative obligations upon QPS to provide EEIC with certain financial and other reports, and it includes several negative covenants restricting the ownership and control of QPS.

The primary purpose of the UPS is to improve the quality of power supplied by an electric utility provider to its customers by reducing harmonic distortion at the interconnection between the utility and its customers. QPS achieves such quality enhancement using DEC's HA6000 product, a system developed by DEC to satisfy new requirements being imposed on power line conditioning equipment and uninterruptible power supplies by International Safety and Electrical Manufacturing Compliance Standards.

It is stated that use of the HA6000 technology will permit electric utilities in the New England region to reduce harmonic distortion in an extremely cost efficient manner by directing corrective attention specifically to customers whose equipment contributes to harmonic distortion at utility interconnections and by providing such customers with the lowest available rates on low maintenance modular units customized to such customers' respective needs. Customers who have no power quality complaints will not be required to contribute to such corrective efforts, yet will benefit from improved power servicing due to anticipated reductions in electric utilities' capacity requirements costs upon implementation of the HA6000 systems.

It is also stated that EEIC and QPS believe that the increasing use of automation for demand side and load management of energy needs and the proliferation of computers and other sensitive electronic equipment used by customers of electric utilities will necessitate enhanced reduction of harmonic feedback into the distribution systems of electric utilities.

Upon Commission approval of the proposed transactions, EEIC will enter into a stockholders agreement with QPS providing for EEIC's designation of one out of six director positions on the board of directors of QPS, with any vacancy in such position to be filled only by a subsequent designee of EEIC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4931 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1952]

United States International Telecommunications Advisory Committee; Meeting

The Department of State announces that an Ad-Hoc Working Group for the ITU Plenipotentiary Conference of the United States International Telecommunications Advisory Committee (ITAC) is holding meetings to prepare for the ITU Plenipotentiary Conference to be held September 19 to October 14, 1994 in Kyoto. Meetings will be held on March 8, April 4 and 26, 1994, at 10:30 am in room 1406, and on May 25, 1994 at 10:30 am in room 1105. All four of these meetings will take place at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agendas of the meetings will include discussions of issues pertaining to the Kyoto Plenipotentiary Conference, preparation for bilateral discussions on conference issues, administrative matters related to U.S. participation in the conference, and any other matters that may arise regarding preparation for the Plenipotentiary Conference.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of those interested in the ITU Plenipotentiary Conference issues, and wish to attend please call 202–647–0201—(fax 202–647–7407) not later 5 days before the meeting. Enter from the C Street Lobby. A picture ID will be required for admittance.

Dated: February 15, 1994.

Earl S. Barbely,

Chairman, U.S. ITAC for ITU-Telecom Sector.

[FR Doc. 94–4972 Filed 3–3–94; 8:45 am]

BILLING CODE 4710–45–M

Office of the Secretary

[Public Notice 1960]

Extension of the Restriction on the Use of United States Passports for Travel To, In, or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travellers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restrictions on the ground that such exemptions were in the national interest. The restriction was extended for additional one year periods on February 18, 1992 and February 23, 1993.

Although armed hostilities have ended, conditions in Iraq remain unsettled and hazardous. Regional conflicts continue in northern Iraq between Kurdish ethnic groups and Iraqi security forces. In southern Iraq, military repression of the Shia communities is severe, rendering conditions unsafe. Iraq's economy was severely damaged during the Gulf War and continues to be affected by the U.N. economic sanctions. Basic modern medical care and medicines may not be available to our citizens in case of emergency.

U.S. citizens and other foreigners working inside Kuwait near the Iraqi border have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for illegal entry into the country. Although our interests are represented by the Embassy of Poland in Baghdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate.

In light of these circumstances, I have determined that Iraq continues to be a country "* * * where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991 who continue to reside there, or to American professional reporters or journalists on assignment there.

The Public notice shall be effective upon publication in the Federal Register and shall expire at the end of one year unless sooner revoked or extended by Public notice.

Dated: February 26, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–4979 Filed 3–3–94; 8:45 am]

BILLING CODE 4710–10–M

Office of the Under Secretary for Economic and Agricultural Affairs

[Public Notice 1954]

Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from Lakehead Pipe Line Company, Limited Partnership (Lakehead), for a permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, to construct, connect, operate, and maintain at the U.S.-Canadian border near Neche, North Dakota a pipeline carrying crude oil and natural gas liquids. Lakehead Pipe Line Company, Limited Partnership, is a Delaware-limited partnership, with its principal office located in Duluth, Minnesota. The proposed new pipeline would be constructed in the right of way occupied by three existing oil pipelines owned and operated by Lakehead.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Donald E. Grabenstetter, Office of International Energy Policy, Department of State, Washington, DC 20520. (202) 647–4557.

Dated: February 7, 1994.

Joan E. Spero,

Under Secretary of State.

[FR Doc. 94–4973 Filed 3–3–94; 8:45 am]

BILLING CODE 4710–07–M

Office of the Assistant Secretary for Economic and Business Affairs

[Public Notice 1953]

Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from MG Industries, Inc., for a permit, pursuant to Executive Order 12847 of May 17, 1993, to construct, connect, operate, and maintain at the U.S.-Mexican border near Otay Mesa Border Station, California, a pipeline carrying liquid argon. MG Industries, Inc. is a Delaware corporation with headquarters in Valley Forge, Pennsylvania, that manufactures and markets industrial gasses. MG Industries is a wholly owned subsidiary of Messer Griesheim GmbH, a German corporation with its principal office in Frankfurt, Germany. The proposed new pipeline would be constructed in the right of way occupied by two existing pipelines carrying liquid oxygen and liquid nitrogen that are owned and operated by MG Industries.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Donald E. Grabenstetter, Office of International Energy Policy, Department of State, Washington, DC 20520. (202) 647–4557.

Dated: February 8, 1994.

Daniel K. Tarullo,

Assistant Secretary of State.

[FR Doc. 94–4974 Filed 3–3–94; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Accelerated Schedule of Duty Elimination for Certain Goods Imported From Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of effective date of previously proclaimed accelerated duty elimination under the United States-Canada Free-Trade Agreement.

SUMMARY: Presidential Proclamation 6579 of July 4, 1993 (58 FR 36839), implemented an accelerated schedule of duty elimination for certain goods originating in the territory of Canada pursuant to the United States-Canada Free-Trade Agreement. Section B of the

Annex to that Proclamation directed the U.S. Trade Representative to specify the effective date for the duty elimination on enumerated goods, to coincide with the date of implementation of the North American Free Trade Agreement (NAFTA), and to publish a notice in the **Federal Register**. The NAFTA entered into force between the United States and Canada on January 1, 1994.

Accordingly, notice is hereby given that the provisions of section B of the Annex to Proclamation 6579 are effective with respect to goods of Canada, under the terms of general note 12 to the Harmonized Tariff Schedule of the United States, that are entered, or withdrawn from warehouse for consumption, on or after January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202–355–3412).

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

[FR Doc. 94–4948 Filed 3–3–94; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 25, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49427.

Date filed: February 22, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 22, 1994.

Description: Application of Great Western Air, Inc., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations, requests authority to engage in interstate and overseas scheduled air transportation of persons, property and mail: Between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any state of the United States or the District of Columbia, or any territory or possession of the United States.

Docket Number: 49181.

Date filed: February 24, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 24, 1994.

Description: Amendment No. 1 to the Application of Sportsflight Airways, Inc. pursuant to Section 401(d)(1) of the Act and subpart Q of the Regulations to engage in interstate and overseas air transportation.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–4925 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: Cities of Aberdeen and Hoquiam, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway construction project in Grays Harbor County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Division Administrator, Federal Highway Administration, 711 South Capitol Way, suite 501, Olympia, WA 98501, telephone: (206) 753–9555; or Gary Demich, District Administrator, District 3, Washington State Department of Transportation, P.O. Box 7440, Olympia, WA 98504, telephone: (206) 357–2659.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Washington State Department will prepare an environmental impact statement (EIS) on a proposal to improve State Route 101 (SR 101) in Grays Harbor County, Washington. The proposed project would select and adopt a new highway alignment through the cities of Aberdeen and Hoquiam. The new alignment would begin at the intersection of State Route 12 (SR 12) and terminate at the intersection with State Route 109 (SR 109), a distance of approximately 8 miles.

This highway improvement is considered necessary to alleviate congestion, decrease delays, and improve safety. The SR 101 corridor through Aberdeen and Hoquiam is the main route between the metropolitan Puget Sound region, the Pacific Ocean beaches and the western Olympic Peninsula, leading to extremely high traffic volumes during peak tourist periods. Due to poor roadway geometrics, inadequate signal coordination, high volumes of port related truck traffic, and under utilization of the designated truck by-pass through the port industrial area, operational conflicts between heavy trucks and other vehicles result in severe congestion and delays. Accident rates are abnormally high through the Central Business District due to conflicts between through traffic and vehicles utilizing on-street parking. There are no alternate routes through the corridor. The proposed improvement would resolve congestion and safety concerns by improving truck access to Grays Harbor port facilities and providing an alternate corridor for through traffic.

Alternatives currently under consideration include (1) no action; (2) limited improvements to the existing alignment, (3) two which would construct a new Hoquiam River Bridge crossing with limited improvements to the existing alignment, (4) three separate new alignment alternatives, and (5) a multi modal alternative. Incorporated into and studied with the various alternatives will be design variations for new bridges over the Wishkah and Hoquiam Rivers and completion of the SR 101/SR 12 Interchange.

Announcements describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies. These will also be sent to affected Indian Tribes, private organizations and citizens who have previously expressed or are known to have interest in this proposal. Scoping meetings will be held in Aberdeen on March 23rd and 24th, 1994. Additional public meetings will be held prior to the release of the Draft EIS on the project. In addition, a public hearing will be held after the release of the Draft EIS to receive public and agency comments on the EIS. Public notice will be given of the time and place of these future meetings and the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

It is important that the full range of issues related to this proposed action be addressed and that all significant issues be identified. To ensure this, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed

action and the EIS should be directed to the FHWA at the address and phone number provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on February 23, 1994.

José M. Miranda,

Environmental Program Manager, Federal Highway Administration, Washington Division.

[FR Doc. 94–4975 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Lafayette and Ray Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Lafayette and Ray Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald Neumann, Program Review Engineer, Federal Highway Administration, Division Office, P.O. Box 1787, Jefferson City, MO 65102 Telephone: (314) 636–7104; or Bob Sfreddo, Division Engineer, Design Division, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102 Telephone: (314) 751–2876.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Missouri Highway and Transportation Department, will prepare an Environmental Impact Statement (EIS) on a proposal to improve State Route 13 in Lafayette and Ray Counties, Missouri. The proposed improvement would involve the reconstruction of Route 13 between the towns of Lexington and Richmond for a distance of approximately 13 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is the replacement of an existing deficient bridge across the Missouri River and the construction of a new interchange with U.S. Route 24. Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; (3) improvement of the existing two-lane roadway to four lanes; (4) constructing a four-lane limited access highway on new location, and (5) constructing a four-lane fully access controlled highway on new location. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

A scoping process has been initiated that is involving all appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings are being held to obtain comments from the local and regional community. The first meeting was held in Lexington in early January and was followed by a second meeting in early February, 1994. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MHTD at the addresses provided above.

Issued: February 18, 1994.

Donald L. Neumann,

Program Engineer, Jefferson City, Missouri.

[FR Doc. 94–4976 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Sumter County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Sumter County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve a segment of U.S. Highway 80 in Sumter County, Alabama. The improvements begin near the Alabama/Mississippi State Line at an existing four-lane road and extend approximately 33 kilometers (20.5 miles) to Alabama State Route (SR) 28 west of the Tombigbee River. U.S. 80 east of SR 28 is a two-lane facility on existing four lane right-of-way.

The improvements to the travel corridor are considered necessary to provide for the existing and projected traffic demand. The type of roadway being considered is a four-lane controlled access freeway. Alternatives under consideration include: (1) Alternate route locations, (2) taking no action, and (3) postponing the action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A scoping meeting will be held in the Hightower Community Center, 615 Second Avenue, York, Alabama. The program will begin at 1:30 p.m. Central Standard Time on Thursday, March 3, 1994. A public involvement meeting will follow the scoping meeting. In addition, a public hearing will also be held. Public notice will be given of the time and place of the meetings and hearings. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 22, 1994.

Bill Van Luchene,

Acting Division Administrator, Montgomery, Alabama.

[FR Doc. 94–4949 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 93–29; Notice 2]

Am-Safe, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

Am-Safe, Inc. (Am-Safe) of Phoenix, Arizona, determined that some of its replacement seat belt assemblies fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard (FMVSS) No. 209, "Seat Belt Assemblies," and filed an appropriate report pursuant to

49 CFR part 573, "Defect and Noncompliance Reports." Am-Safe also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 29, 1993, and an opportunity afforded for comment (58 FR 26032). This notice grants that petition.

Between January 1985 and the date it filed its petition, Am-Safe produced and distributed approximately 100,000 replacement seat belts which did not include the installation and maintenance instructions required by Standard No. 209.

Paragraph S4.1(k) of Standard No. 209, requires that:

> A seat belt assembly or retractor shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle except for a seat belt assembly installed in a motor vehicle by an automobile manufacturer. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles * * *.

In addition, section S.4.1(1) requires that:

> A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened.

Am-Safe supported its petition for inconsequential noncompliance with the following:

No Evidence of Incorrectly Installed Seat Belts

[Am-Safe believes] the simplistic mounting design of these seat belts make [sic] it improbable that any incorrect installations exist. Am-Safe, Inc. is unaware of any suggestions or allegations, in regards to motor vehicle safety, concerning seat belts that were incorrectly installed.

[Am-Safe Sophisticated Part Numbering System

Seat belts are identified by a nine or ten digit part number. A typical seat belt part number is 502293–401–6. The 502293 defines the basic belt configuration such as a retractable or nonretractable lap belt. The –401 specifies the dimensions of [the] web and component cover lengths. The –6 is the color code when applicable. Permanently affixed labels have pertinent information to ensure the proper seat belt is ordered for replacement. This label includes the part number, manufacturing date, and name and phone number of the manufacturer. This accurate numbering system can be confidently used for proper seat belt replacement.

Simple Installation Procedures

The seat belts in question are attached to the vehicle anchorage holes with existing mounting hardware. These assemblies require only one bolt for attachment of the buckle half and one bolt for the attachment of the connector half. The accomplish the installation of a replacement seat belt, the existing seat belt must first be removed from the vehicle. These steps are then reversed for proper installation of the replacement seat belt. The majority of these replacements are performed by individuals acquainted with seat belt installation, i.e.; seat manufacturers, transit but operators, and associated companies [which] perform seat belt installation on a regular basis. In addition, the design and construction characteristics of these seat belts reflect universal practices of operation and maintenance procedures.

Conclusion

There is no evidence that any of the subject seat belts are incorrectly installed. These seat belts have been installed and are currently in service without incident making a recall impractical. The complex part numbering system used by Am-Safe, Inc. leaves little chance for error when ordering a replacement seat belt. In the majority of cases, installation was performed by companies with experienced [personnel] familiar with correct procedures. [In i]nstances where seat belts are knowingly distributed to the general public, Am-Safe, Inc. has always supplied appropriate instructions. [As a] result of this noncompliance, Am-Safe, Inc. now includes these instructions with all seat belts unless otherwise instructed by the vehicle manufactures. In conclusion, Am-Safe, Inc. believes that lack of instructions for seat belts that are currently in service is inconsequential as it relates to motor vehicle safety.

No comments were received on the petition.

With respect to the failure to provide installation instructions, the petitioner has argued that its parts ordering and shipping procedures ensure that the correct replacement parts are received by the dealer. Installation of the belts is a simple procedure, requiring only one bolt for the attachment of the buckle half and one bolt for the attachment of the connector half. These restraints are typically installed by persons who perform replacements on a regular basis. After reviewing these arguments, NHTSA concurs with them.

With respect to the failure to provide usage and maintenance instructions, the petitioner has argued that this information has always been provided with belts distributed to the general public. As for the belts covered by the petition, Am-Safe has concluded that since they are currently in service, lack of instructions for maintenance and use at this point is inconsequential as it relates to safety. With respect to this argument, NHTSA believes it more likely than not that instructions accompanying packaged belts will be discarded once the belts are installed. In addition, similar petitions from vehicle manufacturers have stated that maintenance and use instructions for belts are included in the operator's manuals of the vehicles in which the replacement belts have been installed. Given the fact that all seat belts must conform to Standard No. 209, NHTSA believes that there is such a sufficient similarity between belts of all manufacturers, whether used as original or replacement equipment, that the maintenance and use instructions in any specific vehicle operator's manual will be of general applicability.

For the foregoing reasons, the petitioner has met its burden of persuasion that the noncompliances herein described are inconsequential as they relate to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: February 28, 1994.

Barry Felrice,

Associated Administrator for Rulemaking.

[FR Doc. 94–4916 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the dates and locations of the next meetings and the agendas for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on April 7–8 in Chicago, Illinois. The April 7 portion of the meeting will be held at approximately 3:30 p.m. in a U.S. Customs Service conference room at O'Hare Airport. The April 8 business meeting of the Committee will be held at 9 a.m. at Motorola Corporation, Motorola Campus, 1297 East Algonquin Road, Schaumberg, Illinois.

The April 7 portion of the meeting, which will consist solely of briefings by

Customs officials regarding a pending study of Customs reorganization, will be closed. The portion of the April 8 meeting that will consist of a general discussion by Committee members of proposals for Customs reorganization, and their recommendations, will also be closed.

A subcommittee of the Advisory Committee will meet informally with representatives of the U.S. Customs Service reorganization team in the offices of Michael H. Lane, chairman of the reorganization team, at Customs Headquarters on March 21, 1994 to prepare for the discussion of reorganization at the Chicago session on April 7 and 8. This informal subcommittee meeting will also be closed.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: I hereby determine pursuant to 5 U.S.C. app. 2, 10(d) and Treasury Order No. 101–05 that the premature disclosure of the pending study and any proposals regarding the Customs Service's reorganization, would be likely to significantly frustrate the implementation of a proposed plan to reorganize the Customs Service. Therefore, it is in the public's interest that specific portions of the Committee's next meetings regarding the study and any proposals be closed as permitted by 5 U.S.C. 552b(c)(9)(B).

The Customs Reorganization Team has been soliciting and analyzing ideas for reorganizing the Customs Service to improve its efficiency and the quality of its service. These ideas are highly inchoate and have not received the endorsement of the Commissioner of Customs or the Treasury Department. The premature disclosure of this information would likely initiate speculation about site closings or site reductions resulting in precipitous actions by Customs Service employees and contractors as well as local residents and businesses. The premature disclosure of a proposal to close a site may cause site employees to relocate or resign and local contractors to eliminate services, thus frustrating the Customs Service's ability to later keep a site open when a reorganization plan is implemented.

The preliminary agenda to be considered during the meetings on April 7 and 8 1994 is as follows:

April 7, 1994: 3:30 p.m.: Customs Reorganization Team Findings (Closed Session).

April 8, 1994.

I. Closed Session (9 a.m.).

1. Customs Reorganization Team Findings.

II. Open Session (Approximately 11 a.m.).

1. North American Free Trade Agreement Implementation.

2. Customs Modernization Act Implementation.

2. Briefing and Discussion of U.S. Textile Program after the Uruguay Round with Ms. Rita Hayes, Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, U.S. Department of Commerce.

With the exception of the closed portion indicated, the April 8 meeting is open to the public. However, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the meeting, contact Ms. Theresa Manning at (202) 622–0220 no later than April 1, 1994. Details and confirmation of meeting room and time may be obtained from Ms. Manning.

Dated: March 1, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–5022 Filed 3–3–94; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Monday, March 21, 1994, at Techworld Plaza, 801 I Street, NW., Washington, DC. The meeting will be held in Room 946.

The purpose of the Advisory Committee is to advise the Department on its prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (117C), phone (202) 535–7293, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to March 14, 1994.

Dated: February 17, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–4960 Filed 3–3–94; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Amendment of System of Records—Veterans Mortgage Life Insurance-VA (53VA00)

AGENCY: Department of Veterans Affairs.

ACTION: Amendment of system of records.

Notice is hereby given that the Department of Veterans Affairs (VA) is revising certain paragraphs in the system of records entitled, "Veterans Mortgage Life Insurance-VA" (53VA00) which is set forth on page 959 of the **Federal Register** Publication, "Privacy Act Issuances, 1991 Compilation, Volume II." The System Location, Routine uses of records maintained in the system, Storage, Safeguards, and Retention and Disposal paragraphs are being revised to reflect the transfer of certain responsibilities from a commercial life insurance company to the St. Paul, Minnesota VA Regional Office and Insurance Center and to make other minor changes.

Approval: February 23, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of Amendment to System of Records

1. The system of records identified as 53VA00, "Veterans Mortgage Life Insurance-VA" appearing on page 959 of the **Fedeal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II" is amended by eliminating the references to the Bankers Life Insurance Company of Nebraska. Notice of electronic record storage is added and minor changes to the Safeguards and Retention and disposal paragraphs are included as follows:

53VA00

SYSTEM NAME:

Veterans Mortgage Life Insurance-VA.

SYSTEM LOCATION:

Records (i.e., applications, VA special grant cards, correspondence, records of premium and interest payments and records on death cases) are maintained at the VA Regional Office and Insurance Center, St. Paul Minnesota, and the Benefits Delivery Center, Hines, Illinois. Address locations of VA facilities are listed at VA Apendix 1 at the end of this document.

* * * * *

2. In Routine Uses of records maintained in the system, including categories of users and the purpose of such uses, remove paragraph 5 and redesignate paragraph 6 as paragraph 5.

3. Revise Storage, Safeguards, and Retention and Disposal paragraphs to read as follows

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on automated computer files and on paper documents in manual account folders.

* * * * *

SAFEGUARDS:

All manual records at the VA Regional Office and Insurance Center are maintained in steel file cabinets, and access to the files is limited to authorized personnel only. Information in these records is restricted to those authorized persons on a "need to know" basis. Information on electronic media is protected by 'password' and other system safeguards.

RETENTION AND DISPOSAL:

Inactive mortgage life insurance records are placed in a closed file for seven years after the insured's death or until his/her 77th birthday, whichever comes first. Annually, those closed files are reviewed and destroyed as applicable. A record is considered inactive when any one of the following occurs: Mortgage paid in full, insured's 70th birthday, termination of veterans' ownership of the property securing the loan, payment of premiums discontinued by the veteran, entire contract or agreement discontinued, or failure to timely submit required statement.

* * * * *

[FR Doc. 94–4961 Filed 3–3–94; 8:45 am]

BILLING CODE 8320–01

Advisory Committee on Women Veterans; Availability of Biennial Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the biennial Report of the Department of Veterans Affairs' Advisory Committee on Women Veterans for 1992 has been issued. The Report summarizes activities of the Committee on matters relative to women veterans, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540; and Department of Veterans Affairs, Office of Environmental Medicine and Public Health, Techworld Plaza—room 436, 801 I Street, NW., Washington, DC 20001.

Dated: February 23, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–4959 Filed 3–3–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 43
Friday, March 4, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION[1]

FCC To Hold Open Commission Meeting, Tuesday, March 8, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, March 8, 1994, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Application of Open Network Architecture (ONA) and Nondiscrimination Safeguards to GTE Corporation (CC Docket No. 92–256). Summary: The Commission will consider adoption of a *Report and Order* addressing whether to apply the ONA requirements and nondiscrimination safe-guards to GTE.

2—Common Carrier—Title: Rules and Policies Regarding Calling Number Identification Service-Caller ID (CC Docket No. 91–281). Summary: The Commission will consider adoption of a *Report and Order and Further Notice of Proposed Rulemaking* to establish federal policies and rules concerning interstate calling number identification services.

3—Office of Engineering and Technology—Title: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92–9, RMs–7981 and 8004). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* addressing issues raised in the Petitions for Clarification and Reconsideration of the Second Report and Order and Third Report and Order.

4—Office of Plans and Policy—Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding (pp Docket No. 93–253). Summary: The Commission will consider adoption of a *Second Report and Order* to prescribe regulations concerning competitive bidding procedures to select from among two or more mutually exclusive applications for initial licenses.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

[1] Note: The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meeting. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–5094 Filed 3–2–94; 11:47 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:03 p.m. on Tuesday, March 1, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's supervisory activities.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: Sale of Performing Commercial Real-Estate Secured Loans, Various Failed Depository Institutions Nationwide, Case No. 000–00033–94–BOD

Recommendation regarding an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: March 2, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–5116 Filed 3–2–94; 1:04 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published in the Federal Register on March 3, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, March 9, 1994.

CHANGES IN THE MEETING: Change in the status of an item: Publication for comment of proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding discounts on products and services for customers obtaining traditional banking products from affiliates has been moved from the Summary Agenda to the *Discussion Agenda.*

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 2, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–5108 Filed 3–2–94; 11:48 am]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on March 10, 1994. The meeting will commence at 1 p.m.

PLACE: San Francisco Hilton and Towers, 333 O'Farrell Street, Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of January 28, 1994 Meeting.
3. Consider and Act on Report from the Director of the Offices of Program Services and Program Evaluation, Analysis and Review.

a. Consideration of and Possible Action on January 29, 1988, Board Resolution Adopting Corporate Policy Regarding Individual Grantees' Failure to Produce Materials Requested By the Corporation.

4. Report on the Field Process to Consider Matters Pertaining to Monitoring, Evaluation and Support.

5. Consider and Act on Options Available to the Corporation With Regard to the National Community Services Act.

6. Report on the Request for Proposals for Funding of Law School Clinical Programs Pursuant to the Resolution Adopted by the Board of Directors on January 28, 1994.

7. Presentations By:

a. Jose Padilla, Executive Director, California Rural Legal Assistance, Regarding Issues Affecting the Delivery of Legal Services to Migrant Farmworkers;

b. Mary Trimble-Norris, Deputy Director, California Indian Legal Services, Regarding Issues Affecting the Delivery of Legal Services to Native Americans; and

c. Mary Burdick, Executive Director, the Western Center on Law and Poverty, Incorporated, Regarding Service Delivery and Program Funding.

8. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–5073 Filed 3–1–94; 4:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on March 10, 1994. The meeting will commence at 3 p.m.

PLACE: San Francisco Hilton and Towers, 333 O'Farrell Street, Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.

2. Approval of Minutes of January 27, 1994 Meeting.

3. Presentations by Client Representatives Regarding Suggested Client Initiatives for Fiscal Years 1994 and 1995.

a. Ollie Cantos, Chair, American Federation of the Blind, Los Angeles, California.

b. Ronald Rosello, President, National Organization of Client Advocates.

4. Receipt and Review of Fiscal Year 1993 Audited Financial Statements for the Corporation.

5. Review of the Committee's Budget Review Guidelines, Including the Schedule of Committee Tasks and Events During Each Calendar Year.

6. Review and Possible Action on Expense and Revenue Report on the Corporation's Fiscal Year 1994 Consolidated Operating Budget Through January 31, 1994.

7. Consideration of Staff Report on the Corporation's Budget Request for Fiscal Year 1995.

8. Committee Chair's Report on Her March 8, 1994 Appearance Before the House Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies.

9. Consideration of and Possible Action on Submission of Additional Information to Congress Regarding the Corporation's Fiscal Year 1995 Budget Request.

10. Discussion of and Possible Action Regarding Committee Scheduling for Consideration of the Corporation's Fiscal Year 1996 Budget Mark and Budget Request.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: March 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–5074 Filed 3–1–94; 4:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on March 11, 1994. The meeting will commence at 1 p.m.

PLACE: San Francisco Hilton & Towers, 333 O'Farrell Street, the Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session(s) held on January 8, 1994 and January 28, 1994. The Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) (5), (6), and (7)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a), (d) (e), and (f)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC, 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.

2. Approval of Minutes of January 28, 1994 Meeting.

3. Welcoming Remarks Offered by Quinton Kopp, State Senator, California Legislature.

4. Welcoming Remarks Offered by Margaret Morrow, President, California State Bar Association, and Laurie Zelon, Chair, Standing Committee on Legal Aid to Indigent Defendants, American Bar Association.

5. Presentation by Members of the California Legal Services Community.

6. Presentation by Richard Taylor, Jr., Chair, Project Advisory Group.

7. Chairman's and Members' Reports.

8. Consider and Act on Operations and Regulations Committee Report.

9. Consider and Act on Provision for the Delivery of Legal Services Committee Report.

a. Consideration of and Possible Action on January 29, 1988 Board of Directors Resolution Adopting Corporate Policy Regarding Individual Grantees' Failure to Produce Materials Requested by the Corporation.

10. Consider and Act on Audit and Appropriations Committee Report.

11. Consider and Act on Presidential Search Committee Report.

12. President's Report.

13. Inspector General's Report.

Closed Session:

14. Approval of Minutes of Executive Session of January 8, 1994.

15. Approval of Minutes of Executive Session Held on January 28, 1994.

16. Consultation by Board with the President on Internal Personnel and Operational Matters.

17. Consider and Act on Internal Personnel and Operational Matters.

18. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.

Open Session:

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[1] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Board meeting(s).

19. Public Comment.
20. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–5075 Filed 3–1–94; 4:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on March 11, 1994. The meeting will commence at 9 a.m. It is anticipated the substantive portion of the open session (i.e., deliberation of agenda item number 5) will commence at approximately 10 a.m.

PLACE: San Francisco Hilton and Towers, 333 O'Farrell Street, Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING: Open, except that part of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, the Office of Administration, and the Office of Human Resources/Equal Opportunity, the four offices of the Corporation under the Committee's purview. Finally, the Committee will consider for approval the minutes of the executive session(s) held on January 27, 1994. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a), (e), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.

Closed Session:

2. Approval of Minutes of January 27, 1994 Executive Session.
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party.
4. Consider and Act on Internal Personnel and Operational Matters.

Open Session: (Resumed)

5. Approval of Minutes of January 27, 1994 Meeting.
6. Develop, Consider and Act on Plans Related to Reauthorization of the Corporation.
7. Consider and Act on Proposed Changes to the Corporation's Bylaws.
8. Consider and Act on Status Report on the Regulation Reform Effort.
9. President's Report.
10. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–5076 Filed 3–1–94; 4:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Presidential Search Committee Meeting

TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Presidential Search Committee will be held on March 12, 1994. The meeting will commence at 9 a.m.

PLACE: San Francisco Hilton and Towers, 333 O'Farrell Street, Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING: Open, except that part of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will, with its Advisory Committee, consider prospective candidates for the position of President of the Corporation. In addition, the Committee will consider for approval the minutes of the executive session(s) held on January 28, 1994.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2) and (6)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a) and (e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of January 28, 1994 Meeting.

Closed Session:

3. Approval of Minutes of January 28, 1994 Execution Session.
4. Consider, With Advisory Committee, Candidates for the Position of President of the Corporation.

Open Session:

5. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–5077 Filed 3–1–94; 4:46 pm]

BILLING CODE 7050–01–M

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[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1 p.m., Wednesday, March 9, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Proposed Rule: Request for Comment: Section 701.21, NCUA's Rules and Regulations: Prohibited Fees.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–5091 Filed 3–2–94; 10:04 am]

BILLING CODE 7535–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATES: The meeting will be held Wednesday, March 23, 1994, at 10 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: February 28, 1994.

Lester M. Hunkele III,

Executive Director.

[FR Doc. 94–5162 Filed 3–2–94; 3:30 pm]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of March 7, 1994.

An open meeting will be held on Wednesday, March 9, 1994, at 9 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Wednesday, March 9, 1994, at 9 a.m., will be:

1. Consideration of a proposed release regarding the application of the antifraud provisions of the federal securities laws to municipal securities issuers and other market participants in connection with both primary offerings and continuing disclosure to the secondary market. For further information, please contact Ann D. Wallace at (202) 272–7282, Amy Meltzer Starr at (202) 272–3654, Vincent W. Mathis at (202) 272–3968, Division of Corporation Finance; Janet W. Russell-Hunter at (202) 504–2418, Division of Market Regulation.

2. Consideration of whether to propose amendments to Rule 15c2–12, which would make it unlawful for a broker, dealer, or municipal securities dealer (a) to act as an underwriter of an issue of municipal securities unless the issuer has agreed to provide annual financial information and notices of material events to a nationally recognized municipal securities information repository and (b) to recommend the purchase or sale of such a municipal security without having previously reviewed that information. For further information, please contact Catherine McGuire, Janet W. Russell-Hunter at (202) 504–2418, Division of Market Regulation; Amy Meltzer Starr at (202) 272–3654, Division of Corporation Finance.

3. Consideration of a proposed release amending Rule 10b–10 to require confirmation disclosure of: (a) The mark-up and mark-down in connection with a riskless principal transaction in debt securities, other than U.S. savings bonds and municipal securities; (b) the unrated status of a debt security; (c) the mark-up and mark-down in connection with a transaction in a small-cap NASDAQ or regional exchange-listed security; (d) the fact that a broker-dealer is not a member of SIPC; and (e) enhanced yield information with respect to collateralized debt securities.

In addition, consideration will be given to a proposed rule requiring confirmation disclosure of: (a) The mark-up and mark-down in connection with riskless principal transactions in municipal securities; and (b) the unrated status of a municipal security. For further information, please contact C. Dirk Peterson at (202) 504–2418, Division of Market Regulation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2300.

Dated: March 2, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–5180 Filed 3–2–94; 3:49 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 43
Friday, March 4, 1994

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4834-5]

National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution (Stage I)

Correction

In proposed rule document 94-2695 beginning on page 5868 in the issue of Tuesday, February 8, 1994 make the following corrections:

§§ 63.422 and 63.423 [Corrected]

1. On page 5889, in the first column, in § 63.422(b), in the third line, and in § 63.423 in the last line, "February 8, 1997." should read (3 years after date of publication of the final rule in the **Federal Register**)".

§ 63.424 [Corrected]

2. On the same page, in the second column, in § 623.424(b)(2), in the last line, "August 8, 1994." should read "(180 days after date of publishing of final rule in the **Federal Register**.)"

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-4808-8]

National Emission Standards for Hazardous Air Pollutants Schedule for the Promulgation of Emission Standards Under Section 112 (e) of the Clean Air Act Amendments of 1990

Correction

In notice document 93-29513 beginning on page 63941 in the issue of Friday, December 3, 1993 make the following correction:

On page 63941, in the second column, in the **EFFECTIVE DATE:**, "December 3, 1994." should read "December 3, 1993."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93F-0428]

PPG Industries, Inc.; Filing of Food Additive Petition

Correction

In notice document 94-60 appearing on page 590 in the issue of Wednesday, January 5, 1994 make the following corrections:

On page 590:

1. In the first column, the docket heading should read as set forth above.

2. In the second column, under the heading **ADDRESSES:**, in the fourth line, "rm. 10023," should read " rm. 1-23,".

3. In the same column, under the heading **FOR FURTHER INFORMATION CONTACT:**, in the second line, "(HFS09216)," should read "(HFS-216)," and the last line, should read "202-254-9500."

4. In the same column, under the heading **SUPPLEMENTARY INFORMATION:**, in the 9th line, "§ 1A176.200" should read "§ 176.200" and in the 11th line, "§ 1A176.210" should read "§ 176.210".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD 87-016b]

RIN 2115-AC69

Emergency Position Indicating Radio Beacons and Visual Distress Signals for Uninspected Vessels

Correction

In proposed rule document 94-3519 beginning on page 8100 in the issue of Thursday, February 17, 1994 make the following corrections:

1. On page 8101, in the first column, in the first line, "EPIR" should read "EPIRB".

§ 25.26-10 [Corrected]

2. On page 8104, in the first column, in § 25.26-10(c)(1), in the second line, "minutes" should read "miles".

BILLING CODE 1505-01-D

federal register

Friday
March 4, 1994

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–90–201]

Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended, prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE or Department) to administer an energy conservation program for these products. The National Appliance Energy Conservation Act amendments require DOE to consider amending the energy conservation standards for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters and fluorescent lamp ballasts; and to consider establishing energy conservation standards for television sets.

DATES: Written comments on the proposed rule must be received by the Department by May 18, 1994. The Department requests 10 copies of the written comments and, if possible, a computer disk.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, beginning at 9:30 a.m. on April 5, 6 and 7, 1994.

Requests to speak at the hearing must be received by the Department no later than 4 p.m., March 25, 1994. Copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., March 29, 1994. The DOE panel will read the statements in advance of the hearing and would appreciate the oral presentations to be limited to a summary of the statement. The length of each oral presentation is limited to 15 minutes.

ADDRESSES: The hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC. Written comments, oral statements, and requests to speak at the hearing are to be submitted to U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–431, Energy Conservation Program for Consumer Products, Docket No. EE–RM–90–201, room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–7140.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding see Section VI, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law 95–619, by the National Appliance Energy Conservation Act, Public Law 100–12, by the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486 [1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer product classified by the Secretary of Energy. Section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology, is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to produce test results that measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. Section 323 (b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323 (d)(1). Test procedures appear at 10 CFR part 430, subpart B.

The Federal Trade Commission is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bears a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the Federal Trade Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions, or is not economically feasible. In such a case, the Federal Trade Commission must require a different useful measure of energy consumption. Section 324(c). At the present time there are Federal Trade Commission rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, refrigerators, refrigerator-freezers and freezers, central air conditioners and central air conditioning heat pumps, and fluorescent lamp ballasts. 44 FR 66475, November 19, 1979, 52 FR 46888, December 10, 1987, and 54 FR 28031, July 5, 1989.

For each of the 12 covered products, the Act prescribes an initial Federal energy conservation standard. Section 325(b)-(h). The Act establishes dates of applicability for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by the Department within 3 to 10 years, also depending on the product. Section 325(b)-(h). After the specified period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency of a covered product. Section 325(l)(1). The Department's current review of standards is for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters and fluorescent lamp ballasts and is considering establishing energy conservation standards for television sets. Section 325(g)(4)(A).

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(l)(2)(A).

Section 325(l)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

In addition, section 325(l)(2)(B)(iii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that "the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure* * *."

Section 327 of the Act addresses the effect of Federal rules on State laws or regulations concerning testing, labeling, and standards. Generally, all such State laws or regulations are superseded by the Act. Section 327(a)-(c). Exemptions to this general rule include: (1) State standards prescribed or enacted before January 8, 1987, and applicable to appliances produced before January 3, 1988 (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (Section 327(b)(3) and (f)(1)-(4)); (3) State regulations banning constant burning pilot lights in pool heaters (Section 327(b)(4)); and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product (Section 327(b)(6) and 327(c)).

b. Background

The National Energy Conservation Policy Act required DOE to establish mandatory energy efficiency standards for each of the 13 covered products.[2] These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

The National Energy Conservation Policy Act provided, however, that no standard for a product be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

The National Appliance Energy Conservation Act, which became law on March 17, 1987, amended the Energy Policy and Conservation Act in part by: redefining "covered products" (specifically, refrigerators, refrigerator-freezers, and freezers were combined into one product type from two; humidifiers and dehumidifiers were deleted; and pool heaters were added); establishing Federal energy conservation standards for 11 of the 12 covered products; and creating a schedule, according to which each standard is to be reviewed to determine if an amended standard is required.

The National Appliance Energy Conservation Amendments of 1988, which became law on June 28, 1988, established Federal energy conservation standards for fluorescent lamp ballasts. These amendments also created a review schedule for DOE to determine if any amended standard for fluorescent lamp ballasts is required.

The Energy Policy Act of 1992, which became law on October 24, 1992, addressed various commercial appliances and equipment.

As directed by the Act, DOE published an advance notice of proposed rulemaking with a 75-day comment period that ended December 12, 1990, for the eight products subject to today's rulemaking. 55 FR 39624, September 28, 1990. (Hereafter referred to as the September 1990 advance notice). The September 1990 advance notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking. The Department invited comments and data on the accuracy and feasibility of the planned methodology and encouraged interested persons to recommend improvements or alternatives to the Department's approach. The comments in response to the advance notice are addressed in Sections II and III of this notice.

II. General Discussion

a. Energy Descriptors

As discussed above, the Act established initial energy conservation standards for all of the covered products except television sets. Some of these standards were of a prescriptive form, such as the requirement of a no heat dry option for dishwashers, and others were performance standards, stated in terms of an energy descriptor, such as seasonal energy efficiency ratio for central air conditioners, annual fuel utilization factor for furnaces, etc. The intent of these standards, and the subsequent required DOE analyses and rulemaking regarding amending the standards, is to save energy. In conducting rulemakings and analyses required by the Act to determine if standards should be amended, the Department previously determined that the form of a standard may need to change in order to evaluate the efficiency standards. For example, the final rule issued for dishwashers changed the standard from the initial prescriptive standard to a performance standard based on an energy descriptor. 56 FR 22250, May 14, 1991. Additionally, the Department has determined in this rulemaking that energy descriptors may need to be changed when it is found they do not account for all of the energy or all types of energy consumed by an appliance. Not to change these energy descriptors would result in an incomplete analysis and could lead to standards being met by utilizing unaccounted energy resulting in products that might satisfy the energy descriptor but result in little or no total energy savings. Examples of unaccounted energy are the pilot light energy of a pool heater which is not accounted for by the current energy descriptor of Thermal Efficiency or the electrical fan energy of a gas furnace which is not accounted for by the current energy descriptor of the annual fuel utilization factor. Accordingly, the Department is proposing in today's notice to change the energy descriptors of the initial standards for direct heating equipment, mobile home furnaces, and pool heaters.

b. Test Procedures

For each product discussed in today's proposed rulemaking there is an applicable DOE test procedure to evaluate its energy efficiency.

A Notice of Proposed Rulemaking that would amend the test procedures for mobile home furnaces, direct heating equipment, and pool heaters was published in the **Federal Register** on August 23, 1993 (58 FR 44538); in addition, another Notice of Proposed

[2] The consumer products covered by the National Energy Conservation Policy Act included: Refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

Rulemaking which includes amendments to the test procedures for clothes washers, water heaters, ranges and ovens is being published.

c. Technological Feasibility

1. General

For those products and classes of products discussed in today's notice, DOE believes that the efficiency levels analyzed, while not necessarily being realized in production, are technologically possible. The technological feasibility of the design options are addressed in the product-specific discussion. The Department's criteria for evaluating design options for technological feasibility are that the design options are already in use by the respective industry, or that research has progressed to the development of a prototype.

2. Maximum Technologically Feasible Levels

The Act requires the Department, in considering any new or amended standards, to consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." (Section 325 (l)(2)(A)). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible (max tech) design option was identified. The max tech level is one that can be carried out by the addition of design options, both commercially feasible and prototypes, to the baseline units.[3] The Department believes that in identifying the max tech level a unit must be capable of being assembled, but not necessarily mass produced, by the effective date of the amended standards. Manufacturing ability is determined under economic justification. For example, in the November 1989 Final Rule, DOE concluded that evacuated panels for refrigerators was a technically feasible design option since refrigerators had been produced on a limited scale with this technology included. However, DOE concluded that this technology was not economically justified because the chemical industry would not be able to make sufficient quantities of the raw materials commercially available by the effective date of the standard.

The max tech levels were derived by adding energy-conserving engineering design options to the respective classes in order of decreasing consumer payback. For example, the max tech level for room air conditioners includes higher efficiency fan motors, which were added early, and variable speed compressors, which were added later because of their slower payback. A complete discussion of each max tech level, and the design options included in each, is found in the *Engineering Analysis*. See Technical Support Document, Chapter 3.

Tables 2–1 through 2–8 present the Department's max tech performance levels for all classes of the subject products:

TABLE 2–1.—ROOM AIR CONDITIONER MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Energy efficiency ratio
With louvered sides less than 6,000 Btu	13.0
With louvered sides 6,000 to 7,999 Btu	12.1
With louvered sides 8,000 to 13,999 Btu	13.5
With louvered sides 14,000 to 19,999 Btu	13.6
With louvered sides 20,000 and more Btu	11.4
Without louvered sides less than 6,000 Btu	12.6
Without louvered sides 6,000 to 7,999 Btu	11.7
Without louvered sides 8,000 to 13,999 Btu	13.0
Without louvered sides 14,000 to 19,000 Btu	13.1
Without louvered sides 20,000 and more Btu	11.0
With reverse cycle, and with louvered sides	13.2
With reverse cycle, without louvered sides	12.7

TABLE 2–2.—WATER HEATER MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Energy factor
Gas	.687 − (.001707 × Measured Storage Volume (in gals.)).
Oil	.835 − (.001707 × Measured Storage Volume (in gals.)).
Electric	2.597 − (.001172 × Measured Storage Volume (in gals.)).
Gas instantaneous.	.897.

TABLE 2–3.—DIRECT HEATING EQUIPMENT MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Annual efficiency
Gas wall fan type up to 42,000 Btu/hour	89.2
Gas wall fan type over 42,000 Btu/hour	89.9
Gas wall gravity type up to 10,000 Btu/hour	81.0
Gas wall gravity type over 10,000 Btu/hour up to 12,000 Btu/hour	81.7
Gas wall gravity type over 12,000 Btu/hour up to 15,000 Btu/hour	82.1
Gas wall gravity type over 15,000 Btu/hour up to 19,000 Btu/hour	82.9
Gas wall gravity type over 19,000 Btu/hour up to 27,000 Btu/hour	83.3
Gas wall gravity type over 27,000 Btu/hour up to 46,000 Btu/hour	83.8
Gas wall gravity type over 46,000 Btu/hour	84.4
Gas floor type up to 37,000 Btu/hour	88.6
Gas floor type over 37,000 Btu/hour	90.0
Gas room type up to 18,000 Btu/hour	85.9
Gas room type over 18,000 Btu/hour up to 20,000 Btu/hour	87.3
Gas room type over 20,000 Btu/hour up to 27,000 Btu/hour	88.1
Gas room type over 27,000 Btu/hour up to 46,000 Btu/hour	88.9
Gas room type over 46,000 Btu/hour	89.7

TABLE 2–4.—MOBILE HOME FURNACE MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Annual efficiency
Gas-fired	89.5
Oil-fired	85.8

TABLE 2–5.—KITCHEN RANGE AND OVEN MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Annual energy use
Electric oven, self-cleaning	209.2 kWh.
Electric oven, non-self-cleaning	157.3 kWh.
Gas oven, self-cleaning	1.42 MMBtu.
Gas oven, non-self-cleaning	1.07 MMBtu.
Microwave oven	228.2 kWh.
Electric cooktop, coil element	257.7 kWh.

[3] The baseline unit is the most commonly used combination of engineering design options which are found in appliances that meet the existing National Appliance Energy Conservation Act standards except for television sets where no National Appliance Energy Conservation Act standard exists. In the case of television sets, the baseline is represented by the typical 19/20" television with electronic tuning and remote control.

TABLE 2–5.—KITCHEN RANGE AND OVEN MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS—Continued

Product class	Annual energy use
Electric cooktop, smooth element	258.5 kWh.
Gas cooktop	1.6274 MMBtu.

TABLE 2–6.—POOL HEATER MAXIMUM TECHNOLOGICALLY FEASIBLE LEVEL

Product class	Annual efficiency
Gas-fired	95.7

TABLE 2–7.—FLUORESCENT LAMP BALLAST MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Efficacy factor
One F40 lamp	2.50
Two F40 lamp	1.28
Two F96 lamp	0.72
Two F96HO lamps	0.50
Three F40 lamps	0.87
Four F40 lamps	0.67
One F32T8 lamp	3.17
Two F32T8 lamps	1.58
Three F32T8 lamps	1.06
Four F32T8 lamps	0.76

TABLE 2–8.—TELEVISION SET MAXIMUM TECHNOLOGICALLY FEASIBLE LEVEL

Product class	Annual energy use (kWh/yr.)
Color 19″–20″ electronically tuned	138.5

The Department believes that these are the max tech levels from an engineering analysis standpoint. Each of the levels was evaluated in accordance with the economic justification factors specified in the Act to determine economic justification.

The Department evaluated each max tech level to determine if it would be economically justified at the time the standards would become effective. The Department rejected energy conservation standards that had unacceptable impacts on consumers or manufacturers (e.g., unusually long payback periods and substantially adverse impacts on manufacturers' returns on equity).

d. Energy Savings

1. Determination of Savings

The Department forecasted energy consumption through the use of the Lawrence Berkeley Laboratory Residential Energy Model, which forecasted energy consumption over the period of analysis for candidate standards and the base case. The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standard's case and the base case. The base case represents the forecasts of outputs, e.g., prices, operating expenses, energy consumption, shipments, and manufacturer impacts in the absence of new or amended standards.

The Lawrence Berkeley Laboratory Residential Energy Model was used by DOE in previous standards rulemakings. The Lawrence Berkeley Laboratory Residential Energy Model is explained in the Technical Support Document accompanying this notice. (See Appendix B to that document for a detailed discussion of the Lawrence Berkeley Laboratory Residential Energy Model.) The Lawrence Berkeley Laboratory Residential Energy Model contains algorithms to project average efficiencies, usage behavior, and market shares for each product.

COMMEND is the Commercial Energy End-Use Model. It was developed by the Electric Power Research Institute, to characterize energy end-use in the commercial sector. For this rulemaking, the Commercial Energy End-Use Model is being used to evaluate more stringent standards on fluorescent lamp ballasts, which are found principally in the commercial sector of the economy.

The market share calculations contain the following steps: potential purchasers may purchase any competing technology within an end-use, or none. For room air conditioners, fluorescent lamp ballasts, and television sets, the decision to purchase or not is modeled, and the fraction of the total that chooses each class, e.g., F40T12 lamps, F96T12 lamps, etc., is specified exogenously. For the other products, along with the considerations above, the choice of fuel is modeled. Long-term market share elasticities have been assumed with respect to equipment price, operating expense, and income. The effects of standards are expected to be lower operating expense and increased equipment price. The percentage changes in these quantities are used, together with the elasticities, to determine changes in sales volumes resulting from standards. Higher equipment prices will decrease sales volumes, while lower operating expenses will increase them. The net result depends on the standard level selected, and associated equipment prices and operating expenses.

The Lawrence Berkeley Laboratory Residential Energy Model and the Commercial Energy End-Use Model (for ballasts only) are used to project energy use over the relevant time periods for seven of these products with and without amended standards, and, in the case of televisions, with and without standards. By comparing the energy consumption projection at alternative standard levels with the legislated standards, the Department estimated the amount of energy projected to be saved during the period 1996–2030.[4] The energy saved is expressed in quads, i.e., quadrillions of British thermal units (Btu). With respect to electricity, the savings are quads of source or primary energy, which is the energy necessary to generate and transmit electricity. The Act defines "energy use" as the quantity of energy directly consumed by a consumer product at point of use. This is generally called "site" energy, as opposed to "source" energy. There are major differences between these types of energy. From data that remains rather constant over the years, the amount of electrical energy consumed at the site is less than one-third of the amount of source energy that is required to generate and transmit the site electrical energy.[5] Therefore, it is important to identify whether the electricity involved is site or source energy.

The Lawrence Berkeley Laboratory Residential Energy Model projections are dependent on many assumptions. Among the most important are responsiveness of household appliance purchasers to changes in residential energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances. The Commercial Energy End-Use Model projections are dependent upon changes in commercial energy prices, future construction of

[4] Lawrence Berkeley-Laboratory Residential Energy Model and the Commercial Energy End-Use Model were programmed to analyze a single standard level or alternate standard levels over the entire period. That is, the fact that a standard might be revised during subsequent rulemakings was not considered by the model. The Department believes that it is not possible to predict what result such reviews may have, and therefore it would be speculative to model any particular result. Therefore, for purposes of this rulemaking, each standard level that was analyzed was projected to have been in place from the time of implementation to the year 2030.

[5] Energy Information Administration, Electric Power Annual 1987, Tables 25 and 82, DOE/EIA 0348(87), 1987.

commercial floorspace, responsiveness of building owners to future energy and equipment prices and to utility demand-side management programs, and options for improving the energy efficiency of lighting. As is the case with any complicated computer model simulation, the validity of the outputs is critically dependent on the inputs.

2. Significance of Savings.

Under section 325(l)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. While the term "significant" has never been defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1406 (DC Cir. 1985), concluded that Congressional intent in using the word "significant" was to mean "non-trivial." *Id.* at 1373.

e. Rebuttable Presumption

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. Section 325(l)(2)(B)(iii) states:

"If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified."

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then it is presumed that such standard is economically justified.[6] This presumption of economic justification can be rebutted upon a proper showing.

f. Economic Justification

As noted earlier, Section 325(l)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

[6] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures. Therefore, the consumer is assumed to be an "average" consumer as defined by the DOE test procedures. Consumers that use the products less than the test procedure assumes will experience a longer payback while those that use them more than the test procedure assumes will have a shorter payback.

1. Economic Impact on Manufacturers and Consumers

The engineering analysis identified improvements in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per-unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

To assess the likely impacts of standards on manufacturers, and to determine the effects of standards on different-sized firms, the Department used a computer model that simulated hypothetical firms in the eight industries under consideration. This model, the Lawrence Berkeley Laboratory Manufacturer Impact Model, is explained in the Technical Support Document. *See* Technical Support Document, Appendix C. The Lawrence Berkeley Laboratory Manufacturer Impact Model provides a broad array of outputs, including shipments, price, revenue, net income, and short- and long-run returns on equity. An "Output Table" lists values for all these outputs in the base case and in each of the standards cases under consideration. It also gives a range for each of these estimates. A "Sensitivity Chart" shows how returns on equity would be affected by a change in any one of the model's nine control variables.

For consumers, measures of economic impact are the changes in purchase price and annual energy expense. The purchase price and annual energy expense, i.e., life-cycle cost, of each standard level are presented in Chapter 6 of the Technical Support Document. Under section 325 of the Act, the life-cycle cost analysis is a separate factor to be considered in determining economic justification.

2. Life-cycle Costs.

One measure of the effect of proposed standards on consumers is the change in operating expense as compared to the change in purchase price, both resulting from standards. This is quantified by the difference in the life-cycle costs between the base and standards cases for the appliance classes analyzed. The life-cycle cost is the sum of the purchase price and the operating expense, including installation and maintenance expenditures, discounted over the lifetime of the appliance.

The life-cycle cost was calculated for the range of efficiencies in the Engineering Analysis for each class in the year standards are imposed, using real consumer discount rates of 2, 6, and 10 percent. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. Energy price forecasts are taken from the 1991 Annual Energy Outlook of the Energy Information Administration. (DOE/Energy Information Administration—0383(91)). Appliance usage inputs are taken from the relevant test procedures.

3. Energy Savings

While the significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected savings that are expected to result directly from revised standards. The Department used the Lawrence Berkeley Laboratory Residential Energy Model results, discussed earlier, in its consideration of total projected savings. The savings for the eight products are provided in Section IV of this notice.

4. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products and design options, the Department tried to eliminate any degradation of utility or performance in the eight products under consideration in this rulemaking. That is, to the extent that comments, or the Department's own research, indicated that a product included a utility or performance-related feature that affected energy efficiency, a separate class with a different efficiency standard was created for that product. In this way, the Department attempted to minimize the impact of this factor as a result of the standards that were analyzed.

5. Impact of Lessening of Competition

It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department studied the affected appliance industries to determine their existing concentrations, levels of competitiveness, and financial performances. This information will be sent to the Attorney General. See Technical Support Document, Chapter 7. The Department has also provided the Attorney General with copies of this notice and the Technical Support Document for her review.

6. Need of The Nation to Conserve Energy

The results of the environmental effects from each standard level for each product will be reported under this factor in the product specific discussion (Section IV) of this notice.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. The Secretary is seeking comments on two issues which may be considered in this rulemaking. The issues are (1) the incremental impact of appliance conservation standards on energy use, consumers, manufacturers and other factors (See the discussion regarding rebuttable presumption under General Analytical Comments) and, (2) the extent to which any proposed national efficiency standard is likely to disproportionally affect identifiable groups of consumers and whether the analysis should be modified to consider such impacts in the selection of efficiency standard levels (See the discussion regarding other comments under Product-Specific Comments for Direct Heating Equipment).

III. Discussion of Comments

The Department received 90 written comments in response to the September 1990, advance notice. These comments addressed all aspects of the analysis. In this section, the Department will present discussions of the general analytical issues raised by the comments, followed by discussions of the product-specific issues.

a. General Analytical Comments

Discount Rates

The Department's plans to use a 7 percent discount rate in the standards' analyses drew more comments than any other issue. (American Council for an Energy Efficient Economy, No. 6 at 6; Public Citizen, No. 7 at 4; Wayne Goode, No. 8 at 1; Ohio Sierra Club, No. 11 at 1; Natural Resources Defense Council, No. 13 at 5 and appendix; Rocky Mountain Institute, No. 15 at 1; Citizens Environmental Coalition Education Fund, Inc. No. 18 at 1; California Energy Commission, No. 24 at 2; Advance Transformer, No. 25 at 3; Whirlpool Corporation, No. 31 at 1; Northwest Power Planning Council, No. 32 at 2; Champaign County (IL) Board, No. 36 at 1; Washington Gas Light, Inc., No. 37 at 2; George Smith, No. 38 at 1; Lone Star Gas Co., No. 39 at 2; Florida Energy Office, No. 42 at 2; Sierra Club, No. 43 at 2; Ohio Office of the Consumers' Council, No. 60 at 7; Helen Satterthwaite, No. 67 at 1; Warren Widener, No. 78 at 1; and Martin Frost, No. 80 at 1).[7] Most of the comments asserted that the 7 percent rate was unjustifiably high, while several stated that a 7 percent or even higher rate was an appropriate rate for the various analyses.

Commentators seeking a higher rate focused on consumer impacts, while those advocating a lower rate generally pointed to societal benefits. These different perspectives are not easily captured in a single discount rate. The Department has reconsidered the issue, and has decided that multiple discount rates, with each pertaining to a different perspective, are warranted. These different rates (i.e., consumer, commercial and societal) are used to capture the impacts of the standards on different constituents. The consumer and commercial rates are used to calculate life-cycle costs for purchasers of residential and commercial products, respectively. The social discount rate is used to calculate the net present value of standards for the Nation as a whole. Separate rates, therefore, were used for the consumer sector, the commercial sector (since fluorescent lamp ballasts are purchased primarily by commercial firms), and for society as a whole. This discussion will describe the derivations of the consumer, commercial and social discount rates that were used in the different analyses.

1. *Consumer discount rate.* On November 17, 1989, DOE published a final rule for refrigerators, refrigerator-freezers, freezers, and small gas furnaces (54 FR 47916, November 17, 1989), hereafter referred to as the November 1989 final rule. In the November 1989 final rule, DOE selected a 7 percent discount rate, based on a methodology derived from the Court of Appeals decision, *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1406 (D.C. Cir 1985). As discussed in the November 1989 final rule, the applicability of the court decision changed somewhat with the passage of the Tax Reform Act of 1986 (Pub. L. 99–514). The Tax Reform Act phased out the deductibility of interest paid on consumer loans. Based on the revised methodology, DOE calculated a range of discount rates that consumers incur; this range is from less than 1 percent to slightly more than 15 percent. As explained in the November 1989 final rule, DOE selected 7 percent for the analysis for purposes of that rulemaking proceeding because it was near the mid-point of the potential consumer discount rates. In addition, DOE believes that the approach is reasonable in that it was related to the opportunity cost of money for purchasing consumer durables. As such, it was justified in terms of alternate consumer purchases that are foregone in order to finance the purchases of appliances.

In a subsequent final rule on energy conservation standards for dishwashers, clothes washers, and clothes dryers (56 FR 22250, May 14, 1991), hereafter referred to as the May 1991 final rule, the Department restated that the 7 percent rate was near the mid-point of the range of consumer finance rates for the purchase of appliances. It was further stated that if the Department could obtain data on the methods that consumers use to purchase appliances, it could develop a weighted-average, real, after-tax finance rate to use as a consumer discount rate in the analysis.

In its comments on the September 1990 advance notice, Whirlpool Corporation offered estimates of consumer financing of purchases of its equipment: 40 percent of retail sales are paid in cash; 35 percent use credit cards; 25 percent use retailer loans. These figures excluded new home construction, which accounts for approximately 25 percent of Whirlpool Corporation's total sales. (Whirlpool Corporation, No. 31 at 1–2 and Appendix 1.)

While Whirlpool Corporation represents only one source of data, the Department has no reason to believe that Whirlpool Corporation's customers differ from those of other manufacturers, and, therefore, accepted Whirlpool Corporation's estimates as representative.

These numbers were applied to the real, after-tax finance rates that are incurred by consumers, as reported in the November 1989 final rule. Those rates were estimated to be just over 3 percent for appliances purchased as part of a new home (whose finance rate is a tax-deductible mortgage interest rate), to slightly under 1 percent for cash purchases, to more than 15 percent for credit card purchases.

When these rates were applied to Whirlpool Corporation's estimates, the resulting weighted-average, real, after-tax rate incurred by consumers in appliance purchases was approximately 6 percent. The Department, then, used 6 percent for the consumer discount rate in the analyses, with sensitivities at 4 and 10 percent. The Department believes that this range of discount sensitivities will capture the real, after-

[7] Comments on the advance notice of proposed rulemaking have been assigned docket numbers and have been numbered consecutively.

tax rates that consumers encounter in financing the purchase of an appliance.

The Department recognizes however, that there remains considerable uncertainty in this estimate of the average consumer discount rate. There are numerous possible financial interactions that could be involved in the purchase of an appliance. For example, a credit card purchase could be paid in full within the customary billing grace period, thereby being exempt from finance charges, and, in effect, resembling a cash purchase. This would tend to put downward pressure on the weighted-average range of purchase financing choices. On the other hand, a cash purchase may actually be financed, indirectly, by an increase in credit card debt. This would tend to put upward pressure on the weighted-average range of purchase finance rates. Furthermore, this analysis does not take into account varying consumer perceptions of the value of reducing current consumption in favor of longer- term financial gains. For these reasons, the Department continues to solicit data that might provide a more complete basis for the derivation of a consumer discount rate used in these analyses.

Furthermore, while financing rates may indicate the direct financial impact to consumers of an investment in increased efficiency, they do not reflect either other types of investments available to them, or varying consumer perceptions of the value of reducing current consumption in favor of longer-term financial gains. For example, what value of energy savings does a consumer need to receive from an investment in an energy efficient refrigerator in order to justify reducing savings, increasing debt, or delaying the purchase of other consumer goods?

The costs of consumer financing does not indicate whether there are similar investment opportunities, available to most consumers, that produce higher rates of return. For example, are there home improvements or other investments that could be made by most consumers that would have higher rates of return than an investment in an energy-efficient appliance? Also, a consumer discount rate based on consumer financing expenses does not fully account for the risks of individual consumer investments in improved appliance efficiency. For example, the actual rates of return experienced by individual consumers may vary widely depending on energy prices, appliance usage and useful life.

Some have argued that implicit discount rates estimated through an examination of actual consumer purchases of appliances and related consumer equipment would be a better basis for the consumer discount rate used under this program. Various studies have indicated that these implicit discount rates range from 3 percent to as high as 100 percent (or more) for certain appliances. However, because implicit discount rates are based on actual consumer purchase behavior, they also reflect the extent to which the numerous potential market failures in energy efficiency investments occur, such as inadequate information, conflicting owner/renter incentives, and second party (builder/contractor) purchases. One of the major reasons why Federal appliance efficiency standards were originally established was to overcome these market failures regarding investment in energy efficiency. Consequently, DOE does not believe unadjusted (i.e., not corrected for potential biases) discount rates derived from actual consumer behavior should be used in evaluating the economic impact of proposed standards on consumers.

This conclusion appears to be supported by court rulings affecting the program. In *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1406 (DC Cir. 1985), the court stated that "the entire point of a mandatory program was to change consumer behavior" and "the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct." The Department believes that the intent of the legislation which established the appliance standards program is to achieve energy savings which are being foregone because of market failures which distort consumer decision-making (and behavior) from investing in energy efficiency.

However, if information were available on the implicit discount rates revealed by consumer decision-making in the absence of any significant market-failure biases, it might provide a better basis for the discount rates to be used in assessing the impacts on consumers of proposed appliance efficiency standards. Another approach might be to examine the rate of return consumers would require from other fixed investments of comparable risk and liquidity. The Department solicits information on the results of any analyses that could support the derivation of discount rates using either of these approaches.

On the other hand, the nature of the appliance standards program may imply that a household average required rate of return, whether based on actual appliance purchase decisions (in the absence of potential market failure distortions) or on comparable investments, may understate the appropriate rate. Because the Act requires minimum standards, their effect is generally greater on the low-efficiency, low purchase-price end of the market, sometimes eliminating the lowest-priced models. To the extent that low-income households purchase a disproportionate share of these low-efficiency/low-price appliances, they will be disproportionately represented among the affected consumers.

At the same time, limited empirical research [8] suggests that these households exhibit higher-than-average discount rates (i.e., required rates of return) across all of their time-sensitive decisions, including (but not limited to) their appliance purchases. If, indeed, these households are disproportionately affected by standards, their discount rates would need to be given greater weight in determining the effects of alternative standard levels on consumers. The Department seeks comment on this issue.

Based on the information now available, it appears that the average consumer discount rate lies in the range of 4 to 10 percent. As discussed above, the Department has used a 6 percent consumer discount rate for the analyses in this rulemaking. The Department has conducted sensitivity analyses using the 4 to 10 percent range and will continue to solicit data and comments that would provide a better basis for the derivation of consumer discount rates.

2. *Commercial discount rate.* For a discount rate that would be applicable in the fluorescent ballast analysis, the Department believes that one based on consumer expenses is inappropriate; the rate should be based on costs in the commercial sector, since fluorescent lamp ballasts are purchased for use primarily in that sector. In developing a rate for use in the commercial sector, the Department considered a procedure similar to the procedure used to develop a consumer discount rate, and examined possible methods of financing purchases of more efficient lighting equipment. One such method would be to finance a loan. For the most credit-worthy customers, the prime rate of interest would be applicable. Tables 15 and 21 of the DRI/McGraw-Hill *Review of the U.S. Economy; Long-Range Focus; Winter 1990–91* presented forecasts of prime interest rates and percentage changes in the consumer price index (CPI) for each year between 1995 and

[8] Train, Kenneth, Discount Rates in Consumers' Energy-Related Decisions: A Review of the Literature; Energy, December 1985.

2015. During this period, the prime rate is expected to be fairly stable, ranging from 8.37 percent to 8.50 percent. The changes in the consumer price index are projected to range from 3.88 percent to 4.90 percent. The resulting real rates of interest are projected to range from 3.55 percent in 2014 to 4.64 percent in 1995, with a 21-year average of 3.85 percent.

Most companies, of course, are not eligible for prime-rate loans. For them, the terms of borrowing are generally less favorable. While DRI/McGraw-Hill does not forecast long-term, non-prime loan rates, some insight can be gained from how such loans rates differ from prime loan rates.

Based on a telephone conversation with the Federal Reserve System, DOE learned that most commercial loans were in the 6 percent to 15 percent range. Using the higher rate, 15 percent, and deducting the applicable changes in the consumer price index, the Department calculated real rates of interest ranging from 10.1 percent in 2014 to 11.2 percent in 1995, with a 21-year average of 10.46 percent.

Alternatively, the Department looked at the divergence of the 15 percent loans from the then current prime rate; such loans were 50 percent greater than the 10 percent prime rate prevailing in 1990. By applying a 50 percent increase to the projected prime interest rates, the Department obtained nominal rates of interest of 12.56 percent to 12.75 percent. After a deduction of the expected changes in the consumer price index, real rates of interest ranged from 7.76 percent to 9.87 percent, averaging 8.05 percent over the 21-year period.

Another possible financing mechanism would be for the corporation to finance the purchase of the more efficient equipment by displacing investment capital. In Table 8 of DRI/McGraw-Hill's forecasts, there are annual projections of the after-tax costs of financial capital for each year between 1995 and 2015. After converting the numbers to pre-tax costs, and after deducting the expected changes in the consumer price index, the Department obtained the respective real rates of interest. The costs of financial capital are projected to range from 11.61 percent in 1995 to 12.86 percent in 2015. The consumer price index rates forecasts are the same as before, and the resulting real finance rates range from 7.67 percent in 2000 to 7.96 percent in 2015, with the 21-year average being 7.86 percent.

Of the different possible means of companies paying for conservation improvements in lighting equipment, the range of real rates of interest is from 3.55 percent to 11.12 percent.

Economic theory suggests that in deriving a commercial discount rate, the Department should consider the opportunity costs of commercial investments that were foregone. Therefore, the Department also investigated real rates of return from commercial investment activities between 1961 and 1990. These data were compiled from Annual Statistical Digests of the Board of Governors of the Federal Reserve System. The variables that were examined were commercial trade credit, i.e., bankers acceptances; time deposits, i.e. certificates of deposits; U.S. Treasury securities; and commercial paper. During the 30-year period, the average real investment returns realized in the commercial sector ranged from 2.02 percent for bankers' acceptances (which constituted 70 percent of the investment dollars), to 2.29 percent for investments in Treasury securities (which constituted 9 percent of commercial investment dollars).

When more risky investments, such as tax-exempt (class B) and corporate (AA) bonds were examined, their real rates were 1.27 percent and 3.52 percent, respectively, over the 1970-to-1986 period. These real rates, too, were substantially outside of the purchase finance range. The real rates for such bonds in earlier years also fell below the purchase financing range of rates.

After considering the above, the Department elected to use four percent as the commercial discount rate. The Department believes that this rate approximates the real costs likely to be incurred by private businesses which are able to finance small additional investments in energy efficiency by reducing relatively liquid corporate investments, e.g., bankers' acceptances, or by obtaining loans at or near the prime interest rate, without diminishing their normal business investment.

However, if increasing investments in more energy efficient technology are assumed to displace other, more profitable business investments, or would require loans available only at more typical commercial interest rates, the approximate discount rate would be higher. For example, between 1980 and 1991, the real rates of return to nonfinancial corporations averaged between 7 and 8 percent based on data contained in Table 1.16 of the National Income and Product Accounts, as presented in the Department of Commerce's *Survey of Current Business* and, as noted above, real commercial interest rates often exceeded 7 percent.

The Department invites comment on the most appropriate methodology upon which to base the commercial discount rate and the best types and sources of data to use in the calculation of this rate.

3. *Social discount rate.* In identifying a discount rate that is appropriate for use in calculating benefits to the Nation as a whole, the Department must consider the opportunity costs of devoting more economic resources to the production and purchase of more energy-efficient appliances and fewer national resources to other alternative types of investment. It is not necessary, however, to determine the characteristics of specific classes of consumers or businesses directly impacted by the proposed standard. For these reasons, a broad measure of the average rates of return earned by economic investment throughout the United States is the most useful basis for a social discount rate.

Using this approach, the Office of Management and Budget prepared a Background on OMB's Discount Rate Guidance in November of 1992, containing an analysis of the average annual real rate of return earned on investments made since 1960 in nonfinancial corporations, non-corporate farm and non-farm proprietorships, and owner-occupied housing in the United States. The results of this analysis indicated that since 1980, the annual real rate of return for these categories of investments averaged slightly more than 7 percent, ranging from a low of about 4 percent for owner-occupied housing (which represented about 43 percent of total capital assets in 1991 of about $15 trillion) to a high of about 9 percent on non-corporate farm and non-farm capital (which represented about 23 percent of the total). Between 1960 and 1980, the average real rate of return on capital was higher, averaging about 8.5 percent in the 1970's and about 11.2 percent in the 1960's. As a result of this analysis, the Office of Management and Budget chose to designate 7 percent as the social discount rate specified in revisions to Office of Management and Budget Circular A–94 issued on November 10, 1992 (57 FR 53519). In that revised circular, Office of Management and Budget established, *inter alia*, discount rate guidance for benefit-cost analyses of regulatory programs that provide benefits and costs to the general public.

An alternative method for deriving such social discount rate might be broad measures of the costs of financing capital investments in the United States. One such measure is the Federal Government's cost of borrowing or the interest rate that is payable on long-term Government securities. Another might be the prime interest rate available to

major corporate borrowers. In order to derive a real discount rate from either of these measures the relevant interest rate would be adjusted for inflation.

With regard to long-term Government securities as an example, the nominal rates during June 1991 on Government securities maturing between the years 2000 and 2015 averaged 8.55 percent. Adjusted by long term forecasts of inflation, the rate would be approximately 4 percent. Because the Government borrowing rate most accurately reflects the direct cost to the Government of added investment, the Office of Management and Budget has used this approach as the basis for discount rates used in evaluating Federal investments which directly affect Federal costs (such as energy efficiency investments in Federal facilities). Using the prime interest rate or some combination of rates to reflect non-Federal financing costs would result in somewhat higher rates.

As indicated above, because the cost of financing additional capital investments does not reflect the full opportunity cost of shifting private investment from one area to another, it is not considered to be a good basis for deriving discount rates. For this reason, DOE is now proposing the use of a 7 percent social discount rate in National net present value calculations, although it will also perform sensitivity analyses at 4 percent and 10 percent. The Department seeks comment on appropriate discount rates for the analysis.

Life-Cycle Cost Analysis

Another consumer issue that drew a considerable number of comments was the suggestion that in its life-cycle cost analyses, the Department include any additional installation and maintenance expenses that may result from conservation standards. (Southern Gas Association, No. 4 at 10; Energen, No. 12 at 2; American Gas Association, No. 23 at 2; Florida Energy Office, No. 42 at 1; Southern Natural Gas Company, No. 46 at 1; Montana-Dakota Utilities Company, No. 54 at 4; Laclede Gas Company, No. 55 at 4; Oklahoma Natural Gas Company, No. 57 at 3; ENTEX, No. 58 at 4–5; Gas Research Institute, No. 59 at 1; Arkansas Western Gas Company, No. 64 at 7; Piedmont Natural Gas Company, No. 71c at 4; Public Service Company of North Carolina, Inc., No. 74 at 4; Southern California Gas Company, No. 79 at 1; and Louisiana Gas Service Company, No. 81 at 2).

In each of the consumer analyses, such as payback and life-cycle costs, the Department did include all incremental expenses caused by standards. For those design options entailing additional maintenance expenses (beyond the base case), the incremental maintenance expenses were included in the consumer price of the design option. Installation expenses that were specific to the design option and independent of the application were also included in the consumer price of the design option.

Regional and Other Variations in Impacts

Several comments recommended that the Department look at regional variations in usages of some climate-sensitive products, e.g., direct heating equipment. (Southern Gas Association, No. 4 at 10; United Texas Transmission Company, No. 26 at 3; Florida Energy Office, No. 42 at 1; Arkansas Western Gas Company, No. 64 at 3; and Minnegasco, No. 83 at 2.).

The standards analysis assumes that nationwide average appliance usage rates, energy prices, and efficiency applied to all consumers in all areas of the nation, although the Department recognizes that there exist large variations in each of these factors. However, the Department did conduct a sensitivity analysis on the life-cycle cost for energy prices by substituting various high and low regional prices for national prices. The results of these sensitivities are presented in the Technical Support Document. See Technical Support Document, Chapter 4. However, these sensitivity analyses were performed at the national level, and no effort is made to link them with any specific population groups.

The Department seeks information concerning the extent to which any proposed national efficiency standard is likely to affect identifiable groups of consumers disproportionally and how best to consider such impacts in the selection of efficiency standard levels. The Department is also seeking additional data to help it better assess the disproportionate impacts on such groups.

Usage

On a related issue, numerous comments suggested that the usage variables the Department should use are those that are calculated from field usage data. In addition, many of the comments provided estimates of annual operating expenses of several of the appliances, e.g. water heaters, direct heating equipment, and ranges and ovens. (Southern Gas Association No. 4 at 4; —— American Council for an Energy Efficient Economy, No. 6 at 2; Whirlpool Corporation, No. 31 at 17, 19; Washington Gas Light, No. 37 at 5; Lone Star Gas Company, No. 39 at 3; Gas Appliance Manufacturers Association, No. 40 at 8; Columbia Gas, No. 45 at 3; Southern Natural Gas Company, No. 46 at 1; Montana-Dakota Utilities Company, No. 54 at 3; Laclede, No. 55 at 4; Oklahoma Natural Gas Company, No. 57 at 3, 5; Association of Home Appliance Manufacturers, No. 61A at 36; Arkansas Western Gas Company, No. 64 at 6; Peoples Natural Gas Company, No. 65 at 1; Northern Minnesota Utilities, No. 68 at 1; Minnegasco, No. 83 at 2; and Flair, No. 85 at 2).

The Department appreciates the data it received. The Department also obtained data on unit energy consumption by appliance type, principally from utility companies. The Department reviewed the data received from all sources and generated what it believes are the best estimates of energy consumption which are contained in the proposed test procedure amendments for mobile home furnaces, direct heating equipment, pool heaters and kitchen ranges and ovens discussed above, and were used in the analyses for today's notice.

As noted above, regional energy prices were used in sensitivity analyses. Additionally, in the proposed test procedure amendments, the usage for mobile home furnaces and direct heating equipment have been modified from a national basis to a regional one to reflect the mostly regional distribution of these products.

Rebound Effect

Two comments raised the issue of rebound effects, which occur when an appliance that is made more efficient is used more intensively, so that the expected energy savings from the efficiency improvement do not fully materialize. (American Council for an Energy Efficient Economy, No. 6 at 5; Washington Gas Light, No. 37 at 2). American Council for an Energy Efficient Economy commented that the consumer sees and reacts to his or her total utility bill, so any efficiency change in a particular product that has a small impact on his or her total utility bill should not affect usage behavior. Washington Gas Light suggested that usage elasticities should be decided by rigorous analyses of regional appliance usage characteristics.

In this rulemaking, the rebound effects assumed were: 30 percent for direct heating equipment and mobile home furnaces, 20 percent for room air conditioners, and 10 percent for ranges and ovens. These percentages represent the amounts by which the potential

energy savings from standards are reduced.

There is, however, an argument that the usage elasticities/rebound effects for at least some household uses of energy may be substantial. Within a household, the price elasticity of demand will be an average of the elasticities of demand for each end use, e.g. appliance. For example, suppose the price elasticity of demand at the household level is .3. If some levels of appliance usage (say refrigerators) are insensitive to price changes, i.e., zero elasticity, then at least one other use must have an elasticity in excess of .3.

If the usage elasticity for a product is identical to the price elasticity of demand for the energy the product uses, then it follows that the weighted average of the usage elasticities of all household uses must equal the household price elasticity of demand. Since the appliances subject to energy efficiency standards account for more than 80 percent of household consumption, it would be unlikely that all appliances would have usage elasticities less that the overall household price elasticity of demand.

According to the Energy Information Administration, the household price elasticity of demand for electricity is about .15 in the short run and upward of .7 in the long run. Thus usage elasticities, should, on average approximate these estimates. The Department seeks comments on this argument.

Marginal Electricity Rates

American Council for an Energy Efficient Economy, Natural Resources Defense Council, and Washington Gas Light all urged the Department to use marginal electricity rates rather than average ones. (American Council for an Energy Efficient Economy, No. 6 at 6; Natural Resources Defense Council, No. 13 at 18; and Washington Gas Light, No. 37 at 3). American Council for an Energy Efficient Economy and Natural Resources Defense Council both stated that since room air conditioners are run disproportionately during periods of peak utility load (when rates are the highest), the use of average electricity rates will undervalue the electricity savings from improved efficiency.

The Department agrees that use of average electricity prices can produce inaccuracies and does attempt to use energy prices specific to each end use. In the past, electricity rates have been assumed higher for air conditioning than for other end uses, based on survey data of consumer expenditures, disaggregated according to equipment ownership. The consumer analysis for this proposed rule continues to distinguish energy prices by end use, based on such survey results.

Washington Gas Light added that in addition to using marginal electricity prices, the Department should use the All-Ratepayers Test when measuring the cost effectiveness of a standard level. This test was developed by the California Public Utilities Commission, and it measures the impact of an action on all ratepayers, including non-participants in the conservation activity. (Washington Gas Light, No. 37 at 13).

In this program the Department examines the effect of energy conserved by each purchaser of a more efficient appliance, but does not examine the effects that the aggregate conservation effects would impose on the rates charged within a given utility. The impacts on any system's rates from increased energy standards would depend on the participation rates of its customers in the conservation activity and the particular financial position of the utility.

Several comments discussed the impact of energy conservation standards on low-income people. (Rocky Mountain Institute, No. 15 at 2; Southern Union Gas Company, No. 46 at 1; Laclede, No. 55 at 5; Oklahoma Natural Gas Company, No. 57 at 5; and Public Service Company of North Carolina, Inc., No. 74 at 5). While the Rocky Mountain Institute stated that with improved energy efficiency, the prices of used appliances could be expected to decline in the short run, the other comments all stated that the higher prices that would be caused by improved efficiency standards on new units would have price-increasing effects on used appliances and, therefore, be harmful for lower-income and elderly consumers on fixed incomes.

The Department conducted literature searches on purchasing and usage decisions in low-income households, to determine whether the inputs of the consumer analysis should be adjusted to account for differences between low- and average-income households. There was no information available on which to base any changes to the consumer analysis.

Lighting Prices

Another consumer issue was raised by Valmont Electric, which stated that new energy conservation standards on fluorescent ballasts would raise the retail prices of such ballasts, thereby impeding the conversion from incandescent lighting to fluorescent lighting. (Valmont Electric, No. 16 at 2).

Conversions from incandescent lighting to fluorescent lighting occurs principally through compact fluorescent bulbs, the ballasts of which are not included as part of the review of the legislated fluorescent ballast conservation standards. Any revised energy conservation standards on fluorescent ballasts will not affect the prices of compact fluorescent bulbs and thereby slow the conversion from incandescent to fluorescent lighting.

Heat Pump Water Heaters

On the issue of consumer acceptance of heat pump water heaters, Crispaire Corporation stated that studies show consumer satisfaction with them. (Crispaire Corporation, No. 19 at 1). In addition, the company provided attachments with estimates of unit energy consumption and annual performance factors for heat pump and resistance water heaters.

The Department appreciates the information provided and used the cited studies in developing data for the consumer analysis and forecasting efforts.

Appliance Lifetimes

Two comments discussed product lifetimes. Wisconsin Blue Flame Council stated that pilot lights decrease condensate, thereby extending the tank life of gas water heaters. (Wisconsin Blue Flame Council, No. 33 at 2).

The Department based product lifetimes on an analysis comparing recent replacement sales to historical shipments, and researched the effects of particular design options on product life.

Air Energy Heat Systems said that the lifetime of heat pumps for pool heaters is approximately the same as for air conditioning, if the water chemistry of the pool is maintained in proper balance. (Air Energy Heat Systems, No. 44 at 1).

The Department did not analyze heat pump pool heaters because no test procedure is available.

Modeling

There were several issues raised with regard to the forecasting efforts in the analyses. For example, Natural Resources Defense Council suggested that the Department model uncertainty, not point forecasts in economic growth and consumer choice and further suggested that the Department could model uncertainties in economic growth by modeling high-, mid-, and low-growth scenarios. (Natural Resources Defense Council, No. 13 at 35–36).

The Department recognizes that all forecasts contain uncertainties. The

principal method by which DOE has accounted for uncertainties has been through sensitivity analyses, which, in the past, have been performed on equipment prices, energy prices, projected equipment efficiencies and market discount rates (the last of which models uncertainties in consumer choices of efficiency).

The Department favors an explicit representation of the uncertainty in the forecasts. Clearly, the best representation would be a statistical treatment of the uncertainty in each of the important variables, including the coefficients used in the Lawrence Berkeley Laboratory Residential Energy Model. At this time, however, such a specification of the distribution of each of the variables and coefficients does not exist. As the Lawrence Berkeley Laboratory Residential Energy Model is updated, such distributions will be generated, which will allow the Department to work towards the capability to perform an uncertainty analysis in the model. Until then, the Department will model uncertainties with sensitivities.

On the other hand, Natural Resources Defense Council endorsed the Department's different assumptions used when calculating energy savings and net present value. (Natural Resources Defense Council, No. 13 at 36).

For this rulemaking, the Department maintained the current methodologies for calculating energy savings and net present value.

Ballast Energy; Use Forecasting

Advance Transformer Company recommended that the Department exclude fluorescent lamp ballasts from incorporation in the Lawrence Berkeley Laboratory Residential Energy Model because of their small number of sales in the residential sector. (Advance Transformer Company, No. 25 at 3).

The Department did exclude fluorescent lamp ballasts from incorporation in the Lawrence Berkeley Laboratory Residential Energy Model. Instead, the Department analyzed fluorescent lamp ballasts in the commercial sector using the Electric Power Research Institute end-use model and the Commercial Energy End-Use Model.

Television Sets

With regard to television power and usage forecasts, the Electronics Industries Association stated that television sets of newer vintage draw less power than those of older vintage. To support this, Electronic Industries Association presented data for the period 1967–1991. (Electronic Industries Association, No. 30 at 2).

Thomson Consumer Electronics, Inc. provided data on the energy consumption of color televisions by size, and asserted that the most important factor in energy usage is viewing habits, specifically, the number of concurrently operating televisions in a household, the number of daily operating hours for each receiver, and control settings, i.e., brightness and sound levels. (Thomson Consumer Electronics, Inc., No. 49 at 3–5).

The Department welcomes the additional data provided in the comments. The Department agrees that the energy consumption of a television set is a function of vintage. It was included in a previous analysis [9] and is included in the analysis for this proposed rule.

The Department also agrees that the number of television sets per household and number of viewing hours are determinants of energy usage, and included these factors in its forecasts. On the other hand, while the Department recognizes that control settings are important, it does not expect them to be different in the future than from today, and, therefore, it did not forecast them.

Lawrence Berkeley Laboratory Residential Energy Model

Two comments addressed the Lawrence Berkeley Laboratory Residential Energy Model methodology and documentation. Whirlpool Corporation stated that it had no strong concerns with the Lawrence Berkeley Laboratory Residential Energy Model at this time. (Whirlpool Corporation, No. 31 at 1). The Florida Energy Office said that the Department should document, well before the final rule, all model assumptions. In addition, the Florida Energy Office offered to provide Florida-specific data to the Department. (Florida Energy Office, No. 42 at 2, 6).

The Department will continue to use the basic Lawrence Berkeley Laboratory Residential Energy Model methodology, but will incorporate updates to data and coefficients for specific products as new analyses proceed. The model assumptions and data for this rulemaking are documented in the Technical Support Document accompanying this proposed rule.

[9] U.S. DOE Technical Support Document: Energy Conservation Standards for Consumer Products: Refrigerators, Furnaces, and Television Sets, DOE/CE–0239, November 1988.

Lawrence Berkeley Laboratory-Manufacturer Impact Model

1. *Modeling.* There were numerous comments on the manufacturer impact analysis. The Association of Home Appliance Manufacturers and Whirlpool Corporation made several suggestions for improving the modeling of manufacturer impacts.

The Association of Home Appliance Manufacturers suggested that the Department devote more modeling efforts to developing demand curves that are empirically verifiable. (Association of Home Appliance Manufacturers, No. 61A at 66).

In response, the Department notes that many of the demand curves used in the Lawrence Berkeley Laboratory-Manufacturer Impact Model were derived from those that were empirically estimated by Oak Ridge National Laboratory in 1976.[10] The Department recognizes that a project to update the demand curves could be useful, considering the age of the data currently being used. The Department does not believe that such data exist. However, the Department requests that if such data does exist that it be submitted as comment on today's proposed rule.

2. *Product mix.* The Association of Home Appliance Manufacturers stated that the Lawrence Berkeley Laboratory-Manufacturer Impact Model should, but does not, take into account the effect that standards have on the relative prices among product classes, which in turn will change the product mix demanded by the market. (Association of Home Appliance Manufacturers, No. 61A at 67).

The Department did take cross-elasticity effects into account in the analysis of water heaters (between electric and gas fuels) where they were particularly important, and will continue to look for instances where such effects may arise in order to take those effects into account as warranted. (See Technical Support Document, Volume F, Appendix B).

3. *Market power.* The Association of Home Appliance Manufacturers was critical of the way the Department models marketplace monopsony power, i.e., the market power of purchasers. In its critique, the Association of Home Appliance Manufacturers stated that the ability of manufacturers to pass on increased costs to the consumer is limited because their customers are primarily a group of large and sophisticated retailers who have

[10] Lin, Hirst, and Colon, Fuel Choices in the Household Sector, ORNL Report Con-3 Oak Ridge National Laboratory, 1976.

significant and increasing power in the marketplace, and who exert downward pressure on the retail prices of appliances. It further stated that the Lawrence Berkeley Laboratory-Manufacturer Impact Model attempts to model the situation by modeling a larger number of manufacturers than actually exist in the marketplace. The Association of Home Appliance Manufacturers said that no theoretical underpinnings were given for this assertion and that there is no reason why the predictions of this "false model" should have any resemblance to what actually transpires in the real world. (Association of Home Appliance Manufacturers, No. 61A at 67–68).

The Department believes that oligopsony power itself could probably be modeled analogously to oligopoly power. There is, however, no accepted theory on the modeling of an industry characterized by both oligopoly and oligopsony. Thus, DOE detailed the assumptions and relevant mathematical derivations of the approach in the aforementioned Technical Support Document for the final rule for dishwashers, clothes washers, and clothes dryers. The approach is to increase the number of firms input into the Lawrence Berkeley Laboratory-Manufacturer Impact Model until the markups that are actually observed in the marketplace are achieved; this is also an obvious implication of The Association of Home Appliance Manufacturers's comments that manufacturers' ability to pass on costs is limited. In fact, the most prominent comments from a review panel on the Lawrence Berkeley Laboratory-Manufacturer Impact Model indicated a concern that the modeling assumptions had gone too far in the direction of reduced markups.[11]

4. *Individual firm.* There were also three comments critical of the Department's modeling of an individual firm. It was argued that the use of a "typical firm" does not address the differential impacts of standards on companies, e.g., sizes, costs, niche markets. The Association of Home Appliance Manufacturers insisted that the Department could address the lack of data in performing this type of analysis by researching the economic literature or by developing an economic theory of how different classes of manufacturers would be affected by standards. Whirlpool Corporation suggested addressing the data problem by putting a range on the cost and margin data. (Advance Transformer, No. 25 at 3; Whirlpool Corporation, No. 31 at 1; Association of Home Appliance Manufacturers, No. 61A at 68–69).

The problem is essentially a lack of data. The Department's review of the economic literature offered no solution to this problem. The Department does analyze the cost and margin data (in addition to other parameters) by performing a sensitivity analysis where the Department changes those parameters (and others) in the model, and tests the sensitivity of the model's results.

During interviews conducted with manufacturers, the Department asked a series of questions covering the effects of firm size and specialization. To date, DOE has not been given information by the industry to draw conclusions about probable effects.

While it would be desirable to analyze the impact of standards on the distribution of firms in an industry, fundamentally, this requires detailed information on how individual firms differ from the norm.

Stating that the primary concern to manufacturers is the short-run industry impact from standards, Whirlpool Corporation and the Association of Home Appliance Manufacturers called for the Department to present greater focus on, or explanation of, short-run impacts. (Whirlpool Corporation, No. 31 at 1; Association of Home Appliance Manufacturers, No. 61A at 69–70).

There are limitations to such an analysis. While general impacts may be understood, the specific details of how each firm reacts at each point of the short-run adjustment process are beyond the ability of economic theory to elucidate. The Department believes that it has treated the short run properly by modeling it on the short-run impact of the downturn from a business cycle. In addition, in considering standard levels to propose, the Department did take explicit account of the short-run Lawrence Berkeley Laboratory-Manufacturer Impact Model results.

The Association of Home Appliance Manufacturers suggested that more detailed analysis of the impacts on individual firms and other areas should be done. The Association of Home Appliance Manufacturers commented that an analysis of how industry will fare, on average, belies the very serious effects that adjustment can have, especially if standards force a company in a small community to close. Therefore, it is important, the Association of Home Appliance Manufacturers believes, that DOE evaluate these potential short-term and individual company impacts. (Association of Home Appliance Manufacturers, No 61A at 70).

In the analyses to date, the Department has used industry profitability as the best single indicator of plant closures and other significant disruptions on manufacturers. Further, the primary impact variables of returns on equity, net income, revenue, price, and shipments have been presented as the best summary statistics with which to capture the significant impacts resulting from standards.

5. *Multiple standards.* In another comment, the Association of Home Appliance Manufacturers stated that firms face constraints on the share of their resources that can be devoted to meeting each new wave of conservation standards from DOE. The cumulative impact of each new rulemaking on manufacturers' resources must be considered in evaluating manufacturer impacts. (Association of Home Appliance Manufacturers, No. 61A at 70–72).

The Lawrence Berkeley Laboratory-Manufacturer Impact Model is designed to analyze the impact of standards on industry profitability for an individual appliance. To date, this has involved treating each manufacturer of a subject product as a separate company. Recognizing, however, that many of the manufacturers produce more than one appliance type subject to these rulemakings, and recognizing that those companies may have limited resources to comply with the requirements of all of the relevant regulations, the Department is presently seeking approaches to account for the cumulative effects on a multi-product company of the appliance conservation standards that it promulgates and requests comments in this regard.

6. *Variable costs.* On another manufacturer issue, Whirlpool Corporation criticized the Department's assumption that pricing relates only to variable costs. Whirlpool Corporation suggested, instead, that changes in fixed costs do have an impact on pricing in an industry. (Whirlpool Corporation, No. 31 at 1).

The Department acknowledges that firms may try to pass on fixed costs; however, standard economic theory concludes that even monopolists will find this unprofitable, and will eventually decide not to try it. The Department has seen no argument or evidence to the contrary. It is interesting to note that if Whirlpool Corporation were correct, the manufacturers who decided to do so would be impacted far more favorably by standards than the Lawrence Berkeley Laboratory-Manufacturer Impact Model predicted.

[11] Lawrence Berkeley Laboratory, Manufacturers Impact Model (MIM) External Review Panel Meeting, January 11, 1990.

Consumer Demand

Whirlpool Corporation stated the Department assumes that consumers will pay more for energy efficiency. Whirlpool Corporation claims studies have shown this has not been true. In support, Whirlpool Corporation supplied a list of 20 key buying factors from an August 1988 McKinsey study. Energy efficiency placed tenth in consideration for kitchen products. (Whirlpool Corporation, No. 31, at Attachment 2).

The Department notes that energy efficiency placed ahead of other factors such as "lowest price available among similar makes and models," "has an extended service agreement at a fair price," and "runs quietly." These results tend to support the Department's position that consumers are willing to pay for energy efficiency.

Rebuttable Presumption

For consideration of rebuttable presumptions, the Association of Home Appliance Manufacturers stated that incremental payback, not cumulative payback, are the appropriate payback for standards. (Association of Home Appliance Manufacturers, No. 61A at 64).

Since the legislation requires that payback be considered from a standard level compared to the base case, DOE believes that only cumulative payback may be used for the rebuttable presumption determination. Additionally, the other impacts of appliance conservation standards on energy use, consumers, manufacturers, and other factors were determined by comparing projections under the base case [12] with the projections under the proposed standards.

Standards Decision Making

Natural Resources Defense Council and the Rocky Mountain Institute addressed the Department's standards selection criteria. Both Natural Resources Defense Council and the Rocky Mountain Institute stated that in deciding the economic justification of standards, the Department should not be attempting to maximize the economic benefits to consumers, but should instead be maximizing energy savings. (Natural Resources Defense Council, No. 13 at 16; Rocky Mountain Institute, No. 15 at 2).

In response, the Department recognizes that the basic statutory direction to set standards is to achieve the "maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified" (section 325(l)(2)(A). DOE notes that the economic impact of standards on consumers is only one of the factors the Department considers in reaching its decision to set conservation standards. Other factors include impacts on manufacturers and on national benefits and costs. However, regarding consumer benefits, while the minimum consumer life-cycle cost point is selected as a trial standard level, and in many cases, the most stringent standard level that the Secretary determined was economically justified coincided with that level, several of the proposed standard levels have life-cycle costs that exceed the minimum life-cycle cost. Thus, maximizing consumer benefits does not take precedence over maximizing energy savings.

Natural Resources Defense Council further stated that in deciding on standard levels, the Department must first consider the most stringent level of efficiency, i.e., the "max tech" level, and if it is economically justified, DOE must set the standard at that level. If it is not economically justified, DOE must then consider the next most stringent level, and if economically justified, set the standard at that level. (Natural Resources Defense Council, No. 13 at 17).

The Department does consider candidate standard levels in this manner. However, in making its determination as to whether a standard is economically justified, the Department considers both: The benefits and costs of the standard level under consideration relative to the base case; and how these benefits and costs compare to the benefits and costs of other standards analyzed by the Department in the technical support document for this rule.

Currently the costs and benefits of all candidate standard levels are analyzed in comparison to the base case. However, it is possible that more direct comparisons of the impacts of different standard levels may be useful. In light of the above, the Department specifically solicits comment on whether any incremental perspectives would be useful and valid in the determination as to whether a particular standard level is "economically justified."

The Florida Energy Office stated that after considering all relevant costs and benefits over the life of the appliance, the Department should set standards at the highest levels that are cost-effective to the nation. (Florida Energy Office, No. 42 at 1).

As stated above, consideration of the national costs and benefits of the impacts of candidate standard levels was one of the factors considered in this rulemaking. (See Technical Support Document, Chapter 8.)

External Costs and Benefits

A number of comments on the Advance Notice of Proposed Rulemaking urged the Department to consider the external costs and benefits in its economic analyses of the efficiency standards proposed in this Notice of Proposed Rulemaking. For example, the American Council for an Energy Efficient Economy suggested that DOE account explicitly for environmental costs in its economic analysis. (American Council for an Energy Efficient Economy, No. 6 at 6.) In addition, Public Citizen stated that the Department should include in its analyses all external costs and benefits, e.g., environmental quality, national security, and reduced energy imports. (Public Citizen, No. 7 at 4.)

The Sierra Club stated that the difference between "Consumer Analysis" and "Life-Cycle Cost Analysis" is difficult to ascertain. They urged DOE to evaluate, as part of the Consumer Analysis; (a) environmental external costs; and, (b) national security and balance-of-payments costs of increased/decreased oil consumption. (Sierra Club, No. 43 at 2.)

The Ohio Office of the Consumers' Council said that the consumer and utility analyses should include monetization of externalities (environmental and security) such as sulfur oxides, carbon monoxide, carbon dioxide, nitrogen oxides, particulate, and other air, water, and land use impacts of energy production and use. Such considerations should be consistent with current trends in state utility regulations. (Ohio Office of the Consumers' Council, No. 60 at 2.)

The Department recognizes that appliance standards may generate external societal benefits arising from reductions in oil imports, and emissions of SO_2, NO_x, and CO_2 and perhaps other pollutants. In this proposed rulemaking, as in previous rulemakings, the Department derives the quantities of oil savings and emissions reductions associated with the estimated energy demand reductions expected to result from the proposed standards, but does not attach any externality values to these benefits. In a separate Advance Notice of Proposed Rulemaking for three products (58 FR 47326, September 8, 1993), the Department has indicated

[12] The base case assumes implementation of the conservation standards that were set by the Act for central air conditioners and central air conditioning heat pumps and furnaces and by Department of Energy rulemaking in the case of refrigerators-freezers and freezers and small gas furnaces.

that it would be desirable to establish monetary values for these external benefits, if sound analytical bases can be found for doing so. The Department will attempt to develop and use such monetary values in the analysis of the likely impacts of updated standards for these three product categories. However, because there is no consensus on how to undertake the analysis underlying estimates of such environmental and energy security externalities, the Department is not yet able to set monetary values for such externalities accurately enough to be useful in the current rulemaking.

Standards

1. *Regional standards.* On another standards determination issue, the Association of Home Appliance Manufacturers stated opposition to the setting of regional standards for room air conditioners. (Association of Home Appliance Manufacturers, No. 61A at 22.)

The Department is not setting regional standards, but did conduct a sensitivity analysis on life-cycle cost for room air conditioners because their energy use is affected by climate. The sensitivity analysis considered regional energy prices and usage.

2. *Corporate average fuel economy.* The Rocky Mountain Institute stated that the Corporate Average Fuel Economy standards for appliances, like the Corporate Average Fuel Economy for automobiles, could allow for the gradual phase-in of technologies that are substantially different from the present, less-efficient technologies, e.g., horizontal-axis clothes washers and heat pump water heaters. (Rocky Mountain Institute, No. 15 at 3.)

The Department acknowledges that some stringent standard levels could involve radical industry manufacturing changes and recognizes that a Corporate Average Fuel Economy-type approach to such standards could help to ease industry's transition to producing these more efficient appliances. The Department believes, however, that the Act precludes that option since the statute requires any covered product to meet the energy conservation standard.

3. *Fuel switching.* Several of the comments in this area dealt with the standards selection criteria for specific products. For example, Peoples Natural Gas Company stated a concern that standards could unintentionally increase energy consumption by forcing a switch from gas water heaters to electric. Peoples Natural Gas Company recommended limiting standards-induced price increases to consumers for gas water heaters to 120 percent of the standards-induced price increases for electric resistance water heaters. Peoples Natural Gas Company contended that this would avoid switching from gas to electric by price-sensitive consumers, such as home builders and low-income homeowners. (Peoples Natural Gas Company, No. 28 at 1).

In response, the Department analyzed standard levels by the methodology proposed in the September 1990 advance notice, wherein fuel switching was accounted for as part of the Lawrence Berkeley Laboratory Residential Energy Model's forecasting of economic impacts. While some fuel switching did occur (electric water heaters are projected to increase their share of the market from 45.5 percent to 50.3 percent, as shown by Table 3.4 of Volume F of the Technical Support Document), the Department does not believe it occurred because of the relative equipment price increases since the price of electric water heaters are projected to increase much faster than that of gas, as presented in Section IV below. The Department ascribes the fuel switching that is projected to occur to the relative increase in the price of gas compared to electricity as shown in Table 5.5 of Volume A of the Technical Support Document.

Impacts on Manufacturers

The Association of Home Appliance Manufacturers contracted with Arthur D. Little, Inc. to prepare a report on the Department's analysis of top-loading, horizontal-axis clothes washers. In that report, entitled "Financial Impact of DOE Top-Loading Horizontal Axis Standards on U.S. Washing Machine Manufacturers," Arthur D. Little listed a number of criticisms of the Lawrence Berkeley Laboratory-Manufacturer Impact Model and suggested that the Department use a "Cash Flow Model," instead. (Association of Home Appliance Manufacturers, Nos. 61D and 61E). Although clothes washers have been dropped from this rulemaking, as discussed below, many of Arthur D. Little's comments have general applicability to the other appliances.

One of Arthur D. Little's criticisms of Lawrence Berkeley Laboratory-Manufacturer Impact Model involved that model's consumer preference assumptions. Arthur D. Little stated, "The combination of price and energy savings account for under two-thirds of the basis of selection. Thus, the Manufacturer Impact Model at best is taking into account a little less than two-thirds of the consumer's decision to purchase." Arthur D. Little concluded, "neglected features seriously distort the prediction of consumer's * * * well being." (Association of Home Appliance Manufacturers, No. 61E at 25.)

The Department intends to set standards that do not reduce consumer utility, a gauge of well being, by establishing product classes that protect utility. While utility is sometimes a matter of degree, instead of an open and shut case, the basic concept is the establishment of classes that protect a less efficient, but desirable, feature such as the through-the-door ice service for refrigerators. Since the establishment of classes is performed before the manufacturer impact analysis, it is appropriate for the Lawrence Berkeley Laboratory-Manufacturer Impact Model to assume there is no difference in consumer utility between an appliance meeting the different trial standard levels. Furthermore, since standards are intended to affect only an appliance's energy efficiency (which usually is positively related to price), modeling consumer response only to changes in those variables is reasonable.

The Arthur D. Little report was also critical of the Lawrence Berkeley Laboratory-Manufacturer Impact Model's treatment of market power issues. The report stated that the manufacturer analysis concludes that manufacturers can set their own prices because the manufacture of the product is concentrated in the hands of a small number of producers. (Association of Home Appliance Manufacturers, No. 61E at 27.) Furthermore, the report asserted that within the Lawrence Berkeley Laboratory-Manufacturer Impact Model, mark-up is countered only by a very weak consumer reaction, as measured by the elasticity of demand relative to the purchase price of the appliance and its operating expense. (Association of Home Appliance Manufacturers, *Id.*)

A major difference that exists in the manufacturer impact analysis performed for today's notice and typical manufacturer experience to increasing prices is that the analysis assumes that all manufacturers in the industry will have to increase prices to meet the standard. This is a very different scenario from an individual firm raising its prices independently from its competitors. To accomplish the analysis, the Lawrence Berkeley Laboratory-Manufacturer Impact Model uses two elasticities; an individual firm elasticity, which is used to establish price, and an industry elasticity, which is used to establish sales. The individual firm elasticity used by the Lawrence Berkeley Laboratory-Manufacturer Impact Model is greater than the industry elasticity, and is such that if a

firm raises prices it loses sales. It is this price elasticity faced by the individual firm that determines how much the firm can mark up price. However, the initial effect of this elasticity is tempered in the model by the fact that the firm's competitors are also raising prices until equilibrium is reached between increased costs to meet the standard and increased prices. The consumer reaction to this higher price is then calculated by the industry elasticity, which is the consumers' responsiveness to having the appliance or not, as opposed to buying it from a competing seller for less. Since the Department considers the whole industry to be affected by standards, a resulting rise in the general level of prices for an appliance would likely have a relatively weak aggregate consumer reaction.

In addition, the Department notes that in Arthur D. Little's own "cash flow" model, long-run sales of appliances are seemingly unaffected by price; Arthur D. Little has assumed there is no consumer reaction to price, or in other words, a price elasticity of zero.[13]

This assumption would imply that manufacturers were completely free to set price at any level they wanted.

Another area in which the Arthur D. Little report was critical of the Lawrence Berkeley Laboratory-Manufacturer Impact Model was in the treatment of dynamic adjustment issues. As Arthur D. Little's report stated, "To determine the impact on manufacturers, the Manufacturer Impact Model only examines two static cases * * * and misses important changes in the health of the industry [during the adjustment period]." (Association of Home Appliance Manufacturers, *Id.*).

The "two static cases" to which Arthur D. Little is referring are the base and standards cases. However, Arthur D. Little is incorrect in stating that these two cases are static. As is documented in the Technical Support Document, the Lawrence Berkeley Laboratory-Manufacturer Impact Model also computes a short-run analysis, the sole purpose of which is to assess the dynamic impact of standards, in addition to computing the long-run analysis to determine the impacts after those dynamic impacts have been absorbed. The dynamic effect that is captured with the Lawrence Berkeley Laboratory-Manufacturer Impact Model short-run analysis is the extra price competition that may occur when the quantity demanded is suddenly reduced by the standards-induced price increase. This dynamic effect generally results in lower profitability over the short-run, as compared to over the long-run, especially at the higher standard levels as reported in Section IV below. This effect is completely ignored by the Arthur D. Little model with its zero price elasticity. However, Arthur D. Little does address a different dynamic effect which the Lawrence Berkeley Laboratory-Manufacturer Impact Model does ignore.

The dynamic effect addressed by Arthur D. Little is the forward time-shifting of appliance purchases in anticipation of a standards-induced price increase. The Department has been aware of this for some time, but has not incorporated it into the Lawrence Berkeley Laboratory-Manufacturer Impact Model because of a lack of data on the extent of purchase time-shifting.

Additionally, the Department believes that any effect of time-shifting is initially positive and then negative. When appliances are bought in advance of standards, the initial effect probably would be to improve profits and cash flow. When the quantity demanded falls temporarily after standards, the effect probably would be to hurt profits and cash flow. These two effects very nearly should cancel over time. The Department notes that this result is in sharp contrast to the dynamic effect that the Lawrence Berkeley Laboratory-Manufacturer Impact Model does consider, which has a non-recoverable impact on the industry. Nonetheless, DOE agrees that time-shifting could bear further investigation and will evaluate whether the estimates supplied by Arthur D. Little on the magnitude of time-shifting can be of use.

Arthur D. Little also was critical of the Lawrence Berkeley Laboratory-Manufacturer Impact Model's inability to take into account (or try to predict) some of the consequences of the low profitability that the model sometimes predicts. In particular, its report points out that if the rate of profit did decline significantly in real terms, the industry would have a very hard time raising additional equity. Arthur D. Little points out that, in actuality, both owners and financial backers of firms would limit capital until expected return matched their required return. According to the comment, the Lawrence Berkeley Laboratory-Manufacturer Impact Model, therefore, "* * * sacrifices realism in modeling the relationship between expected return and the willingness of owners and financial backers to commit capital for retooling." (Association of Home Appliance Manufacturers, No. 61E at 27–28.)

The Department agrees with Arthur D. Little's statement regarding the difficulty that industry likely would have in raising capital as a consequence of significantly reduced profitability. Furthermore, it is true that the Lawrence Berkeley Laboratory-Manufacturer Impact Model is limited to estimating the impact of potential standards on an industry, whether positive or negative, as characterized by profitability. The model does not attempt to predict the specific forms of the damage and the complex reactions (inability to raise capital, failures of some firms, foreign buy-outs, mergers, capacity reductions, etc.) that could occur within a negatively affected industry. However, the Department does not believe that it is necessary to attempt to predict that sort of detail. Rather, DOE believes it is obligated not to set standards that would cause serious damage.

The Department believes that the magnitude of the hypothetical profit loss is a very good indicator of the magnitude of the impacts that will be imposed on the industry. When the Lawrence Berkeley Laboratory-Manufacturer Impact Model predicts a precipitous decline in profit, this should be interpreted as damaging to the industry. Indeed, in many cases, as discussed in Section IV below, the Lawrence Berkeley Laboratory-Manufacturer Impact Model does predict a sharp drop in profitability, and this prediction figures strongly in rejecting the standard in question.

Because of all the "deficiencies" in the Lawrence Berkeley Laboratory-Manufacturer Impact Model, Arthur D. Little's report suggested that the Department abandon the model, and proposed, instead, that the Department use a cash-flow model. The cash-flow model determines the economic impact of energy conservation standards on manufacturers by estimating the cash flows associated with meeting the standards, and calculating a value for those cash flows. (Association of Home Appliance Manufacturers, No. 61E at 19 and Appendix C.)

However, Arthur D. Little's cash-flow model submitted does not predict whether a manufacturing industry will or will not be hurt by standards. It

[13] This result may be found by examining Appendix C of the ADL report which contains the results of its cash flow model. In it, two cases are discussed: a constant volume case and a variable volume case. The distinction between the two is that in the former, production volume is assumed to be constant for each year, while in the latter, volume is constant for each year until 1997 (two years before standards when, presumably, sales rise in anticipation of higher prices) through 2003. The volume then goes back to the same constant level in 2004. Thus, the results indicate that consumers respond to the coming price increase, but after six years, their demand falls back to the original level, despite the higher price. Thus, aside from a short run effect over a six-year period, the price elasticity of demand is zero.

allows one to make various assumptions about the market's behavior, and then to predict the impact of those assumptions on cash flow; but, it tells nothing about the market's behavior. As a result, the Department notes that Arthur D. Little has run three scenarios with radically different implications for the industry, with no way to choose among them. The model is equally capable of processing the optimistic and the pessimistic scenario, but it does not have an expected scenario. The Department, therefore, does not believe that the cash flow model, as presented in Association of Home Appliance Manufacturers's comments, could serve to replace the Lawrence Berkeley Laboratory-Manufacturer Impact Model for use in the analyses of the impacts of appliance standards on manufacturers.

However, the Arthur D. Little report also stated that one of the key assumptions in the Lawrence Berkeley Laboratory-Manufacturer Impact Model is the proportion of costs that are fixed. The Arthur D. Little report went on to state that, "After interviewing all five domestic manufacturers, Arthur D. Little was unable to verify that the washing machine manufacturers have any sense as to the proportion of their costs which are long-term fixed costs * * *. Basing a model upon an assumption that is not empirically verifiable is a risky proposition." (Association of Home Appliance Manufacturers, *Id.*)

The Department agrees that one of the key assumptions in the Lawrence Berkeley Laboratory-Manufacturer Impact Model is the proportion of costs that are fixed and variable. The Department is sensitive to the claim that this key input parameter to the Lawrence Berkeley Laboratory-Manufacturer Impact Model is "completely alien to manufacturers." The Department would certainly consider alternate manufacturer impact models that utilize more known and verifiable inputs. However, to be an acceptable alternative model, the Department believes that such model would have to have forecasting ability similar in scope and sophistication as the Lawrence Berkeley Laboratory-Manufacturer Impact Model. As discussed above, the cash-flow model submitted by the Association of Home Appliance Manufacturers does not meet this test. Additionally, the Department would be interested in any analyses that indicate adverse manufacturer impacts at any of the proposed standard levels, as opposed to arguments over the severity of the adverse impact of rejected standard levels.

Impacts on Utilities

Several comments addressed the Department's proposed analysis of the impacts of energy conservation standards on electric utilities. Natural Resources Defense Council stated that the utility analysis needs to consider that under the base cases, there will be less forecasting certainty than would occur under new and revised standards, and a greater probability that utilities would misforecast electricity demand. (Natural Resources Defense Council, No. 13 at 32). The Ohio Office of the Consumers' Council also suggested that the utility analysis should consider the value of reduced uncertainty in utility forecasts as a result of standards. In addition, the Ohio Office of the Consumers' Council gave references to a methodology. (Ohio Office of the Consumers' Council, No. 60 at 6).

Increased demand certainty after standards is an effect that was not captured in the utility analysis. It results in substantial benefits to electric utilities, particularly when demand growth is rapid. These benefits accrue because demand growth is uncertain, and if the utility misforecasts demand, it may build too few or too many power plants. This risk of capital misallocation can be substantial in certain cases.

With regard to the appropriate measure of dollars to use in the utility impact analysis, Natural Resources Defense Council stated that "DOE needs to do the utility impact analysis in nominal dollar terms, using actual utility assumptions for depreciation and rate of return. Utility rates and finances are computed in nominal dollars, not real dollars, and this can have a dramatic impact on how new power plant construction will affect rates." (Natural Resources Defense Council, No. 13 at 32).

It is true that utilities calculate rates in nominal dollar terms. The Department, therefore, calculated utility impacts in both real and nominal dollars, in order to determine how adding an inflation factor would affect the results.

With regard to the Clean Air Act Amendments of 1990 (Pub. L. 101–549, November 15, 1990), Natural Resources Defense Council stated that utility expansion plans will need to be consistent with the Act, which will require more controls as the demand for electricity grows. Appliance standards will, all other things being held equal, make compliance with the Clean Air Amendments less expensive for utilities, as it allows them to meet the cap on emissions more easily. (Natural Resources Defense Council, No. 13 at 32, 35).

The utility analysis and the environmental analysis are consistent with the 1990 Clean Air Act Amendments. The Department collected forecasts of the value of marketable permits for sulfur, estimates of the other effects of the Clean Air Act Amendments, and assessments of future utility generation by fuel type. The Department assessed these estimates and assimilated them into the analysis. (See Technical Support Document, Environmental Assessment, Section 2).

The Florida Energy Office stated that capacity cost credit (for avoided capacity) should not be limited to combustion turbines but should match the load characteristics of the subject appliance, categorized into peaking, intermediate, and baseload groups. Air conditioners should be categorized according to their load duration characteristics. (Florida Energy Office, No. 42, at 2).

The Department agrees that load shape characteristics should be included in an assessment of air conditioner (and other appliances) avoided peak demand. The current utility analysis accounted for these effects. The Department investigated separating energy savings into peaking, intermediate, and baseload categories, to determine if this would have a significant effect on the results. The utility analysis assumed a combustion turbine proxy, which values all peak demand savings at the cost of a combustion turbine. This is the most widely used approach by U.S. utilities.

The Ohio Office of the Consumers' Council stated that the utility analysis should consider transmission and distribution capacity savings. (Ohio Office of the Consumers' Council, No. 60 at 5).

The Department agrees that transmission and distribution capacity savings should be included in the utility analysis, and did include them. Avoided transmission and distribution costs were based on the value assigned to this avoided transmission and distribution capacity by many different U.S. utilities.

Two commentators stated that off-peak water heaters (those that heat water only during off-peak hours) save energy, and that this should be included in the utility analysis. (National Regional Electric Cooperative Association, No. 17 at 1; Vaughn Manufacturing Company, No. 75 at 1).

In response, the Department notes that where utilities offer time-of-day rates, the economics of off-peak water heating change dramatically and may be

very attractive. However, the Department does not have the authority to require utilities to offer such rates, and believes the lack of these rates offered nation-wide precludes consideration of off-peak water heaters in a national standard.

Several comments discussed the impacts of appliance conservation standards on natural gas utilities. The Washington Gas Light, Inc. urged the Department to dedicate a similar level of analytical effort to the utility cost consequences of standards on natural gas appliances as it devotes to impacts on electric utilities from standards on electric appliances. (Washington Gas Light, Inc., No. 37 at 12).

The Department initially studied the potential impacts of standards on electric utilities and not natural gas utilities because there were more abundant data on the former. Furthermore, significantly more residential energy consumption is electricity rather than natural gas.

Nevertheless, the Department recognizes that for analytical completeness, it should conduct studies on the potential impacts of standards on natural gas utilities. Accordingly, DOE is now examining methodologies and data sources that will enable it to conduct such studies. The Department, therefore, welcomes submittals of relevant information and data in this regard.

Columbia Gas and the Montana-Dakota Utilities Company stated that conservation standards on gas appliances would result in a loss of natural gas sales, which, in turn, would lead to higher rates to all gas customers. (Columbia Gas, No. 45 at 5; Montana-Dakota Utilities Company, No. 54 at 3).

The Department does not accept the inevitability of that contention; a loss of gas sales may or may not increase rates. The actual effect depends on the cost structure of the gas utility. If avoided costs are larger than rates, then reducing sales would actually decrease rates. Without study of individual gas utility cost structures, no *a priori* conclusion in this regard can be drawn.

Lastly, four comments addressed the Department's planned analysis of environmental effects. Both the Southern Union Gas Company and Columbia Gas pointed out that the negative environmental effects from electric resistance water heaters are more severe than are the effects from natural gas water heaters. Columbia Gas stated that carbon dioxide emissions from electric resistance water heaters are 3.8 times higher than those from a minimum efficiency gas water heater. (Southern Union Gas Company, No. 22 at 2; Columbia Gas, No. 45 at 5). Also, the American Gas Association and Columbia Gas urged the Department to consider the environmental impact of the total energy delivery cycle, i.e., source energy, not just site consumption only. (American Gas Association, No. 23 at 3; Columbia Gas, No. 45 at 2).

The statements regarding the relative environmental impacts of gas and resistance electric water heating are generally correct. Furthermore, the Department does account for source energy (not just site energy) savings by including the fuel used by electric utilities and the consequent emissions in the utility impact assessment and environmental analysis. These effects are reported in Chapter 9 of the Technical Support Document accompanying this Notice.

b. Product-Specific Comments

1. Room Air Conditioners

Classes. In the September 1990 advance notice, DOE proposed 12 classes of room air conditioners. The product classes consist of four categories; units with side louvers, units without side louvers, units with reversing valve with side louvers, and units with reversing valve without side louvers. There are five class divisions by capacity within each of the two categories without reversing valves.

The California Energy Commission proposed a reduction in product classes from 12 to 4, eliminating the class divisions based on capacity. (California Energy Commission, No. 24 at 2). Whirlpool Corporation and Association of Home Appliance Manufacturers proposed two additional classes, a casement slider and a casement only room air conditioner. They stated that restricted geometry adversely impacts the potential new designs that can be applied to those types of room air conditioners. For example, rotary compressors could not be fitted into the casement units. (Whirlpool Corporation, No. 31 at 7; Association of Home Appliance Manufacturers No. 61A at 4). The American Council for an Energy Efficient Economy in its comments cited room air conditioners as an example where broad product classes have been properly selected. (American Council for an Energy Efficient Economy, No. 6, at 1).

There are several constraints placed on the design of room air conditioners. Because most room air conditioners are installed in double-hung windows, the size of the most typical double-hung windows becomes a significant factor in cabinet design and production. Every room air conditioner unit could be designed to optimize performance and efficiency as long as a specific cabinet could be built to best suit the unit's particular capacity and efficiency. Manufacturers cannot afford the luxury of optimizing every model they produce, so they limit their production of cabinets to three or four sizes. Because of space and configuration limitations, the larger capacity units for a given cabinet size will tend to be less efficient. For this reason the Department is rejecting the California Energy Commission proposal to ignore capacity in establishing classes.

The Department decided to adopt additional classes for casement slider and casement only room air conditioners. These units offer a unique utility to the consumer in that they offer a performance-related feature (fitting into casement windows) which other room air conditioners cannot provide. The Department believes that the size limitations imposed on casement units are more significant than those faced by typical double-hung window units. Since its performance-related feature justified a lower standard, separate product classes were established for casement slider and casement only units. Because of the small amount of empirical data on casement type units, the Department was unable to analyze these classes. As a result, the Department is not proposing any standards for them.

Design options. Both the Association of Home Appliance Manufacturers and Whirlpool Corporation provided detailed comments on each design option. (Association of Home Appliance Manufacturers, No. 61A at 5–22 and Whirlpool Corporation, No. 31 at 6–13). A number of the comments concerned design changes to improve heat exchanger (evaporator and condenser) performance. These improvements can be put into two categories; designs for increasing the heat transfer surface area and designs for increasing the heat transfer coefficients. The heat transfer surface area can be increased by any of the following methods: increasing the depth of the coil by adding vertical tube rows, increasing the frontal area of the coil by increasing the height or width, increasing the fin density, or adding a subcooler to the condenser coil. The heat transfer coefficients can be increased by using an enhanced fin design or grooved (rifled) refrigerant tubing. In addition, spraying condensate on the condenser can improve its heat transfer coefficient.

The Association of Home Appliance Manufacturers and Whirlpool Corporation commented that cabinet size could prevent or at least limit the

number of tube rows that could be added to increase the depth of the coil. In addition, they state that the effect of each successive tube row on system performance diminishes rapidly. The Association of Home Appliance Manufacturers also commented that compressor reliability could be affected. The addition of tube rows increases the internal volume of the system and, therefore, the amount of refrigerant required. Compressor reliability could be reduced as the compressor would be required to pump excess refrigerant. Whirlpool Corporation added that a thicker coil will increase air flow restriction and may actually reduce efficiency. (Association of Home Appliance Manufacturers, No. 61A at 9–10; Whirlpool Corporation, No. 31 at 8).

In the analysis of additional tube rows, the Department used engineering design data provided by room air conditioner manufacturers. The data were based on measurements taken from actual room air conditioner units and included information that specified the number of tube rows that could be added to the existing coils. The computer simulation model which was used in the analysis of room air conditioners considered the effect that additional tube rows have on the entire room air conditioner refrigerant system.

The Association of Home Appliance Manufacturers and Whirlpool Corporation commented that increasing the frontal area of the coil would require an increase in chassis size. Coils in existing room air conditioners are already so large that any useful increase would require an increase in the size of the cabinet. The incremental cost for such a change would be significant. Whirlpool Corporation added that an increase in frontal area reduces the water removal capability of the evaporator coil. (Association of Home Appliance Manufacturers, No. 61A at 10; Whirlpool Corporation, No. 31 at 7).

The Department agrees with the Association of Home Appliance Manufacturers's and Whirlpool Corporation's comments regarding the increase of the coil's frontal area. Any useful increase in performance would require that the cabinet size be increased as well. Manufacturers' cost data for this design were taken into consideration in the analysis. The computer simulation model takes into account the impact of increasing the coil frontal area on the evaporator's water removal capability.

Both the Association of Home Appliance Manufacturers and Whirlpool Corporation stated that there is a limit to how high the fin density can be increased before air flow becomes too restricted and adversely affects the efficiency of the unit. In addition, an increased fin density might prevent the proper drainage of condensate from the evaporator. The Association of Home Appliance Manufacturers added that dirt build-up is a serious concern in coil design. With a higher fin density, greater dirt build-up is likely to result in coil degradation and lower unit efficiency. (Association of Home Appliance Manufacturers, No. 61A at 11; Whirlpool Corporation, No. 31 at 8).

The Department solicited comments from room air conditioner manufacturers regarding the maximum allowable fin densities for a variety of evaporator and condenser coils. Their comments served as a guideline to how high fin densities could be increased for prospective coils. The computer simulation model is capable of calculating the effect that increased fin density has on the air-side pressure drop across the coil and, in turn, the power consumption of the fan motor.

In its comment concerning subcoolers, Association of Home Appliance Manufacturers asserted that subcoolers are not used unless it is impossible to achieve the needed subcooling without them. The Association of Home Appliance Manufacturers also stated that when a subcooler is needed, the available room in the chassis dictates the allowable length of the subcooler. (Association of Home Appliance Manufacturers, No. 61A at 12, 13). Whirlpool Corporation stated that a subcooler type that transfers heat from the refrigerant in the liquid line to the superheat exiting the evaporator is not practical in room air conditioners due to limited space within the cabinet. (Whirlpool Corporation, No. 31 at 10).

The Department understands the conventional practice used by manufacturers for incorporating subcoolers into room air conditioners. But the Department does not believe that this should prevent the design option from being considered. As long as the chassis of the particular unit is large enough to accommodate it, a subcooler will be considered as a way to improve a unit's performance. Engineering data supplied by manufacturers provided information on the maximum length of subcoolers which could be incorporated into a particular unit. The data were used to establish subcooler length for prospective room air conditioners.

Enhanced fin surfaces, such as wavy or slit patterns, improve the heat transfer capability of a coil by increasing the air-side heat transfer coefficient. In its comments regarding enhanced fin designs, the Association of Home Appliance Manufacturers stated that most manufacturers now use a wavy or "waffle" fin (Association of Home Appliance Manufacturers, No. 61A at 12). Additional improvement can be achieved through the use of "lanced" or "louvered" fins. The Association of Home Appliance Manufacturers expressed a concern that data based on work performed by manufacturers should be more heavily relied upon than data based on published research papers available in the public domain. The publicly available data seems to be either based upon theoretical analysis or research-type testing of simulated coil configurations. The Association of Home Appliance Manufacturers stated that the correlation between the data and actual performance results in room air conditioners is difficult to determine. (Association of Home Appliance Manufacturers, No. 61A at 13, 14). Whirlpool Corporation stated that air flow is reduced and air-side pressure drop across the coil is increased due to incorporating enhanced fin surfaces into coils. But Whirlpool Corporation added that enhanced fin designs provide significant improvement without substantial additional cost. (Whirlpool Corporation, No. 31 at 9).

The Department generally agrees with the comments made by Association of Home Appliance Manufacturers concerning enhanced fin design. Test data received from room air conditioner manufacturers and heat exchanger manufacturers are given more weight than theoretical analyses when deciding how much of an improvement should be given to the air-side heat transfer coefficients due to enhanced fin surfaces. The Department does not believe that the theoretical or research data available in the public domain should be dismissed entirely, and is using it as a check on the data received from manufacturers to determine if their information is reasonable. Improvements to the air-side heat transfer coefficients are input to the computer simulation model. With this information on improvements, the model is able to determine what effect enhanced fin surfaces have on the entire room air conditioner system.

Augmenting the smooth inside surface of refrigerant tubing with grooves increases the tube's refrigerant-side heat transfer coefficient. Grooved (rifled) tubing can therefore improve the heat transfer capability of a coil. The Association of Home Appliance Manufacturers' comments concerning grooved tubing are similar to the comments it gave regarding enhanced

fin surfaces. The Association of Home Appliance Manufacturers stated that data based on work performed by manufacturers should be more heavily relied upon than data provided by refrigerant tubing manufacturers. The Association of Home Appliance Manufacturers asserted that the data made available by tubing manufacturers are generally obtained under optimized conditions rather than under conditions representing actual application in room air conditioners. (Association of Home Appliance Manufacturers, No. 61A at 15). Whirlpool Corporation states that grooved tubing costs significantly more than smooth tubing but has a beneficial effect on system performance. (Whirlpool Corporation, No. 31 at 9).

As with enhanced fin surface data, the Department is giving more weight to data received from room air conditioner manufacturers when deciding how much improvement should be given to the refrigerant-side heat coefficients due to grooved tubing. The Department is using data made available by refrigerant tubing manufacturers as well as data provided by research papers in the public domain to compliment the data received from room air conditioner manufacturers. (See Technical Support Document, Volume H). Improvements to the refrigerant-side heat transfer coefficients are input as multipliers to the computer simulation model. With the multipliers, the model is able to determine what effect grooved tubing has on the entire room air conditioner system.

Whirlpool Corporation stated that it is standard practice to spray condensate produced by the evaporator onto the condenser coil. (Whirlpool Corporation, No. 31 at 9).

Because most, if not all, manufacturers incorporate the spraying of condensate into their room air conditioners, the Department did not analyze condensate spray as a design option. Baseline models for each of the product classes are assumed to include condensate spray in their designs.

Improving the air system efficiency can be accomplished either by increasing the fan or fan motor efficiency. In a room air conditioner, both the evaporator and condenser fans are driven by one fan motor. The Association of Home Appliance Manufacturers stated that increases in air system efficiency are limited because of the following: Configuration constraints due to the compact design of room air units; standardization of air system components because the industry's supply comes almost entirely from a single vendor; lower fan motor efficiencies that occur because the room air unit design is optimized at fan speeds other than the point of maximum motor efficiency; and air system designs which must limit noise levels. In addition, the Association of Home Appliance Manufacturers stated that fan motor efficiency is not expected to increase significantly by the year 1995. The Association of Home Appliance Manufacturers also stated that reductions in restrictions to air flow can be made only by increasing the space available for air flow. Major increases in cost would be associated with such a change as it would necessitate an increase in the chassis of the room air conditioner. (Association of Home Appliance Manufacturers, No. 61A at 16–19). Whirlpool Corporation repeated much of what the Association of Home Appliance Manufacturers stated and, in addition, stated that the use of separate fan motors would require significant redesign and increase the product cost. (Whirlpool Corporation, No. 31 at 11). Natural Resources Defense Council said that DOE should add improved air flow past coils as a design option. (Natural Resources Defense Council, No. 13 at 27). The American Council for an Energy Efficient Economy recommended that DOE treat fan and fan motor efficiency separately. (American Council for an Energy Efficient Economy, No. 6 at 3).

In its analysis of increasing the air system efficiency, the Department analyzed only improvements that could be made to the fan motor. The data from fan manufacturers did not provide information on the effect of different fan types on air system efficiency in a room air conditioner application. Therefore, the Department did not analyze improvements due to changes in the fan efficiency. The Department agrees with the Association of Home Appliance Manufacturers's comment regarding restrictions to air flow. Increasing the space available for air flow can be accomplished only by enlarging the chassis size. In the analysis of increased coil face areas where the cabinet size had to be increased, increases in system efficiency were assumed to be a result not only of the enlarged coil, but also the improvement in air flow resulting from the larger cabinet. Therefore, improvements in the air flow past the coils are inherently considered in the analysis of increased coil face areas. The Department utilized data obtained from fan motor manufacturers to determine efficiency increases and the associated incremental costs for improving the efficiency of fan motors.

Both the Association of Home Appliance Manufacturers and Whirlpool Corporation commented that most room air conditioner manufacturers use rotary compressors. Improvements beyond the currently available efficiency of 11.0 energy efficiency ratio are expected to be small. They also stated that higher efficiency scroll compressors might be suitable for larger capacity room air units. But use of scroll compressors would significantly increase the cost of room air conditioners. (Association of Home Appliance Manufacturers, No. 61A at 19, 20; Whirlpool Corporation, No. 31 at 11). Natural Resources Defense Council said that DOE should disaggregate the design option of improving the compressor efficiency into motor efficiency, volumetric efficiency, reduced mechanical resistance in pumps, and alternate compressor designs. (Natural Resources Defense Council, No. 13 at 27).

The Department took into account data from both room air conditioner and compressor manufacturers when determining the available efficiency increase in compressors. The data indicated that most room air conditioners use rotary compressors and that the maximum energy efficiency ratio for compressors of this type is 11.0. Other compressor types were also analyzed. New technologies for reciprocating compressors with capacities exceeding 17,000 Btu/h have pushed energy efficiency ratios past 11.0. These reciprocating compressors were considered for the two largest capacity classes of room air conditioners. Scroll compressors were also considered, but for the compressor capacities in the range used in room air conditioner units, energy efficiency ratios did not exceed 11.0. Compressor manufacturers indicated that there is a high probability that compressor energy efficiency ratios ranging from 11.5 to 12.0 would be available by the year 1995. Based on this information, compressor efficiencies of this magnitude were analyzed by the Department. In response to Natural Resources Defense Council's comment, compressor manufacturers increase compressor efficiency by improving the performance of these individual components. Data for the impact of component improvements are not available but, component improvements are reflected in higher compressor energy efficiency ratios. Therefore, the Department is analyzing the compressor as a whole rather than attempting to analyze individual components.

Other comments. The American Council for an Energy Efficient Economy proposed that DOE revise the room air conditioner test procedure to determine the energy savings on a

cycling rather than a steady state basis. If the test procedure cannot be revised during the rulemaking, the American Council for an Energy Efficient Economy recommended development of methods to estimate the benefits of design options which tend to improve efficiency under cycling conditions. (American Council for an Energy Efficient Economy, No. 6 at 2). On the other hand, the Association of Home Appliance Manufacturers and Whirlpool Corporation stated room air conditioners are not normally turned on for extended periods of time, and when they are turned on the (room and ambient) temperature is more likely to be high, reducing the amount of cycling. The current one-temperature test procedure adequately matches consumer usage patterns for room air conditioners. The Association of Home Appliance Manufacturers said that any change in the procedure will drive up the product cost and provide no benefit. It was the contention of the Association of Home Appliance Manufacturers and Whirlpool Corporation that design options such as variable speed compressors, electronic expansion valves, thermostatic cycling controls, and possibly use of alternative refrigerants that improve efficiency under cycling conditions will not result in any measurable efficiency improvements. The Association of Home Appliance Manufacturers stated that the addition of a cycling test must be justified by in-depth studies and field experiments to determine if the efficiency improvements such a revision would predict are cost-effective. (Association of Home Appliance Manufacturers, No. 61A at 6–8; Whirlpool Corporation, No. 31 at 12–14).

In response, the Department believes that some design options may improve efficiency under cycling conditions. The Department also agrees that before such design options are translated into test procedure credits, field tests would need to be conducted to provide evidence to support such credits. Therefore, for purposes of this rulemaking, cycling designs for room air conditioners will not be given test procedure credit.

Though no test procedure credit will be given to cycling designs, the Department believes that energy savings can be realized through the use of variable speed compressors. Energy savings for variable speed compressors have been estimated by extrapolating from results based on tests performed on central air conditioners. The extrapolated estimate is significantly lower than what test results indicate for central systems. A low estimate is used because room air conditioners probably cycle less than central systems. Cycling data for room air conditioners are not available.

There are some design options listed in the Advance Notice of Proposed Rulemaking which are theoretically possible, but for which experimental data or prototypes are not available. The impact of electronic expansion valves and thermostatic cycling controls on the efficiency of room air conditioners has not been analyzed because the Department was not able to obtain any data for these designs.

Both the Association of Home Appliance Manufacturers and Whirlpool Corporation made comments regarding replacement refrigerants for R–22. They commented that though research has identified refrigerant blends (non-azeotropic mixtures) that could improve the efficiency of room air conditioners, no prototypes have been developed that demonstrate this potential. In addition, changes would be required in room air conditioner systems, e.g., heat exchangers, in order for the unit to operate efficiently with the replacement refrigerant. (Association of Home Appliance Manufacturers, No. 61A at 8; Whirlpool Corporation, No. 31 at 15).

The Department agrees with the comments made by the Association of Home Appliance Manufacturers and Whirlpool Corporation regarding replacement refrigerants for R–22. Since no prototypes exist, the Department did not analyze replacement refrigerants as a design option for room air conditioners.

The Association of Home Appliance Manufacturers provided extensive comments regarding the computer simulation model used by the Department to analyze room air conditioners. The Association of Home Appliance Manufacturers proposed the following changes to the computer simulation model: (1) Modification of the compressor subroutine to model rotary compressors and to simulate reciprocating compressors better; (2) correction of the condensate spray subroutine to predict its effect on system performance better; (3) addition of correction factors to account for indoor/outdoor air leakage, short-circuiting of indoor air, and heat leakage through the divider wall; (4) addition of multiplication factors to modify coil heat transfer coefficients as a result of using enhanced fin surfaces; (5) addition of correction factors to modify such values as the compressor power and refrigerant mass flow rate in order to assist in calibrating the model to test data; and (6) addition of a psychometric heat balance routine to check that the results from the simulation model are thermodynamically consistent. In addition to making changes to the simulation model, the Association of Home Appliance Manufacturers requested that DOE calibrate the model to match industry test data for the baseline models chosen to represent each of the room air conditioner product classes. The Association of Home Appliance Manufacturers also requested that the room air conditioner industry be given the opportunity to conduct experiments to judge the models validity after the needed changes to the model were completed. The Association of Home Appliance Manufacturers also stated that manufacturers' data should be given significant weight in predicting the increases to efficiency due to design modifications. (Association of Home Appliance Manufacturers, No. 61A at 2,3). Whirlpool Corporation stated that it fully supports the Association of Home Appliance Manufacturers's recommended changes to the computer simulation model. (Whirlpool Corporation, No. 31 at 15).

The Department has made the changes to the simulation model that were proposed by the Association of Home Appliance Manufacturers. Simulation of baseline models were calibrated against test data submitted by manufacturers. The Department encourages the room air industry to test the validity of the simulation model and submit results in response to the standard levels being proposed in this rulemaking.

The Rocky Mountain Institute proposed that latent cooling be considered in room air conditioner energy savings, and that DOE investigate whether the spread between evaporator temperatures has been reduced to a minimum. (Rocky Mountain Institute, No. 15 at 4).

The computer simulation model used in the analysis of room air conditioners evaluated the thermodynamic performance of the refrigerant system. In this evaluation, the removal of latent heat was calculated. Minimization of the difference in evaporator inlet and outlet temperatures is an inherent consideration in heat exchanger and system design. This temperature difference was determined by the simulation model.

The Florida State Energy Office (FSEO) suggested that the Department consider classifying room air conditioners according to their load characteristics. (FSEO, No. 42 at 5, 6). The Association of Home Appliance Manufacturers stated that regional

standards could increase the product's cost by denying manufacturers the economy of large production runs and augment distribution problems by isolating inventories by region. (Association of Home Appliance Manufacturers, No. 61A at 22–25).

The Department assumes that the Florida State Energy Office comment concerns regional standards. The Department believes the program requires the setting of a national standard and is proposing therefore only a national standard for room air conditioners.

The Natural Resources Defense Council and the Florida State Energy Office proposed that DOE establish procedures that take into account the integration of room air conditioners and water heaters (heat recovery units). (Natural Resources Defense Council No. 13 at 29; FSEO No. 42 at 2,3).

Establishing standards and developing test procedures for appliances which serve two types of loads simultaneously is a very complex problem. The Department is in the process of developing standards and test procedures for combined central air conditioners and water heaters. However, because of the difficulty of running water lines to a remote room air conditioner location and the inherent heat losses from the hot water line, a room air conditioner/water heater configuration does not seem particularly appropriate. At this time, DOE will not establish a standard for room air conditioner/water heater systems.

The Natural Resources Defense Council, the Florida State Energy Office and the American Council for an Energy Efficient Economy stated that DOE should consider the cost of peak power in evaluating the cost effectiveness of room air conditioner standards. (Natural Resources Defense Council No. 13 at 18; Florida State Energy Office No. 42 at 5,6; American Council for an Energy Efficient Economy No. 6 at 7).

The price of electricity used for room air conditioners is the projected 1996 average residential electricity price from DOE Annual Energy Outlook 1991. Analysis of electricity price by end-use from data in the DOE/EIA 1987 Residential Energy Consumption Survey indicates that the average electricity price for residential air conditioning was the same as the national average residential electricity price (in other words, the end-use price multiplier is 1.00). Cost effectiveness to the consumer, e.g., life cycle cost, payback and cost of conserved energy, is evaluated according to the actual charges to the consumer.

The Fedders Corporation urged DOE to establish a minimum energy efficiency ratio for window air conditioners of 10.0, stating that this should be done to keep the industry competitive on a global basis. The Fedders Corporation also stated that existing technology clearly can support this minimum efficiency at small cost to manufacturers. (Fedders, No. 91 at 1).

The Association of Home Appliance Manufacturers responded to the Fedders Corporation's comment stating that the Association of Home Appliance Manufacturers was unclear as to which classes the Fedders Corporation was referring, and urging DOE to maintain and evaluate separate classes of room air conditioners. Furthermore, the Association of Home Appliance Manufacturers stated that the Fedders Corporation cannot accurately judge the technological and economic impacts of such a minimum energy efficiency ratio on other manufacturers. (Association of Home Appliance Manufacturers, No. 92 at 1).

The Department notes both comments and has analyzed each proposed class of room air conditioners separately, using all available cost and performance data. The results presented in today's notice as proposed minimum energy efficiency ratio's for room air conditioners range from 9.3 to 11.1, depending on size and configuration.

2. Water Heaters

Classes. There was considerable discussion about water heater product classes. Many comments came from gas utilities.

The American Gas Association urged DOE to adopt a source-based energy analysis and to recognize the importance of efficiency of the total energy delivery cycle. (American Gas Association, No. 23 at 3.)

The National Appliance Energy Conservation Act separates water heaters into three product classes by fuel type: Gas, electric and oil.[14] Also, the National Appliance Energy Conservation Act directs the Secretary to develop different standards for product classes within an appliance type if they "consume a different kind of energy from that consumed by other covered products within such type."[15] Therefore, the Department did not compare water heaters of different fuel types. However, the Department considered the effects of fuel-switching caused by the standards, as forecasted by the Lawrence Berkeley Laboratory Residential Energy Model.

The American Gas Association and many of the gas utilities proposed additional classes for gas water heaters based on several factors. These included the utility of having hot water if the power fails and the high cost of bringing electricity to locations without electric outlets near the water heater. The American Gas Association argued that a precedent already exists with ranges/ovens for separate product classes with or without an electric cord. (American Gas Association, No. 23 at 4–6.)

Several comments proposed that DOE establish four classes for gas water heaters: With and without draft hood, and with and without electric cord. (American Gas Association, No. 23 at 2; Southern Gas Association, No. 4 at 3; Lone Star Gas Company, No. 39 at 3; Southern Natural Gas Company, No. 46 at 2; LaClede Gas, No. 55 at 3; Equitable Resources, No. 72 at 1; Madison Gas & Electric, No. 77 at 1; Louisiana Gas, No. 81 at 1; United Texas Transmission, No. 26 at 2; Southern Union Gas Company, No. 22 at 1; Colorado Interstate Gas, No. 14 at 2; Wisconsin Gas Company, No. 33 at 1; South Carolina Electric and Gas Company, No. 34 at 2; Bay State Gas, No. 52 at 1; Arkansas Oklahoma Gas, No. 56 at 1; Providence Gas, No. 62 at 1; Southern Connecticut Gas, No. 63 at 1; Arkansas Western Gas, No. 64 at 4; ENTEX, No. 58 at 5; Essex County Gas, No. 69 at 1; K N Energy, No. 70 at 3; and Delta Natural Gas, No. 73 at 2.)

The Gas Appliance Manufacturers Association stated that DOE should recognize the particular utility and performance characteristics of conventional gas water heaters and preserve the availability of this product to the American consumer. (Gas Appliance Manufacturers Association, No. 40 at 3.)

Two gas utility companies proposed three product classes for gas-fired water heaters: with a draft hood with and without electric cord, and with electric cord (no designation on presence of draft hood). (Atlantic Gas Light Company, No. 29 at 2; and Energen, No. 12 at 4.)

Some gas utilities proposed two product classes for gas water heaters, namely, with and without electric cord. (Oklahoma Natural Gas Company, No. 57 at 1; and Northern Indiana Public Service, No. 48 at 2.)

The Arkansas Western Gas Company listed several benefits provided by a standing pilot in water heaters. These benefits include keeping the flue warm, helping maintain water temperature in the tank, providing a low-cost, fail-proof ignition system, allowing operation

[14] "Standards for Water Heaters; Pool Heaters; Direct Heating Equipment." *42 U.S.C. 6295(e).*

[15] "Special Rule for Certain Types or Classes of Products", *42 U.S.C. 6295 (n)(1)(A).*

during power outages, and low operating cost. (Arkansas Western Gas Company, No. 64 at 5.) Piedmont Natural Gas Company, Inc. urged the Department to evaluate fully the benefits of standing pilot ignition systems. Many citizens in North and South Carolina continued to have hot water and were able to cook after hurricane Hugo caused extensive power outages which lasted up to several weeks. (Piedmont Natural Gas Company, No. 71C at 2.)

The Department considered only one product class for gas-fired storage water heaters. The Department believes that designs that eliminate draft hoods or add electric cords do not change the utility of water heaters; therefore, these designs do not warrant inclusion in a separate class. These design options were evaluated solely on economic considerations. Additional installation cost to bring electricity to water heaters not close to outlets was included in the analysis of those design options. When condensation from mid-efficiency water heaters would damage masonry chimneys, the cost of relining or power venting was added to the installation costs.

The Department does not consider the utility of having hot water, or other amenities, during power outages adequate reason to develop separate product classes. Between 90 percent and 93 percent of residential electric customers experience no electricity outages longer than four hours per year.[16] Currently, central gas furnaces are not divided into product classes based on the use of electricity as proposed above for gas water heaters. Additionally, in this proposal, ranges/ovens are not divided into two product classes based on the use of electricity.

The Public Service Company of North Carolina, Inc. recommended that additional product classes be defined for gas-fired storage water heaters installed outside. (Public Service Company of North Carolina, Inc., No. 74 at 3).

The Department is not aware of any unique water heater design features that lead to any utility and lower energy efficiency that justifies a separate class. Therefore, the Department is not establishing a separate product class for gas-fired water heaters installed outside.

The Pacific Power and Edison Electric Institute supported three separate classes for electric water heaters (resistance, instantaneous, and heat pump). The Pacific Power stated that heat pump water heater efficiency depends upon climate and use patterns. (Pacific Power, No. 53 at 1, and Edison Electric Institute, No. 20 at 2). Peoples Natural Gas Company stated that heat pump water heaters should be promoted over electric resistance water heaters. (Peoples Natural Gas Company, No. 28 at 3).

Several comments proposed that heat pump water heaters be treated as a design option for electric storage water heaters, and not as a separate product class. (DEC International No. 3 at 1; Mr. Wayne Goode, No. 8 at 1; Mr. Joe Wilson, No. 10 at 1; American Council for an Energy Efficient Economy, No. 6 at 1; Natural Resources Defense Council, No. 13 at 21; Rocky Mountain Institute, No. 15 at 2; Crispaire, No. 19 at 1; Citizens Environmental Coalition Educational Fund, No. 24 at 3; Champaign County Board, No. 36 at 1; Northwest Power Planning Council, No. 32 at 1; Mr. George Smith, No. 32 at 2; Sierra Club, No. 43 at 2; and Mr. Warren Widener, No. 78 at 2). Northwest Power Planning Council proposed a separate product class for add-on heat pumps for water heaters. (Northwest Power Planning Council, No. 32 at 2).

The Natural Resources Defense Council argued that heat pump water heaters should not be a separate class. In its comments, the Natural Resources Defense Council acknowledged some arguments in favor of keeping them a separate class, such as the inability to operate at low temperatures, which the Natural Resources Defense Council claimed can be overcome with electric resistance backup; first hour rating, which the Natural Resources Defense Council stated can be overcome with a larger tank; and noise, which the Natural Resources Defense Council suggested can be overcome with more insulation. The Natural Resources Defense Council argued that these are economic considerations, not product utility considerations. (Natural Resources Defense Council, No. 13 at 22). On the other hand, Edison Electric Institute supported a separate product class for heat pump water heaters. Because of replacement market considerations, the heat pump compressor may have to be located outdoors, the air temperature must be greater than 45°F, sufficient air circulation is needed (500 cfm) or surrounding air space must be of sufficient volume (1000 ft^3), and there must be provision for condensate drainage. (Edison Electric Institute, No. 20 at 2).

The Gas Appliance Manufacturers Association stated that DOE should not analyze heat pump water heaters since their shipments are extremely low, totaling less than 0.05 percent of all electric water heater shipments. (Gas Appliance Manufacturers Association, No. 40 at 4).

The Department considered only one product class for electric storage water heaters. Heat pump water heaters were regarded as design options for electric storage water heaters. They provide the same utility as electric resistance storage water heaters. The Department agreed with the Natural Resources Defense Council that all of the issues regarding heat pump water heaters discussed above are economic in nature, and are treated as such in the analyses.

The Department decided a separate product class was not appropriate for add-on heat pumps. Since this type of heat pump is always used with a storage tank, there is no difference in the utility provided to the consumer.

No detailed information describing the location of electric water heaters in existing houses was provided. Lacking better data, DOE assumed sufficient volume of air circulation would be available to allow proper operation of heat pump water heaters. Most of the heat pump water heaters considered in this analysis are currently available. They are all equipped with freeze protection and have backup resistance elements. This permits operation under adverse conditions. Providing condensate drains was included in the installation costs for all heat pump water heaters.

The Department rejected the Gas Appliance Manufacturers Association's comment that heat pump water heaters not be considered in the analysis because of their low sales volume. The Department would agree with the Gas Appliance Manufacturers Association if heat pump water heaters warranted a separate class; however, since they are treated as a design option, DOE concluded that they warrant consideration. The effect on water heater manufacturers of standard levels requiring heat pump water heaters was considered in the manufacturing impact analysis.

The low heating rate of electric instantaneous water heaters presents a disadvantage with respect to their capability to provide a large quantity of hot water as rapidly as an electric resistance storage water heater. This difference justified two product classes (instantaneous and all other) for electric water heaters. There is little that can be done to improve the efficiency of electric instantaneous water heaters. Therefore, standards were not

[16] A.P. Sanghvi. 1990. *Cost-Benefit Analysis of Power System Reliability: Determination of Interruption Costs.* Prepared by RCG/Hagler/Bailly Inc. for Electric Power Research Institute EL-6791, vol 2, p 3-3.

developed for electric instantaneous water heaters.

Gas-fired instantaneous water heaters can provide unlimited amounts of hot water, but at limited rates. The Department judged this to be a significant difference in utility to the consumer. Gas instantaneous water heaters were, therefore, specified as a separate product class, and analyzed as such for standards.

United Technologies Carrier proposed a separate product class for a combined space and water heater. Electricity-using design options are viable for combination appliances, but would cause substantial increases in prices for gas water heater installations, and would inconvenience many customers. (United Technologies Carrier, No. 84 at 1). The Florida Governor's Office and the Northwest Power Planning Council proposed a product class for desuperheater water heaters. These are popular in Florida and use waste heat from air conditioners. Therefore, they operate only during the cooling season. (Florida Governor's Office, No. 42 at 6, and Northwest Power Planning Commission, No. 32 at 2).

Before the Department can consider combination space and water heating appliances and desuperheating water heaters for regulation, test procedures would have to be developed and adopted by DOE for such appliances. Furthermore, appliances that provide combined services will be examined during a forthcoming rulemaking on amended standards for central air conditioners and central air conditioning heat pumps.

Design options. There were many comments on the design options for water heaters. A discussion of these comments follows below.

The Southern Gas Association and other gas companies provided price estimates of more efficient water heater designs. For water heaters with energy factors of 0.63, 0.74, and 0.54, the American Gas Association estimated uninstalled prices of $667, $729, and $195, respectively. (Southern Gas Association No. 4 at 4; Energen Corp. and Alabama Gas Corp., No. 12 at 6; South Carolina Electric and Gas Co., No. 34 at 3; Montana-Dakota Utilities Co., No. 54 at 3; Oklahoma Natural Gas Company, No. 57 at 4).

The Columbia Gas provided a comparison of design options, energy factors and retail prices for four designs of efficiencies of gas water heaters. These were atmospheric draft/underfired (energy factor .54, $150-$350), atmospheric draft/subchamber (energy factor .62, $250-$500), forced draft/subchamber (energy factor .72, $600-$900), forced draft/immersed chamber (energy factor .82, $1300-$1800). (Columbia Gas, No. 45 at 3).

The Department used a retail price of $155.48 for the baseline model with an energy factor of .54. This is based on a factory cost of $95.63 supplied by the Gas Appliance Manufacturers Association. The 63 percent markup from factory cost to retail price was provided by the Lawrence Berkeley Laboratory-Manufacturer Impact Model. Installation expense used in the analysis for the baseline model was $126.12.

The Department included a standard venting, submerged combustion chamber water heater with heat traps, reduced heat leaks and R–16 insulation in the analysis, with an estimated energy factor of .57. At large-scale production, the submerged combustion chamber will not increase the factory cost.[17] The heat traps, reduced heat leaks, and R–16 insulation added $18.19 to the factory cost, for a total factory cost of $113.82. The Lawrence Berkeley Laboratory-Manufacturer Impact Model estimated a markup of about 57 percent for a total retail price of $179.22.

A model with an energy factor of .74 (calculated to have an energy factor of .71 using the proposed test procedure) was also included in the analysis. This unit has 2 inches of foam insulation surrounding a plastic tank, heat traps, indirect heating of the water, and electronic ignition. The Department estimated the factory cost of this unit at large-volume production to be $344.41. This estimate was based on an estimated 16 percent reduction in factory costs due to large-scale production. The retail price predicted by Manufacturer Impact Model was $612.96, with a 78 percent markup.

A water heater with forced draft and submerged combustion chamber was not analyzed. However, the Department did consider forced draft with increased baffling. An estimated incremental manufacturing cost of $312.50 was supplied by the Gas Appliance Manufacturers Association. Heat traps, reduced heat leaks, and R–16 insulation were also included on this unit for an energy factor of .67 (calculated to have an energy factor of .66 using the proposed test procedure). A total factory cost of $426.32 was used. A markup of 40 percent from the Lawrence Berkeley Laboratory-Manufacturer Impact Model was applied to arrive at a retail price of $596.83.

The Department was not aware of any existing designs or prototypes for water heaters with forced draft and immersed chambers. No analysis was done for this design option.

The Wisconsin Blue Flame Council cited an incremental unit cost of $150 to $200 to add automatic ignition devices and flue dampers to residential gas-fired water heaters. (Wisconsin Blue Flame Council, No. 33 at 33). Equitable Resources stated the additional cost for electrical safety controls to be approximately $20 to $50. (Equitable Resources, No. 72 at 2).

The Department used an incremental material cost of $49 for a spark ignition system, flue damper, 24-volt plug-transformer, and control relay.[18] Other factory costs were from the Gas Appliance Manufacturers Association data.

Design Options for Storage Water Heaters

The Rocky Mountain Institute stated that DOE should study insulated pressure relief valves, plastic drain pipes, and flexible anode rods. (Rocky Mountain Institute, No. 15 at 4). The Natural Resources Defense Council proposed that DOE evaluate thermal short circuits through insulation. Work performed by the California Energy Commission and the National Institute of Standards and Technology showed that the effective thermal resistance is often 50 percent or less than the thermal resistance calculated from the level of insulation. (Natural Resources Defense Council, No. 13 at 27).

Reduced heat leaks were included as one of the design options in the analysis of water heaters. The actual features of this design option were not specified. Measures that could be included in this design option were to eliminate thermal bridges from jacket to feed throughs, to eliminate voids in insulation, to insulate the pressure relief valve, to install plastic drain pipes, and to reduce the number of feed throughs by combining functions. These measures were not modeled separately.

The American Council for an Energy Efficient Economy proposed that vacuum panels be considered as a design option. (American Council for an Energy Efficient Economy, No. 6 at 3).

Vacuum insulation was considered as one of the design options for both gas-fired and electric storage water heaters.

[17] This information was from Robert Cook who cited a study on projected costs done by A.O. Smith.

[18] Paul, D.D., Stickford, G.H., & Locklin, D.W. *Assessment of Technology for Improving the Efficiency of Residential Gas Water Heaters, Second Interim Report*, June 3, 1991, Battelle, Columbus OH, prepared for Gas Research Institute.

[19] James E. Harris, *Test Results on the Effectiveness of Heat Traps on Water Heaters*, May 1982, Building Equipment Division, Center for Building Technology, National Bureau of Standards.

The Rocky Mountain Institute stated that DOE should study more accurate thermostats and pipe insulation. (Rocky Mountain Institute, No. 15 at 4).

The Department is not aware of any method to quantify energy savings from more accurate thermostats. Pipe insulation, which is not part of the water heater, was not considered as a design option because of concerns that it might not always be installed in the field.

The Pacific Power stated its research shows that heat traps add only 1 percent to an electric water heater's efficiency, not 5 percent as assigned in the previous DOE testing procedure for water heaters. (Pacific Power, No. 53 at 2).

The Department used data from a letter report prepared for DOE.[19] This report determined actual heat losses out of pipe fittings with and without heat traps. The letter reported that heat traps provide a savings of nine watts on the hot water outlet and seven watts on the inlet. Applied to the baseline model, this results in a 2.5 percent increase in energy factor.

Design Options for Gas-Fired Storage Water Heaters.

The Gas Appliance Manufacturers Association recommended that the multiple flues and submerged combustion chamber design options be combined into a single category to be called increased heat transfer surface. (Gas Appliance Manufacturers Association, No. 40 at 4).

The Department found enough difference in efficiency and cost between these designs to merit classification as individual design options. Water heaters currently on the market with submerged combustion chambers have recovery efficiencies of 85 percent, whereas currently available units with multiple flues have recovery efficiencies of 80 percent.

The Gas Appliance Manufacturers Association recommended that pulse combustion and condensation be simplified to condensation of flue gases. The essential efficiency improvement is to extract enough heat out of the flue gases, such that condensation occurs. (Gas Appliance Manufacturers Association, No 40. at 5).

The Department notes that manufacturing costs and actual efficiencies for design options that condense flue gases depend on the method of condensation. Therefore, pulse combustion was retained as a separate design option.

Northern Indiana Public Service recommended that pulse combustion and condensation of flue gases be eliminated as design options. While these designs are clearly feasible from a technical standpoint, cost considerations have proven to be insurmountable thus far. (Northern Indiana Public Service, No. 48 at 3).

Since pulse combustion and condensation of flue gas technologies are feasible, the Department cannot eliminate these design options, but has considered their cost impacts using the best available estimates of manufacturing cost.

The American Council for an Energy Efficient Economy proposed that flue dampers and intermittent ignition devices be treated as separate designs. (American Council for an Energy Efficient Economy, No. 6 at 3).

Because of concerns about contaminating indoor air with combustion products from the pilot light, the Department did not consider flue dampers as a separate design option.

The Natural Resources Defense Council proposed that DOE evaluate power combustion with intermittent ignition devices. (Natural Resources Defense Council, No. 13 at 27).

From the limited description of this design option, the Department assumed that the Natural Resources Defense Council was referring to a fan-assisted combustion system using electronic ignition with the fan before the combustion chamber. Part of the increase in efficiency from this design is caused by the fan restricting off-cycle air flow through the flue. This reduces off-cycle flue losses. The Department analyzed power vent with intermittent ignition devices, which is a fan-assisted combustion system with the fan after the combustion chamber. The reduction of flue losses would be similar to the reduction for the design option recommended by the Natural Resources Defense Council.

Northern Indiana Public Service also stated that for vent fans, the main energy-conserving value is the reduction of flue losses, and a thermal vent damper could be used to accomplish that reduction more simply. (Northern Indiana Public Service, No. 48 at 4).

The Department did not analyze vent dampers, which are above the draft hood, but did analyze flue dampers, which are below the draft hood, in conjunction with intermittent ignition devices as discussed above.

Oklahoma Natural Gas proposed that DOE analyze improved burner design, modulating controls, improved flue baffling and improved fill tube designs to reduce sediment buildup and temperature stacking of heated water. (Oklahoma Natural Gas, No. 57 at 2).

The Department was not able to obtain cost and efficiency data for improved burner design or fill tube designs. No analysis was done for modulating controls, because the Department is not aware of how this design would improve efficiency. Improved flue baffling was included as a design option.

Mr. Rajendra Narang provided patented items for improving the efficiency of gas and oil water heaters. These included preheat of combustion air, self-regulating fuel flow to the burner, lower heat input, combustion dampers, and better heat exchangers. (Narang, No. 82).

No data on potential energy efficiency improvements or incremental manufacturing costs were available for these design options. In addition, DOE was not able to develop any estimates on the cost or efficiency of these designs. Therefore, they were not included in today's proposed rule. The Department requests cost and efficiency data on these designs in order to evaluate them for inclusion in the final rule.

Pilot Light Design Options

The Gas Appliance Manufacturers Association stated that "reduced pilot light input rate" should not be considered as a design option because pilot inputs have been reduced to the optimal point. (Gas Appliance Manufacturers Association, No. 40 at 4).

The Department agrees with the Gas Appliance Manufacturers Association on this issue. Therefore, further reductions in pilot light input rate were not considered.

Northern Indiana Public Service stated that the elimination of a pilot light has a very small savings. (Northern Indiana Public Service, No. 48 at 4). Washington Gas Light Company noted that not all of the heat from a pilot light is wasted. (Washington Gas Light Company, No. 37 at 9).

The Department agrees that only a portion of the heat from a pilot light is wasted. In the analysis, DOE assumed 76 percent of the pilot light's energy went to maintaining water temperature. This is based on the theory that a pilot light would have the same efficiency as the recovery efficiency of the water heater. Therefore, only the 24 percent of the pilot light input available to be saved by an intermittent ignition device was included in the analysis.

[19] James E. Harris, *Test Results on the Effectiveness of Heat Traps on Water Heaters*, May 1982, Building Equipment Division, Center for Building Technology, National Bureau of Standards.

Design Options for Electric Storage Water Heaters

The National Rural Electric Cooperative Association stated that off-peak water heaters save energy. (National Rural Electric Cooperative Association, No. 17 at 1). Vaughn said that off-peak electric water heaters can save energy use by controlling time period elements are allowed to heat water. (Vaughn, No. 75 at 2).

The Department did include off-peak water heaters as a design option in the Engineering Analysis for electric water heaters. However, as stated above, the Department believes that the economics of this design option, in the absence of the nationwide availability of time-of-day rates, precludes using this design option in setting national standards.

Crispaire provided unit energy consumption and annual performance factors for heat pump water heaters and electric resistance water heaters. Crispaire also stated that its studies showed consumer acceptance of heat pump water heaters. (Crispaire, No. 19 at 2).

The Department included two existing models of heat pump water heaters in the analysis of electric water heaters. One was an E-Tech brand model manufactured by Crispaire. Energy consumption for this model was calculated from the energy factor derived from the DOE water heater test procedure in effect prior to October 17, 1990,[20] derated by 25 percent to account for estimated reductions due to the current test procedure relative to the previous test procedure. This derating value was based on estimated reductions of 15–20 percent from ETL Testing Laboratories,[21] 27 percent from the Gas Appliance Manufacturers Association,[22] and 30 percent from Electric Power Research Institute[23] simulation models. The Gas Appliance Manufacturers Association estimate was based on the difference between data supplied in support of the rulemaking and the least efficient heat pump water heater listed in its directory. This is a minimum estimate of the difference. The Department requests test data on heat pump water heaters, in accordance with the existing test procedures, for consideration in the final rule.

The Natural Resources Defense Council advised that increased jacket insulation and heat traps be evaluated for heat pump water heaters. (Natural Resources Defense Council, No. 13 at 27).

Heat pump water heaters were analyzed as a design option for electric storage water heaters. Increased jacket insulation and heat traps were also included as design options for this product class.

The Ohio Sierra Club commented that in many parts of the U.S., a solar water heating system is considerably more cost-effective than an electric water heater. (Ohio Sierra Club, No. 11 at 2).

The Department included solar pre-heating as a design option for electric storage water heaters. Baltimore, Maryland was used as the location for evaluating the solar water heating systems. Baltimore was chosen as the one site that most closely approximated the population-weighted average climate of the United States.

Design Options for Instantaneous Gas-Fired Water Heaters

The Gas Appliance Manufacturers Association commented that reducing the amount of water within instantaneous water heaters would reduce the heater's ability to provide sufficient heated water. The Gas Appliance Manufacturers Association further noted that instantaneous water heaters do not utilize flues to transfer heat to water. Design options which concern flue improvements are not applicable to instantaneous water heaters. (Gas Appliance Manufacturers Association, No. 40 at 5).

The Department agrees with the Gas Appliance Manufacturers Association on these issues. Reducing the amount of water in the heater and flue improvements were not considered in the analysis of instantaneous water heaters.

The Natural Resources Defense Council recommended that DOE consider an intermittent ignition device for instantaneous water heaters as a design option. (Natural Resources Defense Council, No. 13 at 27).

This design option was included in the analysis of instantaneous water heaters.

Reducing Water Heater Setpoint Temperature

Another comment on design options dealt with a design to limit the temperature of the hot water produced by a water heater. National Wildlife Federation proposed that DOE consider the promulgation of a design standard covering the factory setting of water heater temperature controls. It stated that 140°F water can cause burns, and reducing this temperature could lower accidents. In addition, the energy savings would be substantial. (National Wildlife Federation, No. 21 at 3).

The Department did not consider the hot water setting as a design option for water heaters. While it is true that reducing the hot water temperature will save energy at the water heater, hot wash cycles in clothes washers and dishwashers with 140°F water are required for certain conditions. All clothes washers and dishwashers would have to contain electric resistance booster heaters to maintain this utility. The use of these electric resistance booster heaters would mean that some water heating currently being performed by gas water heaters would be performed by electrical resistance heating with a corresponding loss in overall efficiency.

Other Comments. Fuel switching. One of the most discussed consumer issues involved the impact of increases in initial purchase price for gas water heaters, since standards could alter consumer fuel choice, resulting in increased electricity consumption at the expense of gas consumption, and increased environmental degradation. (Middle Tennessee Natural Gas Utility District, No. 1 at 1; Wisconsin Southern Gas Company, No. 9 at 1–2; Colorado Interstate Gas Company, No. 14 at 2; Peoples Natural Gas Company, No. 28 at 1; Wisconsin Blue Flame Council, No. 33 at 1–2; WGL, No. 37 at 5; Columbia Gas Distribution Company, No. 45 at 3; Northern Indiana Public Service Company, No. 48 at 4; ENTEX, No. 58 at 2; Peoples Gas Light and Coke Company (Peoples), No. 65 at 1; Mobile Gas Service Corporation, No. 66 at 2; Northern Minnesota Utilities, No. 68 at 1; Delta Natural Gas Company, Inc., No. 73 at 1; Public Service Company of North Carolina, Inc., No. 74 at 4; and Southern California Gas Company, No. 79 at 1).

Concern was expressed that if standards imposed on gas water heaters include automatic ignition, requiring electric service, there will be a sizeable increase in the prices of gas appliances. The comments argued that builders are concerned with initial purchase prices, not life-cycle costs; thus, a switch to electricity consumption will occur.

The Department is sensitive to fuel-switching issues. The Department incorporated available data about fuel shares in new housing and replacement markets, based on historical purchase patterns, in the Lawrence Berkeley

[20] Gas Applicance Manufacturers Association, Consumer's Directory of Certified Efficiency Ratings for Residential Heating and Water Heating Equipment, October 1990, pg 184.

[21] John Sabelli, ETL Labs. Phone conversation on 1/29/91.

[22] Consumers' Directory of Certified Efficiency Ratings for Residential Heating and Water Heating Equipment, GAMA, October 1990.

[23] Carl Hiller, Electric Power Research Institute. Phone conversation, 7/23/91.

Laboratory Residential Energy Model. Additional data to quantify the sensitivity in the market to first cost and to operating cost were obtained. Also, sensitivity analyses were performed in the forecast of shipments of water heaters.

The Department also notes that standards resulting in price increases on gas water heaters would cause switching to electric water heaters only if similar or greater price increases did not occur for efficiency improvements to electric water heaters, which is certainly not the case.

Supplying Electricity to Gas-Fired Storage Water Heaters

Several comments addressed inclusion of installation and maintenance expenses in the engineering analyses. The Southern Gas Association, American Gas Association, and Gas Appliance Manufacturers Association, among others, stated that installation (electric supply and venting alterations) and maintenance for gas water heater designs that would require electricity, such as intermittent ignition device, induced draft combustion, power venting, and condensing, must be included in the analyses. (Southern Gas Association, No. 4 at 10; American Gas Association, No. 23 at 3; and Gas Appliance Manufacturers Association, No. 40 at 8).

The American Gas Association, Southern Gas Association, and several other gas utilities gave estimates of costs for providing electric service to a water heater. For an existing appliance location, costs ranged from $75 to $200 and for new construction from $15 to $50. (American Gas Association, No. 23 at 5; Southern Gas Association, No. 4 at 3; Lone Star, No. 39 at 6; Energen, No. 12 at 5; Equitable Resources, No. 72 at 2; South Carolina Gas and Electric Company, No. 34 at 2, 3; Arkansas Western Gas Company, No. 64 at 5; ENTEX, No. 58 at 5; Public Service Company of North Carolina, No. 74 at 4; Oklahoma Natural Gas Company, No. 57 at 3.)

The Gas Appliance Manufacturers Association stated that installation expenses for electric service could double the installed price of the water heater. (Gas Appliance Manufacturers Association, No. 40 at 3). On the other hand, Flair said that in northern climates, the water heater most likely stands next to the furnace, which has an electrical supply readily and cheaply available to the water heater. Flair estimated that the average price of adding electricity is much less than the cost of the water heater. (Flair, No. 85 at 1).

The Department used a cost of $11.20 for the installer to add a small plug-in transformer and install low-voltage wiring to the water heater.[24] The Department assumed this would not require an electrician, and would allow the water heater to be installed a large distance from an existing outlet. This would provide sufficient power to run safety controls, spark ignition, flue damper, and a small venting fan. For design options, such as condensing flue gases, submerged combustion, and direct firing, which would require higher voltage, a charge of $100 was used as the installation price of providing electricity. This figure was presented to the Department by Southern Gas Association.

Modification of Existing Venting Systems

The Gas Appliance Manufacturers Association mentioned that for water heating systems to be compatible with existing venting systems, recovery efficiencies must be less than 82 percent. Gas Appliance Manufacturers Association further stated that elimination of the draft hood and installation of a new venting system for both a furnace and water heater would modify the installed price of the water heater by three to five times. (Gas Appliance Manufacturers Association, No.40 at 4). The Gas Research Institute said that additional expenses of altering venting systems are necessary for high-efficiency water heaters. Estimates of these expenses[25] were provided to the Department on a regional basis. (Gas Research Institute, No. 59 at 2–3).

The Washington Gas Light, Inc. indicated that "installing a water heater with a vent damper or power combustion into an existing masonry chimney . . . may result in the need to reline the chimney." The charge for this would be between $500 and $2000. (Washington Gas Light, Inc., No. 37 at 8). ENTEX estimated installing a new vent system in its service area would be approximately $260. (ENTEX, No. 58 at 5). Energen Corporation estimated the incremental cost of adding a new vent system at $125 to $175. (Energen, No. 12 at 6).

The charge for relining venting systems that were not type-B was added to the installation expense of all design options with recovery efficiencies above 80 percent that were not power vented. The Department used values of $408 for relining masonry chimneys, $85 for replacing vent connectors, and $75 for adding a sidewall venting system.[26]

Maintenance

Mississippi Valley and Energen stated that when an intermittent ignition device and flue damper or forced draft combustion are added to a gas water heater, it is likely that at least one of the following components (ignitor, fan motor, printed circuit board, fan relay system, or vent damper assembly) will fail and need service or replacement in the 10- to 12-year life of the water heater. (Mississippi Valley, No. 5 at 6; Energen, No. 12 at 8).

Among other comments on the engineering analysis of water heaters, Energen stated that reliability and functionality issues are most important in a total system-specific, real world situation. Issues such as venting materials, vent categories, common venting, vent-system condensation, corrosion, masonry chimney suitability, backdrafting, spillage, negative room pressure, combustion air management, construction clearances, vent termination requirements, heat or flame roll out, flammable vapors ignition, and others must be a significant part of the efficiency equation. (Energen, No. 12 at 9).

The limited data available on component lifetimes suggested failure would occur near the end of the service life of water heaters. Therefore, the Department did not include maintenance expenses in the analysis. The Department requests data on water heater lifetimes, component lifetimes and service costs for consideration in the final rule.

Baseline Model

The Southern Gas Association and other gas suppliers recommended baseline units and costs. (Southern Gas Association, No. 4 at 8). Energen said that the baseline unit should logically be a natural draft, non-powered unit upgraded to the highest field-proven technology level, including heat traps, advanced insulation techniques, sealing of the pilot light and/or main burner combustion cavity, piezo pilot ignitors, flue dampers and or advanced flue baffling. (Energen No. 12 at 8). Lone Star proposed that shipment data from the Gas Appliance Manufacturers Association be used for baselines. (Lone Star, No. 39 at 3).

The baseline model used in this analysis was established from data provided by the Gas Appliance Manufacturers Association who was

[24] Paul, D.D., Stickford, G.H., & Locklin, D.W. *Assessment of Technology for Improving the Efficiency of Residential Gas Water Heaters, Second Interim Report*, June 3, 1991, Battelle, Columbus OH, prepared for Gas Research Institute.

[25] Ibid.

[26] *Ibid.*

supplied with the data by manufacturers. The baseline represents a typical water heater that marginally meets the 1990 National Appliance Energy Conservation Act standards.

The baseline gas-fired storage water heater is a center flue, glass- lined steel tank with a standing pilot. It has a 40-gallon tank and 1-inch-thick foam insulation. Both the inlet and outlet are at the top of the tank. It has six feed throughs and no heat traps. It is bottom-fired with a three-inch central flue. The burner input is 34,000 Btu per hour. The pilot light input rate is 400 Btu per hour.

The baseline model for the electric water heater analysis is a glass-lined steel tank, with two 4,500-watt resistance elements. It has a 52-gallon tank and 2-inch-thick foam insulation. Both the inlet and the outlet are on top of the tank. It has eight feed throughs and no heat traps.

Measured Versus Rated Volume

The California Energy Commission proposed that the measured volume rather than the rated volume of water heaters be used in all analyses. (California Energy Commission, No. 24 at 3).

With regard to how the Department should set water heater conservation standards, the California Energy Commission proposed that any standard be expressed as EF = A + (B * V), and not as EF = A − (B * V), so that an exaggeration of volume, V, by manufacturers would result in a more stringent standard. (California Energy Commission, No. 24 at 3).

The California Energy Commission also argued that tolerances between rated and measured volumes of 5 percent and 10 percent, respectively, for gas and electricity water heaters volumes, are too high. (California Energy Commission, No. 24 at 2).

The energy conservation standards are in the form of equations that are a function of the volume of the water heater. A footnote refers to the volume as being rated volume. The DOE test procedure contains provisions to determine the measured or actual volume, but is silent on the rated volume which is established by the manufacturer. The tolerances to which the California Energy Commission are referring are those set by safety testing agency specifications and are not related to the energy efficiency program. In the vast majority of cases, the measured volume is lower than the rated volume. All of the 13 water heaters tested by the National Institute of Standards and Technology in support of the DOE test procedure had measured volumes below rated volumes. Furthermore, one out of six electric water heaters and one out of five gas water heaters tested by the National Institute of Standards and Technology exceeded the safety tolerances for rated volume. (55 FR 42166, October 17, 1990 and 54 FR 1893, January 17, 1989). To conduct the analysis which forms the basis for today's notice in an accurate manner, the actual volume had to be used. To be consistent with that analysis, the Department is proposing that the volume referred to in the efficiency equation be the actual or measured volume. The Department believes that the use of measured volume rather than rated volume in the calculation will eliminate this issue.

Definitions in Test Procedure and Conservation Standards

The California Energy Commission proposed that the coverage of the water heater test procedures and efficiency standards be consistent, i.e., the test procedure does not cover some classes and sizes of water heaters that otherwise would be covered by the efficiency standards. (California Energy Commission, No. 24 at 2–3).

Modifications to the test procedures for water heaters, which address these issues, are contained in the Notice of Proposed Rulemaking referenced above.

Gas Research Institute Study

Energen urged DOE to evaluate thoroughly a study commissioned by the gas industry on cost/efficiency of water heater designs. (Energen, No. 12 at 9.)

The Department did review and use information from this Gas Research Institute study,[27] particularly cost data for installation and reventing. The study was also useful in categorizing standby losses.

3. Direct Heating Equipment

Classes. Among the comments on product classes, Southern Gas Association, Energen Corp. and Atlanta Gas Light Company proposed that direct heating product classes be expanded to separate each present class into two classes, one with and one without an electric cord. The division of product classes by capacity is not mentioned. Their arguments deal generally with economic and utility issues, i.e., the ability of products without an electric cord to provide heat if a power outage occurs, and the affordability of these products to lower-income people. (Southern Gas Association, No. 4 at 6; Energen, No. 12 at 12–13; and AGLC, No. 29 at 3). The California Energy Commission stated that there are too many product classes for this product and proposed three classes which are wall (fan and gravity), floor (fan and gravity), and room (fan and gravity). (California Energy Commission, No. 24 at 4).

As stated above, the Department does not believe that the ability of gas equipment to operate during electricity outages is a utility that requires separating the existing gravity product classes into those with and without a power cord. Instead, designs that use electricity are evaluated on their economic advantages and disadvantages. The Department has kept the four product class categories as designated by the National Appliance Energy Conservation Act. The categories are: fan-wall, gravity-wall, room, and floor. With respect to division by capacity, the Department kept the National Appliance Energy Conservation Act divisions during the engineering analyses. The current class divisions by capacity are necessary because of the manner in which direct heating equipment is evaluated by the DOE test procedure. The energy descriptor for this equipment, the annual fuel utilization efficiency, is a function of, among other things, the pilot fraction. The pilot fraction is defined as the energy input rate to the pilot light (Q_p) divided by the steady-state heat input rate to the heater (Q_{in}). As the pilot fraction decreases, the annual fuel utilization efficiency will increase. For each of the four categories of direct heating equipment (fan-wall, gravity-wall, room, floor), the pilot light input rate is constant. Thus, for heaters of two different capacities within the same category and with the same steady-state efficiency, the annual fuel utilization efficiency will always be higher for the larger capacity equipment. The division of classes by capacity is required to account for this relationship between the annual fuel utilization efficiency and the pilot fraction.

Design options. The Gas Appliance Manufacturers Association stated that gravity-type direct heating units provide a unique utility in that they operate during an electrical power outage. In addition, gravity-type equipment can be used where an external electrical source is not available. Because of these reasons, the Gas Appliance Manufacturers Association argued that design options requiring electricity should not be required for floor heaters, room heaters, or gravity wall furnaces. (Gas Appliance Manufacturers Association No. 40 at 6).

[27] *Ibid.*

As stated above, the Department does not believe that the ability of gas equipment to operate during electric outages is a utility that forecloses consideration of electricity-using design options for those appliances. Therefore, the Department considered, for economic justification, design options that would require electricity for gravity wall, floor, and room direct heating equipment.

With regard to electronic ignition systems, both Southern Gas Association and North Carolina Public Service Co. stated that adding an automatic ignition system and electronic controls would add significantly to the price of direct heating equipment. The Southern Gas Association said it would add $190 while North Carolina Public Service Co. stated it would add $150 to $200. (Southern Gas Association, No. 4 at 7; North Carolina Public Service Co., No. 74 at 5). The American Council for an Energy Efficient Economy said that intermittent ignition device and vent dampers should be considered separately. (American Council for an Energy Efficient Economy, No. 6 at 3).

The Department took into account all sources of available data when determining the cost of an electronic ignition system for direct heating equipment. Sources of data included manufacturers, suppliers, utilities, and published papers and reports. The electronic ignition design option was evaluated not only separately from any other design option, but also with other design options, including vent dampers.

The Gas Appliance Manufacturers Association commented that increased insulation does not improve the energy efficiency of room heaters since this equipment is located within the heated space. (Gas Appliance Manufacturers Association, No. 40 at 6).

The Department agrees with the Gas Appliance Manufacturers Association's comment and is not considering the increased insulation design option for room heaters or wall furnaces. Insulation is only applicable to floor furnaces as this equipment's intended installation is in an unconditioned crawl space.

The Gas Appliance Manufacturers Association also commented that two-stage or modulating burners reduce the energy efficiency of direct heating equipment. (Gas Appliance Manufacturers Association, No. 40 at 6).

The Department agrees with the Gas Appliance Manufacturers Association's comment. When incorporated into a typical gravity or forced-air direct heater, i.e., heaters that are currently being manufactured, two-stage and modulating burners actually reduce the energy efficiency of direct heating equipment. Two-stage and modulating burners which are currently manufactured regulate the gas flow but not the air flow. Excess air is induced at lower gas-flow rates, resulting in lower combustion efficiencies when compared to a normal or maximum gas flow rate. Because of this, typical heaters equipped with two-stage or modulating burners will always have a lower energy efficiency, as measured by the DOE test procedure, than heaters equipped with single-stage burners. The Department is not aware of any two-stage or modulating burners that regulate both the gas and air flow. The Department believes however, that it is possible to regulate the air flow being drawn into a two-stage or modulating burner if the direct heater is also equipped with a two-speed or variable-speed combustion fan, i.e., induced or forced draft system. With a multi-speed combustion fan, a low fan speed can be used to reduce the excess air that would normally occur at low gas flow rates. Thus, the steady-state efficiency that occurs at the high gas flow rate of a two-stage or modulating burner can be maintained at its lower gas flow rate. Since currently manufactured two-stage and modulating burners actually reduce energy efficiency in typical direct heating equipment, DOE is considering them as a design option only if they are incorporated into a heater already equipped with a multiple-speed induced or forced draft combustion system.

The American Council for an Energy Efficient Economy said that DOE should consider two-speed or variable-speed blowers. (American Council for an Energy Efficient Economy, No. 6 at 3).

The practical application of two-speed or variable-speed blowers is with two-stage or modulating burners. When heating loads are low, both the burner rate and the blower speed could be reduced. This would prevent cycling of the unit and reduce large fluctuations in room temperature. In addition, overall energy consumption could be reduced. As with two-stage and modulating burners, two-speed and variable-speed blowers will also be considered by the Department only on heaters already equipped with a multiple-speed induced or forced draft combustion system. This is because two-stage or modulating operation can improve system efficiency only if coupled with a device, i.e., a multi-speed combustion system that can regulate the air flow rate into a two-stage or modulating burner.

The North Carolina Public Service Co. suggested that DOE consider whether blowers can be used in direct heating equipment with self-generating pilots. (North Carolina Public Service Co., No. 74 at 5).

It is not clear to what North Carolina Public Service is referring, as it fails to define clearly in its comment which blower it is discussing and what a self-generating pilot is. A blower could be interpreted as either an air circulation fan or an induced or power draft fan. The self-generating pilot is probably some type of electronic ignition device. The Department has evaluated all of the above-mentioned design options and has determined that blowers of any type can be used with electronic ignition systems.

The Gas Appliance Manufacturers Association commented that for a replacement unit incorporating an increased heat exchanger surface area, condensate must be avoided in the existing vent system. This requirement results in limiting the combustion efficiency to 83 percent. (Gas Appliance Manufacturers Association, 40 at 7).

The Department agrees with the Gas Appliance Manufacturers Association's comment and considered venting issues in the analysis. Design options that increased the combustion efficiency over 83 percent require an additional installation charge to account for venting low-temperature flue gases and draining condensate.

Other comments. The Southern Gas Association, Energen, and the Atlanta Gas Light Company recommended baseline units for direct heating equipment. (Southern Gas Association, No. 4 at 8; Energen, No. 12 at 15,16; Atlanta Gas Light Company, No. 29 at 4).

The Department considered these comments regarding baseline units in the Engineering Analysis. Baseline unit efficiency levels for each of the direct heating product classes have been set at the standard levels established by the National Appliance Energy Conservation Act. Of the units currently produced, the National Appliance Energy Conservation Act minimum efficiency standards are representative of the efficiency levels that presently exist for most models.

Minnegasco said that installation and maintenance expenses for direct heating products are important, and that DOE must consider them. (Minnegasco, No. 83 at 3).

The Department has considered these expenses in the analysis of direct heating equipment. The increase in consumer expenses caused by a design option includes not only the increase in retail price, but also any additional installation and maintenance expenses

that result from incorporating that design option into the equipment.

Southern Gas Association contended that more efficient direct heating equipment would have a severe economic impact on lower-income and elderly consumers, and that low usage in Southern states should be evaluated. (Southern Gas Association, No. 4 at 7,10). Minnegasco also commented on the issue of low usage by urging DOE to consider regional usage when performing the engineering analysis. (Minnegasco, No. 83 at 2).

The Department has lowered its usage assumption by using the modified burner operating hours contained in the Notice of Proposed Rulemaking mentioned above for furnace test procedures. The proposed burner operating hours for direct heating equipment has been revised downward to account for the regional distribution of this product disproportionately to the southern half of the Nation. The Department has no data with which to measure the standards' impacts on elderly and lower-income consumers in determining whether a standard level is economically justified; however, DOE will consider the financial effect that the standard has on such consumers.

In the Advance Notice for this rulemaking, the Department described how it performs sensitivity analyses to help it understand the effects on the forecasted impacts because of changes in the exogenous variables and assumptions. (55 FR 39633).

Those sensitivities were developed at the national level, and no effort was made to link them with any specific population groups. With the exception of the direct heating equipment analysis discussed above, the standards analysis assumed that nationwide average appliance usage rates, energy prices, and efficiency applied to all consumers in all areas of the nation, although the Department recognized that there exist large variations in each of these factors. The Department seeks additional information concerning the extent to which any proposed national efficiency standard is likely to affect identifiable groups of consumers disproportionally and, especially how best to consider such impacts in the selection of efficiency standard levels. The Department is also seeking additional data to help it better assess the disproportionate impacts on such groups.

4. Mobile Home Furnaces

Design options. The Gas Appliance Manufacturers Association stated that an intermittent ignition device design is not appropriate to mobile home furnaces. The Gas Appliance Manufacturers Association stated there is almost no flow through the heat exchanger during the off-cycle. If the intermittent ignition device failed, a gas-air mixture could build up and possibly lead to an explosion when the intermittent ignition device is activated. (Gas Appliance Manufacturers Association, No. 40 at 7).

The Department accepted Gas Appliance Manufacturers Association's comment and did not consider an intermittent ignition device plus vent damper as an engineering design for mobile home furnaces.

American Council for an Energy Efficient Economy proposed intermittent ignition devices and vent dampers be separately considered and that two-speed or variable-speed blowers be evaluated. (American Council for an Energy Efficient Economy, No. 6 at 4).

The Department has accepted these approaches. The intermittent ignition device with fan-forced combustion has been considered as one option, while the combustion box damper has been considered as a separate option. A combustion box damper has the same effect on efficiency as a vent damper for isolated combustion-type systems. Mobile home furnaces are required to have isolated combustion systems by the Housing and Urban Development code. Both two-stage and continuously modulated burners were included in the final list of design options.

Evcon commented that vent dampers are inappropriate designs because of damper location and isolated combustion design. (Evcon, No. 76 at 1).

The Department has considered combustion box dampers instead of vent dampers. The Department knows of no design considerations that would render combustion box dampers inappropriate.

Evcon also suggested that condensing designs and intermittent ignition devices are inappropriate because of excessive cost. (Evcon, No. 76 at 1–2).

The Department has incorporated the costs for materials, components, maintenance, and installation into the Engineering Analysis.

Evcon further commented that expense and noise problems exist with pulsed combustion furnaces. (Evcon, No. 76 at 1).

The Department acknowledges these points and notes that pulsed combustion is no longer on the list of design options. In eliminating this design option, the Department reasoned that non-pulsed combustion technology can achieve efficiencies equivalent to pulsed-combustion technology at a lower cost. This is particularly true for manufacturers having to pay patent royalties for pulse combustion technology. Manufacturing cost data from the manufacturers supported this conclusion.

Lastly, Evcon commented that corrosion and cost problems exist with two-stage and modulating burner designs. (Evcon, No. 76 at 2).

In the Engineering Analysis, the Department assumed that material costs (for the concentric flue/supply air assembly) would increase because of the need to design for possible intermittent condensation in two-stage non-condensing furnaces. Non-condensing modulating furnaces are not included in the present list of design options.

Other comments. Gas Appliance Manufacturers Association also commented that replacement furnaces must be able to fit into the same spaces as the units being replaced. (Gas Appliance Manufacturers Association, No. 40 at 7).

The Department does not believe that any of the studied design options would result in significant space problems.

Evcon also commented that American Society of Heating, Refrigerating, and Air-conditioning Engineers Standard 103–1982 is inadequate for the testing of various design options and urged that American National Standards Institute/ American Society of Heating, Refrigerating, and Air-conditioning Engineers Standard 103–88 be adopted. (Evcon, No. 76 at 2).

Modifications to the test procedures for furnaces, which address these issues, are contained in the Notice of Proposed Rulemaking referenced above.

5. Kitchen Ranges and Ovens

Classes. The comments on classes for conventional ranges and ovens ranged from Aloha Systems Inc.'s recommendation that all electric cooktops be one product class to Association of Home Appliance Manufacturers's proposal to add several classes to those proposed in the Advanced Notice of Proposed Rulemaking. Specifically, the Association of Home Appliance Manufacturers recommended that DOE add, as classes, electric cooktops with grill/griddle without downdraft feature, and for gas cooktops—grill/griddle with downdraft feature, grill/griddle without downdraft feature with and without an electric cord, and warming/simmer burners. (Aloha Systems, Inc., No. 2 at 1; and Association of Home Appliance Manufacturers, No. 61A at 38).

Several comments supported the range/oven product classes that were listed in the Advanced Notice of Proposed Rulemaking. Four gas utilities,

Southern Gas Association, Energen, South Carolina Electric and Gas Company - Gas Operations, and the Oklahoma Natural Gas Co., all supported the classes selected by DOE for gas cooktops and gas ovens. (Southern Gas Association, No. 4 at 7; Energen, No. 12 at 14; South Carolina Electric and Gas Company - Gas Operations, No. 34 at 6; and the Oklahoma Natural Gas Co., No. 57 at 6).

The rest of the comments on range/oven product classes argued that the Department had proposed far too many different classes in the September 1990 advance notice. As mentioned, Aloha Systems, Inc. recommended a single product class for electric cooktops. The American Council for an Energy Efficient Economy, the Natural Resources Defense Council, the California Energy Commission, and the Ohio Office of the Consumers' Council all stated that there are too many classes for conventional ranges and ovens. (Aloha Systems, Inc. No. 2 at 1; American Council for an Energy Efficient Economy, No. 6 at 1; Natural Resources Defense Council, No. 13 at 25, California Energy Commission, No. 24 at 5; and Ohio Office of the Consumers' Council, No. 60 at 9). ENTEX proposed that the Department specify freestanding, drop-in, and slide-in ovens and wall ovens as one class. (ENTEX, No. 58 at 6). Whirlpool Corporation, a manufacturer of ranges and ovens, suggested that DOE not analyze those classes with low sales volumes, and instead restrict the analysis to the following nine classes: Electric cooktops with open coil elements; electric cooktops with solid disk elements; standard or catalytic electric ovens; self-cleaning electric ovens; conventional or sealed burner gas cooktops (with and without power cords); standard or catalytic gas ovens (with and without power cords) and self-cleaning gas ovens. (Whirlpool Corporation, No. 31 at 16). Association of Home Appliance Manufacturers stated that three of the classes listed in the Advanced Notice of Proposed Rulemaking for gas cooktops, conventional burners with electrical cords, conventional burners without electrical cords and sealed burners, should be consolidated into two classes, namely, conventional and sealed burners with electrical cords and conventional and sealed burners without electrical cords. (Association of Home Appliance Manufacturers, No. 61A at 47, 48).

After considering the comments and reviewing the data, the Department believes that many of the classes proposed in the September advance notice were not warranted on a utility and performance basis.

For this proposed rule, four product classes were considered for electric cooktops: Low or high wattage open (coil) elements, smooth cooktops, grill with or without downdraft feature, and griddle with or without downdraft feature. The baseline cooktop element selected for smooth cooktops is a solid disk element. As compared to open coil element cooktops, smooth cooktops are much easier to clean. Because cleanability is a consumer utility, the Department believes that a separate class is warranted for smooth cooktops. Induction cooking, halogen lamps, and radiant elements were considered as design options for smooth cooktops and assessed according to the economic characteristics of the particular design. Because of the small amount of empirical data on grill and griddle cooktops, the Department was unable to analyze these classes. In addition, the DOE test procedure is presently unable to measure grill or griddle energy consumption, and the Department has not proposed to include the testing of grills or griddles. As a result, the Department is not proposing any standard for these two classes.

Four product classes are now considered for gas cooktops: Conventional burners, grill with or without downdraft feature, griddle with or without downdraft feature, and warming/simmer burners. For other designs, the Department does not believe that significant utility issues exist, for example, in the ability of the appliance to operate during electric outages, which would require that classes be established into gas cooktops with and without electrical cords. Between 90 and 93 percent of residential electricity customers experience no electric outages longer than four hours per year.[28] Designs which use electricity were evaluated on their economic advantages and disadvantages. Other classes in the Advance Notice of Proposed Rulemaking (sealed and radiant burners) were considered as design options for conventional cooktops. There were no utility issues warranting separate classes for sealed and radiant burners. As with electric cooktops, because of the small amount of empirical data on grill and griddle cooktops and warming burners, the Department was unable to analyze these classes. In addition, the DOE test procedure is presently unable to measure grill, griddle or warming burner energy consumption, and the Department has not proposed to include the testing of grills, griddles or warming burners. As a result, the Department is not proposing any standard for these three classes.

Two product classes were considered for electric ovens: Standard ovens with or without catalytic linings and self-cleaning ovens. Oven types that were listed as classes in the September 1990 advance notice (forced convection for cooking, forced convection for cleaning, halogen lamp, and steam cooking with and without pressure) were considered as design options. The Department believes that no utility issues exist warranting additional classes beyond standard and self-cleaning ovens.

As with electric ovens, two product classes were considered for gas ovens: Standard ovens and self-cleaning ovens. Oven types that were listed as classes in the September 1990 advance notice (radiant burner and convection) were considered as design options. In addition, the Department does not believe that significant utility issues exist in the ability of the appliance to operate during electric outages, which would require that classes be established into those with and without electrical cords. Designs which use electricity are evaluated on their economic advantages and disadvantages.

As for microwave oven classes, both Whirlpool Corporation and Association of Home Appliance Manufacturers recommended that the Department limit its analysis to microwave ovens with and without browning elements, the classes which accounted for 96.8 percent of domestic shipments in 1989. (Whirlpool Corporation, No. 31 at 9; Association of Home Appliance Manufacturers, No. 61A at 30).

The Department rejected the proposals to limit the analysis to two product classes: conventional microwave ovens with and without browning elements. The Department combined these ovens into one class. Since the test procedure does not measure the energy use of the browning element, there is no need to separate these two kinds of ovens into classes; therefore, only one class of microwave ovens was analyzed.

Design options. There were numerous comments on the design options for ranges/ovens and microwave ovens. Natural Resources Defense Council recommended that DOE study (for ranges/ovens) reduction in thermal mass, catalytic burners, reflective surfaces, the biradiant concept, and improved magnetrons for microwave

[28] A.P. Sanghvi, 1990. *Cost-Benefit Analysis of Power System Reliability: Determination of Interruption Costs.* Prepared by RCG/Hagler/Bailly Inc. for Electric Power Research Institute EL-6791, vol 2, p3-3.

ovens. (Natural Resources Defense Council, No. 13 at 27–28). Aloha Systems, Inc. said that induction cooking is the most efficient method. (Aloha Systems, Inc., No. 2 at 1,2). American Council for an Energy Efficient Economy proposed that DOE evaluate the infrared jet gas burner for conventional ovens, and for microwave ovens, advanced transformer winding and core materials, and the high-efficiency electronic controller (which turns power on and off). (American Council for an Energy Efficient Economy, No. 6 at 4). The Rocky Mountain Institute proposed that DOE study improved controls that allow the resistance element to "coast" the food to completion. A reference to European tests was given, stating that this design requires a thermostat and temperature control knob and saves 20 percent or more of the energy. (Rocky Mountain Institute, No. 15 at 5). The Oklahoma Natural Gas Co. suggested that thermostatically controlled gas burners be replaced by various-sized (Btu/h input and dimensions) and manually controlled surface burners to accommodate different-size cookware. (Oklahoma Natural Gas Co., No. 57 at 6). The Association of Home Appliance Manufacturers provided comments on each design option for ranges/ovens and microwave ovens. (Association of Home Appliance Manufacturers, No. 61A at 30–62). Whirlpool Corporation supported the Association of Home Appliance Manufacturers' comments on ranges/ovens and microwave ovens. (Whirlpool Corporation, No. 31 at 16, 19).

For gas cooktops, the Association of Home Appliance Manufacturers stated that thermostatically controlled gas burners are not effective at controlling temperature. The sensing element which is designed to make contact with the cooking vessel will not allow effective control if the cooking utensil has an uneven bottom in the area where it is to be "sensed." In addition, since the electric sensing element will retain heat due to its mass, reaction times could be delayed, thus allowing wide swings in the thermostatically selected temperature. The DOE test procedure also cannot measure the effect of thermostatically controlled burners. (Association of Home Appliance Manufacturers, No. 61A at 54, 55.) The Association of Home Appliance Manufacturers stated that the performance of reflective surfaces is degraded significantly from reaction to cooking vapors, burnt-on spillovers and cleaning with abrasive pads. To maintain reflective surfaces it would be necessary to replace these expensive units periodically. The Association of Home Appliance Manufacturers felt that the energy savings from reflective surfaces are very small. (Association of Home Appliance Manufacturers, No. 61A at 56, 57.) With regard to insulation, the Association of Home Appliance Manufacturers stated it is occasionally used in gas cooktops where there are surface temperature problems on the surrounding structures. The insulation is attached outside of the burner box. Any other placement would impair utility, because the space underneath the countertop cooktop unit (that is designed to fit in drawers) would become significantly reduced.

The Association of Home Appliance Manufacturers also felt that the energy savings from insulation is very small. (Association of Home Appliance Manufacturers, No. 61A at 56, 57.) In its comments regarding product classes, the Association of Home Appliance Manufacturers, though it suggested that both conventional and sealed burners be considered as one class, stated that it is incorrect to assume that sealed burners are more efficient than conventional burners. Sealed burners obtain all of their secondary air from above the cooktop, which requires that either the grate height be raised or the burner be derated in order for it to be as efficient as conventional burners. (Association of Home Appliance Manufacturers, No. 61A at 47, 48.) The Association of Home Appliance Manufacturers stated that radiant burners should be considered as a product class rather than a design option and went on to state several problems with these burner types. Since radiant burners use a powered pre-mix burner, carbon monoxide control is more critical, and the burner flame can only be varied by 30 percent. Test work performed by the Gas Research Institute with the American Gas Association Laboratories on prototypes has revealed that low burner rate is difficult to maintain. This means that current prototypes would not meet American National Standards Institute standards. The Association of Home Appliance Manufacturers also stated that burner efficiency might be no better than conventional burners. (Association of Home Appliance Manufacturers, No. 61A at 49–51.)

The Department took into account all sources of available data when determining the cost and energy savings from thermostatically controlled burners, reflective surfaces, and sealed burners. Sources of data included the Association of Home Appliance Manufacturers, manufacturers, suppliers, and published papers and reports. Lack of any available data regarding catalytic burners, high efficiency electronic controllers, and insulation prevented the Department from analyzing these design options. The Department agrees with the Association of Home Appliance Manufacturers' comments regarding radiant gas burners. Because there is no prototype that works satisfactorily, it is not possible to determine if this design option is technologically feasible..

For electric open coil cooktops, the Association of Home Appliance Manufacturers stated that the contact conductance of open coil elements cannot be significantly improved. Manufacturers have worked together to improve the flatness of this element type, and have produced an element that is doing an excellent job. (Association of Home Appliance Manufacturers, No. 61A at 57, 58.) The reflective surface and insulation design options cause the same problems for electric open coil cooktops as for gas burners. See comments, supra, for gas cooktops. (Association of Home Appliance Manufacturers, No. 61A at 58.)

Manufacturers' data provided by the Association of Home Appliance Manufacturers and published reports [29] were used by the Department to analyze the effects from improved contact conductance and reflective surfaces. Cost data were also provided by these sources. The electronic controls referred to by the American Council for an Energy Efficient Economy and the Rocky Mountain Institute cannot be evaluated by the DOE test procedure. Different types of tests based on boiling water have been used to evaluate electronic controls. But boiling water tests have yet to be standardized by DOE as a method to rate cooktops. Therefore, this design option was not analyzed by the Department.

For electric smooth cooktops, the Association of Home Appliance Manufacturers's comments on product classes proposed separate classes for solid disk elements, radiant elements under glass, halogen elements under glass, and induction elements. The

[29] "Costing Analysis of Design Options for Residential Appliances and Space Conditioning Equipment," Lawrence Berkeley Laboratory, prepared by ADM Associates, Inc., Purchase No. 4541710, December 1987, "Energy Efficient Electrical Product Knowledge Base," Canadian Electrical Association, prepared by ORTECH International, C.E.A. No. 821 U 678, October 1989, M. Shepard, A.B. Lovins, J. Neymark, D.J. Houghton, and H.R. Heede, "The State of the Art: Appliances," Rocky Mountain Institute, Competitek, August 1990 Edition, and U.S. Department of Energy Engineering Analysis, DOE/CS–0166, June 1980.

Association of Home Appliance Manufacturers commented that though solid disk elements are inherently less efficient than open coil elements, they should be a separate class because of the additional utility in their ease of cleaning. (Association of Home Appliance Manufacturers, No. 61A at 39, 40). With regard to radiant and halogen elements under glass, the Association of Home Appliance Manufacturers commented that not only are these cooktops easy to clean because of their smooth surfaces, but additional work space is gained when the cooktop surface is not in use. The Association of Home Appliance Manufacturers also stated that the recommended cookware for halogen elements are metal pots and pans, since glass and ceramic cookware are not good heat conductors. (Association of Home Appliance Manufacturers, No. 61A at 40, 41). The Association of Home Appliance Manufacturers stated that since induction elements heat items by transferring electromagnetic energy, the glass or ceramic countertop under which they lie is unaffected and remains relatively cool. This also means that the cookware used with induction elements must be made from magnetic materials. The Association of Home Appliance Manufacturers listed the following advantages of induction cooking: fast response and control of heat source, ease of cleaning (since food spills do not burn onto the cooking surface), and the ability to heat utensils that are not flat. The Association of Home Appliance Manufacturers pointed out that because the DOE test procedure uses non-magnetic aluminum blocks, it is not suitable for testing induction elements. (Association of Home Appliance Manufacturers, No.61A at 41–43).

As stated in the discussion of product classes, the Department has established two classes for electric cooktops (open coil and smooth), and believes that radiant, halogen, and induction elements offer no consumer utility which prevents them from being analyzed as design options for smooth cooktops. Solid disk elements are treated as the baseline unit for smooth cooktops. Data provided by the Association of Home Appliance Manufacturers, cooktop manufacturers, suppliers, and a published report [30] were used in the analysis of smooth cooktops. Data were provided which evaluated radiant, halogen, and induction elements according to the DOE test procedure. The Department test results were obtained for induction elements by attaching a ferro-magnetic material to the aluminum test block. As with open coil elements, different types of tests based on boiling water have been used to evaluate electronic controls for smooth cooktops. But boiling water tests have yet to be standardized by DOE as a method to rate cooktops. Therefore, this design option was not analyzed by the Department.

In its comments on design options for gas and electric ovens, the Association of Home Appliance Manufacturers stated that since the DOE test procedure does not require maintaining heat in the oven over a period of time, improving the insulation in the cabinet will not show any energy savings. (Association of Home Appliance Manufacturers, No. 61A at 58). With regard to reduced vent size, the Association of Home Appliance Manufacturers stated that this design option should be considered only for electric ovens, not for gas ones. It then proceeded to state how any reductions in vent size will negatively impact cooking and baking performance as well as safety (Association of Home Appliance Manufacturers, No. 61A at 58, 59). The Association of Home Appliance Manufacturers stated that, according to the DOE test procedure, existing instrumentation cannot measure the small energy efficiency gains that result from reducing conduction losses. (Association of Home Appliance Manufacturers, No. 61A at 59). As with cooktops, the Association of Home Appliance Manufacturers stated that reflective surfaces degrade quickly in ovens. This significantly reduces their impact on energy use over the life of the product. (Association of Home Appliance Manufacturers, No. 61A at 59, 60). The Association of Home Appliance Manufacturers asserted that oven thermal mass cannot be reduced. Further reductions in the gauge of the oven wall material may result in cracking and heat loss. (Association of Home Appliance Manufacturers, No. 61A at 60). The Association of Home Appliance Manufacturers stated that an oven separator to reduce oven thermal mass would pose potential safety problems due to improper installation, gas combustion considerations, and the handling of the separator by the consumer. No test procedure currently exists to certify the safety or performance of an oven using a separator. In addition, the Association of Home Appliance Manufacturers questioned the separator's utility, as consumers already use microwave and toaster ovens for small loads. The Association of Home Appliance Manufacturers also questioned whether the DOE test procedure could evaluate this design option. (Association of Home Appliance Manufacturers, No. 61A at 60–62).

For electric ovens, the Association of Home Appliance Manufacturers proposed separate product classes for forced convection ovens for cooking and cleaning, halogen lamp ovens, and steam cooking ovens. The Association of Home Appliance Manufacturers stated that due to unique operating characteristics a separate class should be adopted for convection ovens. (Association of Home Appliance Manufacturers, No. 61A at 45, 46). With regard to halogen lamp ovens, the Association of Home Appliance Manufacturers asserted that the baking performance is relatively poor compared to the characteristics of a conventional electric oven. But since it may have certain advantages for broiling applications, the Association of Home Appliance Manufacturers said it should be a separate class. (Association of Home Appliance Manufacturers, No. 61A at 46). Since no United States manufacturer is currently producing steam ovens and because the food products that can be cooked or baked by this oven type are limited, the Association of Home Appliance Manufacturers said it should be adopted as a separate class. (Association of Home Appliance Manufacturers, No. 61A at 47).

As stated in the discussion of product classes, the Department has established two product classes for electric ovens (standard and self-cleaning), and analyzed halogen lamp, convection, and steam cooking as design options for electric ovens. The design options commented on by the Association of Home Appliance Manufacturers and others have all been considered for electric ovens. This includes the biradiant oven concept that was referred to by the Natural Resources Defense Council. Data provided by the Association of Home Appliance Manufacturers, oven manufacturers, suppliers, and published reports [31] were

[30] M. Shepard, A.B. Lovins, J. Neymark, D.J. Houghton, and H.R. Heede, "The State of the Art: Appliances," Rocky Mountain Institute, Competitek, August 1990 Edition.

[31] "Costing Analysis of Design Options for Residential Appliances and Space Conditioning Equipment," Lawrence Berkeley Laboratory, prepared by ADM Associates, Inc., Purchase No. 4541710, December 1987, "Energy Efficient Electrical Product Knowledge Base," Canadian Electrical Association, prepared by ORTECH International, C.E.A. No. 821 U 678, October 1989, U.S. Department of Energy Engineering Analysis, DOE/CS–0166, June 1980, and D.P. DeWitt and M.V. Peart, "Bi-Radiant Oven a Low-Energy Oven System," Purdue University, prepared for Oak Ridge National Laboratory, April 1980, ORNL/Sub–

used in the analysis of electric ovens. Manufacturers' data supplied by the Association of Home Appliance Manufacturers were the only source of cost and efficiency data provided to analyze oven separators. The improved insulation and reduced vent size design options were analyzed only for standard electric ovens. Insulation improvement levels and vent size reductions for standard ovens were selected to bring their baseline unit to the same efficiency level as the baseline unit selected for self-cleaning ovens. The Department received no data that indicated that insulation could be improved beyond the baseline level for self-cleaning ovens. In addition, any further reductions in vent size were assumed to jeopardize both oven safety and cooking performance. The Department did not receive any energy-use or cost data concerning the halogen lamp and steam cooking design options, thus preventing them from being analyzed for electric ovens.

For gas ovens, the Association of Home Appliance Manufacturers proposed separate product classes for standard and self-cleaning convection ovens and radiant burner gas ovens. As with electric convection ovens, the Association of Home Appliance Manufacturers said the unique operating characteristics of the convection oven warrant a separate class. (Association of Home Appliance Manufacturers, No. 61A at 53). For radiant burner gas ovens, the Association of Home Appliance Manufacturers made reference to its comments on radiant burners for gas cooktops. (Association of Home Appliance Manufacturers, No. 61A at 53).

As stated in the discussion of product classes, the Department has established two product classes for gas ovens (standard and self-cleaning). The Department believes that convection and radiant burner gas ovens should be analyzed as design options. A separate class would be warranted if lower efficient design options had consumer utility relative to convection and radiant burner gas ovens. The design options commented on by the Association of Home Appliance Manufacturers and others have all been considered for gas ovens. The bi-radiant oven concept referred to by the Natural Resources Defense Council was determined to be applicable to electric ovens only.[32] Data provided by the Association of Home Appliance Manufacturers, manufacturers, suppliers, and published reports[33] were used in the analysis of gas ovens. Manufacturers' data supplied by the Association of Home Appliance Manufacturers were the only source of cost and efficiency data provided with which the Department could analyze oven separators. As with electric ovens, the improved insulation and reduced vent size design options were analyzed only for standard gas ovens. The Department did not receive any energy-use or cost data concerning the radiant burner gas oven, thus preventing it from being analyzed.

For microwave ovens, the Association of Home Appliance Manufacturers stated that high-grade stainless steel (or reflective material steel coating) would be more efficient than painted cold-rolled steel by approximately one percent. (Association of Home Appliance Manufacturers No. 61A at 30–33). The Association of Home Appliance Manufacturers stated that a small efficiency improvement may be available if fan air flow is increased or if motor energy consumption is decreased. (Id. at 32). The Association of Home Appliance Manufacturers said that magnetron efficiency has reached its maximum at 72 percent. (Id. at 33). The Association of Home Appliance Manufacturers stated that solid-state power supplies are not more efficient, but cost more. At low power levels, improved performance is expected because they eliminate the on/off cycling used by other power supplies. (Id. at 34). The Association of Home Appliance Manufacturers stated that there are no data available to suggest that solid-state microwave generators would increase the generating efficiency over the 70+ percent efficiency available in today's magnetrons. (Id. at 34). The Association of Home Appliance Manufacturers said that a modified wave guide may decrease energy absorption by one percent. (Id. at 35). The Association of Home Appliance Manufacturers stated that microwave oven models with fan-type stirrers use a cover over the fan to prevent inadvertent damage to the fan when inserting or removing food and to prevent degradation of the wave guide due to food splatter. While these ceramic stirrer covers may absorb some microwave energy, they are essential for protecting the stirrer and to prevent accumulation of food splatter inside the wave-guide. (Association of Home Appliance Manufacturers No. 61A at 35).

The Department has utilized the Association of Home Appliance Manufacturers's estimates for energy savings from improved magnetrons, reflective surfaces, modified wave guides, and more efficient fans. After considering the Association of Home Appliance Manufacturers's comments, the Department has also excluded solid-state microwave generators and modified food stirrers from its cost/efficiency tables. The Department has generated data for, and included a more efficient power supply in, its cost/efficiency analysis for microwave ovens.

Arkansas Western Gas said that maintenance and installation should be considered. (Arkansas Western Gas, No. 64 at 7).

Maintenance and installation costs were considered for ranges and ovens. The Department determined that the only design option which required additional maintenance costs was electronic ignition for gas cooktops. Using data obtained from electronic ignition manufacturers, the Department established a price for replacing malfunctioning electronic ignition devices. A retirement function based on data received from electronic ignition manufacturers and service technicians was used to establish the rate of failure of these control devices. With the retirement function and replacement cost, the expected maintenance expense was then determined.

Mr. Rajendra Narang provided patents for improving the efficiency of gas ranges/ovens. These included, for ovens: Combustion air preheated by discharge gases, heated discharge gases discharged only when combustion occurs, and circulation fans for better airflow; for cooktops: an efficient piloted ignition and flame containing burner rings to support pots and pans. (Narang, No. 82).

The Department was not able to assess the energy savings from most of the design options presented by Mr. Narang. (Circulation fans were analyzed, however.) Experimental data and simulation models were not available to allow evaluation of these design options.

Other comments. The Association of Home Appliance Manufacturers recommended that the usage assumptions for ranges/ovens be decreased to account for changes in

80/0082/1, ORNL/Sub–80/0082/2, ORNL/Sub–80/0082/3.

[32] D.P. DeWitt and M.V. Peart, "Bi-Radiant Oven a Low-Energy Oven System," Purdue University, prepared for Oak Ridge National Laboratory, April 1980, ORNL/Sub–80/0082/1, ORNL/Sub–80/0082/2, ORNL/Sub–80/0082/3.

[33] "Costing Analysis of Design Options for Residential Appliances and Space Conditioning Equipment," Lawrence Berkeley Laboratory, prepared by ADM Associates, Inc., Purchase No. 4541710, December 1987, "Energy Efficient Electrical Product Knowledge Base," Canadian Electrical Association, prepared by ORTECH International, C.E.A. No. 821 U 676, October 1989, U.S. Department of Energy Engineering Analysis, DOE/CS–0166, June 1980.

lifestyles since the original usage values were estimated. The Association of Home Appliance Manufacturers said the reductions in energy use are from 68 to 74 percent for cooktops and ovens. (Association of Home Appliance Manufacturers, No. 61 at 38). Whirlpool Corporation stated that DOE should revise the test procedure to account for lower usage; the present test procedure overstates usage for cooktops and ovens by 70 and 76 percent, respectively. (Whirlpool Corporation, No. 31 at 17). The American Council for an Energy Efficient Economy also recommended that the usage values be updated. (American Council for an Energy Efficient Economy, No. at 2). Finally, Arkansas Western Gas said range use is down, and that gas use is so low (6Mcf) that any conservation item will have little effect. (Arkansas Western Gas, No. 64 at 6).

As stated previously, the Department has proposed revised test procedures for kitchen ranges and ovens. The Department used the proposed test procedure, including the more current field usage numbers, for the analyses in today's notice. The new annual useful cooking energy output values were determined to be 209.4 kWh for electric cooktops, 732.5 kBtus for gas cooktops, 35.5 kWh for electric ovens, and 124.2 kBtus for gas ovens.

With regard to potential microwave oven standards, the Association of Home Appliance Manufacturers contended that such standards would have an insignificant effect on energy consumption. (Association of Home Appliance Manufacturers, No. 61A at 29).

The Department analyzed quantitatively the energy-saving potential of standards on microwave ovens and found that significant savings are possible. (See Technical Support Document, Chapter 5).

With respect to the usage values for microwave ovens, Whirlpool Corporation stated that microwave energy use has increased significantly, and DOE should initiate a new study to determine a reasonable estimated energy use for microwave ovens. (Whirlpool Corporation, No. 31 at 19). Citing the Electronic Industries Association's estimated 100 kWh/yr usage for microwave ovens in 1987, the Association of Home Appliance Manufacturers stated that it was consistent with its 1976 data showing 75 kWh/yr usage because, although average family size has decreased, microwave oven use within the household has increased. (Association of Home Appliance Manufacturers, No. 61A at 27).

As with the usage number for conventional ranges and ovens, the Department used the proposed test procedure usage values for the analysis of microwave ovens. The Department obtained the proposed energy use values from several utility conditional demand studies resulting in the proposed usage value of 270 kWh/yr for microwave ovens.

Lastly, some comments urged changes in the ranges and ovens test procedure as well as the microwave oven test procedure. Aloha Systems, Inc. commented that the present test procedure using an aluminum block is not realistic, and that induction cooking cannot be evaluated with the present test procedure since that procedure requires iron pots and pans. (Aloha Systems, Inc., No. 2, at 2). Whirlpool Corporation and the Association of Home Appliance Manufacturers both urged the Department to change its microwave test procedure to the 1988 International Electrotechnical Commission test procedures for measuring microwave power and energy use. (Whirlpool Corporation, No. 31 at 18; Association of Home Appliance Manufacturers No. 61A at 25.)

Modifications to the test procedures for kitchen ranges and ovens, which address these issues, are contained in the Notice of Proposed Rulemaking referenced above.

6. Pool Heaters

Classes. With regard to comments on pool heater classes, Southern Gas Association, Energen, South Carolina Gas and Electric, Laclede, and the Oklahoma Gas Co. proposed that an additional product class for pool heaters be established—gas pool heaters with automatic ignition. (Southern Gas Association, No. 4 at 8; Energen, No. 12 at 15; South Carolina Gas and Electric, No. 34 at 6; Laclede, No. 55 at 6; and Oklahoma Gas Company, No. 57 at 7.)

The Department believes there is no significant difference in consumer utility between gas-fired pool heaters which use electricity and those which do not. In addition, pool heaters are customarily installed adjacent to the pump and filter. Therefore, electricity will be readily available for the pool heater. The Department decided to keep gas-fired pool heaters as one class and to consider electricity-using design options as another design option. Accordingly, the installation and maintenance expenses (in addition to increased manufacturer costs) associated with design options using electricity were considered in the economic calculations.

Another product class issue dealt with heat pump pool heaters. Air Energy Heat Systems (Air Energy Heat Systems, No. 44 at 1) provided efficiency data. The company stated that coefficients of performance are available in the mid five's and will reach the low six's in the future.

The Department has adopted American National Standards Institute Standards Z21.56–1989 and Z21.56a–1990 as the test procedure for pool heaters. The American National Standards Institute standards apply to gas-fired pool heaters only, not electric resistance pool heaters or electric heat pump pool heaters. Since a test procedure does not exist for electric pool heaters, coefficients of performance data were not used in the analysis.

Design options. As for pool heater design options, the Gas Appliance Manufacturers Association argued that since pool heaters have "no flues," many of the design options listed in the Advanced Notice of Proposed Rulemaking are inappropriate, such as use of flue dampers, multiple flues, and increased flue baffling. (Gas Appliance Manufacturers Association, No. 40 at 5.)

Most pool heaters currently being manufactured pass the water through a heat exchanger pipe which is located inside a combustion chamber above the burner. This design does not have a flue, and would not benefit from design options to improve the flue. The Department agrees with Gas Appliance Manufacturers Association and is not considering these design options.

One company took issue with the Gas Appliance Manufacturers Association's comments about flue dampers not being an appropriate design for pool heaters. Flair said, "We know of several manufacturers who build boiler-type pool heaters equipped with flues." (Flair, No. 85 at 1.) Flair also recommended that the Department evaluate a water heater design option of automatic ignition with a flue damper for pool heaters. (Flair, No. 85 at 2.)

The Department is not aware of any residential pool heaters being manufactured currently with separate boilers or tanks that store water at elevated temperatures. Flue dampers are effective only at reducing standby losses from storage tanks. Therefore, flue dampers were not considered. Automatic ignition was included as a design option.

Other comments. One comment dealt with pool heater test procedure issues. The California Energy Commission stated new test procedures are needed for oil-fired, electric resistance, and heat pump pool heaters, and the gas-fired pool heater test needs to include

standby losses so that intermittent ignition devices are credited for increasing the energy factor. (Commission Energy Commission, No. 24 at 5.)

Modifications to the test procedures for pool heaters, which address these issues, are contained in the Notice of Proposed Rulemaking referenced above.

Lastly, one comment proposed that pool heaters be brought under the appliance labeling program. (California Energy Commission, No. 24 at 6).

In response, the Department notes that the appliance labeling program is administered by the Federal Trade Commission. It will be the Federal Trade Commission's decision, not the Department's, whether to bring pool heaters under labeling requirements.

7. Clothes Washers

In a final rule regarding standards for three types of appliances, including clothes washers, published in the **Federal Register** on May 14, 1991 (56 FR 22250), the Department announced that it was accelerating the second review of energy efficiency standards for clothes washers. In response to that notice, a number of energy-efficiency advocates and appliance manufacturers requested that the Department delay the second review until 1995–96.[34] The additional time was requested in order to allow manufacturers time to implement the standards imposed by the 1991 final rule and to fully evaluate new, more energy-efficient technologies such as top-loading horizontal-axis clothes washers. This additional time, manufacturers contend, will enable them to provide more meaningful and relevant comments on the next, legislatively required rulemaking. The Department considered the request, and by letter, dated February 26, 1992, notified the parties requesting the delay that the Department had determined that it will conduct the rulemaking on the later schedule, as requested.[35]

8. Fluorescent Lamp Ballasts

Classes. Several fluorescent ballast class issues were raised in the comments on the Advanced Notice of Proposed Rulemaking. One comment supported the Department's proposed classes. (Advance Transformer, No. 25 at 2). On the other hand, a number of comments recommended additional classes for fluorescent lamp ballasts based on the size and type of lamp for which the ballast is designed. One set of comments proposed adding three and four-lamp F40T12 ballasts and F32T8 ballasts as product classes. (American Council for an Energy Efficient Economy, No. 6 at 2; Public Citizen, No. 7 at 3; Natural Resources Defense Council, No. 13 at 26; Rocky Mountain Institute, No. 15 at 3; California Energy Commission, No. 24 at 6; Northwest Power Planning Council, No. 32 at 2; and Sierrra Club, No. 43 at 2). Several comments proposed adding ballasts for compact fluorescent lamps as a product class. (Natural Resources Defense Council, No. 13 at 26; Rocky Mountain Institute, No. 15 at 3; Northwest Power Planning Council, No. 32 at 2; and Sierra Club, No. 43 at 2). Lastly, three comments proposed that dimming features on ballasts warrant a separate class, since such ballasts provide the utility to vary light output. (American Council for an Energy Efficient Economy No. 6 at 5; California Energy Commission, No. 24 at 7; Northwest Power Planning Council, No. 32 at 6).

In response, the Department has added three and four-lamp F40T12 ballasts and one, two, three, and four-lamp F32T8 ballasts to the list of product classes. These new classes will all have unique ballast efficiency factors. Compact fluorescent ballasts, however, are integrated with a lamp and sold as one package. As such, one cannot determine the efficiency of the ballast separate from the lamp. Although dimming ballasts do provide a unique utility to vary light output, the Department believes that such ballasts do not warrant a separate class. At full light output, their energy efficiency is expected to be equal to that of non-dimming ballasts. Therefore, any standard developed for non-dimming ballasts will apply to dimming ballasts operated at full light output.

Design options. The comments on the fluorescent lamp ballast design options consisted largely of suggestions of additional designs for the Department to consider. Certified Ballast Manufacturers stated that it feels there are only two design options, electromagnetic and electronic. (Certified Ballast Manufacturers, No. 47 at 2). Four comments proposed improvement of magnetic ballasts through the use of lower resistance conductors and low-loss silicone or amorphous steel core material. (American Council for an Energy Efficient Economy, No. 6 at 5; Valmont Electric, No. 16 at 1; California Energy Commission, No. 24 at 7; and Northwest Power Planning Commission, No. 32 at 5). A number of comments suggested that design options which reduce energy use of magnetic ballasts through cathode (heater) cutout, including use of electronic controls (hybrid ballasts), be considered. (American Council for an Energy Efficient Economy, No. 6 at 5; Public Citizen, No. 7 at 3; Natural Resources Defense Council, No. 17 at 29; Valmont, No. 16 at 1; California Energy Commission, No. 24 at 7; and Northwest Power Planning Council, No. 32 at 5). The California Energy Commission stated that instant start should be considered as one of the design options for magnetic ballasts. (California Energy Commission, No. 24 at 7). There were several comments regarding the consideration of levels of efficiency of electronic ballasts as design options such as instant start and use of integrated circuits. (American Council for an Energy Efficient Economy, No. 6 at 5; Public Citizen, No. 7 at 3; Sierra Club, No. 16 at 2; Natural Resources Defense Council, No. 17 at 29; Valmont, No. 16 at 1; California Energy Commission, No. 24 at 7; and Northwest Power Planning Council, No. 32 at 5). Finally, three comments proposed that dimming capability (task tuning) be considered as a design option of electronic ballasts. (American Council for an Energy Efficient Economy, No. 6 at 5; California Energy Commission, No. 24 at 7; and Northwest Power Planning Commission, No. 32 at 5).

Dimming capability (task tuning) is addressed above in the product class discussion. The analysis treated cathode cutout and instant start for magnetic ballasts, as well as lower resistance conductors and low-loss steel cores, as design options. The Department also analyzed one efficiency level for instant start and one for rapid-start electronic ballasts. The Department concluded that the use of integrated circuits as a substitute for discrete components is common enough to be included in the initial electronic ballast design option.

Other comments. Two comments recommended that energy-efficient magnetic ballasts be used as the baseline for all product classes. (Valmont, No. 16 at 1; and Magnetek Universal, No. 35 at 1).

The Department agrees with these recommendations and used energy-efficient magnetic ballasts for the baseline units for all classes.

Several comments advised against the Department's considering standards to reduce the harmonic distortion of fluorescent lamp ballasts. (Valmont, No. 16 at 3; Advance Transformer, No. 25 at 4; Magnetek, No. 35 at 2; and National Electrical Manufacturers Association, No. 41 at 1). These comments contended that the harmonic distortions caused by fluorescent lamp ballasts, presently less than 30 percent, are not a serious problem, and that options designed to

[34] ACEEE, AHAM, NRDC, No. 89 at 1.

[35] J. Michael Davis, P.E., No. 90 at 1.

reduce such distortions would not be cost-effective. (Both magnetic and electronic ballasts generate harmonic distortion.)

The Department treated the harmonic content for electronic ballasts as acceptable for conventional, i.e., non-compact, ballasts and did not assign any additional cost to achieving reduced harmonic distortion.

With regard to the fluorescent ballast test procedure, Advance Transformer and the National Electrical Manufacturers Association stated that there is presently no test procedure for electronic ballasts. (Advance Transformer, No. 25 at 2; National Electrical Manufacturers Association, No. 41 at 2).

The Department used the present test procedure for magnetic ballasts to measure the ballast efficacy factor of electronic ballasts. The Department notes that the 60 hertz input power measurement and the light output measurement are the same, regardless of the type of ballast (low or high frequency). The Department believes that the existing test procedure is adequate to measure the ballast efficacy factor of electronic ballasts.

Three manufacturers provided energy savings estimates for various design options. Energy Advantage stated that 20 percent savings from electronic ballasts, compared to energy-efficient magnetic ballasts, are possible. In addition, this energy savings can be accomplished with up to a 50 percent increase in lifetime. (Energy Advantage, No. 27 at 1). Magnetek said that losses for a two lamp F40 electronic ballast can be reduced from 5–6 watts to about 3.5–4.5 watts, for a savings of 1.25–1.5 watts out of 56–58 watts, by substitution of an integrated circuit for discrete components. (Magnetek, No. 35 at 1). One other company, Valmont, provided energy savings tables for five ballast product classes, their maximum technologically feasible efficiencies, and the costs of achieving those efficiencies. (Valmont, No. 16 at 4–7).

The Department used some of the above data in combination with data from directories and other published data [36] to determine energy savings for various classes of fluorescent ballasts. (See Technical Support Document, Volume B). The Department found that 10–15 percent energy savings from electronic ballasts, relative to energy-efficient magnetic ballasts, are possible. The Department developed data that indicated larger energy savings are possible with electronic ballasts than were estimated by Valmont. This resulted in higher maximum technologically feasible efficiencies for all ballast product classes than provided by Valmont. The Department used incremental manufacturer costs that were specific to the energy efficiency gains estimated for each ballast product class studied, and, therefore, did not use the cost data provided by Valmont. A more detailed discussion of assumptions and analysis used for this product class are provided in the Technical Support Document. As for lifetimes of ballasts, the Department assumed the lifetime for an electronic ballast to be equal to that of a magnetic ballast, since no experimental data were received or found to differentiate their lifetimes.

Three manufacturers suggested that some combination of education and controls would be superior to standards in saving lighting energy use. Advance Transformer contended that fluorescent ballasts do not belong in the proposed rulemaking, and that improved education about lighting will accomplish more than standards. (Advance Transformer, No. 25 at 1). Magnetek and Certified Ballast Manufacturers both stated that controls, i.e., occupancy sensors, light feedback, daylighting, and automatic timers, can save more energy than can more stringent ballast standards. (Magnetek, No. 35 at 1; Certified Ballast Manufacturers, No. 47 at 2).

In response, the Department notes that the Act requires DOE to consider, in this rulemaking, more stringent fluorescent ballast standards and the concomitant energy savings therefrom. The Department considered such programs as alternatives to standards in the Regulatory Impact Analysis found in Section V of today's notice.

9. Television Sets

Classes. The Natural Resources Defense Council, Rocky Mountain Institute, and Thomson commented on television set class delineations. The Natural Resources Defense Council stated that separate classes may be needed for stereo sound, remote control, and other features. (Natural Resources Defense Council, No 13 at 24). Also, the Rocky Mountain Institute stated that it might make sense to differentiate on the basis of features like remote control, electronic tuning, and stereo sound. (Rocky Mountain Institute, No. 15 at 2).

Thomson stated that the large number of necessary variables or items used to classify television receivers, including, for example, feature content and screen size, would greatly complicate any attempt to categorize television receivers in order to establish meaningful energy usage guidelines. Thomson also said that many customer-preferred performance qualities, such as high picture brightness and high-quality stereo sound consume correspondingly higher levels of power than television sets that do not exhibit those qualities. There are other desirable, if not necessary, features, such as remote control and on-screen function displays, and federally mandated features, such as closed caption decoding, that may increase energy use. (Thomson, No. 49 at 3, 5).

The Electronic Industries Association stated that in 1989, 83 percent of color television sets sold to dealers reportedly included a remote control feature and that virtually all television sets use electronic tuning. (Electronic Industries Association, No. 30 at 3, 4).

In response to these comments, the Department established one class for color television sets with electronic tuning and remote control. However, the Department believes that the energy used to illuminate the screen is strongly affected by screen size and, therefore, has proposed standards for television sets that are a function of screen size. Furthermore, DOE believes that there is no need to separate classes according to stereo sound because the sound is not on during the efficiency test and therefore sound energy does not affect test procedure measurements.

The standard level analysis is based primarily on manufacturers' data for 19/20" color television sets because recent manufacturer cost and energy use data for other screen sizes were very limited. The results of the analysis, based on the 19/20" color television sets and the limited data available for other screen sizes ranging from 13.5" to 33", were then used to derive the proposed standards as a function of screen size.

Additionally, the Department did not consider standards for black and white television sets since their share of the market is rapidly decreasing and over 50 percent of those sold are designed for battery or battery-AC operation and are thus designed to minimize energy use.

Design options. Among the comments on television set design options, the Rocky Mountain Institute proposed that DOE consider all reasonable options for reducing standby power as well as operating power. One option would be

[36] R. Verderber, O. Morse, and F. Rubinstein, "Performance of Electronic Ballast and Controls with 34 and 40 Watt F40 Fluorescent Lamps," *IEEE Transactions on Industry Applications*, Vol. 25 No. 6, November 1989 and A. Loruss and K. Bowes, *Harmonic and Power Characteristics of Electronic Ballasts for Fluorescent Applications*, Northeast Utilities Service Company, Lab Test, June 1990; Directory of Certified Fluorescent Lamp Ballasts and Certified Luminaire Manufacturers, CEC, March 4, 1991.

to require a clearly labeled switch that would give consumers the choice of turning the set to standby or completely off. (Rocky Mountain Institute, No. 15 at 5).

The American Council for an Energy Efficient Economy suggested that DOE analyze use of a step down transformer rather than a resistance circuit for electronic tuning and new transformer materials with low core loss (amorphous alloys). The American Council for an Energy Efficient Economy also urged DOE to look at television sets in other countries, particularly Germany. (American Council for an Energy Efficient Economy, No. 6 at 3–4). The Natural Resources Defense Council proposed that DOE consider power supply efficiency improvement. (Natural Resources Defense Council, No. 13 at 38).

The Electronics Industry Association said that average remote control power is 4W, while some are as low as 2W; electronic tuning uses less than 1W, brightness sensor less than 1W. (Electronic Industries Association, No. 30 at 3–4). Thomson said that remote control uses 3–6W and that a brightness sensor consumes essentially no power in itself and offers no energy benefit not otherwise available to the consumer by using the customary picture control adjustments. (Thomson, No. 49 at 6, 7). The Electronic Industries Association provided data on voltage-regulating power supplies. It said that a change in the type of regulator from shunting to switching can save approximately six watts at an additional cost of $1.50. Other comments were provided for other design options, but no additional data were submitted. (Electronic Industries Association, No. 30 at 4).

The Department considered all comments on design options by analyzing standby power; power supply efficiency improvements, including voltage-regulating power supplies; and step down transformers for electronic tuning. These design options are shown in the cost/efficiency tables in the Technical Support Document. Data submitted by the Electronic Industries Association and previously submitted data from manufacturers were used to develop these tables. While a switch to allow consumers to turn off the remote control portion of the television (suggested by the Rocky Mountain Institute) would likely save some energy, the amount would be determined by consumer behavior and is not predictable. The Department discovered no data on improved transformer materials with low core loss nor any data on the energy use, as measured according to DOE test procedure, for the German models. The Department did develop data on Japanese models measured according to its test procedure. These data were included in the analysis.

Other comments. Several comments questioned the feasibility of establishing energy conservation standards for television sets. The Electronic Industries Association said that television set efficiency has improved over the years because manufacturers have been steadily limiting power to reduce internal heat. (Electronic Industries Association, No. 30 at 2). Thomson said there is little, if any, opportunity for further reductions in energy use. Thomson also said the major factors that influence energy use are controlled by the consumer: Operating hours, brightness, sound level, and control settings. (Thomson, No. 49 at 2–6). The Electronic Industries Association argued that efficiency standards would impede the development of high definition television. (Electronic Industries Association, No. 30 at 6). G&A Consultancy suggested that DOE "not place retarding restrictions upon television sets because precluding the television set's potential role as an energy control may inadvertently deny the American homeowner a far more valuable system of energy savings." (G&A Consultancy, No. 50 at 4).

The Department considered all these comments in the decision-making process for television set standards. With regard to such standards precluding the potential for a television set to become a home energy controller, it is the Department's belief that if television sets were transformed to home energy controllers, the nature of the appliance might have changed sufficiently for it to be considered a new appliance. If so, it would not be a covered product and subject to an energy conservation standard for television sets.

Two comments stated that standards are inappropriate for television sets, stating that they already are energy efficient, leaving little room for improvement. (Electronic Industries Association, No. 30 at 7; Thomson, No. 49 at 2).

The Department analyzed television set standard levels by the methodology proposed in the advance notice, thereby taking into account the costs and benefits of any potential efficiency improvements. The Department found that the efficiency of the typical television set can be improved.

IV. Product-Specific Discussion

a. Room Air Conditioners

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for room air conditioners. Table 4–1 presents the seven efficiency levels selected for analysis for the twelve classes of room air conditioners. Level 7 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4.1—STANDARD LEVELS ANALYZED FOR ROOM AIR CONDITIONERS

Product class	Baseline	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7
With louvered sides less than 6,000 Btu	8.27	9.36	9.36	10.44	10.62	11.08	11.52	13.04
With louvered sides 6,000 to 7,999 Btu	8.45	9.32	9.32	9.79	9.79	10.25	10.74	12.14
With louvered sides 8,000 to 13,999 Btu	9.33	9.33	10.05	10.34	10.34	11.02	11.97	13.50
With louvered sides 14,000 to 19,999 Btu	9.00	9.00	10.09	10.09	10.37	11.13	11.13	13.58
With louvered sides 20,000 and more Btu	8.32	8.32	8.32	8.32	9.08	9.63	10.70	11.43
Without louvered sides less than 6,000 Btu ..	7.96	9.01	9.01	10.06	10.24	10.67	11.10	12.56
With louvered sides 6,000 to 7,999 Btu	8.15	8.15	9.22	9.43	9.43	9.98	10.35	11.69
Without louvered sides 8,000 to 13,999 Btu .	9.00	9.00	9.69	9.96	9.96	10.65	11.54	13.01
Without louvered sides 14,000 to 19,999 Btu	8.64	8.64	9.75	9.75	10.01	10.81	10.81	13.10
Without louvered sides 20,000 and more Btu	8.03	8.03	8.03	8.03	8.77	9.30	10.34	11.02
With reverse cycle and with louvered sides ..	8.71	8.71	9.83	9.83	10.10	10.75	12.11	13.22
With reverse cycle and without louvered sides	8.78	8.78	9.42	9.71	9.71	10.39	11.24	12.66

Rather than presenting the results for all classes of room air conditioners in today's notice, the Department selected a class of room air conditioners as being representative, or typical, of the product, and is presenting the results only for that class. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The representative class for room air conditioners is room air conditioners with side louvers, less than 6,000 BTU's per hour, which is one of the most prevalent classes of room air conditioners. For this representative class, trial standard levels 1 and 2 accomplish the above efficiency improvements from the baseline by enhanced evaporator and condenser fins and the use of a permanent split-capacitor fan motor; level 3 adds a subcooler and grooved tubes to both the evaporator and condenser coils; level 4 increases the compressor energy efficiency ratio to 11.0; level 5 increases the compressor energy efficiency ratio further to 11.5; level 6 increases the evaporator and condenser coil area; and level 7 adds a variable-speed compressor and brushless DC fan motor. Similar design options are used to achieve the above efficiencies for the other classes and are found tabulated in Section 1.4 of the Technical Support Document.

2. Payback Period

Table 4–2 presents the payback periods for the efficiency levels analyzed for the representative class of the product. For this representative class, standard levels 1 through 4 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year. Payback for all classes of room air conditioners may be found in Tables 4.13 to 4.24 of the Technical Support Document.

TABLE 4–2.—PAYBACK PERIODS OF DESIGN OPTIONS FOR REPRESENTATIVE CLASS OF ROOM AIR CONDITIONERS

[In years]

Standard level	Payback period
1	1.01
2	1.01
3	1.71
4	1.82
5	3.50
6	5.30
7	16.07

3. Significance of Energy Savings

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new room air conditioners under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of the product:

Level 1—0.28 Quad
Level 2—0.62 Quad
Level 3—1.24 Quads
Level 4—1.42 Quads
Level 5—2.22 Quads
Level 6—3.06 Quads
Level 7—5.22 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. *Economic impact on manufacturers and consumers.* The per unit increased cost to manufacturers to meet the efficiency of levels 1 and 2 for the representative class is $3.81; to meet levels 3–7, the manufacturers' cost increases are $10.10, $11.75, $23.42, $50.24, and $210.24, respectively. See Technical Support Document, Table 1.6.

At those levels of efficiency, the consumer price increases are $4.77 for levels 1 and 2 and $13.64, $15.43, $32.55, $54.61, and $220.04 for standard levels 3–7, respectively. See Technical Support Document, Table 4.1.

The per-unit reduction in annual cost of operation (energy expense) at levels 1 and 2 is $5.12 for the representative class; standard level 3 would reduce energy expenses by $9.13; standard level 4 by $9.73; standard level 5 by $11.16; standard level 6 by $12.41; and standard level 7 by $16.10. See Technical Support Document, Table 4.1.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of room air conditioners show that revised standards would cause a prototypical manufacturer to have some reductions in short-run return on equity from the 8.6 percent return in the base case. Standard levels 1 through 7 are projected to produce short-run return on equity's of 8.5 percent, 8.5 percent, 8.4 percent, 8.4 percent, 8.4 percent, 5.2 percent and minus 4.3 percent, respectively. However, revised standards have little or no effect on the prototypical manufacturer's long-run return on equity. Standard levels 1 through 7 are projected to produce long-run return on equity's of 8.5 percent, 8.5 percent, 8.5 percent, 8.5 percent, 8.6 percent, 7.9 percent and 7.1 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative class, life-cycle costs at all standard levels other than level 7, the max tech level, are less than the baseline unit. Of the seven candidate standard levels, a unit meeting level 4 has the lowest consumer life-cycle cost. See Technical Support Document, Figure 4.1.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard levels 1 and 2 would cause reductions in life-cycle costs for the average affected consumer of $38.86 for the representative class of room air conditioner; standard level 3 would reduce average life-cycle costs by $54.75; standard level 4, by $56.68; standard level 5, by $53.47; and standard level 6, by $43.47. These life-cycle cost reductions indicate that no standard level, other than max tech, would cause any economic burden on the average consumer. At standard level 7, the life-cycle costs are projected to increase $86.09, compared to the base case. See Technical Support Document, Table 4.13.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of room air conditioners. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The Net Present Value analysis, a measure of the net savings to society, indicates that for all classes of room air conditioners, standard level 1 would produce an NPV of $0.44 billion to consumers. The corresponding net present values for standard levels 2–6 are $0.82 billion, $1.59 billion, $1.68 billion, $1.85 billion and $1.32 billion, respectively. The net present value for standard level 7 is minus $4.70 billion. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of electricity consumption by room air conditioners.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of room air conditioners.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* Room air conditioners use electricity directly. In 1987, 4.3 percent of residential sector source electricity (or 0.45 quads) was accounted for on a national basis by room air conditioners.

In addition, decreasing future electricity demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[37] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For all classes of room air conditioners at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be 52,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by powerplants in the United States is 0.03 percent. For standard levels 2–7, the reductions are 116,000 tons; 229,000 tons; 261,000 tons; 394,000 tons; 520,000 tons; and 777,000 tons, respectively. The highest peak annual reduction of these levels is 0.35 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 47,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 0.03 percent. For standard levels 2–7, the reductions are 103,000 tons; 205,000 tons; 234,000 tons; 353,000 tons; 467,000 tons; and 698,000 tons, respectively. The highest peak annual reduction of these levels is 0.35 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 24 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.03 percent. For standard levels 2–7, the reductions are 53 million tons; 105 million tons; 119 million tons; 181 million tons; 240 million tons; and 360 million tons, respectively. The highest peak annual reduction of these levels is 0.35 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 4.91 million barrels over the years 1996 to 2030. For standard levels 2–7, the reductions in oil imports are estimated to be 10.76, 21.5, 24.45, 37.14, 49.21 and 73.69 million barrels, respectively.

5. Conclusion

Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 7 for amended room air conditioner standards.

Of the standard levels analyzed, level 7 would save the most energy (5.22 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all room air conditioners would incorporate improved and increased heat transfer devices and high efficiency and variable-speed fan motors and compressors. However, the payback at this standard level of 16.1 years for the representative class, and up to 23.9 years for other classes, exceeds the 15-year life of the product and causes life-cycle cost increases of $86 for the representative class, and up to $178 for other classes. This level also drives the short-run manufacturer return on equity from 8.6 percent to negative 4.3 percent.

The Department therefore concludes that the burdens of standard level 7 for room air conditioners outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 6. This standard level is projected to save 3.06 quads of energy. This level produces life-cycle cost savings compared to the base case of $43, with a payback of 5.3 years, which is slightly more than one third of the average product lifetime. However, this level causes payback as high as 9.1 years for other classes (over 60 percent of product life) and reduces manufacturer short-run return on equity from 8.6 percent to 5.2 percent, a

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[37] The expected environmental impacts of the candidate standard levels were calculated prior to passage of the Clean Air Act Amendments of 1990 (CAAA, Pub. L. 101–549, November 15, 1990). As explained below, the CAAA will lower emissions of SO_2 and NO_2. Since appliance standards reduce the need for generation of electricity, they will cause lower emissions by powerplants of SO_2 and NO_2, thereby helping those utilities meet their required pollution reductions.

For SO_2, any emission reductions caused by appliance standards prior to the year 2000 will be part of much greater SO_2 reductions that are required by the CAAA. After the year 2000, SO_2 reductions achieved through appliance standards or any other means by those emitting SO_2 can be earned as credits. These are credits to emit an amount of SO_2 equivalent to the amount of the SO_2 reduction that created the credits. The new amendments allow those earning the credits either to sell them to others or to "bank" them for future use.

Therefore, after the year 2000, to the extent that appliance standards result in SO_2 credits being earned, and to the extent that such standards—induced credits are sold and used by others, the national SO_2 reductions from standards will not occur.

The new law also requires that utility boilers emit lower levels of NO_x and requires that additional actions to reduce emissions be taken in regions not now in compliance with Federal ambient air quality standards for NO_x or derivative pollutants, such as ground-level ozone. Because of these new requirements, the actual reductions in NO_x emissions likely to result from the appliance standards are very likely to be substantially less than the estimates made prior to the enactment of the Clean Air Amendments of 1990 and contained in this document.

With respect to CO_2, there are as yet no such regulatory constraints on national or regional emissions. However, efforts to comply with international commitments to stabilize CO_2 emissions, such as voluntary commitments by utilities and industries to reduce greenhouse gas emissions to 1990 levels by 2000, may result in constraints that are similar in nature to those for SO_2 and NO_2. If so, the reductions in CO_2 emissions estimated to result from the standards also may not be fully realized.

reduction of almost 40 percent. Also, at this standard level, some classes are assumed to incorporate variable-speed compressors, for which there is not a DOE test procedure. The Department believes that the development of such a test procedure would be a lengthy process which would probably delay the effective date of the standard for room air conditioners.

The Department therefore, concludes that the burdens of standard level 6 for room air conditioners outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for room air conditioners with standard level 5 for room air conditioners. The Department concludes that standard level 5 for room air conditioners saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 2.22 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 353,000 tons and 394,000 tons, respectively, or by as much as 0.18 percent each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 181 million tons, or as much as 0.18 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 3.5 years for the representative class and no more than 7.0 years for any class. This standard is at or near the lowest life-cycle cost for all classes and is expected to result in a reduction in life-cycle cost of approximately $53 for the representative class. Additionally, the standard is expected to have essentially no impact on the prototypical manufacturer's return on equity of 8.6 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

b. Water Heaters

1. Efficiency Levels Analyzed.

The Department examined a range of standard levels for water heaters. Table 4–3 presents the efficiency levels selected for analysis for the four classes of water heaters. Electric and gas storage water heaters each have five efficiency levels that were analyzed, but were paired together to yield the eight combinations shown below. Level 8 corresponds to the highest efficiency level, max tech, considered in the engineering analysis for each class.

TABLE 4–3.—EFFICIENCY LEVELS ANALYZED FOR WATER HEATERS

[Energy factor]

Product class	Standard level								
	Baseline	1	2	3	4	5	6	7	8
Electric	0.86	0.90	0.93	1.77	1.89	1.89	2.54	2.54	2.54
Gas	0.54	0.54	0.55	0.57	0.57	0.58	0.58	0.60	0.82
Instan.	0.62	0.62	0.62	0.62	0.75	0.75	0.75	0.78	0.90
Oil	0.53	0.58	0.60	0.67	0.67	0.69	0.69	0.69	0.78

Rather than presenting the results for all classes of water heaters in today's notice, the Department selected two classes of water heaters as being representative, or typical, of the product, and is presenting the results only for those classes. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative classes. The representative classes for water heaters are electric storage water heaters and gas storage water heaters, which are the most prevalent classes of water heaters. For electric storage water heaters, trial standard level 1 accomplishes the above efficiency improvement from the baseline by the use of heat traps and by reducing heat leaks; level 2 increases the insulation level to R–25; at level 3 the insulation is reduced back to the baseline level of R–16, but an add-on heat pump is added; levels 4 and 5 increase the insulation back to R–25; and levels 6, 7 and 8 assume the use of an integral heat pump. For gas storage water heaters, trial standard level 1 is the same as the baseline, trial standard level 2 accomplishes the above efficiency improvement by the use of heat traps and by reducing heat leaks, levels 3 and 4 increase the insulation level to R–16, levels 5 and 6 increase the insulation level to R–25, at level 7 the insulation level is reduced back to R–16 but electronic ignition is added, and at level 8 the flue gases are assumed to condense. Similar design options are used to achieve the above efficiencies for the other classes and are found tabulated in Sections 1.5 and 1.6 of the Technical Support Document.

2. Payback Period

Table 4–4 presents the payback period for the efficiency levels analyzed for gas and electric storage water heaters. For gas water heaters, standard level 2 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year; for electric water heaters standard levels 1 through 5 satisfy the rebuttable presumption test.

TABLE 4–4.—PAYBACK PERIODS OF DESIGN OPTIONS FOR WATER HEATERS

[In years]

Standard level	Payback period	
	Gas	Electric
1	N/A	0.5
2	2.6	2.3
3	3.5	1.9
4	3.5	2.0
5	10.1	2.0
6	10.1	3.5
7	11.2	3.5
8	18.9	3.5

3. Significance of Energy Savings

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new water heaters under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030,

the following energy savings would result for all classes of the product:

Level 1—0.09 Quad
Level 2—0.73 Quad
Level 3—32.10 Quads
Level 4—34.89 Quads
Level 5—34.99 Quads
Level 6—44.39 Quads
Level 7—45.85 Quads
Level 8—54.45 Quads

The Department finds that each of the increased standards Levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. *Economic impact on manufacturers and consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency for gas water heaters is zero since it is the same as the baseline; to meet level 2 the manufacturers' cost increase is $5.47, levels 3 and 4 are $18.19, levels 5 and 6 are $28.57, level 7 is $72.14, and level 8 is $358.23. The per-unit increased cost to manufacturers to meet the level 1 efficiency for electric water heaters is $5.32; to meet level 2 the manufacturers' cost increase is $14.33, level 3 is $201.82, levels 4 and 5 are $210.83, and levels 6 through 8 are $585.06. See Technical Support Document, Table 1.5, "Cost Data for Gas-Fired Storage Water Heaters" and Table 1.9, "Cost Data for Electric Storage Water Heaters."

At those levels of efficiency, the consumer price increases for gas water heaters are zero for level 1, since it is the same as the baseline, $7.35 for level 2, $24.05 for levels 3 and 4, $59.60 for levels 5 and 6, $108.55 for level 7 and $901.80 for level 8. For electric water heaters the consumer price increases are $6.85 for level 1, $42.04 for level 2, $361.36 for level 3, $394.38 for levels 4 and 5, and $834.31 for levels 6 through 8. See Technical Support Document, Tables 4.1 and 4.2.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is zero for a gas water heater because it is the same as the baseline; standard level 2 would reduce energy expenses by $2.87; standard levels 3 and 4 by $7.46; standard levels 5 and 6 by $9.20; standard level 7 by $13.32; and standard level 8 by $53.02. For electric water heaters standard level 1 would reduce energy expenses by $14.66, standard level 2 by $26.78, standard level 3 by $195.01, levels 4 and 5 by $207.13 and levels 6 through 8 by $250.79. See Technical Support Document, Tables 4.1 and 4.2.

The Lawrence Berkeley Laboratory-Manufacturers Impact Model results for all classes of water heaters show that any of the revised standards would cause a prototypical manufacturer to have negative short-run return on equity. This is caused in part by the very low base case return of 0.4 percent, indicative of an industry which is extremely price-competitive. The negative short-run return on equity's are especially severe at the three most stringent levels. Standard levels 1 through 8 are projected to produce negative short- run return on equity's of 0.2 percent, 0.3 percent, 3.3 percent, 3.5 percent, 3.7 percent, 17.1 percent, 18.1 percent and 31.7 percent respectively. However, revised standards will slightly increase the prototypical manufacturer's long-run return on equity at standard levels above level 2. Standard levels 1 through 8 are projected to produce long-run return on equity's of 0.4 percent, 0.4 percent, 0.8 percent, 0.8 percent, 0.8 percent, 1.6 percent, 1.7 percent and 1.9 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Furthermore, most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports. Also, DOE based its assumptions for the prototypical firm strictly on information regarding water heater manufacturers. The Department seeks comments on how to better characterize a prototypical firm when heat pump water heaters are included in the mix of products. For example, it may be that room air conditioner manufacturers become the system manufacturer, with the water heater tank becoming a purchased part. In that case, at those levels where heat pumps are assumed, it may be reasonable to introduce some of the financial characteristics of the room air conditioner industry since the heat pumps in question are very similar to room air conditioners.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative classes, life-cycle costs at all standard levels other than level 8, the max tech level, for gas water heaters are less than the baseline unit. Of the eight candidate standard levels, units meeting levels 4 and 5 have the lowest consumer life-cycle costs for electric water heaters and units meeting levels 3 and 4 have the lowest consumer life-cycle costs for gas water heaters. See Technical Support Document, Figures 4.2 and 4.1.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average consumer of $70.39 for the representative class of electric water heaters with no impact on gas water heaters, which remain at the base case at this level; standard level 2 would reduce average life-cycle costs by $81.04 and $19.13 for electric and gas water heaters, respectively; standard level 3, by $974.88 and $29.81; standard level 4, by $1024.20 and $29.81; standard level 5, by $1024.20 and minus $3.77; standard level 6, by $907.99 and minus $3.77; standard level 7, by $907.99 and minus $13.12; and standard level 8, by $907.99 and minus $437.41. These life-cycle cost reductions indicate that no standard level, other than levels 5 through 8 for gas water heaters, would cause any economic burden on the average consumer. See Technical Support Document, Tables 4.5 and 4.6.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of water heaters. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of water heaters, standard level 1 would produce a net present value of $0.19 billion to consumers. The corresponding net present values for levels 2–8 are $0.99

billion, $40.17 billion, $42.92 billion, $42.68 billion, $38.15 billion, $39.91 billion and $32.50 billion, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of energy consumption for water heaters.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of water heaters.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* Water heaters use electricity, gas, and oil directly. In 1987, 18.4 percent of residential sector source electricity (or 1.94 quads) and 30.7 percent of residential sector natural gas consumption (or 1.59 quads) were accounted for on a national basis by water heaters.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A [38]. Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For all classes of water heaters at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be 17,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is 0.01 percent. For standard levels 2–8, the reductions are 145,000 tons; 5,381,000 tons; 5,885,000 tons; 5,890,000 tons; 7,796,000 tons; 7,823,000 tons; and 7,124,000 tons, respectively. The highest peak annual reduction of these levels is 3.58 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 14,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 0.01 percent. For standard levels 2–8 the reductions are 118,000 tons; 4,890,000 tons; 5,338,000 tons; 5,336,000 tons; 6,995,000 tons; 7,086,000 tons; and 7,109,000 tons, respectively. The highest peak annual reduction of these levels is 3.57 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 7 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.02 percent. For standard levels 2–8 the reductions are 59 million tons; 2,607 million tons; 2,837 million tons; 2,845 million tons; 3,662 million tons; 3,747 million tons; and 4,113 million tons, respectively. The highest peak annual reduction of these levels is 4.14 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 1.6 million over the years 1996 to 2030. For standard levels 2–8, the reductions in oil imports are estimated to be 24.12, 605.97, 654.55, 677.03, 835.53, 842.83 and 786.97 million barrels, respectively.

5. *Conclusion.* Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 8 for amended water heater standards.

Of the standard levels analyzed, level 8 will save the most energy (54.45 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all electric water heaters will incorporate improved thermal characteristics and an integral heat pump, and all gas water heaters will incorporate improved thermal characteristics and condense the flue gases. However, the payback at this standard level of 18.9 years for gas water heaters exceeds the 14-year life of the product and causes life-cycle cost increases of $437 for gas water heaters, and up to $1,108 for other classes. This level also quadruples the first cost of electric and gas water heaters and drives the short-run manufacturer return on equity from 0.4 percent to negative 32.1 percent.

The Department therefore concludes that the burdens of standard level 8 for water heaters outweigh the benefits, and rejects the standard level.

The next two most stringent standard levels, 7 and 6, are projected to save 45.85 and 44.39 quads of energy, respectively. However, these levels also produce life-cycle cost increases for gas water heaters compared to the base case with payback of 11.2 and 10.1 years, which are more than two thirds of the average product lifetime. The first cost of electric water heaters at these levels is quadrupled from the base case and manufacturer short-run return on equity is reduced from 0.4 percent to negative 18.1 and negative 17.1 percent, respectively.

The Department therefore concludes that the burdens of standards level 7 and 6 for water heaters outweigh the benefits, and rejects these standard levels.

The next most stringent standard level is standard level 5. This standard level is projected to save 34.98 quads of energy. However, this level also produces a life-cycle cost increase for gas water heaters compared to the base case, with a payback of 10.1 years, which is more than two thirds of the average product lifetime.

The Department therefore concludes that the burdens of standard level 5 for water heaters outweigh the benefits, and rejects this standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act—imposed 1990 standard for water heaters with standard level 4. The Department concludes that standard level 4 for water heaters saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 34.87 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 5,336,000 tons and 5,890,000 tons, respectively, or by as much as 2.77 and 2.72 percent, respectively, by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 2,845 million tons, or as much as 2.93 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 2.0 and 3.5 years for electric and gas water heaters, respectively. This standard has the lowest life-cycle cost for all classes and is expected to result in a reduction in life-cycle cost of approximately $1,025 and $31 for electric and gas water heaters, respectively. Additionally, the standard is expected to double the prototypical manufacturer's long-run return on equity from 0.4 to 0.8 percent even

[38] See, footnote 37.

though the short-run return on equity is projected to drop to negative 3.5 percent. However, as stated previously, the Department believes that the requirement of heat pumps for electric water heaters will cause other manufacturers, with the stronger financial characteristics of room air conditioner manufacturers, to be drawn into the mix of manufacturers offering electric water heating systems. The Department believes that this mix of manufacturers would have a positive return on equity compared to that projected for existing water heater manufacturers.

The Department recognizes that establishing a standard for electric water heaters that essentially requires the use of heat pumps is a significant change for consumers and manufacturers. However, heat pump water heaters are not a technology that has to be developed; the product already exists in the marketplace. Additionally, the projected energy savings are very large and the forecasted benefits appear to outweigh the burdens. However, the magnitude of some of the changes, such as in first cost and product manufacturing, could make questionable some of the assumptions contained in the analysis and may warrant closer scrutiny. For example, as reported in the Technical Support Document, the Lawrence Berkeley Laboratory Residential Energy Model's computation of appliance turnover rate, i.e., the repair or replace decision, is based on industry data about historical annual shipments and does not explicitly consider the effects of increased first cost. A significant increase in first cost could distort this model. The Department assumes, however, that water heaters are typically replaced because of tank leaks which, because of design features such as glass-lined tanks and foamed-in-place insulation, are essentially non-repairable. Therefore, the Department believes that the impacts on the replacement rate, because of a substantial increase in first cost, is likely to be small. The Department welcomes comment on this assumption and other areas where it might be thought that the magnitude of the first cost increase or manufacturing changes might warrant additional or revised modeling assumptions.

Another possible area of concern regarding this proposed standard is whether heat pump water heaters are physically able to be installed in existing space in the replacement market. The heat pump itself will require some additional space, and as was discussed in the product specific comments regarding classes for water heaters, the Department assumed a sufficient volume would be available to allow air circulation for the proper operation of the heat pump. The Department believes that medium and larger sizes of water heater installations would typically have sufficient space, being usually installed in areas such as basements or garages. For space-restricted applications DOE believes that technical solutions, such as heat pumps with provisions for ducting air flow, are available as well as integrated space conditioning and water heating heat pumps, which are already on the market, and could be used if and when the central heat pump system is replaced. For very small size installations, such as under-the-counter types, where sufficient space for a heat pump may not be readily available or where the economics of a heat pump may not be justified because the water heating loads are well below average, the use of electric instantaneous water heaters would be an effective alternate. A lower limit on the size of electric storage water heaters that the proposed standard would cover may also be a way of minimizing the space and low load concerns. The Department believes there are technical solutions to require the use of heat pump water heaters wherever electric storage water heaters are now used and required. This view was supported at the Hot Water Heat Pump Workshop held in Breckenridge, Colorado on June 30 through July 2, 1993. The proceedings of the workshop are made a part of the record of this notice and are available from the Department's Freedom of Information Reading Room.

Other issues that may warrant further DOE analysis include consumer acceptance of possible increased noise from heat pump water heaters and anticipated increases in maintenance requirements in comparison to electric resistance water heaters. DOE is soliciting public comment on these issues, together with additional data or other information that might assist DOE in better assessing the impacts of this proposed standard on consumers and others.

Because the Department has little information on the space constraints for replacement water heaters or the frequency with which small water heaters experience low annual water heating loads, the cost-effectiveness analysis of the proposed standard does not explicitly consider these factors. The Department believes the analysis is sufficient but would attempt to expand it to include any information on these or other related factors that becomes available during the public comment period. Based on this possible revised analysis, DOE would consider modifying either the proposed standard level for electric water heaters or the definition of the class of water heaters covered by the standard. If the analysis warrants, DOE may establish different classes for two or more sizes of electric water heaters. The Department specifically invites public comment on this expanded analysis and the regulatory alternatives described.

c. Direct Heating Equipment

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for direct heating equipment. In reviewing the design options necessary to achieve those standard levels, the Department determined that a new energy descriptor was needed to adequately address some of the design options in the analysis because the current energy descriptor, annual fuel utilization factor, does not include electrical consumption. For example, design options such as adding an induced draft fan improve thermal efficiency but, at the same time, increase overall electrical consumption which, unless accounted for in the energy descriptor, could lead to higher Annual Fuel Utilization Efficiencies with little or no net energy savings. Because of the above, the Department conducted the analysis, and is proposing the standards, in terms of a new energy descriptor, annual efficiency. The test procedure to determine this energy descriptor is contained in the previously mentioned Notice of Proposed Rulemaking. Table 4–5 presents the five efficiency levels selected for analysis for the 16 classes of direct heating equipment. Level 5 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–5.—STANDARD LEVELS ANALYZED FOR DIRECT HEATING EQUIPMENT

[Annual efficiency (percent)]

Product class	Standard level					
	Baseline	1	2	3	4	5
Gas wall fan type up to 42,000 Btu/hour	72.2	72.2	72.2	72.2	75.6	89.2
Gas wall fan type over 42,000 Btu/hour	73.4	73.4	73.4	73.4	76.4	89.9
Gas wall gravity type up to 10,000 Btu/hour	59.0	59.0	59.0	67.7	67.7	81.0
Gas wall gravity type over 10,000 Btu/hour up to 12,000 Btu/hour	60.0	64.1	64.1	67.7	72.9	81.7
Gas wall gravity type over 12,000 Btu/hour up to 15,000 Btu/hour	61.0	64.9	64.9	67.9	73.2	82.1
Gas wall gravity type over 15,000 Btu/hour up to 19,000 Btu/hour	62.0	65.9	65.9	68.2	76.2	82.9
Gas wall gravity type over 19,000 Btu/hour up to 27,000 Btu/hour	63.0	66.8	68.5	73.6	76.5	83.3
Gas wall gravity type over 27,000 Btu/hour up to 46,000 Btu/hour	64.0	67.5	68.7	73.9	76.9	83.8
Gas wall gravity type over 46,000 Btu/hour	65.0	68.2	71.6	74.2	73.4	84.4
Gas floor type up to 37,000 Btu/hour	56.0	61.3	62.7	70.7	75.8	88.6
Gas floor type over 37,000 Btu/hour	57.0	69.3	70.0	70.0	78.8	90.0
Gas room type up to 18,000 Btu/hour	57.0	62.3	64.4	64.4	69.3	85.9
Gas room type over 18,000 Btu/hour up to 20,000 Btu/hour	58.0	65.0	67.4	69.9	74.8	87.3
Gas room type over 20,000 Btu/hour up to 27,000 Btu/hour	63.0	67.1	67.1	67.1	74.9	88.1
Gas room type over 27,000 Btu/hour up to 46,000 Btu/hour	64.0	67.8	71.2	71.2	76.2	88.9
Gas room type over 46,000 Btu/hour	65.0	68.3	71.5	71.5	77.5	89.7

Rather than presenting the results for all classes of direct heating equipment in today's notice, the Department selected a class of direct heating equipment as being representative, or typical, of the product, and is presenting the results only for that class. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The representative class for direct heating equipment is gravity wall heaters greater than 27 kBtu/hr but less than 46 kBtu/hr, which is one of the more prevalent classes of direct heating equipment. For this representative class, trial standard level 1 accomplishes the above efficiency improvement from the baseline by derating the burner by 20 percent, level 2 adds electronic ignition, level 3 adds a burner box damper, level 4 adds the use of an induced draft fan and electronic ignition to the baseline unit, and level 5 assumes condensation of the flue gases. Similar design options are used to achieve the above efficiencies for the other classes of direct heating equipment and are found tabulated in section 1.4 of the Technical Support Document.

2. Payback Period

Table 4–6 presents the payback period for the efficiency levels analyzed for the representative class of the product. For this representative class, standard level 1 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year. Payback for all classes of direct heating equipment may be found in Tables 4.17 to 4.32 of the Technical Support Document.

TABLE 4–6.—PAYBACK PERIODS OF DESIGN OPTIONS FOR ROOM HEATERS OVER 46 KBTU/HR

[In years]

Standard level	Payback period
1	2.3
2	6.7
3	7.5
4	15.0
5	17.6

3. Significance of Energy Savings

To estimate the base case energy savings by the year 2030 due to revised standards, the energy consumption of new direct heating equipment under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of the product:

Level 1—0.04 Quad
Level 2—0.21 Quad
Level 3—0.38 Quad
Level 4—0.23 Quad
Level 5—0.23 Quad

The above energy savings are smaller than anticipated because the Lawrence Berkeley Laboratory-Residential Energy Model predicts fuel switching from gas to electricity at trial standard levels 4 and above as shown in Table 3.3 of the Technical Support Document. However, the Department finds that the increased standards at levels 1 through 4 considered above would result in a significant conservation of energy.

4. Economic Justification

A. Economic impact on manufacturers and consumers. The per-unit increased cost to manufacturers to meet the level 1 efficiency for the representative class is $8.60; to meet levels 2–5, the manufacturers' cost increases are $19.10, $51.80, $157.60, and $227.70, respectively. See Technical Support Document, Table 1.16.

At those levels of efficiency, the incremental consumer price increases are $24.93, $73.60, $171.34, $402.54, and $690.95 for standard levels 1–5, respectively. See Technical Support Document, Table 4.10.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $10.73 for the representative class; standard level 2 would reduce energy expenses by $17.32; standard level 3 by $29.53; standard level 4 by $35.43; and standard level 5 by $48.24. See Technical Support Document, Table 4.10.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of direct heating equipment show that revised standards would cause a prototypical manufacturer to have slight increases in short-run return on equity from the 7.4 percent in the base case except for the two most stringent levels where short-run return on equity plummets. Standard levels 1 through 5 are projected to produce short-run return on equity's of 7.6 percent, 7.7 percent, 7.6 percent, 5.2 percent and 0.9 percent, respectively. Revised standards have minimal effects on long-run return on equity. Standard levels 1 through 5 are projected to

produce long-run return on equity's of 7.4 percent, 7.4 percent, 7.3 percent, 7.4 percent and 7.1 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative class, life-cycle costs at standard levels 1 through 3 are less than the baseline unit. Of the five candidate standard levels, a unit meeting level 3 has the lowest consumer life-cycle cost. See Technical Support Document, Figure 4.10.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average consumer of $79.31 for the representative class of direct heating equipment. Standard levels 2 and 3 would reduce average life-cycle costs by $23.26 and $41.65, respectively. These life-cycle cost reductions indicate that standard levels 1 through 3 would not cause any economic burden on the average consumer. Standard levels 4 and 5 would increase average life-cycle costs by $132.40 and $296.32, respectively. See Technical Support Document, Table 4.26.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of direct heating equipment. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of direct heating equipment, standard level 1 would produce a net present value of $9 million to consumers. The corresponding net present values for levels 2–5 are $63 million, $113 million, negative $259 million, and negative $930 million, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, all standard levels, except level 5, will result in significant savings of energy consumption for direct heating equipment.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of direct heating equipment.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* In 1987, 6.1 percent of residential sector natural gas consumption (or 0.32 quad) was accounted for on a national basis by direct heating equipment.

In addition, decreasing energy use as a result of standards will usually decrease air pollution. However, in the case of direct heating equipment, projected fuel switching from gas to electric resistance heat causes the energy savings to be less than it otherwise would be, and at some of the trial standard levels the impact on the environment is negative, since it takes more primary energy to heat with resistance electric heat than with a gas furnace. See Technical Support Document, Appendix D of Volume A [39]. Evaluating standards for electric direct heating equipment might result in standards requiring the use of heat pump technology which would probably resolve this abnormality, but DOE has not considered adding standards for electric direct heating equipment in this proposed rule. The resulting impact on energy use because of fuel switching was considered in The Department's decision-making as discussed in the conclusion below.

Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2) at level 1. For all classes of direct heating equipment at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be over 5,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is close to 0 percent. For standard levels 2 and 3, the reductions are 20,000 tons and 32,000 tons, respectively. For standard levels 4 and 5, SO_2 emissions are projected to increase by 72,000 tons and 320,000 tons, respectively. The highest peak annual increase of these levels is 0.18 percent.

Standards at level 1 would result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be over 4,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants during that time in the United States is 0.01 percent. For standard levels 2 and 3, the reductions are 21,000 tons and 37,000 tons, respectively. For standard levels 4 and 5, NO_2 emissions are projected to increase by 27,000 tons and 184,000 tons, respectively. The highest peak annual increase of these levels is 0.13 percent.

Another consequence of the standards will be changes in (CO_2) emissions. For standard levels 1, over the years 1996 to 2030, the total estimated CO_2 reductions would be 2 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.01 percent. For standard levels 2–4 the reductions are 14 million tons, 26 million tons, and 2 million tons, respectively. The highest peak annual reduction of these levels is 0.03 percent. For standard level 5, CO_2 emissions are expected to increase by 60 million tons with a highest peak annual increase of 0.10 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 1.1 million barrels over the years 1996 to 2030. For standard levels 2, the reductions in oil imports are estimated to be 3.5 and 6 million barrels, respectively; while for standard levels 4 and 5 are estimated to

[39] See footnote 37.

result in an increase in oil imports of 15.43 and 70.03 million barrels, respectively.

5. *Conclusion.* Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5 for amended direct heating equipment standards.

Of the standard levels analyzed, level 5 will save the most energy per unit but, because of fuel switching from gas to electric, this level actually causes an energy increase of 0.23 quad between 1996 and 2030. In order to meet this standard, the Department assumes that all direct heating equipment will be condensing with induced draft and electronic ignition. This level produces increased life-cycle costs compared to the base case for all classes of product and has payback which exceed the average product life for all but two classes. Additionally, this level reduces manufacturer short-run return on equity from 7.4 percent in the base case to 0.9 percent and has a negative net present value of $1.1 billion.

The Department therefore, concludes that the burdens of standard level 5 for direct heating equipment outweigh the benefits, and rejects the standard level.

The next most stringent standard level, level 4, is projected to have energy savings of 0.23 quad, but the savings here are also reduced by fuel switching. This level also produces life-cycle cost increases, compared to the base case, of $132 for the representative class, with similar increases for most classes. The payback at this level is 15.0 years for the representative class, equaling the average product life, with similar payback for most of the other classes. Additionally this level has a negative impact on the environment by increasing two of the three atmospheric emissions studied.

The Department therefore concludes that the burdens of standard level 4 for direct heating equipment outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act—imposed 1990 standard for direct heating equipment with standard level 3. The Department concludes that standard level 3 for direct heating equipment saves a significant amount of energy and is technologically feasible and economically justified.

There would be a significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 0.38 quad of primary energy and are essentially not affected by fuel switching. The standard could have a slight positive effect on the environment by reducing the emissions of NO_2 by more than 37,000 tons and SO_2 by almost 32,000 tons by the year 2030. Furthermore, the standard is projected to reduce emissions of CO_2 by 26 million tons over the forecast period.

The technology that is necessary to meet this standard: derated burners, electronic ignition, and burner box dampers or induced draft, is presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 7.5 years, approximately one-half of the average product life. This standard is expected to result in a reduction in life-cycle cost of approximately $42. Additionally, the standard is expected to have little or no impact on the prototypical manufacturer's return on equity of 7.4 percent and has a net present value of $328 million. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

d. Mobile Home Furnaces

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for mobile home furnaces. In reviewing the design options necessary to achieve those standard levels, the Department determined that a new energy descriptor was needed to adequately address some of the design options in the analysis because the current energy descriptor, annual fuel utilization factor, does not include electrical consumption. For example, to consider improvements in fan motor efficiency, the savings in electrical consumption would have to be accounted for in the descriptor. Furthermore, other design options (for instance, fan-assisted combustion) improve thermal efficiency but, at the same time, increase overall electrical consumption which, unless accounted for in the energy descriptor, could lead to higher annual fuel utilization factors with little or no net energy savings. Lastly, since annual fuel utilization factor is defined in the Act in terms of an isolated combustion system, there are steps that could be taken to obtain a higher annual fuel utilization factor, such as adding jacket insulation, which would have no impact on the efficiency of a furnace installed indoors. Since practically all mobile home furnaces are installed indoors, the current descriptor is not entirely appropriate for this rulemaking. Because of the above, the Department conducted the analysis, and is proposing the standards, in terms of a new energy descriptor, annual efficiency. The test procedure to determine this energy descriptor is contained in the previously mentioned Notice of Proposed Rulemaking. Table 4–7 presents the six efficiency levels selected for analysis for the two classes of mobile home furnaces. Level 6 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–7.—STANDARD LEVELS ANALYZED FOR MOBILE HOME FURNACES

[Annual efficiency (percent)]

Product class	Standard level						
	Baseline	1	2	3	4	5	6
Gas Fired	72.7	74.3	77.1	79.0	79.1	87.4	89.5
Oil Fired	72.8	74.7	74.7	76.5	76.5	83.2	85.8

Rather than presenting the results for all classes of mobile home furnaces in today's notice, the Department selected a class of mobile home furnaces as being representative, or typical, of the product, and is presenting the results only for that class. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The representative class for mobile home furnaces is gas fired mobile home furnaces, which is the most prevalent class of mobile home furnaces. For this representative class,

trial standard level 1 accomplishes the above efficiency improvement from the baseline by the use of improved fan motor efficiency, level 2 adds a burner box damper, level 3 adds an improved heat exchanger, level 4 substitutes fan-assisted combustion and electronic ignition for the burner box damper and improved heat exchanger, level 5 assumes condensing of the flue gases and level 6 adds continuous furnace modulation. Similar design options are used to achieve the above efficiencies for oil-fired mobile home furnaces and are found tabulated in Section 1.5 of the Technical Support Document.

2. Payback Period

Table 4–8 presents the payback period for the efficiency levels analyzed for the representative class of the product. For this representative class, standard levels 1 and 2 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year. Payback for all classes of mobile home furnaces may be found in Tables 4.3 and 4.4 of the Technical Support Document.

TABLE 4–8.—PAYBACK PERIODS OF DESIGN OPTIONS FOR GAS FIRED MOBILE HOME FURNACES

[In years]

Standard level	Payback period
1	0.6
2	3.0
3	6.7
4	7.5
5	7.6
6	13.0

3. Significance of Energy Savings

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new mobile home furnaces under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of the product:

Level 1—0.02 Quad
Level 2—0.05 Quad
Level 3—0.05 Quad
Level 4—0.03 Quad
Level 5—0.11 Quad
Level 6——0.02 Quad

The above energy savings are smaller than anticipated because the Lawrence Berkeley Laboratory-Residential Energy Model predicts fuel switching from gas to electricity at trial standard levels 2 and above as shown in Table 3.4 of the Technical Support Document. However, the Department finds that each of the increased standards levels considered above except for level 6, the max tech level, would result in a significant conservation of energy.

4. Economic Justification.

A. Economic Impact on Manufacturers and Consumers. The Department is refraining from publishing the per-unit increased cost to manufacturers to meet the trial standard levels for mobile home furnaces due to confidentiality considerations. The Department has determined that the data provided is confidential pursuant to 10 CFR 1004.11. There are only two manufacturers of this product, and they would provide data only if DOE agreed not to publish the data. Today's proposed rule is based upon the Department's consideration of these data, and others, e.g., data from component suppliers, as described in Section 1.5 of the Technical Support Document.

At the considered levels of efficiency, the consumer price increases are $5.74 for level 1 and $76.80, $186.35, $273.71, $569.32, and $1151.56 for standard levels 2–6, respectively. See Technical Support Document, Table 4.1.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $9.56 for the representative class; standard level 2 would reduce energy expenses by $25.71; standard level 3 by $35.54; standard level 4 by $44.96; standard level 5 by $83.20; and standard level 6 by $100.15. See Technical Support Document, Table 4.1.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of mobile home furnaces show that revised standards would cause a prototypical manufacturer to have some fluctuations in short-run return on equity from the 7.3 percent return in the base case, especially at the two most stringent levels. Standard levels 1 through 6 are projected to produce short-run return on equity's of 7.2 percent, 7.3 percent, 6.8 percent, 7.3 percent, 3.3 percent and 1.9 percent respectively. However, revised standards have little or minimal effect on the prototypical manufacturer's long-run return on equity. Standard levels 1 through 6 are projected to produce long-run return on equity's of 7.3 percent, 7.2 percent, 7.2 percent, 7.2 percent, 6.1 percent and 6.8 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. Life-cycle cost and net present value. A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative class, life-cycle costs at all standard levels other than level 6, the max tech level, are less than the baseline unit. Of the six candidate standard levels, a unit meeting level 5 has the lowest consumer life-cycle cost. See Technical Support Document, Figure 4.1.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $100.83 for the representative class of mobile home furnace; standard level 2 would reduce average life-cycle costs by $210.08; standard level 3, by $210.16; standard level 4, by $227.91; and standard level 5, by $358.96. These life-cycle cost reductions indicate that no standard level, other than max tech, would cause any economic burden on the average consumer. At standard level 6, the average life-cycle costs are projected to increase by $34.33, compared to the base case. See Technical Support Document, Table 4.3.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax

rates that consumers would likely face in financing the purchase of mobile home furnaces. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of mobile home furnaces, standard level 1 would produce a net present value of $12 million to consumers. The corresponding 0net present values for standard levels 2–6 are all negative at $175 million, $839 million, $1.39 billion, $2.86 billion and $5.4 billion, respectively. See Technical Support Document, Table 3.6.

C. Energy savings. As indicated above, standards will result in significant savings of energy consumption for mobile home furnaces.

D. Lessening of utility or performance of products. As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of mobile home furnaces.

E. Impact of lessening competition. The determination of this factor must be made by the Attorney General.

F. Need to save energy. In 1987, 1.9 percent of residential sector natural gas consumption (or 0.1 quad) was accounted for on a national basis by mobile home furnaces.

In addition, decreasing energy use as a result of standards will usually decrease air pollution. However, in the case of mobile home furnaces, projected fuel switching from gas to electric resistance heat causes the energy savings to be less than it otherwise would be, and at most of the higher trial standard levels the impact on the environment is negative, since it takes more primary energy to heat with resistance electric heat than with a gas furnace. See Technical Support Document, Appendix D of Volume A.[40] Evaluating standards for electric mobile home furnaces might result in standards requiring the use of heat pump technology which would probably resolve this abnormality, but DOE has not considered adding standards for electric mobile home furnaces in this proposed rule. The resulting impact on energy use because of fuel switching was considered in The Department's decision-making as discussed in the conclusion below.

Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2) at level 1. For all classes of mobile home furnaces at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be approximately 1,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–6, SO_2 emissions are projected to increase by 5,000 tons; 29,000 tons; 54,000 tons; 122,000 tons; and 270,000 tons, respectively. The highest peak annual increase of these levels is 0.18 percent.

Standards at levels 1 and 2 would result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be over 1,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard level 2, the total estimated NO_2 reduction would be less than 1,000 tons. For standard levels 3–6, NO_2 emissions are projected to increase by 7,000 tons; 16,000 tons; 34,000 tons; and 87,000 tons, respectively. The highest peak annual increase of these levels is 0.05 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions at levels 1 and 2. For either of these levels, over the years 1996 to 2030, the total estimated CO_2 reduction would be approximately 1 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 3–6, CO_2 emissions are increased by 2 million tons; 8 million tons; 15 million tons; and 49 million tons, respectively. The highest peak annual increase of these levels is 0.05 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 0.75 million barrels over the years 1996 to 2030. Standard levels 2–6, are estimated to result in an increase in oil imports of 2.87, 18.14, 35.16, 77.82 and 174.02 million barrels, respectively.

5. Conclusion

Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 6 for amended mobile home furnace standards.

Of the standard levels analyzed, level 6 will save the most energy per unit but, because of fuel switching from gas to electric, this level has negative overall energy savings (−0.02 quad between 1996 and 2030). In order to meet this standard, the Department assumes that all mobile home furnaces will be condensing furnaces with full modulation. At nearly triple the purchase price to consumers, this level produces negative life-cycle cost savings compared to the base case of $154 and has a payback of 13.0 years, which is more than half of the average product lifetime. The level also reduces manufacturer short-run return on equity by over 70 percent and has a negative net present value of $8.9 billion, as well as increasing all three environmental atmospheric emissions studied.

The Department therefore, concludes that the burdens of standard level 6 for mobile home furnaces outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 5. This standard level is projected to save the most energy of any of the mobile home furnace trial standard levels, 0.11 quad, but the savings here are also reduced by fuel switching. This level produces the highest life-cycle cost savings compared to the base case of $239 and has a payback of 7.6 years, which is slightly more than one third of the average product lifetime. However, the level reduces manufacturer short-run return on equity by over 50 percent and has a negative net present value of $4.6 billion, as well as increasing all three atmospheric emissions studied.

The Department therefore concludes that the burdens of standard level 5 for mobile home furnaces outweigh the benefits, and rejects the standard level.

The three next most stringent standard levels, 4, 3, and 2, are projected to have energy savings ranging from .03 to .05 quad, but the savings here are also reduced by fuel switching. These levels also produce life-cycle cost savings compared to the base case ranging from $108 to $210 with payback ranging from 7.5 to 3.0 years and have little or no impact on manufacturer return on equity. However, these levels all have negative net present values ranging from negative $1.39 billion to negative $.175 billion, as well as

[40] See footnote 37.

increasing one or more of the three atmospheric emissions studied.

The Department therefore concludes that the burdens of standard levels 4, 3 and 2 for mobile home furnaces outweigh their benefits, and rejects the standard levels.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for mobile home furnaces with standard level 1 for mobile home furnaces. The Department concludes that standard level 1 for mobile home furnaces saves a significant amount of energy and is technologically feasible and economically justified.

There would be small but significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 0.02 quad of primary energy and are essentially not affected by fuel switching. In addition, the standard could have a slight positive effect on the environment by reducing the emissions of NO_2 and SO_2 by as much as 1,000 tons each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 1 million tons over the forecast period.

The technology that is necessary to meet this standard, improved fan motor efficiency, is presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 0.6 years. This standard is expected to result in a reduction in life-cycle cost of approximately $102. Additionally, the standard is expected to have 'essentially no impact on the prototypical manufacturer's return on equity of 7.3 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on the two competitors.

e. Kitchen Ranges and Ovens

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for kitchen ranges and ovens. Table 4–9 presents the five efficiency levels that had been selected for analysis for the eight classes of kitchen ranges and ovens. Level 5 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–9.—STANDARD LEVELS ANALYZED FOR KITCHEN RANGES AND OVENS

[Annual energy use]

Product class	Standard level					
	Baseline	1	2	3	4	5
Electric ovens, self-cleaning (kWh)	346.7	346.7	328.7	287.3	266.8	209.2
Electric ovens, non-self-cleaning (kWh)	327.2	278.3	256.8	217.5	217.5	157.3
Gas ovens, self-cleaning (MMBtu)	2.16	2.16	1.98	1.89	1.64	1.42
Gas ovens, non-self-cleaning (MMBtu)	3.58	2.05	1.38	1.14	1.14	1.07
Microwave ovens (kWh)	270.0	239.0	236.0	233.3	230.0	228.2
Electric cooking top, coil element (kWh)	271.1	271.1	260.2	257.7	257.7	257.7
Electric cooking top, smooth element (kWh)	293.7	293.7	293.7	293.7	289.2	258.5
Gas cooking top (MMBtu)	3.88	3.76	1.71	1.63	1.63	1.63

For analytical purposes the Department segmented the above classes into three groups: Conventional ovens, conventional cooking tops and microwave ovens. Rather than presenting the results for all classes of ranges and ovens in today's notice, the Department selected a class or classes of ranges and ovens as being representative, or typical, of each group of the product, and is presenting the results only for those classes. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The results and conclusions for each group are presented separately below.

Efficiency levels analyzed for conventional ovens. The Department selected two classes of conventional ovens, non-self-cleaning electric ovens and non-self-cleaning gas ovens, as being representative of conventional ovens. For non-self-cleaning electric ovens, trial standard level 1 accomplishes the above efficiency improvement from the baseline by improved door seals, reduced venting, reflective surfaces and by not having an oven door window; level 2 increases insulation; levels 3 and 4 add convection and reduced thermal mass, and level 5 adds improved insulation, reduced conduction losses, and an oven separator and is a biradiant oven. For non-self-cleaning gas ovens, trial standard level 1 accomplishes the above efficiency improvement from the baseline by incorporating an electric ignition and by not having an oven door window; level 2 adds improved door seals, reduced venting, reflective surfaces and increased insulation; levels 3 and 4 add convection, reduced thermal mass and improved insulation, and level 5 adds an oven separator and reduced conduction losses.

Efficiency levels analyzed for conventional cooking tops. The Department selected two classes of conventional cooking tops, electric-coil cooking tops and gas cooking tops, as being representative of conventional cooking tops. For electric-coil cooking tops, trial standard level 1 remains at the baseline while level 2 accomplishes the above efficiency improvement from the baseline by improved heating element contact, level 3 adds reflective surfaces, and levels 4 and 5 for this class are the same as level 3. For gas cooking tops, trial standard level 1 accomplishes the above efficiency improvement from the baseline by having reduced burner excess air, level 2 adds electronic ignition, level 3 adds sealed burners and reflective surfaces, and levels 4 and 5 for this class are the same as level 3.

Efficiency levels analyzed for microwave ovens. The Department considers microwave ovens to comprise one class. For microwave ovens, trial standard level 1 accomplishes the above efficiency improvement from the baseline by incorporating a more efficient power supply, level 2 assumes a more efficient fan, in level 3 the wave guide is modified, level 4 assumes an improved magnetron, and level 5 adds reflective surfaces.

2. Payback Period for Conventional Ovens

Table 4–10 presents the payback period for the efficiency levels analyzed for the representative classes of conventional ovens. For both representative classes, standard level 1 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the

consumer will receive during the first year.

TABLE 4–10.—PAYBACK PERIODS OF DESIGN OPTIONS FOR CONVENTIONAL OVENS

[In years]

Standard level	Payback period	
	Gas	Electric
1	1.8	2.7
2	3.7	3.7
3	7.5	4.9
4	7.5	4.9
5	18.9	15.7

Payback period for conventional cooking tops. Table 4–11 presents the payback period for the efficiency levels analyzed for the representative classes of conventional cooking tops. For the gas representative class, standard level 1 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year.

TABLE 4–11.—PAYBACK PERIODS OF DESIGN OPTIONS FOR CONVENTIONAL COOKING TOPS

[In years]

Standard level	Payback period	
	Gas	Electric
1	1.7	N/A
2	7.0	5.2
3	10.1	9.8
4	10.1	9.8
5	10.1	9.8

Payback period for microwave ovens. Table 4–12 presents the payback period for the efficiency levels analyzed for microwave ovens. Levels 1 through 3 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year.

TABLE 4–12.—PAYBACK PERIODS OF DESIGN OPTIONS FOR MICROWAVE OVENS

[In years]

Standard level	Payback period
1	2.1
2	2.3
3	2.9
4	7.4
5	13.0

3. Significance of Energy Savings for Conventional Ovens

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new conventional ovens under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of product:

Level 1—0.69 Quad
Level 2—1.41 Quads
Level 3—2.40 Quads
Level 4—2.69 Quads
Level 5—3.88 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

Significance of energy savings for conventional cooking tops. To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new conventional cooking tops under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of product:

Level 1—0.02 Quad
Level 2—2.54 Quads
Level 3—2.68 Quads
Level 4—2.85 Quads
Level 5—3.04 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

Significance of energy savings for microwave ovens. To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new microwave ovens under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result:

Level 1—0.46 Quad
Level 2—0.57 Quad
Level 3—0.67 Quad
Level 4—0.77 Quad
Level 5—0.84 Quad

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. Economic impact on manufacturers and consumers. Conventional ovens. The per-unit increased cost to manufacturers to meet the level 1 efficiency for gas non-self-cleaning ovens is $5.92; to meet level 2, the manufacturers' cost increase is $14.40, levels 3 and 4 are $29.75, and level 5 is $61.64. The per-unit increased cost to manufacturers to meet the level 1 efficiency for electric non-self-cleaning ovens is $4.21; to meet level 2, the manufacturers' cost increase is $8.45, levels 3 and 4 are $19.11, and level 5 is $100.12. See Technical Support Document, Tables 1.9 and 1.11

At those levels of efficiency, the consumer price increase for gas non-self-cleaning ovens at level 1 is $13.84; to meet level 2, the cost increase is $36.56, levels 3 and 4 are $69.00, and level 5 is $161.09. For electric non-self-cleaning ovens the cost at level 1 is $8.84; to meet level 2, the cost increase is $18.73, levels 3 and 4 are $41.30, and level 5 is $213.80. See Technical Support Document, Tables 4.4 and 4.6.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $8.38 for gas non-self-cleaning ovens; standard level 2 would reduce energy expenses by $13.32; standard levels 3 and 4 by $14.82; and standard level 5 by $15.35. For electric non-self-cleaning ovens level 1 would reduce energy expenses by $4.22; standard level 2 by $6.07; levels 3 and 4 by $9.45; and level 5 by $14.63. See Technical Support Document, Tables 4.4 and 4.6.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of conventional ovens show that revised standards would have little or no effect on a prototypical manufacturer's short-run return on equity from the 8.6 percent in the base case. Standard levels 1 through 5 are projected to produce short-run returns on equity of 8.6 percent, 8.6 percent, 8.6 percent, 8.5 percent and 8.1 percent, respectively. Revised standards have similar effects on long-run return on equity. Standard levels 1 through 5 are projected to produce long-run return on equity's of 8.6 percent, 8.6 percent, 8.6 percent, 8.6 percent and 9.1 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same

financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

Conventional cooking tops. The per-unit increased cost to manufacturers to meet the level 1 efficiency for gas cooking tops is $0.78; to meet level 2, the manufacturers' cost increase is $15.57, and levels 3, 4 and 5 are $41.71. The per-unit increased cost to manufacturers to meet the level 1 efficiency for electric-coil cooking tops is zero, since for this class level 1 is the same as the baseline; to meet level 2, the manufacturers' cost increase is $2.28, and levels 3, 4 and 5 are $5.31. See Technical Support Document, Tables 1.4 and 1.6.

At those levels of efficiency, the consumer price increase for gas cooking tops at level 1 is $1.63; to meet level 2, the cost increase is $113.38 and levels 3, 4 and 5 are $168.08. For electric-coil cooking tops, the cost at level 1 is unchanged, since it is at the baseline; to meet level 2, the cost increase is $4.79, and levels 3, 4 and 5 are $11.24. See Technical Support Document, Tables 4.1 and 4.3.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $0.95 for gas cooking tops; standard level 2 would reduce energy expenses by $16.09 and standard levels 3, 4 and 5 by $16.68. For electric-coil cooking tops, level 1 would not reduce energy expenses since it is at the baseline; standard level 2 would reduce energy expenses by $0.93 and levels 3, 4 and 5 by $1.15. See Technical Support Document, Tables 4.1 and 4.3.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of conventional cooking tops show that revised standards would have slight impacts on a prototypical manufacturer's short-run return on equity from the 8.6 percent in the base case. Standard levels 1 through 5 are projected to produce short-run returns on equity of 8.6 percent, 8.4 percent, 8.6 percent, 8.7 percent and 8.7 percent, respectively. Revised standards have similar effects on long-run return on equity, with some increases at the higher standard levels. Standard levels 1 through 5 are projected to produce long-run returns on equity of 8.6 percent, 8.2 percent, 8.8 percent, 9.5 percent and 10.0 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

Microwave ovens. The per-unit increased cost to manufacturers to meet the level 1 efficiency for microwave ovens is $5.00; to meet level 2, the manufacturers' cost increase is $6.05; level 3 is $7.90; level 4 is $20.40; and level 5 is $36.80. See Technical Support Document, Table 1.15.

At those levels of efficiency, the consumer price increase for microwave ovens at level 1 is $5.49; to meet level 2, the cost increase is $6.78; level 3 is $9.14; level 4 is $25.38, and level 5 is $46.80. See Technical Support Document, Table 4.8.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $2.67 for microwave ovens; standard level 2 would reduce energy expenses by $2.93; standard level 3 by $3.16; level 4 by $3.44; and level 5 by $3.60. See Technical Support Document, Table 4.8.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for microwave ovens show that revised standards would have little effect, except at the max tech, on a prototypical manufacturer's short-run return on equity from the 8.6 percent in the base case. Standard levels 1 through 5 are projected to produce short-run returns on equity of 9.0 percent, 9.0 percent, 8.8 percent, 8.0 percent and 6.8 percent, respectively. Revised standards have almost no effect on long-run return on equity. Standard levels 1 through 5 are projected to produce long-run returns on equity of 8.6 percent, 8.6 percent, 8.6 percent, 8.7 percent and 8.8 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. Life-cycle cost and net present value. Conventional ovens. A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative classes, life-cycle costs at all standard levels other than level 5, the max tech level, for electric non-self-cleaning ovens, are less than the baseline unit. Of the five candidate standard levels, units meeting level 3 or 4 have the lowest consumer life-cycle cost for electric non-self-cleaning ovens whereas for gas non-self-cleaning ovens, the lowest life-cycle cost occurred for a unit meeting level 2. See Technical Support Document, Tables 4.4 and 4.6.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $73.09 for the representative class of gas non-self-cleaning ovens; standard level 2 would reduce average life-cycle costs by $42.07; standard levels 3 and 4, by $26.37; while standard level 5 would result in an increase of $59.83. For the representative class of electric non-self-cleaning ovens, standard level 1 would cause reductions in life-cycle costs for the average consumer of $27.29; standard level 2 would reduce average life-cycle costs by $38.05; standard levels 3 and 4, by $53.25; while standard level 5 would result in an increase of $61.41. The life-cycle cost reductions indicate that no standard level, other than max tech, would cause any economic burden on the average consumer. See Technical Support Document, Tables 4.12 and 4.14.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of ovens. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost

analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of conventional ovens, standard level 1 would produce a net present value of $1.20 billion to consumers. The corresponding net present values for levels 2–5 are $0.52 billion, $1.09 billion, $1.12 billion, and negative $2.38 billion, respectively. See Technical Support Document, Table 3.6.

Conventional cooking tops. A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative classes, life-cycle costs at all standard levels are less than the baseline unit. However, it should be noted that for another class, electric smooth element cooking tops, there are life-cycle cost increases for units meeting levels 4 and 5. Of the five candidate standard levels, units meeting level 2 have the lowest consumer life-cycle costs for the representative classes. See Technical Support Document, Tables 4.1 to 4.3.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $8.96 for the representative class of gas cooking tops; standard level 2 would reduce average life-cycle costs by $66.08 and standard levels 3, 4 and 5, by $18.05. For the representative class of electric-coil cooking tops, standard level 1 would cause no change in life-cycle costs for the average consumer since it is the same as the baseline; standard level 2 would reduce average life-cycle costs by $5.69 and standard levels 3, 4, and 5 by $1.64. These life-cycle cost reductions indicate that no standard level would cause any economic burden on the average consumer. See Technical Support Document, Tables 4.9 and 4.11.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of ovens. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of conventional cooking tops, standard level 1 would produce a net present value of $10 million, whereas there would be net present value savings for levels 2–5 of $3.01 billion, $1.57 billion, negative $1.62 billion, and negative $3.39 billion, respectively. See Technical Support Document, Table 3.6.

Microwave ovens. A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For microwave ovens, life-cycle costs at all standard levels other than level 4 and level 5, the max tech level, are less than the baseline unit. Of the five candidate standard levels, units meeting level 2 had the lowest consumer life-cycle cost for microwave ovens. See Technical Support Document, Table 4.8.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $14.15 for microwave ovens; standard level 2 would reduce average life-cycle costs by $14.77 and standard level 3 by $14.12. These life-cycle cost reductions indicate that standard levels 1 through 3 would not cause any economic burden on the average consumer. Standard levels 4 and 5 would increase average life-cycle costs by $.03 and $20.31, respectively. See Technical Support Document, Table 4.16.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of microwave ovens. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for microwave ovens, standard level 1 would produce a net present value of $0.74 billion to consumers. The corresponding net present values for levels 2–5 are $0.78 billion, $0.70 billion, negative $0.67 billion, and negative $2.64 billion, respectively. See Technical Support Document, Table 3.6.

C. Energy savings. As indicated above, standards will result in significant savings of energy consumption for conventional ovens, conventional cooking tops and microwave ovens.

D. Lessening of utility or performance of products. As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of conventional ovens, conventional cooking tops, and microwave ovens.

E. Impact of lessening of competition. The determination of this factor must be made by the Attorney General.

F. Need of the nation to save energy. Conventional ovens. Conventional ovens use electricity and gas directly. In 1987, 4.0 percent of residential sector source electricity (or 0.42 quad) and 4.4 percent of natural gas consumption (or 0.23 quad) were accounted for on a national basis by conventional ovens.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[41] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For all classes of conventional ovens at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be over 51,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are

[41] See footnote 37.

expected to be emitted by power plants in the United States is 0.03 percent. For standard levels 2–5, the reductions are 92,000 tons; 202,000 tons; 239,000 tons; and 405,000 tons, respectively. The highest peak annual reduction of these levels is 0.20 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 67,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants during that time in the United States is 0.04 percent. For standard levels 2–5, the reductions are 130,000 tons; 249,000 tons; 287,000 tons; and 451,000 tons, respectively. The highest peak annual reduction of these levels is 0.24 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 46 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.05 percent. For standard levels 2–5, the reductions are 93 million tons; 165 million tons; 187 million tons; and 280 million tons, respectively. The highest peak annual reduction of these levels is 0.29 percent.

Conventional cooking tops. Conventional cooking tops use electricity and gas directly. In 1987, 3.7 percent of source electricity (or 0.39 quad) and 5.0 percent of natural gas consumption (or 0.26 quad) were accounted for on a national basis by conventional cooking tops.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D.[42] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For all classes of conventional cooking tops at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be less than 500 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–5, the reductions are 30,000 tons; 17,000 tons; 156,000 tons; and 92,000 tons, respectively. The highest peak annual reduction of these levels is 0.07 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 1,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–5, the reductions are 151,000 tons; 151,000 tons; 255,000 tons; and 206,000 tons, respectively The highest peak annual reduction of these levels is 0.13 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 1 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–5, the reductions are 144 million tons; 150 million tons; 193 million tons; and 172 million tons, respectively. The highest peak annual reduction of these levels is 0.20 percent.

Microwave ovens. Microwave ovens use electricity directly. In 1987, 1.5 percent of source electricity (or 0.16 quad) were accounted for on a national basis by microwave ovens.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D.[43] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For microwave ovens at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be over 118,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is 0.09 percent. For standard levels 2–5, the reductions are 138,000 tons; 156,000 tons; 178,000 tons; and 190,000 tons, respectively. The highest peak annual reduction of these levels is 0.12 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 94,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 0.09 percent. For standard levels 2–5, the reductions are 112,000 tons; 128,000 tons; 147,000 tons; and 158,000 tons, respectively. The highest peak annual reduction of these levels is 0.12 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 39 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by powerplants in the United States is 0.09 percent. For standard levels 2–5, the reductions are 48 million tons; 56 million tons; 65 million tons; and 71 million tons, respectively. The highest peak annual reduction of these levels is 0.12 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 12.74 million barrels over the years 1996 to 2030. For standard levels 2–5, the reductions in oil imports are estimated to be 21.33, 32.68, 51.88, and 63.07 million barrels, respectively.

5. Conclusion

Conventional ovens. Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5 for amended conventional oven standards.

Of the standard levels analyzed, level 5 will save the most energy (3.88 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all conventional ovens will not have an oven door window and will incorporate improved door seals, reduced venting, reflective surfaces, increased and improved insulation, convection and an oven separator, and reduced thermal mass and conduction losses. Additionally, electric ovens would be biradiant, and gas ovens would incorporate an electronic ignition. However, the payback at this standard level of 18.9 years and 15.7 years for the gas and electric representative classes is roughly equal to the 19-year product life and ranges up to 55 years for other classes. At this standard level, all classes have increased life-cycle costs.

The Department therefore concludes that the burdens of standard level 5 for conventional ovens outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending

[42] See, footnote 37.

[43] See, footnote 37.

the National Appliance Energy Conservation Act-imposed 1990 standard for the conventional oven portion of kitchen ranges and ovens with standard level 4 for conventional ovens. The Department concludes that standard level 4 for conventional ovens saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 2.69 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 267,000 tons and 239,000 tons, respectively, or by as much as 0.15 and 0.12 percent, respectively, by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 187 million tons, or 0.20 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 7.5 years and 4.9 years for the representative gas and electric classes, respectively, with a payback no higher than 10.4 years, or roughly half of the 19-year product life, for any class. This standard has the lowest life-cycle cost for the electric representative class and is expected to result in a reduction in life-cycle cost of approximately $53 for that class. Life-cycle cost savings are $26 for the gas representative class and are positive for all other classes. Additionally, the standard is expected to have almost no impact on the prototypical manufacturer's return on equity of 8.6 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

Conventional cooking tops. Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5 for amended conventional cooking top standards.

Of the standard levels analyzed, level 5 will save the most energy (3.04 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all representative classes of conventional cooking tops will have reflective surfaces. Additionally, electric-coil cooking tops would have improved element contact, and gas cooking tops would incorporate reduced burner excess air, electronic ignition and sealed burners. It should also be noted that the design options for the representative classes are the same for levels 5, 4 and 3,—i.e., max tech,— with the differences in those levels having to do with design options for electric smooth element cooking tops. At level 5, the max tech level for all classes, electric smooth element cooking tops require the use of induction elements. However, the payback at this standard level for electric smooth element cooking tops is 193 years, with a $550 increase in life-cycle costs.

The Department therefore concludes that the burdens of standard level 5 for conventional cooking tops outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 4. This standard level is projected to save 2.85 quads of energy. As discussed above, the representative classes are still at their max tech level, while electric smooth element cooking tops require the use of halogen elements. The payback at this standard level for electric smooth element cooking tops is 890 years, with a $343 increase in life-cycle costs.

The Department, therefore concludes that the burdens of standard level 4 for conventional cooking tops outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 3. This standard level is projected to save 2.68 quads of energy. As discussed above, the representative classes are still at their max tech level, while electric smooth element cooking tops are at the baseline. The payback at this standard level for the representative gas and electric classes are 10.1 and 9.8 years, respectively, which slightly exceeds half of the product life. Additionally, the Department is concerned about the longevity of the design option, reflective surfaces, required to meet this standard level.

The Department therefore concludes that the questionable technology and economic burdens of standard level 3 for conventional cooking tops outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for the conventional cooking top portion of kitchen ranges and ovens with standard level 2 for conventional cooking tops. The Department concludes that standard level 2 for conventional cooking tops saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 2.54 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 151,000 tons and 30,000 tons, respectively, or by as much as 0.09 and 0.02 percent, respectively, by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 144 million tons, or 0.15 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 7.0 years and 5.2 years for the representative gas and electric classes, respectively, or roughly one-third of the 19-year product life. This standard lowers the life-cycle cost for the representative gas and electric classes by $66 and $6, respectively. Additionally, the standard is expected to have only a slight reduction of the prototypical manufacturer's return on equity of 8.6 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

Microwave ovens. Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5 for amended microwave oven standards.

Of the standard levels analyzed, level 5 will save the most energy (0.84 quad between 1996 and 2030). In order to meet this standard, the Department assumes that all microwave ovens will have more efficient power supplies, fans and magnetrons; modified wave guides and reflective surfaces. However, the payback at this standard level of 13.0 years exceeds the 10-year product life, and this level produces increased life-cycle costs.

The Department therefore concludes that the burdens of standard level 5 for microwave ovens outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 4. This standard level is projected to save 0.77 quad of energy. However, the payback at this standard

level of 7.4 years is nearly three quarters of the product life and produces an increase in life-cycle costs.

The Department therefore concludes that the burdens of standard level 4 for microwave ovens outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for the microwave oven portion of kitchen ranges and ovens with standard level 3 for microwave ovens. The Department concludes that standard level 3 for microwave ovens saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 0.67 quad of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 128,000 tons and 156,000 tons, respectively, or by as much as 0.10 percent each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 56 million tons, or 0.10 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 2.9 years, which meets the rebuttable presumption test of economic justification. This standard is close to the lowest life-cycle cost for microwave ovens and is expected to result in a reduction in life-cycle cost of approximately $14. Additionally, the standard is expected to have almost no impact on the prototypical manufacturer's return on equity of 8.6 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

f. Pool Heaters

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for pool heaters. In reviewing the design options necessary to achieve those standard levels, the Department determined that a new energy descriptor was needed to adequately address some of the design options in the analysis because the current energy descriptor, Thermal Efficiency, does not include pilot light usage or electrical consumption. For example, to consider electronic ignition, the savings in pilot light gas consumption would have to be accounted for in the descriptor. Furthermore, other design options, for instance, fan-assisted combustion, improve thermal efficiency but, at the same time, increase overall electrical consumption which, unless accounted for in the energy descriptor, could lead to higher Thermal Efficiency with little or no net energy savings. Because of the above, the Department conducted the analysis, and is proposing the standards, in terms of a new energy descriptor, annual efficiency. The test procedure to determine this energy descriptor is contained in the previously mentioned Notice of Proposed Rulemaking. Table 4–13 presents the four efficiency levels that had been selected for analysis for pool heaters. Level 4 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–13.—STANDARD LEVELS ANALYZED FOR POOL HEATERS ANNUAL EFFICIENCY
[In percent]

Product class	Standard level				
	Baseline	1	2	3	4
Gas Fired	66.8	78.0	82.2	90.7	95.7

The Department considered one class of pool heaters, gas-fired pool heaters. For gas-fired pool heaters, trial standard level 1 accomplishes the above efficiency improvement from the baseline by incorporating an electronic ignition, level 2 assumes heat exchanger efficiency at the noncondensing limit, level 3 assumes condensing flue gases with a fan-assisted combustion system, and level 4 assumes condensing flue gases utilizing pulse combustion.

2. Payback Period

Table 4–14 presents the payback period for the efficiency levels analyzed. Standard level 1 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year.

TABLE 4–14.—PAYBACK PERIODS OF DESIGN OPTIONS FOR POOL HEATERS
[In years]

Standard level	Payback period
1	2.7
2	5.0
3	17.2
4	27.0

3. Significance of Energy Savings

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new pool heaters under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings could result for each:

Level 1—0.07 Quad
Level 2—0.23 Quad
Level 3—0.58 Quad
Level 4—0.78 Quad

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. Economic impact on manufacturers and consumers The per-unit increased cost to manufacturers to meet the level 1 efficiency is $39.39; to meet levels 2–4, the manufacturers' incremental cost increases are $95.05, $405.68, and $760.68, respectively. See Technical Support Document, Table 1.3, "Manufacturers Cost for Gas-Fired Pool and Spa Heaters."

At those levels of efficiency, the incremental consumer price increases are $87.13, $213.97, $1,025.41, and $1,839.60 for standard levels 1–4, respectively. See Technical Support Document, Table 4.1.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $32.77; standard level 2 would reduce

energy expenses by $42.51; standard level 3 by $59.53; and standard level 4 by $68.16. See Technical Support Document, Table 4.1.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for pool heaters show that revised standards would result in increases in a prototypical manufacturer's short-run return on equity from the 17.9 percent in the base case. Standard levels 1 through 4 are projected to produce short- run return on equity's of 18.0 percent, 18.4 percent, 19.7 percent and 19.9 percent, respectively. Revised standards have even greater increases in long- run return on equity. Standard levels 1 through 4 are projected to produce long-run return on equity's of 18.7 percent, 20.1 percent, 26.0 percent and 29.9 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For pool heaters, life-cycle costs at all standard levels other than level 3 and level 4, the max tech level, are less than the baseline unit. Of the four candidate standard levels, a unit meeting level 1 has the lowest consumer life-cycle cost. See Technical Support Document, Table 4.2.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $231.13 and standard level 2 would reduce average life-cycle costs by $198.94. These life-cycle cost reductions indicate that standard levels 1 and 2 would not cause any economic burden on the average consumer. Standard level 3 would increase average life-cycle costs by $447.19, and standard level 4 would increase average life-cycle costs by $1,177.57. See Technical Support Document, Table 4.2.

While DOE examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact, the Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of pool heaters. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that standard level 1 would produce a net present value of $0.14 billion to consumers. The corresponding net present values for levels 2–4 are $0.13 billion, negative $1.09 billion, and negative $2.44 billion, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of electricity consumption for pool heaters.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of pool heaters.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* In 1987, 0.8 percent of residential sector natural gas consumption (or 0.04 quad) was accounted for on a national basis by pool heaters.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[44] Decreases in air pollution will occur for nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 4,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–4 the reductions are 12,000 tons; 31,000 tons and 41,000 tons, respectively. The highest peak annual reduction of these levels is 0.03 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 4 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.01 percent. For standard levels 2–4 the reductions are 12 million tons; 32 million tons and 43 million tons, respectively. The highest peak annual reduction of these levels is 0.04 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. Standard for pool heaters, standard levels 1–4, are not expected to affect oil consumption.

5. *Conclusion.* Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 4 for amended pool heater standards.

Of the standard levels analyzed, level 4 will save the most energy (0.78 quad between 1996 and 2030). In order to meet this standard, the Department assumes that all pool heaters will be condensing pulse combustion pool heaters. However, the payback at this standard level of 27.0 years exceeds the 15-year life of the product and causes life-cycle cost increases of $1,178.

The Department therefore concludes that the burdens of standard level 4 for pool heaters outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 3. This standard level is projected to save 0.58 quads of energy. However, the payback at this standard level of 17.2 years also exceeds the product's life and produces an increase in life-cycle costs.

The Department therefore concludes that the burdens of standard level 3 for pool heaters outweigh the benefits, and rejects the standard level.

[44] See. footnote 37.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for pool heaters with standard level 2 for pool heaters. The Department concludes that standard level 2 for pool heaters saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996—2030, these savings are calculated to be 0.23 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 by as much as 12,000 tons, or 0.01 percent by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 12 million tons, or 0.02 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 5.0 years or one-third of the product life. This standard is expected to result in a reduction in life- cycle cost of approximately $199. Additionally, the standard is expected to increase the prototypical manufacturer's return on equity from 17.9 percent in the base case to 18.4 percent in the short run and to 20.1 percent in the long run. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

g. Fluorescent Lamp Ballasts

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for fluorescent lamp ballasts. Table 4–15 presents the three efficiency levels selected for analysis for the 10 classes of fluorescent lamp ballasts. Level 3 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–15.—STANDARD LEVELS ANALYZED FOR FLUORESCENT LAMP BALLASTS

Product class	Standard level			
	Baseline	1	2	3
One F40 lamp	2.02	2.11	2.50	2.50
Two F40 lamps	1.09	1.15	1.28	1.28
Three F40 lamps	0.71	0.74	0.87	0.87
Four F40 lamps	0.55	0.57	0.67	0.67
Two F96 lamps	0.60	0.72	0.72	0.72
Two F96H0 lamps	0.40	0.50	0.50	0.50
One F32T8 lamp	2.57	2.71	2.97	3.17
Two F32T8 lamps	1.28	1.36	1.48	1.58
Three F32T8 lamps	0.85	0.90	1.00	1.06
Four F32T8 lamps	0.64	0.68	0.72	0.76

Rather than presenting the results for all classes of fluorescent lamp ballasts in today's notice, the Department selected a class of fluorescent lamp ballasts as being representative, or typical, of the product, and is presenting the results only for that class. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The representative class for fluorescent lamp ballasts is ballasts for two F40 lamps, which is the most prevalent class. For this representative class, trial standard level 1 accomplishes the above efficiency improvement from the baseline by assuming energy-efficient magnetic ballasts with a heater cutout; levels 2 and 3 correspond to efficiencies achieved by rapid start electronic ballasts. Similar design options are used to achieve the above efficiencies for the other classes, except that for the F–32 classes level 3 corresponds to efficiencies achieved by instant start electronic ballasts.

2. Payback Period

Table 4–16 presents the payback period for the efficiency levels analyzed for the representative class of fluorescent lamp ballast. For this representative class, standard levels 2 and 3 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year. Payback for all classes of fluorescent lamp ballasts may be found in Tables 4.11d–4.20d of the Technical Support Document.

TABLE 4–16.—PAYBACK PERIODS OF DESIGN OPTIONS FOR REPRESENTATIVE CLASS OF FLUORESCENT LAMP BALLASTS

[In years]

Standard level	Payback period
1	4.4
2	2.4
3	2.4

3. Significance of Energy Savings

To estimate the base case energy savings by the year 2030 due to revised standards, the energy consumption of new fluorescent lamp ballasts under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, Commercial Energy End-Use Model projects over the period 1996–2030, the following energy savings could result for each:

Level 1—13.7 Quads
Level 2—15.9 Quads
Level 3—17.0 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. *Economic impact on manufacturers and consumers.* The per-unit increased cost to manufacturers to meet the level 1 efficiency for the representative class is $2.00; to meet levels 2 and 3, the manufacturers' cost increase is $7.00. See Technical Support Document, Table 1.6.

At those levels of efficiency, the consumer price increases are $4.91 and $8.95 for standard levels 1 and 2/3, respectively. See Technical Support Document, Table 4.2.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $1.11 for the representative class; standard levels 2 and 3 would reduce energy expenses by $3.62. See Technical Support Document, Table 4.12a.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for fluorescent lamp ballasts show that revised standards would result in increases in a prototypical manufacturer's short-run return on equity from the 15.5 percent in the base case. Standard levels 1 through 3 are projected to produce short-run return on equity's of 23.7 percent, 24.5 percent and 24.7 percent, respectively. Revised standards are projected to slightly increase long-run return on equity. Standard levels 1 through 3 are projected to produce long-run return on equity's of 16.0 percent, 16.1 percent and 16.1 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative class, life-cycle costs at all standard levels are less than the baseline unit. Of the three candidate standard levels, a unit meeting levels 2 or 3 had the lowest consumer life-cycle costs. See Technical Support Document, Table 4.2.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average consumer of $7.48 for the representative class, and standard levels 2 and 3 would reduce average life-cycle costs by $30.23. These life-cycle cost reductions indicate that no standard level would cause any economic burden on the average consumer. See Technical Support Document, Table 4.12d.

While DOE examined the effect of different discount rates (2, 4, and 10 percent) on the life-cycle cost curves and generally found little impact, the Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of fluorescent lamp ballasts. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that standard level 1 would produce a net present value of $22.3 billion to consumers. The corresponding net present values for levels 2 and 3 are $25.4 billion and $27.3 billion, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of electricity consumption for fluorescent lamp ballasts.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of fluorescent lamp ballasts.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the Nation to save energy.* Fluorescent lamp ballasts use electricity directly. In 1987, 27 percent of commercial sector source electricity (or 2.17 quads) was accounted for on a national basis by fluorescent lamp ballasts.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[45] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For fluorescent lamp ballasts at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be over 2,417,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is 1.20 percent. For standard levels 2 and 3, the reductions are 2,797,000 tons and 2,986,000 tons, respectively. The highest peak annual reduction of these levels is 1.47 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 2,218,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 1.19 percent. For standard levels 2 and 3, the reductions are 2,566,000 tons and 2,739,000 tons, respectively. The highest peak annual reduction of these levels is 1.47 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 1,174 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States are 1.17 percent. For standard levels 2 and 3, the reductions are 1,358 million tons and 1,450 million tons, respectively. The highest peak annual reduction of these levels is 1.44 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 230.41 million barrels over the years 1996 to 2030. For standard levels 2 and 3, the reductions in oil imports are estimated to be 266.97 and 285.05 million barrels, respectively.

5. Conclusion

Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 3 for amended fluorescent lamp ballast standards.

Of the standard levels analyzed, level 3 will save the most energy (17.0 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all fluorescent lamp ballasts will be electronic rapid or instant start.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act–1988 imposed 1990 standard for fluorescent lamp ballasts with standard level 3 for fluorescent

[45] See footnote 37.

lamp ballasts. The Department concludes that standard level 3 for fluorescent lamp ballasts saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2025, these savings are calculated to be 17.0 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 2,739,000 tons and 2,986,000 tons, respectively, or by as much as 1.47 percent each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 1,450 million tons, or 1.44 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 2.4 years for the representative class and no more than 5.3 years for any class. This standard has the lowest life-cycle cost for all classes and is expected to result in a reduction in life-cycle cost of approximately $30 for the representative class. Additionally, the standard is expected to increase both the short- and long-run prototypical manufacturer's return on equity of 15.5 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

h. Television Sets

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for color television sets. Table 4–17 presents the efficiency levels that have been selected for analysis. Level 3 corresponds to the highest efficiency level, max tech, considered in the engineering analysis. For level 3, the annual energy use in kWh per year can be expressed as E=20.5+6.1D, where D equals the screen size in inches.

TABLE 4–17.—STANDARD LEVELS ANALYZED FOR TELEVISION SETS

[Annual energy use]

Product class	Standard levels—KWH/YR			
	Baseline	1	2	3
19"/20" color TV sets	205	184	171	138.5

Trial standard level 1 accomplishes the above efficiency improvement from the baseline by reducing standby power usage to 2 watts; level 2 corresponds to an efficiency achieved by reducing standby power to 2 watts and by reducing the white and black screen power each by 6 watts; level 3 corresponds to an efficiency achieved by reducing the standby power to two watts, white screen power to 73 watts and black screen power to 41 watts.

2. Payback Period

Table 4–18 presents the payback period for the efficiency levels analyzed for 19"/20" color television sets. Standard levels 1 and 2 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year.

TABLE 4–18.—PAYBACK PERIODS OF DESIGN OPTIONS FOR TELEVISION SETS

[In years]

Standard level	Payback period
1	2.1
2	2.2
3	3.5

3. Significance of Energy Savings.

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new television sets under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 19962030, the following energy savings would result for each:

Level 1—0.52 Quad
Level 2—1.28 Quads
Level 3—3.13 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. Economic impact on manufacturers and consumers. The per-unit increased cost to manufacturers to meet the level 1 efficiency is $2.15; to meet levels 2 and 3 the manufacturers' cost increases are $3.65 and $10.25, respectively. See Technical Support Document, Table 1.4.

At those levels of efficiency, the incremental consumer price increases are $3.76, $6.39 and $19.37 for standard levels 13, respectively. See Technical Support Document, Table 4.1.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $1.81, standard level 2 would reduce energy expenses by $2.95 and standard level 3 by $5.71. See Technical Support Document, Table 4.1.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for television sets show that the prototypical manufacturer has a negative return on equity of 1.9 percent in the absence of standards and that standards cause slight but further reductions in both short- and long-run return on equity. Standard levels 1 through 3 are projected to produce negative short-run return on equitys of 2.0 percent, 2.0 percent and 3.3 percent, respectively. Long-run return on equitys are projected to be negative 1.9 percent, 2.0 percent and 2.2 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For color television sets, life-cycle costs at all standard levels are less than the baseline unit. Of the three candidate standard levels, a unit meeting level 3 has the lowest consumer life-cycle cost. See Technical Support Document, Table 4.1.

However, other than at the max tech level, consumers do not purchase units

of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average consumer of $10.97, standard level 2 would reduce average life-cycle costs by $14.52, and standard level 3 by $24.06. The lower life-cycle costs indicate that no standard level would cause any economic burden on the average consumer. See Technical Support Document, Table 4.2.

While DOE examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact, the Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of television sets. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that standard level 1 would produce a net present value of $0.64 billion to consumers. The corresponding net present values for levels 2 and 3 are $1.35 billion and $1.67 billion, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of electricity consumption for television sets.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of television sets.

E. Impact of lessening of competition. The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* Television sets use electricity directly. In 1987, 2.1 percent of residential sector source electricity (or 0.22 quads) was accounted for on a national basis by television sets.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[46] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For television sets at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be 120,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is 0.07 percent. For standard levels 2 and 3, the reductions are 261,000 tons and 599,000 tons, respectively. The highest peak annual reduction of these levels is 0.29 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 99,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 0.07 percent. For standard levels 2 and 3, the reductions are 225,000 tons and 528,000 tons, respectively. The highest peak annual reduction of these levels is 0.29 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 43 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.07 percent. For standard levels 2 and 3, the reductions are 108 million tons and 263 million tons, respectively. The highest peak annual reduction of these levels is 0.29 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 8.86 million barrels over the years 1996 to 2030. For standard levels 2 and 3, the reductions in oil imports are estimated to be 22.05 and 53.88, respectively.

5. Conclusion

Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 3 for amended television set standards.

Of the standard levels analyzed, level 3 will save the most energy (3.13 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all television sets will have reduced standby power and reduced white/black screen power.

After carefully considering the analysis, the Department is establishing a standard for television sets. The Department concludes that standard level 3 for television sets saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 3.13 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 528,000 tons and 599,000 tons, respectively, or by as much as 0.29 percent each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 263 million tons, or 0.29 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 3.5 years, which compares favorably with the 12-year product life. This standard has the lowest life-cycle cost and is expected to result in a reduction in life-cycle cost of approximately $24. Additionally, the standard is expected to have only a slight reduction in the prototypical manufacturer's return on equity of negative 1.9 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

V. Environmental, Regulatory Impact, Takings Assessment, Federalism, and Regulatory Flexibility Reviews

The Department has reviewed today's proposed action in accordance with the Department's obligations under:

- The National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Council on Environmental Quality regulations implementing the provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), and the

[46] See footnote 37.

Department's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021);

- Executive Order 12866 (58 FR 51735, October 4, 1993) which pertains to agency review of the impact of Federal regulations;
- Executive Order 12630 (53 FR 8859, March 18, 1988) which pertains to agency consideration of Federal actions that interfere with constitutionally protected property rights;
- Executive Order 12612 (52 FR 41685, October 30, 1987) which pertains to agency consideration of Federal actions that would have a substantial direct effect on States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibilities among the various levels of government; and
- The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register.**

a. Environmental Review

The Department prepared an Environmental Assessment (DOE/EA–0819) on the proposed standards pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and the implementing regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). The Environmental Assessment addresses the possible incremental environmental effects attributable to the application of the proposed standards to the design of the eight types of covered products: Room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, fluorescent lamp ballasts, and television sets.

A Finding of No Significant Impact was issued December 1992 and is being published elsewhere in today's **Federal Register.** Publishing the finding has been delayed along with the proposed rulemaking due to difficulties in resolving issues and coordinating with a related rulemaking. The Finding of No Significant Impact concludes that the proposed standards would result in no significant environmental impacts and that an environmental impact statement is not required.

The Environmental Assessment is published within the Technical Support Document and is available at the DOE Freedom of Information Reading Room at the address provided at the beginning of this notice.

b. Regulatory Impact Review

Executive Order 12866 (58 FR 51735, October 4, 1993) directs that, in proposing a significant regulatory action,[47] an agency perform a regulatory analysis. Such an analysis presents major alternatives to the regulation that could achieve substantially the same regulatory goal at lower cost, as well as a description of the costs and benefits (including potential net benefits) of the proposed rule.

The Department has determined that this proposed rule is a "significant regulatory action." Accordingly, the draft regulatory action has been prepared and submitted to the Office of Management and Budget. The Office of Management and Budget has reviewed the draft regulatory action under Executive Order 12866.

The regulatory review of the draft regulatory action is summarized below. This summary focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft "Regulatory Impact Analysis," which is contained in the Technical Support Document, available as indicated at the beginning of this notice. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed standard.

It should be noted at the outset that none of the alternatives that were examined for these eight products saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

Alternatives for Achieving Consumer Product Energy Conservation

Six major alternatives were identified by DOE as representing feasible policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action

—Product labeling
—Consumer education

- Prescriptive Standards
- Financial Incentives

—Tax credits
—Rebates

- Voluntary Energy Efficiency Targets
- The Proposed Approach (Performance Standards)

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the proposed rule.

If no new regulatory action were taken, then no new standards would be implemented for these eight products. This is essentially the "base case" for each appliance. In this case, between the years 1996 and 2030 there would be expected energy use of 443.6 quads of primary energy, with no energy savings and a zero net present value.

Several alternatives to the base case can be grouped under the heading of informational action. They include consumer product labeling and the Department's public education and information program. Both of these alternatives are mandated by the Act. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, the Department assumed that market discount rates would be lowered by 5 percent for purchasers of these eight products. This resulted in energy savings equal to 1.7 quads, with expected consumption equal to 441.8 quads. The net present value is estimated to be $2.7 billion.

Another method of setting standards would entail requiring that certain design options be used on each product, i.e., prescriptive standards. For these eight products, prescriptive standards are assumed to be implemented as standards at one level below the performance standards. The lower standards level entails slightly smaller expenditures for tooling and purchased parts. Consequently, the economic impacts that are expected before the implementation date should be slightly smaller for prescriptive standards. This

[47] "Significant regulatory action" means any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise intefere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlement, 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 this Executive order.

resulted in energy consumption, between 1996 and 2030, of 389.2 quads, and savings of 54.3 quads. The net present value, in 1990 dollars, was $92.3 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. The tax credits to consumers were assumed to be 15 percent of the increased expense for higher energy efficiency features of these appliances, while the rebates were assumed to be 15 percent of the increase in equipment prices. The tax credits to consumers showed a change from the base case, saving 3.7 quads with a net present value of $6.0 billion. Consumer rebates showed more sizable changes; they would save 4.5 quads with a net present value of $8.1 billion.

Another financial incentive that was considered was tax credits to manufacturers for the production of energy-efficient models of these eight appliances. In this scenario, an investment tax credit of 20 percent was assumed. The tax credits to manufacturers had almost no effect; the energy consumption estimates are 442.8 quads with savings equal to 0.7 quad, and a net present value equal to $0.8 billion.

The impact of this scenario is so small because the investment tax credit was applicable only to the tooling and machinery costs of the firms. The firms' fixed costs and most of the design improvements that would likely be adopted to manufacture more efficient versions of these products would involve purchased parts. Expenses for purchased parts would not be eligible for an investment tax credit.

Two scenarios of voluntary energy efficiency targets were examined. In the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers in 5 years. In the second scenario, the proposed standards were assumed to be adopted in 10 years. In these scenarios, the 5-year delay would result in energy consumption by these appliances of 388.0 quads, energy savings of 55.2 quads, and a net present value of $97.1 billion; the 10-year delay would result in 398.4 quads of energy being consumed, 44.8 quads being saved, and a net present value of $76.6 billion.

These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by these appliance manufacturers, an assumption for which there is no reasonable assurance.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this notice. Such performance standards would result in energy consumption of the eight appliances to total an estimated 379.4 quads of primary energy over the 1996–2030 time period. Savings would be 64.1 quads, and the net present value would be an expected $108.7 billion.

As noted at the beginning of this section, none of the alternatives that were considered for these products would save as much energy as the proposed rule.

c. "Takings" Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conduct a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings and help such agencies account for those takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.[48]

There are three parts of the appliance standards program that conceivably could be viewed as having "takings implications." These are testing and certification requirements, the impacts of standard levels, and possible DOE testing of products for validation.

With regard to the first part, namely, testing and certification, the Department believes that such a requirement, implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts, does not constitute a "taking" of private property.

Similarly, the Department's possible validation testing does not constitute a "taking" within limitations described above.

Lastly, the impact of standards could be viewed by some as a "taking." Nevertheless, the Department believes that while an energy conservation standard may limit some manufacturers in the range of appliance efficiencies they can produce, such narrowing of the energy efficiency range does not constitute a "taking" in the sense described above.

In short, in none of the three parts of the appliance standards program does the Department believe that the provisions of Executive Order 12630 pertain.

d. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department finds that today's proposed rule, if finalized, will not have a substantial direct effect on State governments. State regulations that may have existed on these eight products were preempted by the Federal standards established in the National Appliance Energy Conservation Act. States could petition the Department for exemption from such preemption, and none has done so. Today's Final Rule has no added effect on States. Thus, based on the foregoing, the Department finds that the preparation of a Federalism assessment for this rulemaking is not warranted.

The Act provides for subsequent State petitions for exemption from preemption, which necessarily means that the determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

e. Regulatory Flexibility Review

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

In this rulemaking, eight different products and, hence, industries are being addressed. Regulatory flexibility issues will be discussed for the industries for which standards are being prescribed.

First, the energy conservation standard on those room air conditioner

[48] Executive Order 12630, March 15, 1988, Sec. 2.

manufacturers who could be considered small businesses will be discussed.

The room air conditioner industry is characterized by three firms with large market shares (accounting for nearly 75 percent of sales) and numerous firms sharing the remaining one-quarter of the market.

There are significant differences among the major firms. For this industry, the Department has learned that average cost has an inverse relationship to firm size. Thus, the industry has economies of scale, and large firms (to the extent that their facilities are up-to-date) have lower average costs than small firms. This fact, coupled with increasing competitiveness of the national market, probably accounts for the continuing consolidation that has been occurring for several decades. The fact that the consolidation has been producing larger firms strongly corroborates the finding that large firms have a cost advantage.

A principal implication of consolidation is that the smaller of the firms will be, on average, in more danger of failing or being bought out than will the large firms. Because of the greater precariousness of smaller firms, any decrease in average profitability is more likely to mean the difference between success and failure for a smaller firm.

From the point of view of competitiveness, a decrease in average profitability could speed up the process of consolidation, producing a less competitive industry, while an increase in average profitability could help maintain the current levels of competition. Either effect might well be temporary, because, in the long run, the number of firms should be determined by the industry's cost structure and by the way a single firm's elasticity of demand relates to the number of competing firms.

While some small firms have more energy efficient models than larger firms, and while some have more models of average efficiency, the impact of higher efficiency standards on small firms is likely to be mixed. If standards are technologically difficult to meet, however, they may hurt selected smaller firms the most, because smaller firms have less sophisticated research and development capabilities.

Secondly, the impact of the energy conservation standards on water heater manufacturers needs to be addressed.

Water heater manufacturing firms can be divided into two groups: those that compete on large sales volume products and those that compete in small, specialized markets. Small firms are generally forced to specialize in small market niches that offer some protection from the cost advantage that large firms hold when they can produce in volume. This effect can even be observed among the major producers, in the tendency of the smaller major producers to produce somewhat more specialized products.

Just like the room air conditioner industry, water heater manufacturing is characterized by economies of scale in production, and large firms generally tend to have average costs that are lower than those of small firms.

Although larger firms have a cost advantage because of economies of scale, the very small firms in the water heater manufacturing industry have found market niches in which to survive profitably. There are at least two small firms which manufacture standard electric resistance water heaters. In addition, there are also two small firms that manufacture heat pump water heaters. Therefore, if a very stringent efficiency standard for water heaters is mandated, one could expect that given the small margins in the industry, some small firms may have to leave the market. On the other hand, the small firms that specialize in higher efficiency models (such as heat pump water heaters) may experience a boom.

The small firms that sell niche products such as heat pump water heaters usually find that these markets have higher margins. As a result, it is possible that small firms would have an easier time passing through increased variable costs that result from standards, and thus may be more positively affected than large firms by standards. However, this prediction should be tempered by the observation that if standards are technologically difficult to meet, they may hurt selected smaller firms the most since, as noted above, smaller firms typically have less sophisticated research and development capabilities.

Thirdly, the direct heating equipment industry must be considered. This industry, too, is characterized by economies of scale in production, with larger firms having average costs that are lower than those of smaller firms. Here, too, there has been continuing consolidation over the past several decades.

The same points raised above about the implications of consolidation and competitiveness among water heater firms pertain to manufacturers of direct heating equipment as well.

Next, the mobile home furnace industry will be addressed. In this industry, two firms supply all the gas-fired mobile home furnaces. Since discussions with industry sources revealed that the market shares of the two firms are approximately 50 percent each, the Department believes that neither is a small firm on which standards could have a significant adverse impact.

The characterization of the kitchen ranges and oven industry (including microwave ovens) is similar to those industries previously discussed. This industry, too, displays economies of scale in production and increasing consolidation as the larger firms have been acquiring smaller ones for the past few decades.

Since many, if not most, of the energy conservation standards can be achieved without significant retooling of plant and equipment, it is probable that such standards will not have significant adverse impacts on the small firms.

The pool heater industry, too, is characterized by economies of scale in production, with the consequent price advantage that large firms have over smaller ones. This industry, though, is already highly concentrated, and apparently never had a large number of firms. Most of the firms manufacture gas-fired pool heaters as an adjunct to other larger lines of business, e.g., boilers, pool and swimming equipment, etc. It appears that there are no real niche markets. Nevertheless, since the proposed standards are generally not considered to be technologically difficult to meet, and since the forecasts are that all standard levels are profitable, the Department does not expect significant adverse impacts on small firms.

Another industry that shares the characterization of larger firms having cost advantages over smaller ones, i.e., that displays economies of scale, is the fluorescent lamp ballast industry. Here, too, there has been continuing consolidation over time, and presently, three firms produce 90 percent of the market.

Many (if not most) of the standard levels considered do not require significant retooling of plant and equipment. In fact, much of the industry is currently retooling in anticipation of future growth, which is due in part to demand motivated by demand-side management programs of electric utility companies. These factors, combined with the estimates that profitability will be higher at all standard levels, imply that there will probably not be significant adverse impacts on small firms.

Lastly, the impact of energy conservation standards on the television set industry is discussed. This industry also has undergone significant consolidation over the past few decades. Presently, as with most of the other

industries discussed above, the larger firms have cost advantages over the smaller ones.

Zenith is the only domestic television set manufacturer located in the U.S., and it has 13 percent of the market. Therefore, there really cannot be any adverse small firm impacts since, domestically, there is only one firm, and it is not small.

In view of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that today's action will not have a "significant economic impact on a substantial number of small entities."

In conclusion, for each of these eight industries, the Department finds that the standard levels proposed in today's Proposed Rule will not "have a significant economic impact on a substantial number of small entities," and it is not necessary to prepare a regulatory flexibility analysis.

VI. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a comment period of 75 days following publication of this notice for persons to comment on this proposal. All public comments received and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments (with 10 copies) should be labeled both on the envelope and on the documents, "Eight Products Rulemaking (Docket No. EE–RM–90–201)," and must be received by the date specified at the beginning of this notice. 10 copies are requested to be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 5.1. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the DOE Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 10 copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. Procedure for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Eight Products Rulemaking (Docket No. EE–RM–90–201)," and should be sent to the address, and must be received by the time specified, at the beginning of this notice. Requests may be hand-delivered, or telephoned in to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by DOE as to the approximate time they will be speaking.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 15 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question other interested persons who made oral presentations, and employees of the United States who have made written or oral presentations with respect to

disputed issues of material fact relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of such issues. If the time provided is insufficient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

d Issues Requested for Comment

As discussed above in today's notice, DOE has identified a number of issues where comments are requested. These issues include, but are not limited to, the following:

- The baseline units and the base cases;
- Consideration of incremental impacts of various standard levels;
- Market share elasticities;
- Usage elasticities, i.e., rebound effect;
- Appropriate discount rates, including those for residential and commercial consumer analyses (life-cycle cost and Lawrence Berkeley Laboratory-Residential Energy Model) and the use of a social discount rate (Lawrence Berkeley Laboratory-Residential Energy Model);
- Energy price forecasts;
- The characterization of prototypical firms for the manufacturer impact analysis (Lawrence Berkeley Laboratory-Manufacturer Impact Model);
- Efficiency forecasts for these products;
- Any lessening of product utility resulting from the addition of the design options identified;
- The effects on forecasts due to the use of national average energy prices and usage rates;
- The effects of standards on manufacturers' incentives to develop innovative products and product features;
- Any uncertainties in modeling, especially with regard to product usage, e.g., changes in usage rates as shown by survey data or changes in usage of features;
- Location of water heaters with respect to conditioned space;
- Lifetimes of appliances;
- Maintenance costs and failure rates of appliances and components;
- The possible expansion of DOE's economic analysis to include the variable effects of standards on identifiable sub-groups of consumers, and/or the incremental effects of standards relative to lower or higher standard levels; and
- Possible modifications or alternatives to LBL's Manufacturer Impact Model.

Many of these issues are not unique to this proposed rule and some, such as discount rates and modifications of the Lawrence Berkeley Laboratory Manufacturer Impact Model, have been raised in previous DOE public notice under the appliance conservation standards program or by public comments on these notices. Those issues and the possible expansion of DOE's economic analysis in several areas were raised in DOE's Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products, published on September 8, 1993 (58 FR 47326). DOE hopes that its conclusions in these areas for this rulemaking will serve as the basis for the development and promulgation of future appliance conservation standards, unless comments in future rulemakings make a persuasive case to the contrary.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, December 15, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble part 430 of chapter II of title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.32 is amended by revising paragraphs (b), (d), (e), and (i) through (m) to read as follows:

§ 430.32 Energy conservation standards and effective dates.

* * * * *

(b) *Room air conditioners.*

Product class	Energy efficiency ratio, effective as of	
	January 1, 1990	[3 years after publication of Final Rule]
1. Without reverse cycle and with louvered sides less than 6,000 Btu	8.0	11.1
2. Without reverse cycle and with louvered sides 6,000 to 7,999 Btu	8.5	10.3
3. Without reverse cycle and with louvered sides 8,000 to 13,999 Btu	9.0	11.0
4. Without reverse cycle and with louvered sides 14,000 to 19,999 Btu	8.8	11.1
5. Without reverse cycle and with louvered sides 20,000 and more Btu	8.2	9.6
6. Without reverse cycle and without louvered sides less than 6,000 Btu	8.0	10.7
7. Without reverse cycle and without louvered sides 6,000 to 7,999 Btu	8.5	9.9
8. Without reverse cycle and without louvered sides 8,000 to 13,999 Btu	8.5	10.7
9. Without reverse cycle and without louvered sides 14,000 to 19,999 Btu	8.5	10.8
10. Without reverse cycle and without louvered sides 20,000 and more Btu	8.2	9.3
11. With reverse cycle, and with louvered sides	8.5	10.8
12. With reverse cycle, without louvered sides	8.0	10.4

* * * * *

(d) *Water heaters.*

Product class	Energy factor, effective as of		
	January 1, 1990	April 15, 1991	[3 years after publication of Final Rule]
1. Gas	0.62—(.0019×Rated Storage Volume in gallons).	0.62—(.0019×Rated Storage Volume in gallons).	0.64—(.0017×Measured Storage Volume in gallons).
2. Gas Instantaneous	N/A	0.62—(.0019×Rated Storage Volume in gallons).	0.75.
3. Oil	0.59—(.0019×Rated Storage Volume in gallons).	0.59—(.0019×Rated Storage Volume in gallons).	0.73—(.0017×Measured Storage Volume in gallons).
4. Electric	0.95—(.00132×Rated Storage Volume in gallons).	0.93—(.00132×Rated Storage Volume in gallons).	1.96—(.00117×Measured Storage Volume in gallons).

Note: Rated Storage Volume equals the water storage capacity of a water heater, in gallons, as specified by the manufacturer Measured Storage Volume equals the water storage capacity of a water heater, in gallons, as measured in paragraph 6.1.1 of the test procedure.

(e) *Furnaces.*

Product class	Annual fuel utilization efficiency, effective as of January 1, 1992	Annual efficiency, effective as of [3 years after publication of Final Rule]
1. Furnaces (excluding classes noted below)	78	.....
2. Gas-Fired mobile home furnaces	[1]75	74.3
3. Oil-Fired mobil home furnaces	[1]75	74.7
4. Small furnaces (other than furnaces designed solely for installation in mobile homes), input rate less than 45,000 Btu/hour	78	.....
5. Boilers (excluding gas steam)	80	.....
6. Gas steam boilers	75	.....

[1] Effective as of September 1, 1990.

* * * * *

(i) *Direct heating equipment.*

Product class	Annual fuel utilization efficiency, effective as of January 1, 1990	Annual efficiency, effective as of 3 years after publication of Final Rule]
1. Gas wall fan type up to 42,000 Btu/hour	73	72.2
2. Gas wall fan type over 42,000 Btu/hour	74	73.4
3. Gas wall gravity type up to 10,000 Btu/hour	59	67.7
4. Gas wall gravity type over 10,000 Btu/hour up to 12,000 Btu/hour	60	67.7
5. Gas wall gravity type over 12,000 Btu/hour up to 15,000 Btu/hour	61	67.9
6. Gas wall gravity type over 15,000 Btu/hour up to 19,000 Btu/hour	62	68.2
7. Gas wall gravity type over 19,000 Btu/hour up to 27,000 Btu/hour	63	73.6
8. Gas wall gravity type over 27,000 Btu/hour up to 46,000 Btu/hour	64	73.9
9. Gas wall gravity type over 46,000 Btu/hour	65	74.2
10. Gas floor type up to 37,000 Btu/hour	56	70.7
11. Gas floor type over 37,000 Btu/hour	57	70.0
12. Gas room type up to 18,000 Btu/hour	57	64.4
13. Gas room type over 18,000 Btu/hour up to 20,000 Btu/hour	58	69.9
14. Gas room type over 20,000 Btu/hour up to 27,000 Btu/hour	63	67.1
15. Gas room type over 27,000 Btu/hour up 46,000 Btu/hour	64	71.2
16. Gas room type over 46,000 Btu/hour	65	71.5

(j) *Kitchen ranges and ovens.*

Gas kitchen ranges and ovens with an electrical supply cord shall not be equipped with a constant burning pilot light. The standard is effective on January 1, 1990. The annual energy use of a kitchen range and oven shall be the sum of the annual energy use of any of the following components incorporated into the kitchen range and oven, and shall not exceed the allowable sum of energy usages for those components listed below.

Kitchen range and oven component	Annual energy use, effective as of [3 years after publication of Final Rule]
1. Electric ovens, self-cleaning	267 kWh
2. Electric ovens, non-self-cleaning	218 kWh
3. Gas ovens, self-cleaning	1.64 MMBtu
4. Gas ovens, non-self-cleaning	1.14 MMBtu
5. Microwave ovens	233 kWh
6. Electric cooktop, coil element	260 kWh
7. Electric cooktop, smooth element	294 kWh
8. Gas cooktop	1.71 MMBtu

(k) *Pool heaters.*

Product class	Thermal efficiency (percent), effective as of January 1, 1990	Annual efficiency (percent), effective as of [3 years after publication of Final Rule]
Pool heaters	78	82.2

(l) *Television sets.*

Product class	Annual energy use—kWh/yr, effective as of [3 years after publication of Final Rule]
1. Color—Screen size of 13.0 to 33 inches	20.5 + 6.1D

Note: D equals the screen size, in inches, as specified by the manufacturer.

(m) *Fluorescent lamp ballasts.* (1) Except as provided in paragraphs (m)(2) and (m)(3) of this section, each fluorescent lamp ballast designed—

(i) To operate at nominal input voltages of 120 or 277 volts;

(ii) To operate with an input current frequency of 60 Hertz; and

(iii) For use in connection with F32, F40, F96, or F96HO lamps; shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Product class	Ballast input voltage	Efficacy factor, effective as of January 1, 1990	Efficacy factor, effective as of [3 years after publication of Final Rule]
1. One F40 lamp	120	[1] 1.805	[1] 2.50
	277	[1] 1.805	[1] 2.50
2. Two F40 lamps	120	[1] 1.060	[1] 1.28
	277	[1] 1.050	[1] 1.28
3. Two F96 lamps	120	[1] 0.570	[1] 0.72
	277	[1] 0.570	[1] 0.72
4. Two F96HO lamps	120	[1] 0.390	[1] 0.50
	277	[1] 0.390	[1] 0.50
5. Three F40 lamps	120	[2]	[1] 0.87
	277	.....	[1] 0.87
6. Four F40 lamps	120	[2]	[1] 0.67
	277	.....	[1] 0.67
7. One F32T8 lamp	120	[2]	3.17
	277	.....	3.17
8. Two F32T8 lamps	120	[2]	1.58
	277	.....	1.58
9. Three F32T8 lamps	120	[2]	1.06
	277	.....	1.06
10. Four F32T8 lamps	120	[2]	0.76
	277	.....	0.76

[1] Applies to T12 lamps only.
[2] Not applicable.

(2) The standards that are effective January 1, 1990, as described in paragraph (m)(1) of this section, do not apply to:

(i) A ballast which is designed for dimming or for use in ambient temperatures of 0°F or less, or

(ii) A ballast which has a power factor of less than 0.09 and is designed for use only in residential building applications.

(3) The standards described in paragraph (m)(1) of this section, effective [3 years after publication of Final Rule], do not apply to:

(i) A ballast which is designed for use in ambient temperatures of 0°F or less, or

(ii) A ballast which has a power factor or less than 0.90 and is designed for use only in residential building applications.

[FR Doc. 94–4586 Filed 3–3–94; 8:45 am]

BILLING CODE 6450–01–P

federal register

Friday
March 4, 1994

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 315, et al.
Offering and Governing Regulations for United States Savings Bonds; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315, 316, 317, 321, 330, 332, 342, 351, 352, and 353

Offering and Governing Regulations for United States Savings Bonds, Series E, EE, and H, HH, and Savings Notes; Issuing and Paying Agents; and Payment Under Special Endorsement

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This Final Rule amends the offering circulars for United States savings bonds and savings notes; the regulations governing savings bonds and notes; and the regulations governing activities of financial institutions and organizations serving as savings bond issuing and paying agents, to reflect the designation of five Federal Reserve Offices as savings bond processing sites. The changes are made to improve the efficiency of the processing of savings bond transactions. The regulations are further amended to reflect the fact that EZ CLEAR has become the only means by which savings bond paying agents may transmit and receive settlement for redeemed savings bonds and notes.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel, Bureau of the Public Debt, Washington, DC 20239–0001, (202) 219–3320.

SUPPLEMENTARY INFORMATION: As fiscal agents of the United States, Federal Reserve Banks and Branches perform a number of activities in support of the savings bond program, including issuing, redeeming, and reissuing savings bonds and notes. In recent years, both the Bureau of the Public Debt and Federal Reserve Offices have recognized that there would be benefits associated with consolidating certain savings bond activities. Since 1986, several activities have been consolidated, *e.g.*, issuing savings bonds for payroll savings plans based upon a master file data base, and maintaining savings bonds for employee thrift plans in book-entry accounts.

The Bureau and the Federal Reserve recognized that further consolidation would reduce operating costs, improve program management, and provide opportunities for more efficient use of technology, without any reduction in the level of service to bondowners and financial institutions serving as savings bond agents. Therefore, a Savings Bond Processing Study Team, composed of staff from both Public Debt and Reserve Offices, was formed to determine the optimum number of Reserve Office sites at which savings bond processing should be performed. The Team's recommendations formed the basis of the Bureau's decision to approve the changes in sites where consolidated savings bond processing would be performed. A listing of the consolidated processing sites is added to each of the following sections: 31 CFR 315.1, 316.12, 330.8, 332.12, 342.9, 352.13, and 353.1, the offering circulars and governing regulations for savings bonds and notes, and 31 CFR 317.9 and 321.25, the regulations governing the issue and redemption of savings bonds. Federal Reserve Offices, other than those newly listed, may continue to provide some savings bond services, but their activities will be phased out over the period prior to March 1, 1996.

Also, the regulations in 31 CFR part 317, also referred to as Department of the Treasury Circular, Public Debt Series No. 4–67, are being further amended to indicate that issuing agents are subject to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a).

Finally, the regulations in 31 CFR part 321, also referred to as Department of the Treasury Circular No. 750, Fourth Revision, are being further amended to reflect the fact that submission of redeemed savings securities via EZ CLEAR has become the only means of transmitting and receiving settlement for such paid securities. The EZ CLEAR method of paid bond processing permits savings bond paying agents to transmit and receive settlement for redeemed securities in the same manner as for checks and other cash items. The reduction in separate processing has increased efficiency and reduced costs for the savings bond program.

Procedural Requirements

This Final Rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order No. 12866. The regulatory review procedures, therefore, do not apply.

Because this Final Rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information required by this Final Rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Parts 315, 316, 317, 321, 330, 332, 342, 351, 352 and 353

Bonds, Federal Reserve System, Government Securities.

Dated: February 22, 1994.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR chapter II, parts 315, 316, 317, 321, 330, 332, 342, 351, 352, and 353, are hereby amended as follows:

PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES

1. The authority citation for part 315 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

2. Section 315.1 is amended as follows:

A. Paragraph (a) is amended by adding "in the list below" after "Federal Reserve Banks and Branches".

B. Paragraph (b) is revised to read as follows:

§ 315.1 Official agencies.

* * * * *

(b) Communications concerning transactions and requests for forms should be addressed to:

(1) A Federal Reserve Bank or Branch in the list below; the Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101; or the Bureau of the Public Debt, Washington, DC 20226.

(2)(i) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, Vt, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(ii) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

§ 315.31 [Amended]

3. In § 315.31, paragraph (d) is amended by adding "designated" before "Federal Reserve Bank".

§ 315.35 [Amended]

4. In § 315.35, paragraph (e) is amended by adding "designated" before "Federal Reserve Bank".

§ 315.39 [Amended]

5. In § 315.39, paragraph (b) is amended by adding "designated" before "Federal Reserve Bank or Branch" in the two places the phrase appears.

§ 315.40 [Amended]

6. In § 315.40, paragraph (a) is amended by adding "a designated" before "Federal Reserve Bank".

§ 315.41 [Amended]

7. Section 315.41 is amended by adding "designated" before "Federal Reserve Bank or Branch".

§ 315.56 [Amended]

8. In § 315.56, paragraph (a) is amended by adding "designated" before "Federal Reserve Bank".

PART 316—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES E

1. The authority citation for part 316 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 316.3 [Amended]

2. Section 316.3, footnote No. 2, is amended by adding "designated" before "Federal Reserve Bank".

§ 316.6 [Amended]

3. In § 316.6, paragraph (c) is amended by adding "designated" before "Federal Reserve Banks".

§ 316.10 [Amended]

4. In § 316.10, paragraph (b) is amended by adding "referred to in § 316.12" immediately following "a Federal Reserve Bank or Branch".

5. Section 316.12 is revised to read as follows:

§ 316.12 Fiscal agents.

(a) Federal Reserve Banks and Branches referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury in connection with the redemption and payment of Series E bonds.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, such services will be phased out over the period prior to that date.

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

1. The authority citation for part 317 continues to read as follows:

Authority: 31 U.S.C. 3105, 2 U.S.C. 901, 5 U.S.C. 301.

2. Section 317.1 is amended as follows:

A. Paragraph (b) is revised to read as follows:

§ 317.1 Definitions

* * * * *

(b) *Federal Reserve Bank* refers to the Federal Reserve Bank or Branch providing savings bond services to the district in which the issuing agent or the applicant organization is located. See § 317.9 (a).

* * * * *

B. Paragraph (c), first sentence, is amended by adding "designated" before "Federal Reserve Bank".

3. Section 317.3 is amended as follows:

A. Paragraph (a) is revised to read as follows:

§ 317.3 Procedure for qualifying and serving as issuing agent

(a) *Execution of application agreement.* The applicant-organization shall obtain from, duly execute, and file with, a designated Federal Reserve Bank, an application-agreement form.

(1) The terms of each application agreement shall include the provisions prescribed by section 202 of Executive Order No. 11246, entitled "Equal

Employment Opportunity" (3 CFR, subchapter B, 42 U.S.C. 2000e note).

(2) The provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), and regulations issued pursuant thereto (31 CFR part 1, subpart C).

* * * * *

B. Paragraphs (b), and (c) are amended by adding "designated" before "Federal Reserve Bank" in each paragraph.

§ 317.5 [Amended]

4. In § 317.5, paragraphs (a) and (b) are amended by adding "designated" before "Federal Reserve Bank" in each paragraph.

§ 317.6 [Amended]

5. In § 317.6, paragraphs (a) and (b) are amended by adding "designated" before "Federal Reserve Bank" in all places that it appears.

§ 317.7 [Amended]

6. Section 317.7 is amended by removing the word "a", before "Federal Reserve Bank" and replacing it with the words "the designated".

§ 317.8 [Amended]

7. Section 317.8 is amended by adding "designated" before "Federal Reserve Banks", in the first sentence.

8. The appendix to § 317.8 is amended as follows:

A. Subpart A, paragraph 2 (e) and paragraph 5 are amended by adding "designated" before "Federal Reserve Bank".

B. Subpart B, paragraph 1, is amended by adding "designated" before "Federal Reserve Bank".

C. Subpart B, paragraph 2 is amended by adding "designated" before "Federal Reserve Bank", at the end of the sentence.

D. Subpart B, paragraph 3, the introductory paragraph and paragraphs (a) and (b), are amended by adding "designated" before "Federal Reserve Bank" in where it appears.

E. Subpart D, paragraph 1, is amended by adding "designated" before "Federal Reserve Bank" at the end of the paragraph.

F. Subpart D, paragraph 2(b) is amended by adding "the designated" before "Federal Reserve Bank" in the title.

9. Section 317.9 is amended as follows:

A. Paragraph (b) is redesignated as paragraph (c) and the word "designated" is added before "Federal Reserve Banks", in the heading and in the introductory text.

B. Paragraph (a) is revised and a new paragraph (b) is added to read as follows:

§ 317.9 Role of Federal Reserve Banks.

(a) *Role as fiscal agents.* In their capacity as fiscal agents of the United States, the Federal Reserve Banks referred to below are authorized to perform such duties, including the issuance of instructions and forms, as may be necessary to fulfill the purposes and requirements of these regulations.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV, (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

* * * * *

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

1. The authority citation for part 321 continues to read as follows:

Authority: 31 U.S.C. 3105, 2 U.S.C. 901, 5 U.S.C. 301.

2. Section 321.1 is amended as follows:

A. Paragraph (f) is removed, and paragraphs (d) and (e) are redesignated paragraphs (e) and (f) respectively.

B. A new paragraph (d) is added and redesignated paragraph (f) is revised to read as follows:

§ 321.1 Definitions.

* * * * *

(d) *Central Site* refers to the Federal Reserve Bank of Cleveland, Pittsburgh Branch, EZ CLEAR Department.

* * * * *

(f) *Federal Reserve Bank or Branch* refers to the Federal Reserve Bank to which the agent is instructed to transmit redeemed securities; or to which the agent is instructed to forward securities for payment or other transactions, and includes parent Banks, Branches and Regional Check Processing Centers, as appropriate.

* * * * *

3. Section 321.2(b) is revised to read as follows:

§ 321.2 Eligible organizations.

* * * * *

(b)(1) An organization that desires to redeem securities must first qualify as a paying agent. An organization that has qualified and is serving as a paying agent must:

(i) MICR-encode data on securities accepted for payment,

(ii) Submit them directly to the Check Department of the appropriate Federal Reserve Bank or Branch or the Regional Check Processing Center, and

(iii) Receive payment of fees by ACH, or arrange to obtain one or more of these services from another financial institution.

(2) All presenting institutions, as defined in § 321.1, must qualify as savings bond paying agents and enroll in EZ CLEAR.

4. Section 321.3 is amended as follows:

A. Paragraph (a), introductory paragraph, is amended by removing "with, a Federal Reserve Bank an application-agreement form" and replacing it with "an application-

agreement with the appropriate Federal Reserve Office referred to in § 321.25".

B. The concluding text of paragraph (a) is amended by removing "of New York" and replacing it with "Branch in Buffalo, New York" and by removing "of San Francisco" and replacing it with "Kansas City".

C. Paragraph (b) is amended by adding "referred to in § 321.25" after "Federal Reserve Bank", removing "its district," and replacing it with "the Reserve Bank's geographical area, as shown in § 321.25,".

D. Paragraph (c) is amended by adding "referred to in § 321.25" after "a Federal Reserve Bank".

E. Paragraph (d) is revised to read as follows:

§ 321.3 Procedure for qualifying and serving as paying agent.

* * * * *

(d) *Adverse action.* An organization will be notified by the appropriate Federal Reserve Bank referred to in § 321.25, in writing, if its application-agreement to act as paying agent is not approved.

§ 321.5 [Amended]

5. Section 321.5 is amended as follows:

A. Paragraph (a) is amended by adding "referred to in § 321.25" after "a Federal Reserve Bank".

B. Paragraph (b) is amended by adding "referred to in § 321.25" after "Federal Reserve Bank".

6. In § 321.8, paragraph (d) is revised to read as follows:

§ 321.8 Redemption-exchange of Series E and EE savings bonds and savings notes.

* * * * *

(d) *Completion of transaction.* An agent shall transmit for settlement via EZ CLEAR securities redeemed on exchange and, at the same time, forward the exchange application (PD F 3253) and any additional cash needed to complete the transaction, to the Fiscal Agency Department of the servicing Federal Reserve Bank referred to in § 321.25. Securities redeemed on exchange may be commingled with cash redemptions in mixed or separately sorted cash letters."

* * * * *

7. In § 321.11, paragraph (f) is revised to read as follows:

§ 321.11 Payment.

* * * * *

(f) *Certification of request.* An agent is not required to complete the certification to the requests for payment on securities it redeems. When an agent transmits redeemed securities for settlement, as indicated in § 321.14 of this part, such agent shall be understood by such submission to have represented and certified that the identity of the presenter, and his or her entitlement to request payment, have been established in accordance with this part and the appendix hereto.

§ 321.13 [Amended]

8. Section 321.13 is amended as follows:

A. The first sentence is amended by adding "appropriate" after "and four-digit code number assigned by the".

B. The second sentence is amended by removing the word "a" before Federal Reserve Bank, at the end of the sentence and replacing it with "an appropriate".

9. Section 321.14 is revised to read as follows:

§ 321.14 Transmittal to and settlement by Federal Reserve Bank.

In accordance with Federal Reserve Bank instructions, a paying agent shall transmit with an EZ CLEAR cash letter securities redeemed for cash and on redemption-exchange, either directly or through a correspondent institution, to the Check Department of the appropriate Bank or Branch, or to a Regional Check Processing Center (RCPC). Upon receipt of the securities, the Bank, Branch, or RCPC will arrange for immediate settlement with the presenting institution. Such settlement shall be made by a credit to the presenting institution's Reserve or other clearing account in the total amount paid, as reflected on the cash letter, and shall be subject to adjustment via a charge or credit to that account if any discrepancy is subsequently discovered.

§ 321.20 [Amended]

10. Section 321.20 is amended by adding "referred to in § 321.25" after "any Federal Reserve Bank".

§ 321.22 [Amended]

11. Section 321.22, first sentence, is amended by adding "referred to in § 321.25" after "a Federal Reserve Bank".

§ 321.23 [Amended]

12. In § 321.23, Paragraph (a) is amended as follows:

A. The phrase "referred to in § 321.25" is added at the end of the introductory paragraph after "available from a Federal Reserve Bank".

B. Paragraph (a)(1) is removed and paragraphs (a)(2) and (a)(3) are redesignated as (a)(1) and (a)(2), respectively.

13. Section 321.25 is revised to read as follows:

§ 321.25 Role of Federal Reserve Banks.

(a) The Federal Reserve Banks referred to below, as fiscal agents of the United States, shall perform such services in connection with this part as may be requested by the Secretary of the Treasury, or his designee. The Banks are authorized and directed to perform such duties, including the issuance of instructions and forms, as may be necessary to fulfill the purposes and requirements of these regulations.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

Appendix to Part 321 [Amended]

14. The appendix to part 321 is amended as follows:

A. Paragraph Number 4 is revised to read as follows:

* * * * *

4. *Paying agent code numbers.* [§§ 321.3(b) and 321.13] The appropriate Federal Reserve Bank will assign a four-digit code number to each agent it qualifies. A separate number will be assigned to each branch authorized to redeem and submit redeemed securities for its own account to a Federal Reserve Bank or Branch or to a Regional Check Processing Center. At the paying agent's request, only one four-digit code will be assigned for use by all of its branches. The presenting institution's ABA number will be used in the adjustment of discrepancies and in the computation and payment of fees for securities transmitted in separately sorted cash letters.

* * * * *

B. Paragraph 5 is amended by removing "the Federal Reserve Bank", and replacing it with "the appropriate Federal Reserve Bank referred to in § 321.25".

C. Paragraph 9(a), first sentence, is amended by adding "referred to in § 321.25" after "a Federal Reserve Bank".

D. Paragraphs 13(a), 13(b), 14(a), 14(b), 14(d), 18, 23(a), 23(d), 23(e) and 27 are amended by removing "Federal Reserve Bank" and replacing it with "the appropriate Federal Reserve Bank referred to in § 321.25", wherever found.

E. Paragraph 14(e) is revised to read as follows:

* * * * *

14. * * *

(e) *MICR-encoding of payment information.* [§ 321.13] An agent shall MICR-encode the redemption value in the "Amount" field on the face of each security or arrange to have this service performed by another financial institution. If the agent transmits securities in mixed cash letters, it must also MICR-encode the routing/transit number assigned to the Bureau of the Public Debt's savings bond activity in the "R/T" field on the face of all pre-October 1957 paper securities and those punch card securities on which it does not already appear. The Bureau's routing/transit number is 000090007. Care should be taken in repairing MICR-encoded items so as not to obliterate any data in surrounding MICR fields or elsewhere on the face of the security.

* * * * *

F. Paragraph 15 is revised to read as follows:

* * * * *

15. *Transmittal of securities to Federal Reserve Bank.* [§ 321.14] An agent shall transmit and receive settlement for redeemed securities via EZ CLEAR, i.e., the Check Department of a Federal Reserve Bank or Branch, or the Regional Check Processing Center. Redeemed securities may be transmitted in separately sorted or mixed cash letters to the Check Department of a Federal Reserve Bank or Branch, or to a Regional Check Processing Center, either directly, or via a parent office or correspondent institution. An agent shall transmit redeemed securities under cover of the appropriate transmittal document. Securities redeemed in exchange for Series HH bonds must be transmitted for settlement via EZ CLEAR at the same time as the exchange application (PD F 3253) and any additional cash needed to complete the transaction are forwarded to the Fiscal Agency Department of the servicing Federal Reserve Bank referred to in § 321.25. Securities redeemed on exchange may be commingled with cash redemptions in mixed or separately sorted cash letters."

* * * * *

G. Paragraph 16 is revised to read as follows:

* * * * *

16. *Transmittal of securities to Federal Reserve Bank via fiscal agency system.* [§ 321.14] The Fiscal Agency Department of a Federal Reserve Bank or Branch will not accept for settlement securities an agent has redeemed."

* * * * *

H. Paragraph 17(e)(2) is revised and new paragraphs (e)(3),(4) and (5) are added to read as follows:

17. *Transmittal of securities to Federal Reserve Bank via EZ CLEAR. [§ 321.14]*

(e) * * *

(2) *Audit and adjustment* [§ 321.14] The Bureau of the Public Debt will audit all redemption data received from the Central Site as promptly as possible. Each presenting institution will, in due course, be notified by the Bank of any adjustments required. The Bank will adjust via a charge or credit to the presenting institution's Reserve or clearing account any amounts previously credited to that account.

(3) *Requests for Adjustments.* Depositors who discover errors in their EZ CLEAR cash letters subsequent to deposit should allow sixty (60) calendar days from the date of their EZ CLEAR cash letter before requesting adjustments for the cash letter. This will allow sufficient time for the Treasury to classify the savings bonds, forward adjustments to the Central Site and for the Central Site to research and function adjustments to the depositor.

(4) *Separately Sorting Depositors* should submit adjustment requests directly to the Central Site Adjustments Department in correspondence. However, all requests for adjustments due to incorrect cash letter crediting should be directed to the servicing Federal Reserve Bank.

(5) *Mixed Depositors* should submit adjustment requests to their servicing Federal Reserve Bank.

* * * * *

I. Paragraph 18 is revised to read as follows:

* * * * *

18. *Record of securities paid.* [§§ 321.14 and 321.24] A record of the serial number and the amount paid for each redeemed security must be retained by the agent for one year so that settlement can be made if the security is lost in transit, and so that the agent can process any subsequent adjustment as described in paragraph 17(e)(2) above. For that purpose, agents are authorized to microfilm the face and back of each security they redeem. Such film records shall be kept confidential and prints therefrom may be made only with the permission of the Bureau of the Public Debt or an appropriate Federal Reserve Bank.

* * * * *

J. Paragraph 24 is amended as follows:

A. Paragraph (a) is removed.

B. The title and designation "(b) EZ CLEAR transmittals. [§ 321.23]" are removed from current paragraph (b); the beginning of the sentence is amended by removing "by the Federal Reserve Bank" after "Fees will be paid"; and, the second sentence is amended by adding "Federal Reserve" after "No fees will be paid for securities received by the".

K. Paragraph 25 is revised to read as follows:

* * * * *

25. *Claims on account of lost securities* [§ 321.24] If a security redeemed by an agent is lost, stolen, or destroyed while in the custody of the agent, or in transit prior to settlement or audit, relief will be considered, provided the security can be identified by serial number. [See paragraph 18 of this appendix regarding the maintenance of records of redeemed securities]. The presenting institution should resubmit a photocopy of the security to obtain settlement in accordance with established procedures. Questions concerning the established procedures should be referred to the servicing Federal Reserve Bank.

* * * * *

PART 330—REGULATIONS GOVERNING PAYMENT UNDER SPECIAL ENDORSEMENT OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

1. The authority citation for part 330 is revised to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. Section 330.1 is amended as follows:

A. Paragraph (a) is revised to read as follows:

§ 330.1 Definition of terms.

* * * * *

(a) *Federal Reserve Bank or Bank* refers to the Federal Reserve Bank

providing savings bond services to the district in which a paying agent is located. See § 330.9.

* * * * *

B. Paragraph (c) is amended by removing "account directly to a Federal Reserve Bank" and replacing it with "are themselves directly accountable for such redemptions".

C. Paragraph (i) is amended by adding "designated" before "Federal Reserve Bank".

§ 330.2 [Amended]

3. In § 330.2, paragraphs (a) and (c) are amended by adding "designated" before "Federal Reserve Bank", each time it appears.

§ 330.3 [Amended]

4. In § 330.3, paragraphs (a) and (b) are amended by adding "designated" before "Federal Reserve Bank", each time it appears.

§ 330.4 [Amended]

5. Section 330.4 is amended by adding "designated" before "Federal Reserve Bank", in the introductory paragraph.

§ 330.6 [Amended]

6. In § 330.6, paragraph (c) is amended by adding "designated" before "Federal Reserve Bank".

7. Section 330.7 is amended by revising the last two sentences to read as follows:

§ 330.7 Payment or redemption-exchange by agent.

* * * * *

Securities so paid should be combined with other securities paid under that Circular and presented for settlement through EZ CLEAR. Securities redeemed by an agent in an exchange must be presented for settlement through EZ CLEAR separately from, but at the same times as, an exchange subscription and any remittance are forwarded to the Fiscal Agency Department of the appropriate Federal Reserve Bank.

§ 330.8 [Amended]

8. Section 330.8 is amended by adding "designated" before "Federal Reserve Bank", at the end of the first sentence.

9. Section 330.9 is revised to read as follows:

§ 330.9 Fiscal agents.

(a) The Federal Reserve Banks referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested by the Secretary of the Treasury, or his or her delegate, in connection with this part.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 332—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES H

1. The authority citation for part 332 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 332.10 [Amended]

2. Section 332.10 is amended by adding "referred to in § 332.12" immediately after "a Federal Reserve Bank or Branch".

3. Section 332.12 is revised to read as follows:

§ 332.12 Fiscal agents.

(a) Federal Reserve Banks and Branches referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury, or his or her delegate, in connection with the reissue, redemption and payment of Series H bonds.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY, (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 342—OFFERING OF UNITED STATES SAVINGS NOTES

1. The authority citation for part 342 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 342.7 [Amended]

2. In § 342.7, paragraph (a) is amended by adding the phrase "referred to in § 342.9", immediately following "any Federal Reserve Bank or Branch".

3. Section 342.9 is revised to read as follows:

§ 342.9 Fiscal agents.

(a) Federal Reserve Banks and Branches referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury, or his or her delegate, in connection with the issue, redemption and payment of savings notes.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for part 351 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 351.5 [Amended]

2. In § 351.5, paragraph (b)(1) is amended by adding "(see § 351.12)" after "Federal Reserve Banks".

§ 351.7 [Amended]

3. Section 351.7, paragraph (b) is amended by adding the phrase "referred to in § 351.12", immediately following "A Federal Reserve Bank or Branch".

4. Section 351.12 is revised to read as follows:

§ 351.12 Fiscal agents.

(a) Federal Reserve Banks and Branches referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury, or his or her delegate, in connection with the issue, servicing and redemption of Series EE bonds.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY, (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 352—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

1. The authority citation for part 352 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 352.2 [Amended]

2. In § 352.2, paragraph (h) is amended by adding "designated" before "Federal Reserve Banks".

§ 352.5 [Amended]

3. Section 352.5 is amended by adding "(see § 352.13)" after "Federal Reserve Banks".

§ 352.7 [Amended]

4. Section 352.7 is amended as follows:

A. Paragraph (b) is amended by adding "referred to in § 351.13" immediately following "a Federal Reserve Bank".

B. Paragraph (c) is amended by adding "referred to in § 351.13" immediately following "a Federal Reserve Bank".

5. Section 352.13 is revised to read as follows:

§ 352.13 Fiscal Agents.

(a) Federal Reserve Banks and Branches, referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury, or his or her delegate, in connection with the issue, servicing, and redemption of Series HH bonds.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 353—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES EE & HH

1. The authority citation for part 353 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

2. Section 353.1 is amended as follows:

A. Paragraph (a) is amended by adding "in the list in paragraph (b) of this section" after "Federal Reserve Banks and Branches".

B. Paragraph (b) is revised to read as follows:

§ 353.1 Official agencies.

* * * * *

(b) Communications concerning transactions and requests for forms should be addressed to:

(1) A Federal Reserve Bank or Branch in the list below; the Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101; or the Bureau of the Public Debt, Washington, DC 20226.

(2)(i) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(ii) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

* * * * *

§ 353.13 [Amended]

3. In § 353.13, paragraph (d), the introductory paragraph, is amended by adding "designated" before "Federal Reserve Bank", and removing "of the district" and replacing it with "or Branch".

§ 353.31 [Amended]

4. In § 353.31, paragraph (d) is amended by adding "designated" before "Federal Reserve Bank".

§ 353.35 [Amended]

5. In § 353.35, paragraph (c) is amended by adding "designated" before "Federal Reserve Bank or Branch".

§ 353.39 [Amended]

6. In § 353.39, paragraph (b) is amended by adding "designated" before "Federal Reserve Bank or Branch" in the two places the phrase appears.

§ 353.40 [Amended]

7. In § 353.40, paragraph (a) is amended by adding "a designated" before "Federal Reserve Bank".

§ 353.41 [Amended]

8. Section 353.41 is amended by adding "designated" before "Federal Reserve Bank or Branch".

[FR Doc. 94–4831 Filed 3–3–94; 8:45 am]
BILLING CODE 4810–40–P

federal register

Friday
March 4, 1994

Part IV

Department of Transportation

Coast Guard

46 CFR Part 10, et al.

Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of Licenses, Certificates of Registry, or Merchant Mariner's Documents; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 16

[CGD 91-223]

RIN 2115-AE29

Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of Licenses, Certificates of Registry, or Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require chemical testing for use of dangerous drugs of all applicants for issuance or renewal of licenses, certificates of registry (CORs), or merchant mariner's documents (MMDs). This action is necessary to implement the requirements of the Oil Pollution Act of 1990 (OPA 90). Testing of applicants would increase maritime safety by providing an additional tool in the effort to promote a drug-free work place in the maritime industry.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-223), 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.

Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

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: Mr. James W. Cratty, Project Manager, OPA 90 Staff, (202) 267-6740 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

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 91-223) 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 material 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 presentations 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 Mr. James W. Cratty, Project Manager, and Jacqueline L. Sullivan, Project Counsel, Oil Pollution Act (OPA 90) Staff.

Background and Purpose

In recent years, several major oil spills from ships have occurred in waters under the jurisdiction of the United States. Among these were the EXXON VALDEZ in Prince William Sound, Alaska, and the AMERICAN TRADER in coastal waters of California. These spills caused extensive damage, including the loss of fish and wildlife. In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380).

Among other things, OPA 90 introduces new safety measures relating to vessel operations. This notice of proposed rulemaking (NPRM) proposes regulations to implement sections 4101(a) and (b) of OPA 90, which amend 46 U.S.C. 7101 and 7302, respectively, to require every person who applies for the issuance or renewal of a license, certificate of registry (COR), or merchant mariner's document (MMD) to have a test for dangerous drugs.

Under 46 CFR part 10, the Coast Guard issues licenses to qualified officers such as masters, mates, pilots, engineers, operators, and radio officers, and issues CORs to qualified staff officers such as pursers, medical doctors, and professional nurses.

Under the authority of 46 U.S.C. 7302, any person serving aboard most U.S.-flag merchant vessels of more than 100 gross tons operating on other than rivers and lakes must be issued an MMD by the Coast Guard. This document serves as a certificate of identification and service, authorizing work in different capacities on deck and in the engine and steward's departments. The MMD, with an appropriate endorsement, is also the credential issued to a qualified tankerman.

The statutory language of OPA 90 refers to the testing of an individual for the use of dangerous drugs in violation of law or Federal regulation. Existing Coast Guard regulations are framed around the phrase "chemical test," which is already defined in 46 CFR 16.105. For the purposes of this NPRM, the chemical testing required of applicants for issuance or renewal of licenses, CORs, or MMDs relates only to the use of dangerous drugs.

Section 4103(a)(2) of OPA 90 amends 46 U.S.C. 2101 by adding "dangerous drug" to the list of general definitions and removes the definition of dangerous drugs from 46 U.S.C. 7503(a) and 7704(a). The definition of "dangerous drug" in section 4103(a)(2) of OPA 90 includes the term "controlled substance." Although "marijuana" is not specifically mentioned in the new definition, marijuana is a controlled substance under 21 U.S.C. 802, and is therefore covered by the definition of "dangerous drug." This NPRM would revise the definition of "dangerous drug" in 46 CFR 16.105 to conform it to the definition in 46 U.S.C. 2101, as amended by section 4103(a)(2) of OPA 90. This change has no substantive effect on the existing drug testing rules in 46 CFR part 16.

Currently, 46 CFR 16.220(b) provides exceptions to the periodic chemical test requirement when there has been a recent test for dangerous drugs or participation in a random test program. These exceptions were revised by a final rule published in the Federal Register on May 28, 1993 (58 FR 31104). The revised exceptions would apply to the new testing requirements.

Section 4102(b) and (c) of OPA 90 amends 46 U.S.C. 7107 and 7302 to limit the terms of CORs and MMDs to 5 years. On September 16, 1993 the Coast Guard published an NPRM in the Federal Register (58 FR 48572) entitled "Five-year Term of Validity for Certificates of Registry and Merchant Mariner's Documents" (CGD 91-211) to implement the provisions of section 4102. Although the NPRMs for chemical testing and terms of validity both deal with the issuance and renewal of

merchant mariner's credentials, two separate documents have been issued for ease of review by the public. This NPRM proposes additional changes to update Coast Guard regulations, but it does not affect the regulatory amendments contained in the "Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents" NPRM. In two places, 46 CFR 10.805(g) and 12.02–9(f), this NPRM contains proposed regulatory text that would follow after additions proposed in the "Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents" NPRM. One final rule may be issued combining the requirements for chemical testing and regulations for the terms of validity for CORs and MMDs.

Discussion of Proposed Amendments

OPA 90 requires all applicants for the issuance or renewal of licenses, CORs, or MMDs to have a chemical test for dangerous drugs. The proposed rules would apply the requirement to (1) an original issuance or a renewal of a license, COR, or MMD; (2) a raise in grade of a license or a higher grade of COR; and (3) the first endorsement on an MMD as an able seaman, qualified member of the engine department, or tankerman. Applicants meeting either of the exceptions contained in § 16.220 would be exempt from the chemical testing requirements. A chemical test for dangerous drugs would not be required for an MMD endorsement that does not require a new expiration date for the MMD or the duplicate issuance or replacement of valid licenses, CORs, or MMDs. If an applicant applies for multiple documentation transactions at one time, the application is treated as a single transaction and a single drug test will satisfy the drug testing requirements for all documentation transactions covered by the application.

In a supplemental notice of proposed rulemaking (SNPRM) published in the Federal Register on October 17, 1989 (54 FR 42624), the Coast Guard proposed to remove existing 46 CFR subpart 12.20 entitled "Tankerman," and replace it with a new part 13, "Tankermen and Persons in Charge of Transfer of Dangerous Liquid and Liquefied Gas." The Coast Guard is proposing to add chemical testing for dangerous drugs to the requirements for obtaining a tankerman endorsement on an MMD. Because the "Tankerman" rulemaking has not been finalized, the proposal to add drug testing requirements is set out as amendment to the existing requirements in 46 CFR subpart 12.20. The final rule will place the drug testing requirements in subpart 12.20 or a new 46 CFR part 13, as appropriate.

Periodic chemical testing for dangerous drugs is currently part of the physical examinations required for some merchant mariners. Entry-level ratings (46 CFR subpart 12.25), lifeboatmen (46 CFR subpart 12.10), and staff officers (46 CFR 10.801) do not require physical examinations. Existing § 16.220(a) states that, if a physical examination is required, the examination must include a chemical test for dangerous drugs. The applicant must provide the results of the chemical test for dangerous drugs to a Coast Guard Regional Examination Center (REC) where licensing and documentation transactions take place. The proposed rules would revise § 16.220(a) to base testing requirements on issuance or renewal transactions. Additionally, requirements for pilots who must undergo an annual physical examination would be moved to a new § 16.220(b) and a new reporting requirement is proposed for that section. Pilots who are not excepted from taking a chemical drug test as part of their annual physical would be required to provide drug test results to the REC where their license was last renewed.

The Coast Guard is soliciting comments specifically on two issues raised by this expansion of chemical testing requirements. The first issue relates to an unemployed, nonunion applicant who is required to have a chemical test for dangerous drugs. Under 46 CFR 16.370, which would not be amended by the proposed rules, individuals must have test results reviewed by a Medical Review Officer (MRO) selected by the employer or sponsoring organization. However, if an applicant does not hold a maritime-related job or belong to a union, there may be no MRO immediately available to the applicant for reviewing test results and providing appropriate certification. The Coast Guard is interested in receiving comments on whether this situation would pose a significant problem and requests suggestions on alternatives.

The second issue relates to inactive license renewals under 46 CFR 10.209(g). Under the proposed rules, applicants for inactive license renewals would not be required to undergo a chemical test for dangerous drugs. The Coast Guard seeks comments on the desirability of requiring applicants for inactive license renewals to meet the chemical testing requirements.

Regulatory Evaluation

This proposal is not major under Executive Order 12866, but is considered significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979) because of controversy surrounding chemical drug testing, substantial public interest, and the potential for litigation. A Regulatory Evaluation has been prepared for this rulemaking and is available in the docket for inspection or copying where indicated under ADDRESSES.

Costs to Government

Federal Government costs attributable to implementation of these proposed regulations would be incurred by the 17 Coast Guard RECs. Each applicant is responsible for submitting chemical test results verified by a MRO during the "evaluation" phase of the merchant mariner credential transaction. The additional costs, for the "evaluation" phase, associated with receiving and handling test results on applicants for merchant mariner credentials will be minimal. The costs incurred as a result of this rulemaking are a relatively small percentage of the total costs of the "evaluation" phase, and do not warrant revision of the current fees for evaluation related to MMD, COR or licensing transactions.

Costs to Public and Respondents

Firms in the maritime industry and some individual respondents (applicants) would bear the prospective incremental costs of this rulemaking. These costs are addressed in the Regulatory Evaluation.

The cost projections assume that holders of MMDs will not apply for renewals and endorsements at the same time, and that holders of licenses will not apply for renewals and raises in grade at the same time. This approach guards against underestimating costs. However, the projections further assume that holders of licenses who also hold MMDs will renew licenses and MMDs together, and that the few holders of CORs and MMDs will apply for and renew CORs and MMDs together. The cost projections were adjusted to reflect the percentage of merchant mariners that will not have to take a drug test for the documentation transaction because they already participate in a random chemical testing program for dangerous drugs or they have passed a drug test within the previous 185 days. Computations show that the NPRM would subject an estimated additional 7,258 applicants for credentials each year to chemical testing for dangerous drugs. The annual cost to the public would total $439,000.

Benefits

The dollar value of direct and societal benefits derived from the proposed rule are not quantifiable, but may be substantial.

According to a 1987 report published by the National Institute of Drug Abuse, drug-free individuals—

(a) Suffer fewer accidents;

(b) File fewer workers' compensation claims;

(c) Use less sick leave; and

(d) Experience lower medical cost than drug users.

Historical data is insufficient to quantify benefits. However, should this program manage to save even one life per year at $2.5 million per statistical life saved (which recent research shows is a reasonable estimate of people's willingness-to-pay for safety), its benefits would exceed its costs. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

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).

The costs to small entities will probably not be significant because the costs of the additional chemical testing for dangerous drugs will be borne primarily by individual applicants, and is less than $100 per occasion. Because it expects the impact of this proposal on small entities to be minimal, the Coast Guard certifies under 15 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

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection of information requirements in §§ 10.201, 10.202, 10.205, 10.207, 10.209, 10.805, 12.02–4, 12.02–9, 12.05–3, 12.10–2, 12.15–3, 12.20–1, 12.25–10, 16.105, and 16.220. The following particulars apply:

DOT No: 2115.

OMB Control No.: Formerly 2115–0574; Consolidated into 2115–0003.

Administration: U.S. Coast Guard.

Title: Collection of Commercial Vessel & Personnel Accident (Marine Casualty) Information (Forms CG–2692/2692A) and Programs for Chemical Drug & Alcohol Testing of Commercial Vessel Personnel, including Required Drug & Alcohol Testing following a Serious Marine Incident (Form CG–2692B).

Need for Information: Sections 7101 and 7302 of title 46, United States Code mandate that the Secretary require chemical testing of each applicant for the issuance or renewal of a license, COR, or MMD for use of a dangerous drug.

Proposed Use of Information: An applicant must submit proof of passing a chemical test for dangerous drugs or meet one of the exceptions from periodic testing in order to be considered for issuance or renewal of a license, COR, or MMD.

Frequency of Responses: This information must be collected whenever an applicant applies for or renews a license, COR, MMD, or when individuals (e.g., a pilot) are required to receive an annual physical examination.

Burden Estimated: The Coast Guard estimates that the total annual burden on merchant mariners will be $439,000. This estimate does not include the costs to the Coast Guard of administering the program. Again, these costs are incorporated into the "Draft Regulatory Evaluation and Regulatory Flexibility Assessment of Regulations Requiring Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of a license, COR, or MMD."

Respondents: The regulatory impact will fall on the estimated 7,258 merchant mariners not yet required to undergo periodic chemical testing for dangerous drugs.

Form(s): There are no forms applicable to this rulemaking.

Average Burden Hours Per Respondent: The average burden hours per respondent is 1.25 hours per year. The burden hours for all respondents total 9,072.5 hours annually.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

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.

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. This proposal is a procedural regulation without any direct environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, 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 10, 12, and 16 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633, 31 U.S.C. 9701, 46 U.S.C. 2103, 7101; 49 CFR 1.45, 1.46; Section 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Section 10.201(a) is revised to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

(a) In order to receive a license or certificate of registry, each applicant shall establish to the satisfaction of the Officer in Charge, Marine Inspection (OCMI), that he or she meets all the qualifications (respecting age, experience, training, citizenship, character references, recommendations, physical health, chemical testing for dangerous drugs, and professional competence) required by this part before

the OCMI issues a license or certificate of registry.

* * * * *

3. Section 10.202 is amended by revising the section heading and adding paragraph (i) to read as follows:

§ 10.202 Issuance of licenses and certificates of registry.

* * * * *

(i) Each applicant for an original issuance or a renewal of a license or a certificate of registry, for a raise in grade of a license, or for a higher grade of certificate of registry shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. Any applicant who fails a chemical test for dangerous drugs will not be issued a license or certificate of registry.

4. Section 10.205 is amended by adding paragraph (j) to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(j) *Chemical testing for dangerous drugs.* Each applicant shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued a license or certificate of registry.

5. Section 10.207 is amended by adding paragraph (g) to read as follows:

§ 10.207 Requirements for raise of grade of license.

* * * * *

(g) *Chemical testing for dangerous drugs.* Each applicant for a raise in grade shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued a license.

6. Section 10.209 is amended by revising the section heading and adding paragraph (h) to read as follows:

§ 10.209 Requirements for renewal of licenses and certificates of registry.

* * * * *

(h) *Chemical testing for dangerous drugs.* Each applicant for the renewal of a license or of a certificate of registry shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued a license or certificate of registry.

7. Section 10.805 is amended by adding paragraph (g) to read as follows:

§ 10.805 General requirements.

* * * * *

(g) Each applicant for an original certificate of registry or a higher grade of certificate of registry, as described by paragraph (c) of this section, shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued a certificate of registry.

PART 12—CERTIFICATION OF SEAMEN

8. The authority citation for part 12 continues to read as follows:

Authority: 14 U.S.C. 633, 31 U.S.C. 9701, 46 U.S.C. 2103, 2110, 7301, 7701, 49 CFR 1.46.

9. Section 12.02–4 is amended by adding paragraph (c) to read as follows:

§ 12.02–4 Basis for denial of documents.

* * * * *

(c) An applicant who fails a chemical test for dangerous drugs required by § 12.02–9 will not be issued a merchant mariner's document.

10. Section 12.02–9 is amended by adding paragraph (f) to read as follows:

§ 12.02–9 Application for documents.

* * * * *

(f) Each applicant for an original issuance of a merchant mariner's document, the first endorsement as an able seaman, qualified member of the engine department, or tankerman, or a reissuance of a merchant mariner's document with a new expiration date shall present evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter.

PART 16—CHEMICAL TESTING

11. The authority citation for part 16 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

12. Section 16.105 is amended by revising the definition of "dangerous drug" to read as follows:

§ 16.105 Definitions of terms used in this part.

* * * * *

Dangerous drug means a narcotic drug, a controlled substance, or a controlled-substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

* * * * *

13. Section 16.220 is revised to read as follows:

§ 16.220 Periodic testing requirements.

(a) Except as provided by paragraph (c) of this section, an applicant for an original issuance or a renewal of a license or a certificate of registry (COR), a raise in grade of a license, a higher grade of COR, an original issuance of a merchant mariner's document (MMD), the first endorsement as an able seaman, qualified member of the engine department, or tankerman, or a reissuance of an MMD with a new expiration date shall be required to pass a chemical test for dangerous drugs. The applicant shall provide the results of the test to the Coast Guard Regional Examination Center (REC) at the time of submitting an application. The test results must be completed and dated not more than 185 days prior to submission of the application.

(b) Unless excepted under paragraph (c) of this section, each pilot required by this subchapter to receive an annual physical examination must pass a chemical test for dangerous drugs as a part of that examination. The individual shall provide the results of each test required by this section to the REC where the license was last renewed.

(c) An applicant need not submit evidence of passing a chemical test for dangerous drugs required by paragraph (a) or (b) of this section if he or she provides satisfactory evidence that he or she has—

(1) Passed a chemical test for dangerous drugs required by this part within the previous six months with no subsequent positive drug tests during the remainder of the six-month period; or

(2) During the previous 185 days been subject to a random testing program required by § 16.230 for at least 60 days and did not fail or refuse to participate in a chemical test for dangerous drugs required by this part.

(d) An applicant is required to provide the results of only one chemical test for dangerous drugs when multiple documentation transactions are covered by or requested in a single application.

14. Section 16.260(b)(1) is revised to read as follows:

§ 16.260 Records.

* * * * *

(b) * * *

(1) Satisfy the requirements of §§ 16.210(b) and 16.220(c) of this part.

* * * * *

Dated: February 23, 1994.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 94–4767 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–14–M

federal register

Friday
March 4, 1994

Part V

Environmental Protection Agency

40 CFR Parts 271 and 279
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 279

[EPA/530–2–42–011; FRL–4845–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On September 10, 1992, EPA exempted used oil inserted into crude oil pipelines from the part 279 used oil management standards. EPA is today clarifying the existing pipeline exemption and expanding the exemption to other petroleum refinery applications. Today's document clarifies that the exemption from the used oil management standards did not intend to exclude used oil mixed with crude oil or natural gas liquids (hereinafter referred to as "crude oil") in pre-pipeline units (e.g., stock tanks, production separators) prior to being introduced into the crude oil pipeline. In addition, today's rule expands the used oil exemption to include transportation and/or storage of mixtures of small amounts of used oil (i.e., less than 1%) and crude oil that are destined for insertion into a petroleum refining facility process at a point prior to crude distillation or catalytic cracking.

Today's rule exempts from the part 279 standards, used oil that is inserted into the petroleum refining facility process after distillation or catalytic cracking operations provided that the used oil meets the used oil specification prior to insertion.

Today's rule also exempts from the part 279 standards used oil that incidentally enters and is recovered from a refinery's hydrocarbon recovery system or wastewater treatment system (i.e., process sewer, storm sewer, or wastewater treatment units), if the recovered used oil is subsequently inserted into the petroleum refinery process.

In addition, today's rule expands the definition of transfer facility to allow used oil to be held more than 24 hours but less than 35 days prior to specified activities.

Finally, EPA is today amending the used oil processor standards to clarify that a specific set of on-site maintenance, filtering, and separation activities were not intended to be covered under the used oil processor standards. EPA is also correcting errors in regulations that appeared in the May 3, 1993, **Federal Register.**

EFFECTIVE DATE: April 4, 1994.

ADDRESSES: The regulatory docket for this rulemaking is available for public inspection at room 2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The docket number is F–94–UOTA–FFFFF. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Telephone (800) 424–9346 (toll free) or, in the Washington DC, metropolitan area at (703) 920–9810.

For information on specific aspects of this rule, contact Ms. Eydie Pines, telephone (202) 260–3509, U.S. EPA, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

Authority

The regulations promulgated today are issued under the authority of sections 1004, 1006, 2002(a), 3014, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil recycling Act, as amended, 42 U.S.C. 6903, 6905, 6912(a), 6935, and 6974.

II. Background

A. Summary of Recent Regulatory Actions Pertaining to Used Oil

1 Summary of May 20, 1992, **Federal Register** Notice

On May 20, 1992, EPA published a final listing determination for used oils that are destined for disposal (see 57 FR 21524). The Agency determined that used oils destined for disposal did not have to be listed as a hazardous waste because used oils do not typically and frequently meet the technical criteria for listing a waste as hazardous. EPA gave considerable attention, in reaching its determination, to the current Federal regulations that govern the management of used oils that are disposed, including the requirement for used oil that exhibits a characteristic of hazardous waste under subtitle C of RCRA.

The May 20, 1992, **Federal Register** notice also included a categorical exemption from the definition of hazardous waste in § 261.4 for non-terne-plated used oil filters that have been hot-drained to remove used oil.

EPA based this exemption on data submitted to the Agency indicating that these filters do not typically and frequently exhibit the toxicity characteristic.

2. Summary of September 10, 1992, **Federal Register** Notice

On September 10, 1992, EPA promulgated a final listing decision for used oils that are recycled and simultaneously promulgated management standards for used oil, codified at 40 CFR part 279 (see 57 FR 41566). EPA determined that used oil destined for recycling did not have to be listed as a hazardous waste because the used oil did not meet the technical criteria for listing a waste as hazardous, particularly in light of the new management standards and other federal requirements which control the risks posed by improper management of used oil. The standards cover used oil generators, transporters, processors, re-refiners, off-specification burners and marketers. The standards included an exemption from the management standards for used oil placed directly in a crude oil pipeline.

3. May 3, 1993, and June 17, 1993 Correction Notices

On May 3, 1993, EPA published technical amendments and corrections to the May 20, 1992 and September 10, 1992, **Federal Register** Notices (see 58 FR 26421). On June 17, 1993, EPA corrected several errors in the May 3, 1993, notice (see 58 FR 33341).

B. Summary of the 1985 Comments Regarding Used Oil Mixed With Crude Oil Destined for Refineries

On November 29, 1985, EPA proposed to list all used oil as a hazardous waste (50 FR 49248). Commenters responded that used oil mixed with crude oil be exempt from such regulation because the small quantities of used oil mixed with crude oil posed no threat to the environment when refined with crude oil.

C. Summary of 1991 Comments

On September 23, 1991, EPA proposed that the two exemptions from subtitle C requirements promulgated in 1985 (see 40 CFR 261.6(a)(3) (v)–(viii)) for oil-bearing hazardous waste and fuels derived from these wastes, also apply to used oils. (56 FR 48026, 48042) EPA proposed exemptions from the used oil management requirements (whether or not EPA ultimately listed used oil as a hazardous waste) for: (1) Used oils that are reinserted as feedstocks at primary petroleum refineries; and (2) fuels derived from those used oils.

Commenters (mainly the primary petroleum refining industry) stated that if EPA chose to list used oil as hazardous waste, the Agency should exempt used oil that is reintroduced into the refinery process from hazardous waste or used oil management standards requirements. Commenters further stated that if EPA did not adopt this exemption, the entire refinery process could be subject to hazardous waste management requirements, including permits. Commenters stated that this would be unwarranted because the reintroduction of used oil into the refining process contributes only insignificant concentrations of metals to the crude oil or finished petroleum product. Other commenters stated that refiners that handle used oil should be subject to the same requirements for used oil management as are used oil re-refiners.

Commenters from the primary petroleum refining industry also stated that EPA should not limit the exemption to those instances where used oil is inserted before fluid catalytic cracking or distillation, since other conversion and distillation processes in the refinery would also remove, alter or immobilize impurities in the oil. They asserted that limiting the point of insertion could foreclose the future development of used oil recycling activities. These commenters also stated that limiting the insertion point could preclude refineries from accepting DIY oil. Commenters asserted that DIY oil might have to undergo certain pre-processing at refineries prior to its insertion into the refining process. They also asserted that under the proposed exemption, this pre-processing would not be exempt and would be a hazardous waste activity. Commenters stated that these activities are part of the refining process.

Commenters from the primary petroleum industry further stated that EPA should extend the exemption to apply to used oil inserted into the pipeline at marketing, E&P and pipeline facilities for use in the refinery process. They asserted that used oil recovered from oil and gas exploration and production is placed in pipelines and trucks and returned to the refinery from other petroleum facilities. Commenters stated that the recovered oils are useful, valuable raw materials that are reintroduced into the crude stream for their economic value.

III. Analysis of New Part 279 Provisions

On September 10, 1992, EPA promulgated a final listing decision for used oils that are recycled and simultaneously promulgated standards in 40 CFR part 279 for the management of used oil under RCRA section 3014. Under § 279.10(g) of part 279, EPA granted an exemption for used oils introduced directly into crude oil pipelines from part 279 standards at the point at which they are introduced. EPA did not address the proposed exemptions for used oil inserted into the petroleum refining facility process either prior to or after crude distillation or catalytic cracking.

The American Petroleum Institute filed a petition for review of the September 10, 1992, rule, on December 8, 1992, raising the issue that EPA had not addressed the proposed exemptions for petroleum refining, production, and transportation in the September 10, 1992, final rule. Today's rule responds to comments and addresses outstanding issues related to used oil and petroleum refining facility processes.

A. Summary of Comments From Interested Parties

Today's rule was distributed in draft form for comment to the litigants and intervenors concerning the 1992 rule, and other concerned members of the regulated community, States, and environmental groups. The primary substantive comments received on the draft and EPA's responses to those comments are summarized below.

EPA received several comments from the petroleum industry on the exemption from part 279 for storage and transportation of mixtures of used oil and crude oil that contain less than 1% used oil and are destined for insertion into petroleum refining process. These commenters objected primarily to provisions in the draft final rule limiting the exemption to mixtures that contain less than 1% used oil. The commenters also objected to limiting the amount of used oil that can be directly inserted into the petroleum refining process to 1% of the crude oil process unit throughput at any given time. EPA has retained the 1% limit in both cases in today's final rule for reasons discussed in section III.B.2 of this preamble.

EPA received comments from used oil re-refiners (i.e., "secondary" petroleum industry—a type of used oil processor) regarding the regulatory status of petroleum refineries that receive used oil from off-site and store the used oil on-site before mixing it with crude oil. The draft rule proposed to regulate petroleum refining facilities as used oil transfer facilities in these circumstances. Commenters stated, however, that petroleum refiners that receive used oil from off-site pose the same potential concerns from receipt of

adulterated used oil and improper storage of used oil as re-refiners and should therefore be subject to the requirements for used oil processor/re-refiners prior to mixing. EPA agrees and has revised the draft rule accordingly. These changes are discussed in greater detail below.

EPA also received numerous comments on provisions clarifying what constitutes a used oil processor. Provisions contained in the draft document would have prohibited both on- and off-site burning of used oil generated from specified activities that EPA is today clarifying are not subject to the used oil processor standards. Commenters stated that the used oil generated from these activities would be suitable for burning in accordance with the part 279, subpart G standards and that burning should not be further restricted. In response to these comments, EPA has decided to allow on-site burning of the used oil generated from these activities but has retained the prohibition against off-site burning. The basis for this decision is discussed in section III.C of today's preamble.

B. Section 279.1—Definition of Petroleum Refining Facility

Today's rule establishes a regulatory definition for "petroleum refining facility." EPA believes it is necessary to define this term in order to provide a clear distinction between what the Agency considers to be and regulates as primary petroleum refining facilities and facilities that EPA considers to be used oil re-refiners for regulatory purposes. Under today's rule, "petroleum refining facility" is defined as follows:

"Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosine, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).

A used oil re-refiner, in contrast, is a facility that processes used oil to produce lube base stocks and greases, industrial fuels, asphalt extenders, diesel like fuels, and other products.

EPA is aware that petroleum refiners and used oil re-refiners employ similar production processes and produce similar products. Consequently, the Agency has avoided defining these facilities in terms of the process steps employed to produce a finished product or the type of products produced. As defined by today's rule, petroleum refining facilities and used oil re-refining facilities differ primarily in the material that constitutes the primary initial feed to the process. In order for a facility to be considered a petroleum refining facility, the material fed to the front end of the refining process must be comprised primarily of crude oil. In order to be considered a used oil re-refiner, the material entering the front end of the process must be comprised primarily of used oil.

C. Section 279.10(g)—Used Oil Introduced Into Crude Oil Pipelines or Petroleum Refining Facilities

1. Section 279.10(g)(1)—Used Oil Introduced Into Crude Oil Pipelines

The September 10, 1992, final used oil regulations provided an exemption at § 279.10(g) from management standards for used oil that is placed directly into a crude oil pipeline (see 57 FR 41613). Today's rule replaces § 279.10(g) with § 279.10(g)(1) which clarifies the original intent of the pipeline exemption. Section 279.10(g) of the September 10, 1992, final rule provided that "Used oil that is placed directly into a crude oil, oil or natural gas pipeline is subject to the management standards of [part 279] only prior to the point of introduction into the pipeline. Once the used oil is introduced to the pipeline, the material is exempt from the requirements of [part 279]."

EPA is concerned that the phrase, "placed directly into a crude oil or natural gas pipeline," can be literally interpreted to apply more narrowly than the Agency had intended. EPA understands that it is standard practice to first mix small amounts of used oil, typically less than 1%, with crude oil in stock tanks, production separators or other tank units that are connected via pipeline to the petroleum refining facility (i.e., pre-pipeline units). It was not EPA's intent to exclude used oil that is mixed with crude oil in these pre-pipeline units from the § 279.10(g) pipeline exemption. Rather, EPA intended to include this practice within the meaning of "direct insertion." Because used oil is typically inserted into the petroleum pipeline through these pre-pipeline units, to exclude these units from the pipeline exemption would effectively render the exemption meaningless. Clearly this was not EPA's intent. Today's rule revises the language of the exemption to clarify that used oil may be inserted into the pipeline via pre-pipeline units (which contain crude oil) exempt from the requirements of part 279. It should be noted here that the § 279.10(g)(1) pipeline exemption established by today's rule is limited to pipelines that convey crude oil from off-site locations to the petroleum refining facility. The exemption does not apply to pipelines that convey crude oil from one on-site location within a petroleum refinery to another. If such on-site piping contains used oil, it is exempt only if it qualifies under §§ 279.10(g)(2)–(5) discussed below. Also, if processing of the used oil is performed prior to mixing with crude oil in these pre-pipeline units, such processing remains subject to the part 279, subpart F standards for used oil processors and re-refiners. Used oil that is generated and stored at the pipeline is subject to the used oil generator standards prior to mixing with crude oil. Used oil that is transported to the pipeline and immediately mixed with crude oil or stored for less than 24 hours prior to such mixing is subject to all Subpart E transporter standards except for § 279.45 which applies to transfer facilities. Used oil that is transported to and subsequently stored at the pipeline for more than 24 hours and less than 35 days prior to mixing with crude oil is subject to all the part 279, subpart E transporter/transfer facility requirements.

2. Section 279.10(g)(2)—Storage and Transportation of Mixtures of Used Oil and Crude Oil

Section 279.10(g)(2) of today's rule expands the used oil management standard exemption to include: (1) Mixtures of used oil and crude oil containing less than 1% used oil that are being stored at the petroleum refining facility or in discrete units remotely located from the pipeline, as long as the mixture is destined for the refinery and inserted prior to crude distillation or catalytic cracking; and (2) mixtures of used oil and crude oil containing less than 1% used oil that are being transported (via truck, rail, or vessel) to the petroleum refinery or the pipeline for insertion into the petroleum refining process prior to crude distillation or catalytic cracking. The former exemption provided at § 279.10(g) did not apply either to mixtures of used oil and crude oil that are stored at the petroleum refinery or in remotely located units, or to the transportation of mixtures of used oil and crude oil. The previous, more narrow exemption was based on the assumption that used oil was placed directly into the pipeline (or into units directly connected to the pipeline as previously discussed). EPA assumed that the mixing of used oil and crude oil occurred at the point at which used oil was inserted into the pipeline. EPA has since learned, however, that mixing frequently occurs at exploration and

production sites that are remotely located from the pipeline or the petroleum refinery.

For example, used oil generated during on- and off-shore drilling activities (e.g. from compressors, trucks and other heavy equipment) is routinely mixed with crude oil in units (e.g. production separators, seagoing vessels, stock tanks, etc.) located at the exploration and production site and then transported, as a mixture, to the pipeline or petroleum refining facility. Depending on the location of the drilling activities, the mixture of used oil and crude oil may need to be transported (by vessel, truck, rail, etc.) to a separate location for introduction into the pipeline or the petroleum refining facility. In the case of off-shore drilling sites for example, conveyance of the mixture may involve multiple modes of transportation (i.e., from the off-shore platform to land by vessel or pipeline and then to the crude oil pipeline by land-based transport). Today's exemption covers all modes of transportation of mixtures of used oil and crude or natural gas liquids, as long as the mixture contains less than 1% used oil and is destined for insertion into a petroleum refining facility process at a point prior to crude distillation or catalytic cracking. In addition, today's exemption covers storage of mixtures of used oil and crude oil, provided that the mixture contains less than 1% used oil and is inserted into a petroleum refining facility process prior to crude distillation or catalytic cracking.

Used oil that is generated at exploration and production sites continues to be subject to used oil generator standards prior to being mixed with crude oil such that it is exempt under today's rule. Used oil that is generated off-site and transported to or stored at an exploration and production site is subject to the transporter and transfer facility standards, as applicable, up until the point at which the used oil is mixed with crude oil such that it is exempt under § 279.10(g)(2).

EPA is exempting mixtures of used oil and crude oil held in discrete units at a refinery or at remote locations because the Agency understands that the amount of used oil contained in these mixtures is extremely small relative to the large quantities of crude oil. In developing today's rule, EPA held numerous discussions with petroleum refinery industry representatives regarding the maximum amount of used oil contained in mixtures of used oil and crude oil that are destined for insertion into a petroleum refining process prior to crude distillation or catalytic cracking. Industry representatives repeatedly informed the Agency that used oil constitutes less than 1% of these mixtures. In gathering information for today's rule, EPA held conference calls with representatives from a number of petroleum refining companies (e.g., Mobil Oil Corporation and Phillips Petroleum Inc.,). The Agency also conducted several site visits, including visits to an Amoco refinery in Whiting, Indiana and a Mobil Oil Corporation refinery in Paulsboro, New Jersey. In each case, EPA was informed that used oil does not currently, and will not comprise greater than 1% of the crude oil/used oil mixture because of the sheer volumes of crude oil that are continuously being produced and processed relative to the amount of used oil that is generated at production sites or refineries. This recent information is consistent with comments submitted in response to the 1985 Used Oil Proposed Rule in which Exxon Company, USA stated that the average percentage of used oil in refinery feed stock streams is less than 0.02% and Texaco, Inc., indicated that used oil would constitute no more than 0.01% of the refinery input.

EPA does not believe it is necessary to apply the used oil management standards to the less than 1% fraction of used oil that is being held temporarily in discrete units or transported from those units to the pipeline or the petroleum refinery for recycling as part of a mixture that is composed overwhelmingly of crude oil. In essence, because of the high ratio of crude oil to used oil, EPA considers the mixture to be equivalent to crude oil for regulatory purposes. EPA's part 279 standards were designed to control those particular risks associated with the management of used oil (e.g., uncontrolled burning, improper storage practices by used oil handlers) pursuant to section 3014 of RCRA.

The reason for EPA's imposition of a 1% limit on the amount of used oil contained in mixtures of used oil and crude oil being stored or transported to a crude oil pipeline or petroleum refinery prior to insertion into the refining process is that, while we have determined that the small amounts of used oil that are being added to crude oil under current practices pose no incremental risk over normal crude oil, we have not evaluated whether larger amounts of used oil also pose no incremental risk. Given the information provided to EPA by the petroleum refining industry regarding the inherent limitations on the amount of used oil that is or should be contained in mixtures of used oil and crude oil (i.e., less than 1%), and given that EPA has received no information, either recently, or in response to previous rulemakings that provides basis for an alternative limit, the Agency sees no point in imposing a higher cap. Imposition of a higher cap could have the effect of encouraging mixing of used oil with crude oil that would not otherwise occur during the normal course of petroleum refining operations. Such an incentive might lead to increased incremental risk from management of large amounts of used oil, exempt from the part 279 standards, at petroleum refineries. EPA also concluded that a less precise limit (i.e., "*de minimis*" or "small amounts"), as was suggested by some commenters from the petroleum refining industry, would needlessly cause uncertainty, given that EPA was told repeatedly that amounts currently introduced are far less than 1%.

3. Section 279.10(g)(3)—Used Oil Inserted Into the Petroleum Refining Process Without Prior Mixing and Mixtures of Greater Than One Percent Used Oil

As previously stated, under today's rule, mixtures of used oil and crude oil containing less than 1% used oil that are transported to or stored at a petroleum refinery, and are introduced prior to crude distillation or catalytic cracking, are exempt from part 279 standards under § 279.10(g)(2). It is EPA's understanding, based on information received from petroleum industry representatives, that used oil can potentially be inserted directly into the petroleum refining process prior to crude distillation or catalytic cracking without either: (1) Mixing the used oil with crude oil feedstocks, or (2) pre-processing of the used oil to ensure that any contaminants in the used oil will not interfere with the refining process (e.g., contaminants fouling a catalyst, etc.). Based on this understanding, today's exemption also applies to used oil that is introduced directly into the petroleum refining process at a point prior to crude distillation or catalytic cracking as long as the used oil comprises less than 1% of the crude oil feed to a petroleum refining facility process unit at any given time. Again, because of the high ratio of crude oil to used oil, EPA considers these mixtures to be equivalent to crude oil for regulatory purposes. Therefore, the Agency believes that this activity would pose no significant increase in risk.

Used oil that is inserted directly into the petroleum refining process (at a volume of less than 1% of the crude oil process unit feed at any given time) is considered mixed, and therefore exempt

from part 279, at the point at which it enters the process. This exemption applies both to used oil generated at the petroleum refining facility where the used oil is being inserted, and to used oil generated off-site that is collected and transported to the petroleum refining facility for insertion into the refining process prior to crude distillation or catalytic cracking.

Used oil that is inserted into the petroleum refining process without first being mixed with crude oil feedstocks (e.g. in crude oil stock tanks) is subject to part 279 standards prior to insertion. Used oil that is generated on-site and then stored without prior mixing and used oil generated on-site that constitutes greater than 1% of a mixture of used and crude oil continues to be subject to the part 279, subpart C standards for generators. With the exception of used oil that is exempt from the part 279 standards because it constitutes less than 1% of a mixture of used oil and crude oil, used oil that is generated off-site and then transported to or stored at a petroleum refining facility, continues to be subject to the applicable part 279 requirements i.e., to the requirements for used oil transporters and transfer facilities while being transported and to the requirements for used oil processors upon receipt at the petroleum refining facility. Petroleum refining facilities that receive used oil from off-site for direct insertion into the petroleum refining process are subject to the used oil processor standards from the point at which they receive the used oil up until the point at which the used oil is inserted into the petroleum refining process. Finally, it is important to reiterate that the exemptions provided under both §§ 279.10(g)(2) and 279.10(g)(3) of today's rule apply at the point of mixing and only to mixtures that contain less than 1% of used oil.

Although petroleum industry representatives have raised concerns that a 1% limit on the amount of used oil that can be inserted directly into the petroleum refining process may be technology limiting, EPA has not received any information that would support this position, nor has the Agency received information to support an alternative level. The Agency believes that by limiting the amount of used oil that can be introduced directly into the refining process exempt from the used oil processing standards, it can better ensure against mixing only to avoid compliance with the part 279 processing standards. If information becomes available that the 1% limit is inhibiting used oil recycling, the Agency will consider whether any change to the rules is necessary.

In the draft rule, EPA proposed to regulate petroleum refining facilities that receive used oil from off-site as used oil transfer facilities prior to mixing. However, EPA agrees with comments on the draft rule that petroleum refining facilities that receive used oil from off-site pose the same potential concerns associated with receipt of adulterated used oil and improper storage of used oil as used oil re-refiners. Petroleum refining facilities that receive used oil from off-site may not have adequate information to ensure that the used oil has not not been improperly mixed with listed hazardous waste. Also, the volumes of used oil that may be managed require adequate planning for dealing with emergency releases. EPA has therefore revised the final rule to provide that petroleum refining facilities that receive and store used oil from off-site are subject to the used oil processor standards prior to mixing. The principal effect of this change is that petroleum refiners that receive used oil from off-site must prepare a waste analysis plan to ensure that the used oil has not been mixed with hazardous waste and must maintain an operating record to document compliance with the waste analysis plan. In addition, such refineries will have to adopt or amend emergency contingency plans to address used oil in accordance with § 279.52 of the used oil management standards.

4. Section 279.10(g)(4)—Used Oil Inserted Into the Petroleum Refining Process After Crude Distillation or Catalytic Cracking

Under § 279.10(g)(4) of today's rule, used oil that is inserted into the petroleum refining process after crude distillation or catalytic cracking is exempt from the part 279 standards provided that the used oil meets the used oil specification prior to insertion. Used oil remains subject to part 279 standards up until its actual insertion into the petroleum refining process. As previously discussed, used oil generated on-site must be stored according to part 279, subpart C standards for used oil generators. Used oil generated off-site must be transported according to the part 279, subpart E standards for transporters and transfer facilities and stored according to the part 279, subpart F standards for used oil processor/re-refiners.

EPA's use of the terms "before" and "after" crude distillation or catalytic cracking is intended to distinguish between the initial part of the petroleum refining process where crude oil is the primary feedstock and is refined by undergoing crude distillation or catalytic cracking and the latter part of the petroleum refining process where crude oil residuals constitute the primary feed, and coke and asphalt are the primary products. Refinery processes that occur after crude distillation or catalytic cracking do not provide refining to the same extent as that which occurs as a result of crude distillation or catalytic cracking. Crude distillation or catalytic cracking is expressly designed to remove, alter, or otherwise immobilize contaminants in the normal course of the refining process. EPA has insufficient information on post-crude distillation or catalytic cracking units identified by commenters (e.g., asphalt towers, petroleum cokers), and is concerned about the possible environmental effects (e.g., air emissions, transfer of inorganics to asphalt or petroleum coke) of placing large amounts of off-specification used oil into the petroleum refining process without passing through the crude distillation or catalytic cracking units. In contrast, on-specification used oil may be burned in the same manner as virgin petroleum fuel in other situations, therefore it makes little sense to restrict its use as a feedstock to the petroleum coker (or in any other process "after" crude distillation or catalytic cracking).

It should be noted that if off-specification used oil is inserted into petroleum refining processes after crude distillation or catalytic cracking (e.g., a coker), the facility would be subject to the used oil processing requirements in part 279, subpart F. In addition, petroleum refining facilities that wish to insert on-specification used oil into the refining process after crude distillation or catalytic cracking and that are the first to claim that the used oil is on-specification (whether generated at the refinery, or at an off-site location), would be defined as marketers subject to the requirements for used oil marketers found in part 279, subpart H.

5. Section 279.10(g)(5)—Used Oil Captured by the Refinery's Hydrocarbon Recovery System or Wastewater Treatment System and Inserted Into Petroleum Refining Process

Section 279.10(g)(5) of today's rule exempts from the part 279 standards used oil that incidentally enters and is recovered from a petroleum refining facility's hydrocarbon recovery system or its wastewater treatment system (e.g., process sewer, storm sewer, or wastewater treatment units), if the recovered used oil is subsequently inserted into the petroleum refining

process. Oil (that may contain small amounts of used oil) that has been recovered from a refining facility's hydrocarbon recovery or wastewater treatment system is typically used as a feedstock in petroleum refining to produce more petroleum products. EPA understands that used oil, generated from routine refinery process operations and that incidentally enters a refinery's recovery or wastewater treatment system (e.g., drips, leaks, and spills from compressors, valves, and pumps), represents a small portion of the total oil that enters (and is then recovered from) the recovery or wastewater treatment system. Thus, the oil recovered from the system is more properly characterized as crude feedstock than used oil. Provided the used oil is inserted into the petroleum refining process, EPA believes that regulation under part 279 standards is unwarranted. This exemption from the part 279 standards does not extend to used oil which is intentionally introduced into a petroleum refinery's recovery or wastewater treatment system (e.g., pouring collected used oil into any part of the hydrocarbon recovery system, storm or process sewer system or into wastewater treatment units). Used oil may not be introduced to the refinery's hydrocarbon recovery or wastewater treatment system as a way to avoid meeting the conditions specified in § 279.10(g)(4).

For the purposes of the exemption in today's rule, the examples cited in the existing *de minimis* wastewater exclusion (§ 279.10(f)) provide guidance on what types of releases to a refinery's hydrocarbon recovery or wastewater treatment system would be considered "routine" or "incidental". The exemption is intended to cover losses from drippage, minor spillage, etc., that cannot be reasonably avoided. For example, used oil that has been collected from equipment or vehicle maintenance activities and intentionally introduced into a refinery's wastewater treatment system would not be exempt under § 279.1(g)(5) from the part 279 standards once recovered. Similarly, used oil that is generated off-site and is brought to the refinery may not be added to any portion of the refinery's wastewater treatment system (i.e., process sewer, storm sewer, or wastewater treatment units), and still be exempt under § 279.10(g)(5) once recovered; such oil is clearly not "incidentally captured" by the refinery's wastewater treatment system. In fact, unless specifically exempted under § 279.10(g)(2) or § 279.10(g)(3) of today's rule, this type of activity would meet the definition of used oil processing under the existing used oil management standards (see 40 CFR 279.1).

Today's rule does not preclude intentional introduction of used oil in to the facility's recovered oil tanks. EPA is aware that used oil from both on- and off-site is often added directly to the petroleum refining facility's recovered oil tanks. Mixtures of used oil and recovered oil that contain greater than 1% used oil are regulated as used oil. Mixtures of used oil and recovered oil that contain less than 1% used oil and are inserted into the petroleum refining process prior to crude distillation or catalytic cracking are exempt from the part 279 used oil management standards under § 279.10(g)(2). Mixtures of used oil and recovered oil that contain less than 1% used oil and are inserted into the petroleum refining process after crude distillation or catalytic cracking are exempt from the part 279 standards (under § 279.10(g)(4)) only if the used oil meets the used oil specification prior to mixing with recovered oil.

6. Section 279.10(g)(6)—Stock Tank Bottoms

Section 279.10(g)(6) of today's rule exempts tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil from the part 279 standards. Like the actual mixtures of used oil and crude oil, the bottoms from these mixtures are expected to contain insignificant amounts of used oil. Therefore, the Agency does not believe that the bottoms from tanks (or other units) containing mixtures of used oil and crude oil should be subject to the used oil management standards. The tank bottoms are subject to all other applicable requirements, i.e., the § 262.11 requirement to determine if they are hazardous waste.

D. Used Oil Transportation

Section 279.1—Definition of Transfer Facility

Today's rule revises the definition of transfer facility to allow used oil to be held at a location (i.e., a transfer facility) temporarily prior to activities that are not subject to the processor standards as a result of today's rulemaking. In the September 10, 1992 final rule, a transfer facility was defined as a transportation-related facility where shipments of used oil are held for more than 24 hours but less than 35 days during the normal course of transportation. Today's rule expands that definition to allow used oil to be held for more than 24 hours but less than 35 days during the normal course of transportation or prior to an activity performed pursuant to § 279.20(b)(2). Under the amended definition, as discussed below in section F of this preamble, a site to which used oil from oil-bearing electrical transformers is transported for filtering prior to reuse would be considered a transfer facility under today's definition.

E. Section 279.20(b)(2)(ii)—Used Oil Processing by Generators and Transfer Facilities

Since the promulgation of the September 10, 1992, Used Oil Management Standards, a number of parties have raised concerns regarding the definition of used oil processor and the types of activities that are covered by that definition. The commenters are concerned that a broad construction of the term processor inappropriately includes a number of very basic on-site generator activities that the Agency did not intend to regulate under the used oil processor standards (e.g. reconditioning/maintenance to extend the life of used oil, separation of used oil from wastewater discharge, etc.). EPA agrees that activities such as these, when performed by the generator, were not intended to be covered under the used oil processor standards because used oil processing is not their primary purpose, as explained below in greater detail. In fact, too broad an interpretation of the processor definition may discourage environmentally beneficial recycling and waste minimization activities by imposing an unwarranted regulatory burden on owners and operators that EPA did not intend to regulate as used oil processors.

Therefore, today's rule revises the used oil management regulations to clarify the Agency's intent regarding the definition of a used oil processor by specifying those on-site maintenance, filtering, and separation activities that are not, and were not intended to be subject to the used oil processing standards. Under today's rule, generators [1] who only handle used oil in a manner specified under § 279.20(b)(2)(ii) are not processors provided that the used oil is generated on-site and is not being sent directly off-site to a burner of on- or off-specification used oil fuel. (Section 279.20(b)(2)(ii) also applies to collection

[1] A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulations. For example, generators include all persons and businesses who produce used oil through commercial or industrial operations and vehicle services, including government agencies, and/or persons and businesses who collect used oil from households and "do-it-yourself" oil changes.

centers and aggregation points since these entities are regulated as generators.)

Activities that EPA did not intend to include under the definition of used oil processor are described below. EPA does not believe that the activities identified in § 279.20(b)(2)(ii) should be subject to the used oil processor standards because used oil processing is not the primary purpose of these activities i.e., the primary purpose of these activities is not to produce from used oil or to make it more amenable for the production of used oil derived products, and the Agency does not expect these limited activities will pose the same kinds of environmental problems that may occur at processor facilities. Instead, in these cases, the act of mixing, filtering, separating, draining etc., used oil by the generator constitutes a basic step that is incidental or ancillary to a primary activity which is distinct from used oil processing. It is important to note, however, that owners or operators who generate used oil as a result of any of the activities specified in § 279.20(b)(2)(ii) are considered used oil generators and are subject to the generator standards in subpart C.

EPA is allowing on-site but not off-site burning of used oil generated from designated on-site activities because the Agency believes that this approach best enables EPA to strike a reasonable balance between encouraging beneficial on-site reuse and recycling activities that should pose very limited risks, on one hand, and ensuring that activities undertaken primarily to make used oil more amenable for burning (i.e., used oil processing) are adequately controlled under the more stringent used oil processing standards.

The definition of a used oil processor is based on the purpose for which used oil is being filtered, separated, or otherwise reconditioned (i.e., whether the activity is designed to produce used oil derived products or to make used oil more amenable for the production of used oil derived products). The Agency is concerned that in situations where used oil is being filtered, separated or otherwise reconditioned and then sent to off-site burners, the purpose of the activity may prove difficult to discern and that consequently, § 279.20(b)(2)(ii) provisions may be used as a means to avoid compliance with the used oil processor standards (i.e., by persons who claim not to be used oil processors under the § 279.20(b)(2)(ii) provisions but whose primary purpose is to make the used oil more suitable for burning). Therefore, EPA believes it is necessary to adopt an objective measure of the purpose of the activity. The Agency believes that a prohibition against sending used oil generated from specified on-site activities to off-site burners provides the most practical and effective way to ensure that activities undertaken only to make used oil more amenable for burning are subject to the used oil processor standards.

1. Definition of Used Oil Processor

(A) Reconditioning used oil before returning it for reuse by the generator. Under today's rule facility owners or operators who clean, separate, or otherwise recondition used oil generated on-site and then reuse it are not considered used oil processors, provided that the reconditioned used oil is being reused by the owner or operator who generated it. Examples of activities covered under this category include filtering of metalworking fluids for reuse, and filtering and then replacing oil from oil-bearing transformers and turbines during routine maintenance.

Most manufacturing facilities have in place central filtration systems designed to remove contaminants from and extend the life of water-soluble metal working fluids (e.g., lubricants and coolants), used in machining, grinding, and boring equipment. These filtration systems are on-site systems that filter chips, metal fines, dirt, water, and other contaminants from cutting fluids, drawing lubricants and coolants used in machining operations. The filtration of these extraneous materials is designed to extend the life of the reusable coolants and lubricants and is incidental to the production process. Today's rule clarifies that this type of filtration activity is not subject to the used oil processing standards when the generator reuses the filtered oil.

Similarly, during regularly scheduled maintenance of oil-bearing transformers and turbines, the oil in the electrical equipment is removed so that repairs/maintenance can be performed. In some instances, the oil is filtered prior to replacement. The filtering of the used oil is done to extend the life of the used oil, not because the oil is no longer useful, and is therefore ancillary to the equipment repair and maintenance. While, under today's rule, the owner or operator would not be considered a processor in these cases, the draining of the used oil from the transformer constitutes generation of used oil so that the facility would be considered a used oil generator.

The Agency is aware that not all used transformer oil is drained and filtered in the field. Instead, the oil-bearing electrical equipment may be transported to a central location where the oil is removed, filtered, and replaced. Or, the used oil may be removed from the transformers or turbines in the field and then transported separately in a tanker truck to a central location where it is filtered and put back into electrical equipment. Under today's rule, in cases where electrical equipment containing used oil is transported to a central location, the transporter of the oil bearing electrical equipment would not be considered a used oil transporter. However, the owner or operator would become a generator at the point at which the used oil is drained from the equipment (i.e., at the site where the oil is drained and filtered).

In cases where the used oil is removed from the transformers or turbines in the field and then transported separately in a tanker truck to a central location for filtering prior to replacement into electrical equipment, the owner or operator would become a generator in the field (i.e., at the point at which the used oil is drained). The person who then transports the used oil would also be considered a used oil transporter subject to the transporter standards. In these cases, the location at which the used oil is filtered would be considered a used oil transfer facility subject to the transfer facility standards in § 279.45, provided that the used oil is stored at the site for more than 24 hours and less than 35 days. If the used oil is filtered within 24 hours of being drained (i.e., during transport) only the part 279 standards for used oil transporters would apply. This filtering activity should not raise the kind of environmental concerns that would be present at used oil processors; essentially, the filtering is incidental to the transportation and storage and should not change a facility's regulatory status. As discussed in more detail below, today's rule provides that transporters of used oil that is removed from electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to the same use are not subject to the processor or re-refiner requirements in subpart F. In accordance with § 279.10(e), once the used oil has been reclaimed to the point where it is ready for reuse without further processing, it is not subject to regulation as used oil.

(B) *Separating used oil from wastewater to make wastewater acceptable for discharge or reuse.* Today's rule clarifies that oil/water separation activities designed to make wastewater acceptable for discharge or reuse are not subject to the used oil processor standards. Facilities often use oil/water separators to remove oil (which may contain used oil) from oil/

water mixtures collected from the facility's storm sewer, process sewer, sumps and other wastewater containment areas. These separation systems use chemical and physical methods to break the oil/water emulsion and recover oil from the wastewater in order to make the wastewater or storm water acceptable for discharge or reuse in compliance with local, state and federal regulations.

This type of pretreatment of wastewater containing oil is designed primarily to ensure that the wastewater meets established limits for water discharge to streams and POTWs, and not to produce used oil derived products or to make used oil more amenable for the production of used oil derived products. This type of oil/water separation activity is therefore not subject to the used oil processor standards as clarified under today's rule. It should be noted, however, that any used oil recovered from separator units would be subject to the used oil generator standards. It is also important to note that this provision applies only to used oil that is generated on-site. The provision would apply, for example, to simple oil water separation activities conducted (for purposes of wastewater discharge) by a used oil processor on wastewater which has been generated by that processor. However, persons who perform oil/water separation activities on oily wastewater received from off-site would be considered used oil processors.

(C) Using oil mist collectors to remove droplets of used oil from in-plant air to make plant air suitable for continued recirculation. As clarified under today's rule, the act of removing used oil from ambient air in the workplace is not subject to the used oil processor standards. At manufacturing facilities, droplets of used oil from machining operations are often dispersed into in-plant air. Oil mist collectors physically remove the small droplets of oil present in the ambient air. This activity is not subject to the used oil processing standards because it is intended primarily to make plant air suitable for continued recirculation and not to produce products from used oil or to make it more amenable for the production of used oil derived products. However, the oil removed from oil mist collectors is subject to the used oil generator standards.

(D) Removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil. Under § 279.10(c) of the used oil standards, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material are not used oil except when burned for energy recovery. Today's rule clarifies that the Agency does not consider the removal of used oil from materials containing or contaminated with used oil in order to remove excess oil in accordance with § 279.10(c) to be used oil processing. The production of used oil derived products is clearly not the primary reason for removing used oil from materials containing or contaminated with used oil. Instead, the activity is conducted primarily to clean the materials (e.g., machine tools, scrap metal, etc.) prior to reuse, recycling, or disposal and is therefore not subject to the used oil processing standards as clarified by today's rule. However, in removing the used oil from the materials, the owner or operator becomes a used oil generator subject to the Subpart C used oil generator standards.

(E) Filtering, separating, or otherwise reconditioning used oil before burning it in a space heater. Under § 279.23 of the used oil standards, used oil may be burned in a used oil-fired space heater under specified conditions, and provided that the space heater burns only used oil that the owner or operator generates and/or used oil obtained from household DIY oil changers. Prior to burning, the used oil must often be filtered to remove impurities. Today's rule clarifies that filtering of used oil for the purpose of removing contaminants prior to burning the used oil in a space heater is not considered processing of used oil.

EPA provided a regulatory exemption from the used oil burning standards for generators who burn used oil in on-site space heaters (in accordance with § 279.23) because the Agency believes that burning of small amounts of used oil in space heaters poses insignificant risks due to the small volume of used oil burned (see 50 FR 49194, Nov. 29, 1985). The Agency believes that, because of the small volumes of used oil involved, filtering, separating, or otherwise reconditioning used oil that is generated on-site prior to burning it in a space heater would also not pose significant risk. Therefore, although the purpose of the filtering activity in this case is to make the used oil more amenable for burning, because of the small amounts of used oil being filtered for this purpose, the Agency does not believe that imposition of the used oil processor standards is warranted. EPA is therefore adding a regulatory clarification (§ 279.20(b)(2)(ii)(F)) that the used oil processor standards do not apply to filtering of used oil prior to burning it in a space heater, provided that the used oil is generated on-site or obtained from households or "do-it-yourself" oil changes.

F. Section 279.41—Restrictions on transporters who are not also processors or re-refiners and changes to the definition of transfer facility.

Today's rule amends § 279.41 to provide that transporters of used oil that is removed from oil-bearing transformers and turbines and filtered by a transporter or at a transfer facility before being returned to its original use are not subject to the used oil processor and re-refiner requirements. As previously discussed, during routine maintenance of oil-bearing transformers and turbines (or similar equipment), the oil in the electrical equipment is removed so that repairs/ maintenance can be performed. In some cases, the used oil is removed from the transformers or turbines in the field and then transported separately in a tanker truck (subject to the used oil transporter standards) to a central location where it is filtered and put back into electrical equipment. As discussed above, under today's rule the filtering of the used oil would not be considered used oil processing provided that the filtered oil is reused in the same or similar manner. And, in these cases (i.e., where the used oil is removed from the equipment and transported to a separate location for filtering), the location at which the oil is filtered would be considered a transfer facility provided that the used oil is stored for more than 24 hours and less than 35 days. If, as sometimes occurs, the used oil is filtered within 24 hours of being stored at the central location (i.e., during transport) the only applicable standards would be the part 279 standards for used oil transporters (i.e., the § 279.45 requirements for used oil storage at transfer facilities would not apply).

Section 279.41(c) of today's rule provides conforming changes to the used oil transportation standards to allow transporters or transfer facilities to filter the used oil without being subject to the used oil processor standards. It should be clearly noted, however, that if the used oil is stored at a site for more than 35 days, greater environmental concerns may be present, so the site would no longer be considered a transfer facility and the processor standards would apply.

In addition, this rule expands the definition of transfer facility to allow used oil to be held at a location (i.e., a transfer facility) temporarily prior to activities that are exempt from or

performed pursuant to the part 279 standards as a result of today's rulemaking. Under today's revised definition, used oil can be held at a transfer facility for more than 24 hours but less than 35 days prior to an activity and performed pursuant to § 279.20(b)(2). As a result of this change, a site where used oil that has been drained from oil-bearing transformers and turbines is held for more than 24 hours and less than 35 days prior to being filtered for reuse would be considered a transfer facility.

G. Section 279.46—Tracking Today's rule revises the § 279.46 tracking requirements as they apply to rail transporters. Under amended § 279.46, a signature is not required on records of acceptance or records of delivery of used oil shipments that are exchanged between rail transporters. The Agency is making this change in response to comments submitted by the railroad industry regarding the impracticability of requiring signed receipts when used oil is transferred from one rail transporter to another. EPA is aware that rail cars are typically transferred from one railroad company to another without the face-to-face contact that occurs in, for example, the motor carrier industry. The Agency also recognizes that, unlike non-rail transporters, railroads rely on sophisticated electronic tracking and information systems for recording rail-to-rail transfer of cargo. Given these unique circumstances, and in light of the fact that 40 CFR 263.20(f) regulations for hazardous waste transporters do not include signature requirements for intermediate rail carriers, EPA agrees that the signature requirements are unduly burdensome and unnecessary when applied to intermediate used oil rail transporters. EPA is therefore revising the used oil regulations to eliminate the § 279.46 signature requirements between intermediate rail carriers.

H. Corrections to the Regulatory Language

1. Requirements for Enforcement Authority

The Agency published a correction notice on May 3, 1993, which amended several sections of the part 279 used oil management standards that were originally promulgated on September 10, 1992. In the May 3, 1993, correction notice, EPA incorrectly amended regulatory § 271.16, that addressed the requirements for States to have adequate criminal enforcement authority for hazardous waste. EPA amended the regulation to include enforcement authority for used oil handlers that manage used oil incorrectly, but EPA inadvertently deleted from § 271.16 enforcement authority for the improper management of hazardous waste. Therefore, today's rule corrects this section to include enforcement authority for the improper management of both hazardous waste and used oil.

2. Rebuttable Presumption

The final used oil regulations published on September 10, 1992, allow persons to rebut the presumption that used oil containing more than 1,000 ppm total halogens is a hazardous waste by using an analytical method from SW–846, Third Edition, to show that the used oil does not contain hazardous waste. In the regulations, the Agency provided information on the cost of SW–846, Edition III and how to obtain it. However, the Agency misquoted the cost of the document. The actual cost was $319.00 rather than $110.00 as quoted throughout the September 10, 1992, regulations. To avoid having to amend the regulations as a result of future changes in the cost of the document, the Agency is deleting reference to the cost of SW–846, Edition III from the used oil regulations.

3. Characteristic Hazardous Waste

Today's rule revises § 279.10(b)(2)(iii) by deleting reference to the listing status (under part 261, subpart D) of a hazardous waste that is mixed with used oil. This change is necessary to correct a contradiction in the regulations regarding applicability of the used oil management standards to mixtures of used oil and hazardous waste that is listed in subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C. In technical corrections to the used oil management standards published on May 3, 1993, (57 FR 26420), EPA amended § 279.10(b)(2) to correct an error in the September 10, 1992, standards regarding how these mixtures are regulated. At that time, conforming changes should have been, but were not made to § 279.10(b)(2)(iii). As amended by today's rule, § 279.10(b)(2)(iii) correctly provides that mixtures of used oil and hazardous waste that solely exhibits one or more hazardous waste characteristic and mixtures of used oil and hazardous waste that is listed in subpart D solely because it exhibits one or more subpart C hazardous characteristics are regulated as used oil if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability and the resultant mixture does not exhibit the characteristic of ignitability.

IV. State Authorization

As explained in the preamble to the May 3, 1993, Technical Correction to the September 10, 1992, rule, EPA is treating the majority of the final used oil management standards in the same manner as "non-HSWA" Subtitle C requirements. The used oil management standards became effective on March 8, 1993, only in those States and Territories that do not have RCRA base program authorization and on Indian lands. States are required to revise their Subtitle C base programs to adopt the new used oil requirements (including those promulgated in today's rule) by July 1, 1994, or by July 1, 1995, if a statutory change is necessary. See 58 FR 26420 and 57 FR 41605.

Authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(k). Except for the amendments made to § 279.20(b), the standards promulgated today are less stringent than or reduce the scope of the existing Federal requirements. The amendments made to § 279.20(b) merely provide clarification of the existing used oil regulations and are therefore not considered to be less stringent than the current Federal program. Therefore, with the exception of the provisions added at § 279.20(b)(2)(i), authorized States would not be required to modify their programs to adopt requirements equivalent to or substantially equivalent to the provision listed above.

V. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipient 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."

OMB has exempted this regulatory action from E.O. 12866 review.

VI. Paperwork Reduction Act

The reporting and recordkeeping requirements of part 279 have been approved by OMB and generally assigned the control number 2050–0124 (See 58 FR 34374 (June 25, 1993)), which remains in effect. As today's rule does not impose any new such requirements, a separate information collection request was not prepared.

VII. Regulatory Flexibility Act

Today's rule does not impose any new regulatory requirements, and indeed, decreases the costs of compliance for a number of facilities. I therefore certify that today's rule will not have a significant impact or a substantial number of small entities.

VIII. Administrative Procedures Act

Today's rule takes final action on EPA's 1985 and 1991 proposals to exempt used oil inserted into primary refining processes from the used oil management standards. EPA did not address these issues in its September 10, 1992, final rule, and therefore those proposals remained outstanding until today's rule. Since these issues were fully addressed in those proposals, further public comment on today's rule is unnecessary. The other changes being made in today's rule either correct errors or clarify the language contained in the September 10, 1992 rule. No comment is necessary on these provisions.

List of Subjects

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Petroleum, Recycling, Reporting and recordkeeping requirements, Used oil.

Dated: February 25, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.16 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 271.16 Requirements for enforcement authority.

(a) * * *

(3) * * *

(ii) Criminal remedies shall be obtainable against any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; who knowingly transports, treats, stores, disposes, recycles, causes to be transported, or otherwise handles any used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as a hazardous waste under the state's hazardous waste program in violation of standards or regulations for management of such used oil; or who makes any false statement, or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of program compliance (including compliance with any standards or regulations for used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as hazardous waste). Criminal fines shall be recoverable in at least the amount of $10,000 per day for each violation, and imprisonment for at least six months shall be available.

* * * * *

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

3. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

4. In § 279.1 the definition of "Petroleum refining facility" is added in alphabetical order and the definition of "Used oil transfer facility" is revised to read as follows:

§ 279.1 Definitions.

* * * * *

Petroleum refining facility means an establishment primarily engaged in producing gasoline, kerosine, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).

* * * * *

Used oil transfer facility means any transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to § 279.20(b)(2). Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this part.

§ 279.10 [Amended]

5. Section 279.10(b)(1)(ii) is amended by removing the phrase "for the cost of $110.00."

6. Section 279.10 is amended by revising paragraphs (b)(2)(iii) and (g) to read as follows:

§ 279.10 Applicability.

* * * * *

(b) * * *

(2) * * *

(iii) Regulation as used oil under this part, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability (e.g., ignitable-only mineral spirits), provided that the resultant mixture does not exhibit the characteristic of ignitability under § 261.21 of this chapter.

* * * * *

(g) *Used oil introduced into crude oil pipelines or a petroleum refining facility.* (1) Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this part. The used oil is subject to the requirements of this part prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking

are exempt from the requirements of this part.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this part provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this part only if the used oil meets the specification of § 279.11. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this part. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the waste water treatment system).

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this part.

* * * * *

7. Section 279.20 is amended by revising paragraph (b)(2) to read as follows:

§ 279.20 Applicability.

* * * * *

(b) * * *

(2) (i) Except as provided in paragraph (b)(2)(ii) of this section, generators who process or re-refine used oil must also comply with subpart F of this part.

(ii) Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewaters;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to § 279.10(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to § 279.23.

* * * * *

8. Section 279.41 is amended by adding paragraph (c) to read as follows:

§ 279.41 Restrictions on transporters who are not also processors or re-refiners.

* * * * *

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in subpart F of this part.

§ 279.44 [Amended]

9. Section 279.44(c) introductory text is amended by removing the phrase "for the cost of $110.00."

10. Section 279.46 is amended by revising paragraphs (a)(5) and (b)(5) to read as follows:

§ 279.46 Tracking.

* * * * *

(a) * * *

(5) (i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) * * *

(5) (i) Except as provided in paragraph (b)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

* * * * *

§ 279.53 [Amended]

11. Section 279.53(c) introductory text is amended by removing the phrase "for the cost of $110.00."

§ 279.63 [Amended]

12. Section 279.63(c) is amended by removing the phrase "for the cost of $110.00."

[FR Doc. 94–4818 Filed 3–3–94; 8:45 am]
BILLING CODE 6560–50–P

federal register

Friday
March 4, 1994

Part VI

Department of Commerce

National Telecommunications and Information Administration

Telecommunications and Information Infrastructure Assistance Program (TIIAP); Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 940118–4018]

RIN 0660–AA04

Telecommunications and Information Infrastructure Assistance Program (TIIAP)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces the availability of funds for planning and demonstration projects to promote the goals of development and widespread availability of advanced telecommunications technologies; to enhance the delivery of social services and generally serve the public interest; to promote access to government information and increase civic participation; and to support the advancement of an advanced nationwide telecommunications and information infrastructure.

DATES: Applications for the TIIAP must be mailed or hand-carried to the address indicated below and received by NTIA on or before 5 p.m., May 12, 1994. NTIA anticipates that it will take between three to four months to process all applications and make final funding determinations.

ADDRESSES: Office of Telecommunications and Information Applications, Department of Commerce, National Telecommunications and Information Administration, 14th Street and Constitution Avenue, NW., room H–4889, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Charles M. Rush, Acting Director of the Office of Telecommunications and Information Applications, Telephone: (202) 482–2048; fax: (202) 482–2156; e-mail: tiiap@ntia.doc.gov Information on the program may also be downloaded from the NTIA Bulletin Board. Modem should be set at either 2400 or 9600 baud, 8 data bits, 1 stop bit: (202) 482–1199.

SUPPLEMENTARY INFORMATION:

Authority

The National Telecommunications and Information Administration (NTIA), Department of Commerce, serves as the President's principal adviser on telecommunications and information policy. NTIA's functions were codified as part of the Telecommunications Authorization Act of 1992, Public Law 102–538, 106 Stat. 3533, 47 U.S.C. 901–04 (1993).

The Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1993, Public Law 103–121, 107 Stat. 1153 (1993), provides the Department of Commerce $26 million in assistance for public telecommunications facilities under 47 U.S.C. 390–393A (1991), to be used for the planning and construction of telecommunications networks for the provision of educational, cultural, health care, public information, public safety or other social services (notwithstanding the requirements of 47 U.S.C. 392 (a) and (c)).

Program Description

NTIA announces a competitive grant program, the TIIAP, created to advance the goals of the Administration's National Information Infrastructure (NII) initiative. Major goals of the NII initiative include: The promotion of private sector investment through appropriate tax and regulatory policies; the extension of universal service so that information is available to all at affordable prices, using the widest variety of appropriate technologies; the promotion of technological innovation and new applications; wider access to government information; and guarantees of information security and network reliability.

For details of the NII initiative, see The National Information Infrastructure: Agenda for Action, 58 FR 49025 (September 21, 1993). This document is available on Internet, in ASCII format through both FTP and Gopher. The FTP file name is "niiagenda.asc." Address: "ftp.ntia.doc.gov." Login as "anonymous". Use your e-mail address or guest as the password. Change directory to "pub." The Gopher address is "gopher.nist.gov." Login as "gopher." Choose the menu item "DOC Documents." Choose "ntiaagenda.asc."

The TIIAP will provide matching grants to state and local governments, non-profit health care providers, school districts, libraries, universities, public safety services, and other non-profit entities. Grants will be awarded after a competitive merit review process and will be used to fund projects to connect institutions to existing networks and systems, enhance communications networks and systems that are currently operational, establish new network capabilities, permit users to interconnect among different networks and systems, and bring more users on-line. Equally important, they will help leverage the resources and creativity of the private sector to devise new applications and uses of the NII. The success of these pilot projects will create an ongoing process that will generate more innovative approaches each year.

Funding Availability

Congress appropriated $26 million for competitive information infrastructure grants in fiscal year 1994 for the planning and construction of telecommunications networks for the enhancement of equal opportunity and the provision of educational, cultural, health care, public information, library, public safety or other social services. NTIA expects that the level of competition will be extremely high. The overall level of funding will place obvious limits on the amount of funding available for individual grants, although NTIA anticipates receiving a wide range of grant proposals.

Currently, there is pending legislation to authorize an infrastructure grant program for fiscal years 1995 and 1996 that would continue to advance the goals of the grant program described in this Notice for fiscal year 1994 funds. NTIA anticipates that the pending authorization legislation will, if enacted, prescribe standards fully consistent with the criteria set forth in this Notice (criteria that are set as a matter of NTIA's administrative discretion, consistent with NTIA's existing statutory authorities; see 47 U.S.C. 392 (1991)). Nevertheless, it must be emphasized that, until new authorizing legislation is enacted, NTIA cannot unequivocally state what specific criteria it will apply in evaluating grant applications for fiscal years 1995 and 1996. Accordingly, the criteria described below apply only to fiscal year 1994 project proposals.

Matching Requirements

Grant recipients under this program will be required to provide matching funds toward the total project cost. NTIA will provide up to fifty per cent (50%) of the total project cost, unless extraordinary circumstances warrant a grant of up to seventy-five per cent (75%). A project will not be considered grantable unless the applicant can document a capacity both to supply matching funds, and to sustain the project beyond the period of the award. Cash matching is highly desirable; however, NTIA will allow in-kind matching on a case-by-case basis. Federal funds may not be used as matching monies. Grant funds under this program will be released in direct proportion to local matching funds raised and/or documented.

Type of Funding Instrument

The funding instrument for awards under this program shall be a grant.

Eligibility Criteria

The fiscal year 1994 grant cycle of the TIIAP is divided into two separate categories. Category One supports the efforts of all eligible applicants (state and local governments, as well as non-profit entities) to develop their information infrastructures through demonstration projects. NTIA considers this to be the principal funding category. Category Two focuses on planning grants, and is further divided into two subcategories. The first subcategory supports planning efforts that project a statewide, multi-state, or national impact. The second subcategory supports the planning efforts with an intrastate or local impact. State and local governments, as well as multi-state and/or non-profit entities are eligible to apply in all categories.

Award Period

Successful applicants will have between six and eighteen months to complete their projects. The actual time will vary depending on the complexity of any particular project. During the award period, NTIA has a duty to monitor and evaluate the projects it funds through the TIIAP. Typically, monitoring will involve site visits by NTIA staff and designated evaluators, informal telephone contact, and evaluation of the grantees' written reports. NTIA also expects that grantees, working with NTIA, will evaluate the results of their projects, and formalize and disseminate information about the lessons learned therefrom. Further information on NTIA's duty to monitor funded projects, as well as NTIA's evaluation expectations, is contained in the grant application kit.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or one hundred per cent (100%) of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit

Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev 4–88), shall be used in applying for financial assistance. The forms used in the Application are subject to the Paperwork Reduction Act, and have been cleared by the Office of Management and Budget under Control Numbers 0348–0043, 0348–0044, and 0348–0040. Application kits may be obtained by writing to the address listed in the ADDRESSES section above.

Project Funding Priorities

Funding under the TIIAP will be awarded to support projects that most effectively enhance economic opportunity, the provision of education, culture, health care, public information, library, public safety, social services, or other efforts to meet public needs; and that support the further development of a nationwide, high-speed, interactive infrastructure, incorporating the widest variety of information technologies. The number of proposals that will receive funding in each of the two categories will depend, in large measure, on the total number of applications that NTIA receives. Because the aggregate funding level of individual grants cannot be determined in advance, applicants must justify the amounts requested.

NTIA anticipates that approximately sixty per cent (60%) of the funds appropriated for this grant program will be devoted to demonstration projects, with approximately forty per cent (40%) of the funds devoted to planning grants for states, local governments, regional entities, and non-profit entities. Details of funding priorities within these categories are as follows:

Priority in Category One—Demonstration Projects

A priority for demonstration project grants is that the project develop a model that others can follow. An important element of this model is a plan for disseminating the knowledge gained as a result of carrying out the project. In NTIA's view, this nation's telecommunications infrastructure should reinforce the values of American democracy, and the TIIAP should support projects that empower citizens, promote equal opportunity, protect individuals' rights, and strengthen democratic institutions.

Therefore, within the context of this category, all applications in the public interest are candidates for support; however, principal consideration will be given to telecommunications and information applications that promote economic opportunity and the effective provision of education, health care, public safety, libraries, community information services, creation of information empowerment zones, and other approaches that foster public participation in the political process and civic life.

Priorities in Category Two—Planning Grants

Statewide, Regional, and National Planning Grants

Priority consideration will be given to projects whose impact will be statewide, regional (multi-state), or national. A component of this category will be support for states to engage in comprehensive telecommunications infrastructure planning, particularly those states that have not yet developed detailed strategies for their respective information infrastructures. NTIA will also consider, but with a lower priority, applications from states that have developed comprehensive plans, but seek further improvement in these plans. NTIA also encourages proposals from multi-state consortia, as well as from organizations, or coalitions of organizations, for regional or national telecommunications infrastructure planning.

Local and Intrastate Planning Grants

NTIA will deem most competitive those projects that clearly and demonstrably further the goals of this program at a community, county, or multi-county level. While the focus of this subcategory is local, NTIA encourages collaborations among counties, communities, and public and private organizations at the local or regional level, as well as coordination with state agencies involved with telecommunications infrastructure planning and implementation.

Evaluation Criteria

A. General Criteria

As a network of networks, the telecommunications component of the National Information Infrastructure will never be a single entity. In fact, telecommunications networks and systems in the United States have been growing and evolving for more than a century. This trend will continue (and supporting it is a primary policy goal of the NII initiative), driven by technological innovation, market forces, and the elaboration of increasingly sophisticated and varied information delivery systems throughout the world. Applicants should be aware of this trend, and configure their proposed projects to take advantage of existing and emerging standards for interoperability.

The success of any grant program depends upon its ability to fund only those projects that are well thought out and comprehensively planned.

Therefore, no funds will be expended under this program unless the project demonstrates the most economic and efficient use of scarce Federal resources. Other general criteria that all applicants should address are:

1. Technical Considerations

A major goal of the NII is the integration of networks. The TIIAP will not foster stand-alone, "dedicated networks," that are incapable, for either technical or practical reasons, of interconnecting with other networks and systems. In part, applicants will be judged on the extent to which they plan to coordinate information infrastructure activities in their state, in neighboring states, or in the region. Applicants should address the technical aspects of their information infrastructure projects. Proposals should address interconnectivity, the capacity of one system to easily transfer digital information to another system, at the state, regional, national, and international level, as appropriate. Whether the information infrastructure will be expandable is another important issue. The standards, codes, and protocols that will allow for interoperability should be addressed in this section. Finally, the capacity for interactivity should be described in detail.

2. Partnerships

NTIA will look favorably on joint applications from partnerships of two or more entities. For this reason, applicants should be aware of other relevant information infrastructure projects in the state or region. To the extent possible, applicants should plan to coordinate their projects with other relevant projects.

3. Innovation and Experimentation

An overriding goal of the TIIAP is to foster innovation and experimentation in the uses and benefits that accrue from information infrastructure, while at the same time rewarding those projects which display innovative approaches to the problem of ensuring individual privacy. For this reason, the program will carefully assess projects from the perspective of technology or technologies deployed, current applications supported, and the potential for growth in the range of services provided. As noted above, NTIA expects applicants to consider carefully the status of the existing infrastructure; however, applicants should be willing, when appropriate, to experiment with new uses and applications of the information infrastructure supported under this program.

4. Privacy

As noted above, NTIA expects applicants to consider carefully safeguards for the privacy of the information flowing through the information infrastructure funded through this grant program. While not mandating specifics, NTIA expects applicants to demonstrate a high level of respect for the privacy of users' information and data. Applicants proposing projects dealing with individually identifiable information will be required to prescribe mechanisms for protecting individual privacy. In addition, NTIA expects applicants to comply fully with all applicable privacy laws.

5. Eliminating Disparity of Access

One of the key roles for government in the NII is to promote equity of access, so that the information age does not create information "haves" and "have nots." Applicants should address how they intend to support the goal of promoting widespread access, and eliminating or reducing disparities in access, to the information infrastructure, consistent with the scope of the project. For purposes of this grant cycle, NTIA will look favorably on proposals that enable ordinary Americans to learn how to use, or benefit from, information infrastructure, without unreasonable burden or expense. Applicants should also consider how to train end-users in the use of information technologies. This section should address questions such as:

How will the applicant's proposal help ensure end-user ease of access to the telecommunications infrastructure?

How will the planning or implementation process encourage community development?

How will the planning or implementation process address the issue of access to the information infrastructure by minorities, disadvantaged, or otherwise under-served populations?

6. Role of Existing Information Infrastructure

By a variety of measures, the United States' existing information infrastructure is the most advanced in the world. Therefore, if an applicant requests support to construct new transmission capacity, there should be a clear discussion of why utilization of existing networks and systems cannot be relied upon efficiently and economically to meet the project's needs. A proposal should address whether incorporation of existing information infrastructure into the overall plan is feasible. Under this section, applicants should address questions such as:

What information infrastructure is currently available to the applicant? How can commercial and non-commercial providers of telecommunications and information services help the applicant meet its information needs?

7. Accommodation of Future Technology and Flexibility

As communications and information technologies rapidly evolve and improve, existing technology can quickly become obsolete. For this reason, all applicants should consider how they intend to address this issue. The capacity for upgrades and improvements, as well as the flexibility to accommodate changes in the volume or types of uses, should be considered from the beginning of any planning or development process.

8. Contribution to the Formation of the National Information Infrastructure

Applicants should explain how their proposed projects can make a contribution to the development of the National Information Infrastructure. Some questions that an applicant could consider are:

What applications and services are being provided through the existing information infrastructure?

How will the project ensure connectivity to other systems outside the immediate state or community?

What monitoring or evaluation plan will be utilized?

B. Specific Evaluative Criteria

1. Category One—Demonstration Projects

a. *Eligibility.* This category is open to any state or local government, or any non-profit entity. For purposes of this notice, a "local government" is any branch of government below the state level. This term also includes special purpose subdivisions, or government-funded entities that have responsibilities beyond the political boundaries of a single state, and Indian Tribal governments. A "non-profit" entity is any foundation, association, or corporation, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. This is the same definition used in 47 U.S.C. 397 (1991).

b. *Evaluative criteria.* A major criterion under this category will be the capability of the applicant actually to carry out the proposed project and/or the applicant's ability to deliver the proposed service or services. In addition to the general evaluative criteria set forth above, applicants for

demonstration projects should address the following criteria in their applications: (1) *Connection to end-users.* In formulating their proposals, applicants should be mindful of the needs of eventual end-users. Any system or network proposed for NTIA funding should include capacity for providing a range of information services, consistent both with the mission of the entity and the present and future requirements of end-users. Questions applicants might address are:

To what degree does the project duplicate other services available to users in the projected service area?

To what degree does the project include provisions for multifunctional activities—such as education, health care, community information services, etc.—and access to related information sources?

Will the project be structured to respond to increased demands for services from users?

(2) *Efficiency and economy.* In this era of limited fiscal resources, it is essential that each dollar be spent in the most efficient and economical manner possible. Some questions that the applicant might consider under this criterion are:

Is the proposed acquisition of information infrastructure, with NTIA grant funds, the most efficient and economical?

Why is the applicant's choice of technology the most appropriate to the proposal?

How will the system or equipment funded by NTIA be maintained? Is its operation assured for a reasonable amount of time after installation?

How does the applicant intend to deal with rapidly changing technology and issues of obsolescence?

What role will available commercial services play in the proposed project?

(3) *End-user support.* A large barrier to more successful utilization of information infrastructure is the end-user's inability to employ it. Therefore, applicants should consider how end-users will be trained to use the equipment and network. Some questions that the applicant might address are:

Are there specialized training requirements for the system?

Who is best qualified to provide the training?

Can end-users use the system to produce and disseminate information, as well as gain access to information?

Is the system or network user friendly, so that it does not discourage new users, or those who are not "computer literate?"

c. *Financial information.* Grant funds may be spent on purchase of telecommunications infrastructure equipment, long-term lease of services, end-user support, and other expenses reasonably related to the project.

2. Category Two—Planning Grants

Statewide, Regional, and National Planning Grants

a. Eligibility

For purposes of this section—Statewide, Regional, and National Planning Grants—eligible applicants are any of the fifty states, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, America Samoa, and the Marianas Islands, as well as multi-state consortia, coalitions of organizations, or national entities.

b. Evaluative Criteria

In addition to the general evaluative criteria set forth above, applicants for planning projects should address the following criteria in their applications: (1) *Objectives.* Proposals should be consistent with the long range NII objective of fostering seamless, multi-functional networks. Accordingly, applicants should consider the concept of "interoperability," the view that every system, no matter its level of sophistication or geographic extent, is part, ultimately, of a global communication system that allows one end-user to communicate "transparently" with another end-user, irrespective of distance or time.

(2) *End-users.* In their proposals, applicants should identify the end-users of the information infrastructure. Considerations of numbers of users, the diversity of anticipated end-users, and what social good the applicant expects from implementation of its plan may help determine what strategies states will adopt. Under this section, applicants could address questions such as:

How will the widespread availability of telecommunications and information infrastructure capabilities be promoted within the proposal?

How should the costs of ensuring adequate access be allocated? Will the plan stimulate demand for new telecommunications services? How will the plan address the needs of previously disenfranchised potential users?

What steps are necessary to ensure end-user ease of access? What are the respective roles of the state and private sector in taking these steps?

(3) *Incorporation of broad input.* There are many individuals and sectors of society with a stake in the information infrastructure. How an applicant intends to incorporate their opinions and concerns into the final plan is crucial to the eventual successful implementation of the plan. Applicants should address how they intend to incorporate comments from the public into the planning process. The breadth and depth of representation, including a balanced representation of rural and urban, professional, socioeconomic, ethnic, cultural and other relevant interests, is important. Some questions for an applicant to address under this section are:

To what extent will the applicant work to promote public/private partnerships?

What procedures will ensure that individuals and entities can provide input?

What state and national agencies and private sector entities will be involved, and at what levels?

What monitoring or evaluation plan will be utilized?

c. *Financial information.* Grant funds may be spent on information collection, salaries, travel, lodging, and other expenses reasonably related to planning activities.

Local and Intrastate Planning Grants

a. Eligibility

This section supports development of planning and/or implementation strategies of local governments, intrastate multi-community or multi-county entities, and local non-profit organizations.

b. Evaluative Criteria

Many of the evaluative criteria applied to the previous planning grant category—questions of interoperability, identification of end-users, and incorporation of broad input—are germane to Local and Intrastate Planning Grant applications.

(1) Objectives

Although the focus of this subcategory is considerably less "global" than for Statewide, Regional, and National Planning Grants, proposals in this subcategory should nevertheless exhibit the same consistency with the long range NII objective of fostering seamless, multi-functional networks. Accordingly, questions of interoperability and connectivity should be carefully considered.

Within the context of this subcategory, a number of questions become especially relevant:

What provisions in the plan have been made to address crucial "last mile" connectivity questions?

Is sufficient technical and operational expertise available at the local level to ensure efficient planning and subsequent implementation?

Will service provider and/or end-user acceptance of new or expanded telecommunications services present any special difficulties?

(2) Formation of Partnerships

NTIA will consider favorably applications that demonstrate a

partnership among groups of communities or entities for the purpose of pooling and leveraging resources. This does not mean that these groups should come together merely for the purpose of obtaining a federal grant. This partnership or coalition should demonstrate that it will continue to function and operate effectively once the NTIA grant is concluded.

Can the local resources of national or regional organizations, both public and private, be enlisted in support of the planning effort?

What unique linguistic, social, cultural, political, or economic impediments exist locally that might hinder the planning effort?

(3) Innovation and Experimentation

Information infrastructure has evolved and been used in unanticipated ways. Similarly, many of the most valuable telecommunications services (such as the Internet) and facilities now in use were once experimental. NTIA is seeking applications for planning grants that will foster and encourage experimentation with use of NII technologies at the grass roots level, build the capacity of the public to participate in the emerging NII, or address specific objectives underlying the deployment of the NII as identified in the Agenda for Action (September 21, 1993). For this reason, projects supported under Category Two should be those that are more likely to lead to the development of innovative methods, practices, or policies that will ensure that the NII activities reach a broad population. The objective is to build both the technical and human infrastructure needed to make the NII useful to citizens. These plans can serve as models for similar projects that are most likely to lead to the development of systems, projects, and policies that can stimulate similar initiatives in other areas of the country.

(4) Support

Applicants should clearly define the administrative or institutional support that has been generated to advance any planning effort.

Can national sources of public and private funding be leveraged in support of a local planning effort?

Since many local initiatives tend to rely heavily in the initial stages on volunteer energies, how will questions of continuity be addressed?

c. Financial Information

Grant funds may be spent on information collection, salaries, travel, lodging, and other expenses reasonably related to planning activities.

Selection Procedures

Categories of projects warranting support under the TIIAP are described above. The priorities described at the beginning of each specific category sets out those types of projects that NTIA is most interested in supporting. These criteria will enable NTIA to ascertain the competitiveness of projects within certain priorities.

All applications will be subject to a thorough peer review process. Panels composed of individuals fully conversant with the technical and operational aspects of advanced telecommunications technologies and services will review the proposals and make non-binding recommendations to the agency. The final decision on successful applications will be made by the Assistant Secretary for Communications and Information, who also administers NTIA. All applicants should address the general criteria described above, regardless of the category to which they are applying. Specific criteria apply only within that category (i.e., a local government should not address the specific criteria for State Planning). While all criteria carry equal weight, not all criteria will be equally applicable to every proposal. Even if the applicability or lack of applicability of a particular criterion may appear obvious, an applicant should take care to explain why that criterion does not apply to its proposal.

Other Information

Federal Policies and Procedures

Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal financial assistance awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Applicants are hereby notified that, notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of Department of Commerce or NTIA to cover pre-award costs.

No Obligation For Future Funding

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce. Receipt of a TIIAP grant, however, will not eliminate the recipient from consideration for future funding.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: 1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department of Commerce are made.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity.

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," and the following explanations are hereby provided: 1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace—Grantees (as defined at 15 CFR 26.605) 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 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more that $100,000, and loans and

loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure—Any applicant that has paid or will pay for lobbying in connection with a covered Federal action, such as 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, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement 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 applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." This notice was reviewed by the Office of Management and Budget under Executive Order 12866.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–5006 Filed 3–3–94; 8:45 am]

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Federal Register

Vol. 59, No. 43

Thursday, March 4, 1994

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FEDERAL REGISTER PAGES AND DATES, MARCH

CFR PARTS AFFECTED DURING MARCH

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 25, 1994

Public Laws

103d Congress, 2d Session, 1994

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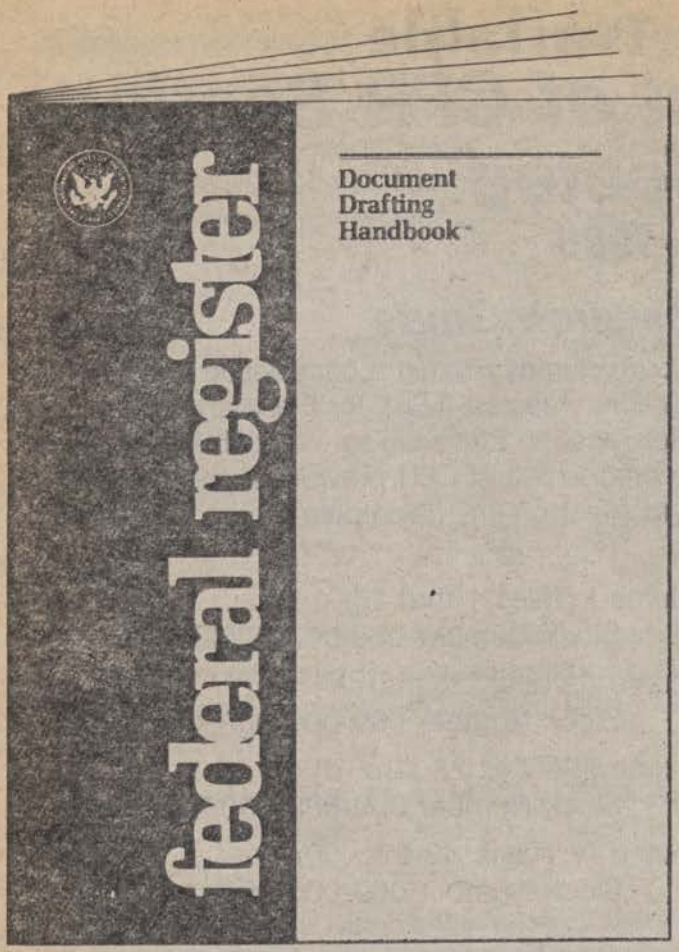

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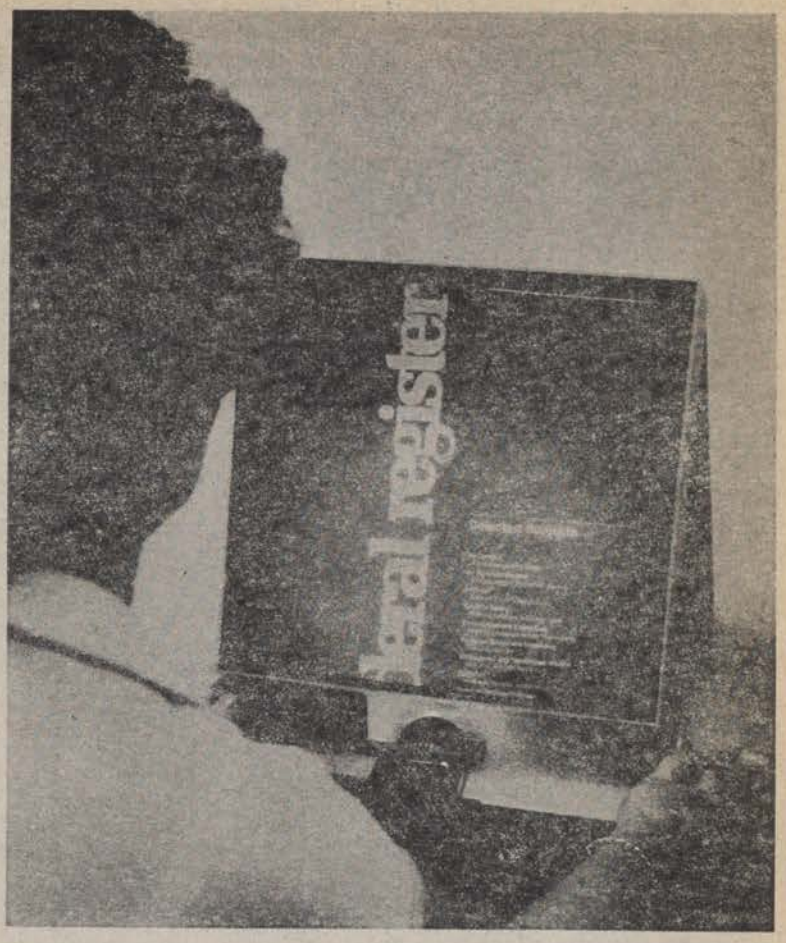

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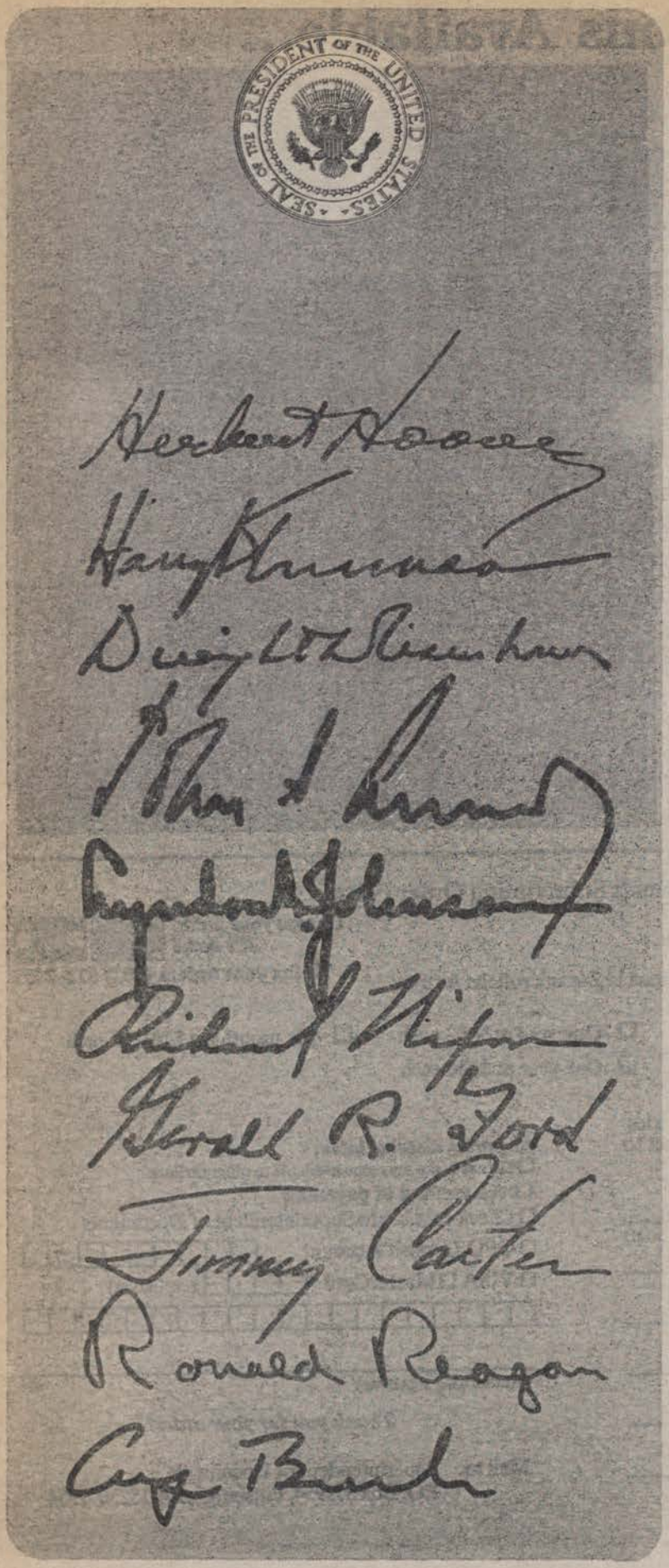

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